


TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL   
DATE: July 17, 2008

**AGENDA ITEM**  
**D-3**  
**JULY 23, 2008**

**CONSIDER ADOPTION OF HAZARD COMMUNICATION POLICY**

**ITEM**

Consider adoption of Hazard Communication Policy [ADOPT RESOLUTION].

**BACKGROUND**

Title 8, Section 5194, of the California Code of Regulations requires employers to have an effective hazard communication policy to ensure that employees are adequately trained and informed of hazardous substances associated with their work environment. The District currently does not have a written hazard communication policy.

Staff has prepared the attached Hazard Communication Policy based on Cal/OSHA's requirements and SDRMA's model hazard communication policy. Once the policy is adopted, staff will proceed to conduct the appropriate training.

**RECOMMENDATION**

Staff recommends that your Honorable Board adopt the attached Resolution.

**ATTACHMENT**

Resolution 2008-XXXX with Exhibit "A" – Hazard Communication Policy

**NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2008-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
NIPOMO COMMUNITY SERVICES DISTRICT  
ADOPTING A HAZARD COMMUNICATION POLICY**

**WHEREAS**, the Nipomo Community Services District (herein "District") does not have a Hazard Communication Policy, and

**WHEREAS**, Staff has determined that the District needs a Hazard Communication Policy to ensure that employees are adequately trained and informed of hazardous substances associated with their work environment; and

**WHEREAS**, the draft Hazard Communication Policy has been circulated for employee comment; and

**WHEREAS**, the Hazard Communication Policy attached as Exhibit "A" to this Resolution has been reviewed by the Board of Directors of the Nipomo Community Services District.

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED** by the Board of Directors of the Nipomo Community Services District, as follows:

1. The policy attached hereto as Exhibit "A" is hereby adopted as the Hazard Communication Policy of the Nipomo Community Services District.
2. Effective Date. This Resolution and the attached Hazard Communication Policy shall take effect immediately.

Upon motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

CONFLICT:

the foregoing resolution is hereby passed and adopted this 23<sup>rd</sup> day of July, 2008.

\_\_\_\_\_  
Michael Winn  
President of the Board  
Nipomo Community Services District

ATTEST:

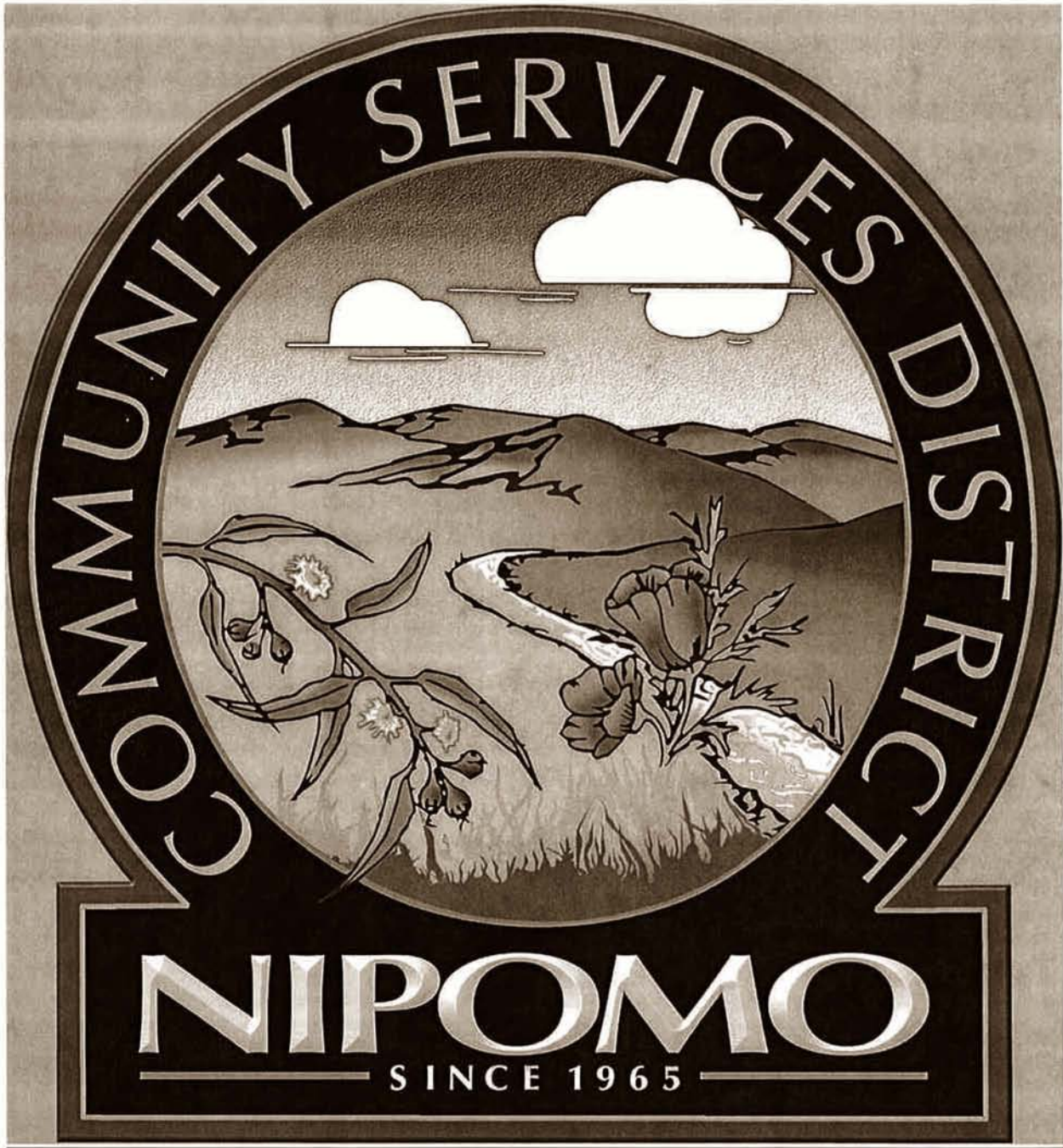
APPROVED:

\_\_\_\_\_  
Donna K. Johnson  
Secretary to the Board

\_\_\_\_\_  
JON S. SEITZ  
District Legal Counsel



**NCSD SAFETY POLICIES AND PROCEDURES  
HAZARD COMMUNICATION POLICY**



# NCS D SAFETY POLICIES AND PROCEDURES

## HAZARD COMMUNICATION POLICY

### I. PURPOSE

The purpose of the NCS D HAZARD COMMUNICATION POLICY is to ensure that employees are adequately trained and informed of the hazards and methods of protection from hazardous substances that may occur in the workplace.

### II. APPLICABILITY

This Policy applies to all NCS D locations where hazardous substances are present.

### III. POLICY

It is the policy of the Nipomo Community Services District to comply with all aspects of the Cal/OSHA requirements for hazard communication specified in the Hazard Communication Standard *Title 8, Subchapter 7, Article 109, Section 5194*.

### IV. DEFINITIONS

*"Chemical Name"* - the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUP AC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name which will clearly identify the substance for the purpose of conducting a hazard evaluation.

*"Container"* - any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, tank truck, or the like that contains a hazardous substance.

*"Exposure"* - any situations arising from work operation where an employee may ingest, inhale, absorb through the eyes or skin, or otherwise come into contact with a hazardous substance.

*"Hazard Warning"* - any words, pictures, symbols, or combination thereof, appearing on a label or other appropriate form of warning which may convey the health hazards and physical hazards of a substance in a container.

*"Immediate Use"* - hazardous substances will be under the control of and used only by the person who transfers it from the labeled container and only within the work shift in which it is transferred.

*"Label"* - any written, printed, or graphic material displayed on or affixed to containers of hazardous substances.

*"Material Safety Data Sheet (MSDS)"* - written or printed material concerning a hazardous substance.



# NCSD SAFETY POLICIES AND PROCEDURES

## HAZARD COMMUNICATION POLICY

### V. RESPONSIBILITY

A. Utility Superintendent and Finance Director/Assistant General Manager shall:

1. Ensure that the HAZARD COMMUNICATION POLICY is implemented. The Utility Superintendent and Finance Director/Assistant General Manager have the authority to delegate any or all portions of this Policy to subordinates, but the Superintendent and Finance Director/Assistant General Manager will be held responsible for compliance.
2. Maintain up-to-date inventory and MSDSs for all hazardous materials.
3. Ensure that employees are properly informed about the hazardous substances that may be encountered in the workplace
4. Ensure that the appropriate personal protective equipment (PPE) is available for the task, and that employees are properly trained to use this equipment
5. Ensure that ongoing training occurs through the use of safety awareness meetings, tailgate meetings and the District's on-line training program.

B. Employees shall:

1. Adhere to all aspects of this policy.
2. Read the MSDSs' and labels of each chemical before it is used in the workplace.
3. Use the appropriate personal protective equipment required for the task.
4. Ensure that all containers are properly labeled with the identity of the chemical and its hazards.

C. District Engineer/Safety Officer shall:

1. Update and maintain the HAZARD COMMUNICATION POLICY on an annual basis.
2. Provide assistance in training employees on hazard communication.
3. Provide interpretation of MSDSs.
4. Review chemical inventory on an annual basis.
5. Review new chemicals prior to District purchase.
6. Review personal protective equipment prior to District purchase.

### VI. PROCEDURE

A. Labeling

Any material transferred from a labeled container and not intended for the immediate use of the employee performing the transfer, shall be labeled in such a manner that the chemical and its hazards are properly identified. The identification system for labeling shall be from the: National Fire Protection Association, Hazard Material Information System, or a manufacturer's system. Employees will be advised of, and trained in, the labeling system used in the workplace. The Safety Officer will provide guidance to supervisors for selecting information to be used on labels. Management is ultimately responsible for ensuring that all containers in each

# NCSD SAFETY POLICIES AND PROCEDURES

## HAZARD COMMUNICATION POLICY

section are properly labeled. All labels or other forms of hazard warning shall be legible. Employees shall not deface labels on hazardous substance containers.

### B. Material Safety Data Sheets

Employees working in an area where a hazardous chemical is used will be informed of the existence of the MSDS and its location, and their right to a personal copy. Copies of MSDSs for all hazardous chemicals will be kept in a central location that is accessible to all employees. If an MSDS is not available employees should immediately contact their immediate supervisor.

The Safety Officer will periodically audit the MSDS files to ensure that copies are available for all chemicals used in the workplace.

### C. Employee Training and Information

Information will be given to employees who may be exposed to a hazardous chemical in the workplace through training programs. Training will be conducted by the supervisor or Safety Officer upon initial assignment of a new employee and whenever a new hazard is introduced into the workplace.

At a minimum, training will include a discussion of:

1. The requirements of the Cal/OSHA Hazard Communication Standard.
2. The location of the written Hazard Communication Policy.
3. The definition of a hazardous chemical.
4. The operations within an employee's area where hazardous chemicals are present.
5. The contents of an MSDS and how to apply the information included therein to the work area situation.
6. How and where MSDSs are stored.
7. How to interpret and use labels on containers of hazardous materials and an explanation of the labeling system used within the division.
8. The potential fire, health, reactivity hazards likely to be encountered in handling or utilization of a hazardous material.
9. What to do in an emergency, release, or over-exposure to a chemical.
10. Methods employees can use to detect the presence or release of a chemical.
11. Warnings that some chemicals may pose a cancer or reproductive hazard to the employee.
12. Forbidden storage of food and water around chemicals.

Training and information sharing shall be accomplished by either formal classroom instruction or in safety tailgate meetings. All training will be documented. Training concerning new hazards will be provided within 30 days of introduction into the workplace.

Supervisors will discuss any chemical hazards associated with non-routine tasks that the employee does not normally conduct prior to the employee doing the task. This discussion will



# NCS D SAFETY POLICIES AND PROCEDURES

## HAZARD COMMUNICATION POLICY

include a review of the chemical hazards, MSDS, and personal protective equipment required. The supervisor must document that this training took place prior to the employee conducting the task.

### D. Protection Methods

The methods that the NCS D has employed to protect employees from chemical exposures will include:

1. General dilution ventilation provided in the workplace to limit the accumulation of hazardous vapors and any other measures provided to reduce employee exposure to hazardous chemicals.
2. Work practice controls and proper storage/handling of chemicals.
3. The use of personal protective equipment as outlined in the Injury and Illness Prevention Policy.
4. Proper procedures to follow in the event of a chemical spill including protective equipment required and methods of containing spills and leaks.
5. Emergency first aid procedures in the event exposure to a hazardous chemical should occur.
6. Instruction on the use of eye wash stations and their locations.
7. Employee instruction on how to detect hazardous chemicals in their work area, including odor and personal monitoring devices.

### E. Chemical Inventory

Each department that uses hazardous chemicals will be required to maintain a chemical inventory. The inventory must be updated whenever a new chemical enters the workplace, a chemical is no longer used in the workplace, and on an annual basis. A copy of the most recent version of the chemical inventory will be provided to and kept on file by the Safety Officer. The Utility Superintendent and Finance Director/Assistant General Manager shall be responsible for the chemical inventory.

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BB*  
DATE: JULY 18, 2008



ACKNOWLEDGE EXECUTION OF HAMNER-JEWELL AGREEMENT

**ITEM**

Acknowledge execution of Hamner-Jewell Agreement for property negotiation services [NO ACTION REQUIRED].

**BACKGROUND**

On June 25, 2008, your Honorable Board authorized execution of an agreement with Hamner-Jewell for property negotiation services related to the Waterline Intertie Project. Attached is an executed agreement.

**RECOMMENDATION**

Staff recommends that your Honorable Board acknowledge execution of the agreement

**ATTACHMENTS**

- Hamner-Jewell Agreement

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**Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444**

**TASK ORDER AGREEMENT FOR PROFESSIONAL SERVICES  
HAMNER, JEWELL & ASSOCIATES**

**THIS AGREEMENT** (hereinafter referred to as "Agreement") is made by and between the Nipomo Community Services District, a Community Services District duly existing and operating pursuant to the provisions of Government Code Section 61000 et seq. (hereinafter referred to as "NCSD" or "District") and Hamner, Jewell & Associates (herein referred to as "Consultant"), with reference to the following Recitals:

**RECITALS**

A. NCSD desires to retain professional property negotiation services on an on-call, as needed basis, to perform services identified in individual task orders ("Task Orders").

B. NCSD desires to engage Consultant to provide services by reason of its qualifications and experience in performing such services, and Consultant has offered to provide the required services through Task Orders on the terms and in the manner set forth herein.

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

**1. DESIGNATED REPRESENTATIVES.** Bruce Buel, General Manager, at telephone number (805) 929-1133 is the representative of NCSD and will administer this Agreement for and on behalf of NCSD. Lillian Jewell, at telephone number (805) 773-1459, is the authorized representative for Consultant. Changes in designated representatives shall be made only after advance written notices to the other party.

**2. NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first-class mail, postage prepaid, or otherwise delivered as follows:

**NCSD:** Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444  
Attn: Bruce Buel, General Manager  
Facsimile: (805) 929-1133

**CONSULTANT:** Hamner, Jewell & Associates  
340 James Way, Suite 150  
Pismo Beach, CA 93449  
Attn: Lillian Jewell  
Facsimile: (805) 773-2418  
Email: ljewell@hamner-jewell.com

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

**3. TASK ORDERS.**

A. Task Orders shall:

1. Describe the Scope of Services to be performed by Consultant;
2. Include Compensation Schedules for services including reimbursable expenses.
3. Include a "Not To Exceed Amount".
4. Be signed by the Consultant prior to execution by NCSD.

B. The terms and conditions of this Agreement are incorporated into individual Task Orders.

**4. SCOPE OF SERVICES.** Consultant agrees to provide the Services and submit deliverables to NCSD in accordance with the individual Task Orders and this Agreement, subject to the direction of NCSD as provided from time to time. Consultant represents and warrants that the Not To Exceed Amount represented in individual Task Orders will be sufficient to provide the Services and submit the deliverables Identified in individual Task Orders. In addition and prior to submitting monthly invoices, Consultant shall participate in at least one (1) phone conference with District General Manager and/or other District representative regarding Consultant's efforts.

**5. TERM.** Consultant shall commence performance within five (5) days of NCSD's Execution of Task Orders and unless otherwise directed in writing by NCSD or unless earlier terminated as provided in this Agreement, shall complete performance and make deliverable as provided in this Agreement and individual Task Orders.



## **6. COMPENSATION OF CONSULTANT.**

A. Consultant will be paid for the Services provided to NCSD in accordance with the Schedule set forth in the Task Orders and subject to the Not to Exceed Amount.

B. Consultant shall submit invoices no more often than monthly for Services performed and Reimbursable Expenses incurred. Each invoice shall identify the person providing the service, the services performed, a report on the services performed that at a minimum summarizes the meetings and conferences attended by Consultant on behalf of the District, and the corresponding Task Order.

C. NCSD shall review each invoice submitted by Consultant to determine whether it accurately reflects the Services performed and Reimbursable Expenses incurred in compliance with the provisions of this Agreement and the Task Order. In the event no charges or expenses are disputed, the invoice shall be approved and paid within forty five (45) days of receipt of the invoice. In the event NCSD disputes any charge or expenses, it shall return the original invoice to Consultant for correction and resubmission, however, the undisputed amount shall be paid as indicated above.

D. NCSD shall not pay Consultant more than the Not-to-Exceed Amount referenced in individual Task Orders without the prior written authorization of the NCSD. In order for NCSD to increase the Not-To-Exceed Amount Consultant must timely, and prior to sixty percent (60%) completion of the services referenced in individual Task Orders, identify and document how circumstances beyond its reasonable control have increased the time and/or costs of performing the Services beyond the amounts identified in the Task Orders. The NCSD, in its sole discretion, may deny in part or in whole the request to increase the Not to Exceed Amount, modify the Scope of Services, or approve the increase in the Not to Exceed Amount.

E. Payment to Consultant shall be full compensation for all personnel, materials, supplies, and equipment used in carrying out the Services.

F. Payment of an invoice by NCSD shall not constitute acceptance of defective Services, and NCSD's failure to discover or object to any unsatisfactory Services or billing prior to payment will not constitute a waiver of NCSD's right to:

1. Require Consultant to correct such work or billings; or
2. Seek any other legal remedy.

G. NCSD may withhold, or on account of subsequently discovered evidence nullify, the whole or a part of any payment to such extent as may be necessary to protect NCSD from loss, including costs and attorneys' fees, on account of (1) defective or deficient work product not remedied; (2) subsequently discovered errors in invoices previously paid; (3) claims filed or reasonable evidence indicating probable filing of a



claim or claims; (4) failure of Consultant to make payments properly to its employees or sub-consultants; or (5) Consultant's failure to adhere to the Schedules or to achieve sufficient progress with the Services such that Consultant is unlikely to achieve timely completion.

## **7. STATUS OF CONSULTANT.**

A. Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of NCSD. Consultant shall have no authority to bind NCSD in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against NCSD, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by NCSD.

B. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither NCSD, nor any elected or appointed boards, officers, officials, employees or agents of NCSD, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, subcontractors, or agents are in any manner officials, officers, employees or agents of NCSD.

C. Neither Consultant, nor any of Consultant's officers, employees, subcontractors, or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to NCSD's employees. Consultant expressly waives any claim Consultant may have to any such rights.

## **8. PERFORMANCE STANDARDS.**

A. Compliance with laws. Consultant shall (and shall cause its agents and sub-contractors), at its sole cost and expense, to comply with all State and Federal ordinances, regulations and statutes now in force or which may hereafter be in force with regard to the Services referenced in individual Task Orders, and this Agreement. The judgment of any court of competent jurisdiction, or the admission of Consultant in any action or proceeding against Consultant, whether NCSD be a party thereto or not, that Consultant has violated any such ordinance or statute, shall be conclusive of that fact as between Consultant and NCSD. Except as provided above, any corrections to Consultant's Services which become necessary as a result of the Consultant's failure to comply with these requirements shall be made at Consultant's expense.

B. Standard of Performance. Consultant represents that it has the skills, expertise, and licenses necessary to perform the Services required under this Agreement and subsequently executed Task Orders. Consultant shall perform all such Services in the manner and according to the standards observed by professionals experienced in providing Services identified in individual Task Orders. All documents and services of whatsoever nature that Consultant delivers to NCSD pursuant to this



Agreement and individual Task Orders shall conform to the standards of quality normally observed by professionals experienced in providing Services identified in individual Task Orders. Consultant shall promptly correct or revise any errors or omissions at NCSD's request without additional compensation. Licenses required to perform such services shall be obtained and maintained by Consultant without additional compensation throughout the term of this Agreement

**9. FAMILIARITY WITH SERVICES TO BE PERFORMED.** By executing individual Task Orders, Consultant represents that Consultant (a) has thoroughly investigated and considered the Scope of Services referenced in Task Orders to be performed; (b) has carefully considered how the services should be performed; (c) fully understands the difficulties and restrictions attending performance of the services under this Agreement; and (d) that the "not to exceed amount" is adequate for the Services to be performed by Consultant.

**10. TAXES.** Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

**11. CONFLICT OF INTEREST.** Consultant covenants that neither it, nor any officer or principal of its firm, or subcontractors retained by Consultant has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of NCSD for Task Order work or which would in any way hinder Consultant's performance of services under this Agreement or Task Order. Consultant further covenants that in the performance of the Services, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the prior express written consent of the NCSD Manager. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the NCSD in the performance of the Services pursuant to Individual Task Orders.

**12. RESPONSIBILITIES OF NCSD.** NCSD shall provide all information reasonably necessary by Consultant in performing the services provided herein.

**13. OWNERSHIP OF DOCUMENTS.** All reports, documents, drawings, photographs, videotape, specifications, data, and other instruments of professional service, in paper and electronic form, whether in draft or final, prepared by Consultant during the performance of this Agreement (the "Documents") shall be and become the property of NCSD. Consultant shall deliver the Documents to the NCSD promptly upon completion of the Services or termination of this Agreement, for any reason, whichever shall occur first.

**14. RECORDS, AUDIT AND REVIEW.** Consultant and Consultant's subcontractors shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Consultant's profession and shall maintain such



records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. NCS D shall have the right to audit and review all such documents and records at any time during Consultant's regular business hours or upon reasonable notice.

## **15. INDEMNIFICATION**

A. To the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to the NCS D) indemnify and hold harmless NCS D and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, court costs, attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities") in performing services pursuant to Task Orders. Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, or willful misconduct of such Indemnitee.

B. Neither termination of this Agreement or completion of the services referenced in individual Task Orders under this Agreement shall release Consultant from its obligations referenced in subsection A, above, as to any claims, so long as the event upon which such claims is predicated shall have occurred prior to the effective date of any such termination or completion and arose out of or was in any way connected with performance or operations under this Agreement by Consultant, its employees, agents or consultants, or the employee, agent or consultant of any one of them.

C. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement and individual Task Orders. If Consultant fails to obtain such indemnity obligations from others as required, Consultant shall be fully responsible for all obligations under this Section. NCS D's failure to monitor compliance with this requirement imposes no additional obligations on NCS D and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend NCS D as set forth herein is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

D. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in the Agreement does not relieve Consultant from liability referenced in this Section 15. The obligations of this Section 15



shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

**16. INSURANCE.**

A. Consultant and its subconsultants shall procure and maintain insurance with companies authorized to do business in the State of California and assigned an A.M. Best's rating of no less than A-(IX), the following insurance coverage on an "occurrence basis", written on the ISO form shown below (or its equivalent) at the limits of liability specified for each:

General Liability Insurance ((ISO Form CG001 11/85) (including coverage for premises, products and completed operations, independent Consultants/vendors, personal injury and contractual obligations with combined single limits of coverage of at least	\$ 1 Million per occurrence. \$ 2 Million in the aggregate
Workers' Compensation Insurance	Statutory
Employer's Liability Insurance	\$ 1 Million policy limit
Professional Liability Insurance or	\$ 1 Million per claim
Errors and Omissions Insurance	\$ 1 Million in the aggregate

B. If Consultant or its employees and agents will use personal automobiles in any way in performing the services under this Agreement, Consultant shall provide evidence of personal auto liability coverage for each such person.

C. The General and Commercial Automobile liability policies shall be endorsed to include the following:

- (1) NCSD, its officers, directors, employees and agents shall be named as Additional Insureds using ISO endorsement No. CG-2010; and
- (2) The coverage afforded NCSD shall be primary and non-contributing with any other insurance maintained by NCSD.
- (3) If not covered separately under a business automobile liability policy, the general liability policy shall also be endorsed to include non-owned and hired automobile liability.

D. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.



E. Prior to commencing work under this Agreement, Consultant shall provide NCSD with Certificates of Insurance evidencing compliance with the foregoing requirements, accompanied by copies of the required endorsements. Certificates of Insurance for commercial general liability, automobile liability, workers' compensation, employer's liability, and professional liability insurance shall specify that the insurer shall give NCSD thirty (30) days advance written notice by the insurer prior to cancellation of the policy except ten (10) days for nonpayment of premium.

F. All insurance coverage required hereunder shall be kept in full force and effect for the term of this Agreement. Professional liability insurance shall be maintained for an additional, uninterrupted period of three (3) years after termination of this Agreement, provided such insurance is commercially available at rates reasonably comparable to those currently in effect. Certificates of Insurance evidencing renewal of the required coverage shall be provided within ten (10) days of the expiration of any policy at any time during the period such policy is required to be maintained by Consultant hereunder. Any failure to comply with this requirement shall constitute a material breach of this Agreement.

G. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against NCSD regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

H. All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the NCSD or its operations limits the application of such insurance coverage.

I. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to NCSD and approved of in writing.

J. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

K. Consultant agrees to provide immediate notice to NCSD of any claim or loss against Consultant arising out of the work performed under this agreement. NCSD assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve NCSD.

## **17. PERSONNEL.**

A. The Consultant represents that it has, or will secure at its own expense, all personnel, sub-consultants and/or subcontractors required in performing the Services under this Agreement. All of the Services required hereunder will be performed by the



Consultant or under Consultant's supervision, and all personnel engaged in the work shall be qualified to perform such Services.

B. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's employees, associates and subconsultants assigned to perform the Services required under this Agreement.

## **18. TERMINATION.**

A. If Consultant at any time refuses or neglects to perform the Services in a timely fashion or in accordance with the Schedule referenced in Task Orders, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without NCSD's written consent, or fails to make prompt payment to persons furnishing labor, equipment, or materials, or fails in any respect to properly and diligently prosecute the Services, or otherwise fails to perform fully any and all of the Agreements herein contained, Consultant shall be in default.

B. If Consultant fails to cure the default within seven (7) days after written notice thereof, NCSD may, at its sole option, take possession of any documents, files (including CAD and other electronic files), or other materials prepared or used by Consultant in connection with the Services and (a) provide any such services, labor, or materials as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (b) terminate Consultant's right to proceed with the Services.

C. In the event NCSD elects to terminate this Agreement, NCSD shall have the right to immediate possession of all Documents and other work in progress prepared by or on behalf of Consultant, whether located at the District Office, at Consultant's place of business, or at the offices of a subcontractor, and may employ any other person or persons to provide the Services and provide the materials therefore. In case of such default termination, Consultant shall not be entitled to receive any further payment under this Agreement until the Services are completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by NCSD in obtaining Services, such excess shall be paid by NCSD to Consultant, but, if such expense shall exceed such unpaid balance, then Consultant shall promptly pay to NCSD the amount by which the expenses exceeds the unpaid balance. The expense referred to in the last sentence shall include expenses incurred by NCSD in obtaining the Services from others, for attorneys' fees, and for any damages sustained by NCSD by reason of Consultant's default or defective Services.

D. In addition to the foregoing right to terminate for default, NCSD reserves the absolute right to terminate the Services authorized by this Agreement without cause ("Terminate for Convenience"), upon 72-hours' written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the Not to Exceed Amount referenced in Task Orders, which shall be calculated as follows: (1) Payment for any Services then satisfactorily completed and



accepted by NCSD, plus (2) Reimbursable Costs actually incurred by Consultant; plus (3) reasonable termination costs incurred by Consultant solely on account of the termination for convenience. There shall be deducted from such sums as provided in this section the amount of any payment made to Consultant prior to the date of termination of the Services. Consultant shall not be entitled to any claim or lien against NCSD or the proposed project for any additional compensation or damages in the event of such termination and payment. In addition, the NCSD's right to hold funds pursuant to Section 6 G shall be applicable in the event of a termination for convenience.

E. If this Agreement is terminated by NCSD for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a Termination for Convenience under Section D, above, and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a Termination for Convenience.

F. Should NCSD fail to pay Consultant undisputed payments set forth in Section 6 above, Consultant may, at Consultant's option, suspend its services if such failure is not remedied by NCSD within thirty (30) days of written notice to NCSD of such late payment.

**19. BREACH OF LAW.** In the event the Consultant or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or Consultant; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraphs 11, 23, 24, 25 of this Agreement; or for any other cause the NCSD determines to be so serious and compelling as to affect Consultant's responsibility as a public consultant or Consultant, including but not limited to, debarment by another governmental agency, then the NCSD reserves the unilateral right to terminate this Agreement, seek indemnification and/or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper.

## **20. DISPUTE RESOLUTION.**

A. The parties agree in good faith to attempt to resolve amicably, without litigation, any dispute arising out of or relating to this agreement. In the event that any dispute cannot be resolved through direct discussions, the parties agree to endeavor to settle the dispute by mediation. Either party may make a written demand for mediation, which demand shall specify the facts of the dispute. The matter shall be submitted to a mediator who shall hear the matter and provide an informal nonbinding opinion and advice in order to help resolve the dispute. The mediator's fee shall be shared equally by the parties. If the dispute is not resolved through mediation, the matter may be



submitted to the judicial system, in which event all litigation and collection expenses, witness fees, court costs and attorneys' fees shall be paid to the prevailing party.

B. No claim, potential claim, dispute or controversy, except non-payment by NCSD of undisputed amounts, shall interfere with the progress and performance of the Services referenced in Task Orders, or any changes thereto, and Consultant shall proceed as directed by the NCSD in all instances with its Services, including any disputed Services, or any changes thereto and any failure of Consultant to proceed shall be deemed a material breach of this Agreement entitling NCSD to all remedies available under Section 19 or other provision of the Agreement and/or applicable law. Except as provided elsewhere in this Agreement, NCSD shall continue to make payments in accordance with the Agreement.

**21. NCSD NOT OBLIGATED TO THIRD PARTIES.** NCSD shall not be obligated or liable for payment hereunder to any party other than the Consultant.

**22. NON-DISCRIMINATION.** Consultant shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with, or related to, the performance of this Agreement.

**23. UNAUTHORIZED ALIENS.** Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against NCSD for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse NCSD for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by NCSD. Consultant shall comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein.

**24. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.**

A. All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than NCSD without prior written authorization from the District Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the District Manager or unless requested by the District Legal Counsel of NCSD, voluntarily provide declarations, letters of support,



testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives NCSD notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then NCSD shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

D. Consultant shall promptly notify NCSD should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there-under. NCSD retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with NCSD and to provide NCSD with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by NCSD to control, direct, or rewrite said response.

**25. ASSIGNMENT.** The expertise and experience of Consultant are material considerations for this Agreement. NCSD has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the District Board of Directors. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling NCSD to any and all remedies at law or in equity, including summary termination of this Agreement. NCSD acknowledges, however, that Consultant, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

**26. COSTS AND ATTORNEY'S FEES.** Except for disputes that are resolved by non-binding mediation, the prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

**27. SECTION HEADINGS.** The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.



**28. SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

**29. REMEDIES NOT EXCLUSIVE.** Except for disputes related solely to the payment for Services performed by Consultant, no remedy herein conferred upon or reserved to the Parties is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

**30. NONEXCLUSIVE AGREEMENT.** Consultant understands that this is not an exclusive Agreement and that NCSD shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Consultant as the NCSD desires.

**31. ASSIGNMENT.** Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of NCSD and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

**32. NON-LIABILITY OF DISTRICT OFFICERS AND EMPLOYEES.** No officer or employee of NCSD will be personally liable to Consultant, in the event of any default or breach by the NCSD or for any amount that may become due to Consultant.

**33. INTERPRETATION OF THIS AGREEMENT.** The parties acknowledge that each party and its attorney had the opportunity to review, negotiate and revise this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the obligations contemplated by this Agreement.

**34. TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

**35. NO WAIVER OF DEFAULT.** No delay or omission of NCSD to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to NCSD shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of NCSD.



**36. ENTIRE AGREEMENT AND AGREEMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and Agreement of the parties and there have been no promises, representations, Agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral Agreements, course of conduct, waiver or estoppel.

**37. SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**38. CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of San Luis Obispo, if in state court, or in the federal court nearest to San Luis Obispo County, if in federal court.

**39. EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

**40. PRECEDENCE.** In the event of a conflict between the Task Orders and this Agreement, the provisions of this Agreement shall control.

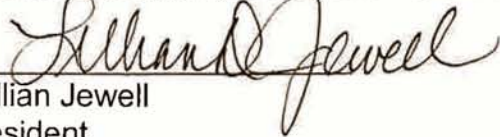
**41. RECITALS.** Recitals A through B are incorporated herein by reference as though set forth at length.

**42. AUTHORITY TO EXECUTE.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Consultant hereby warrants that it shall not have breached the terms or conditions of any other contract or Agreement to which Consultant is obligated, which breach would have a material effect hereon.



**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by the NCSD.

CONSULTANT: Hamner, Jewell and Associates

By:   
Name: Lillian Jewell

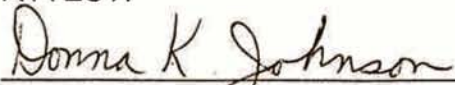
Title: President  
Beacon Integrated Professional Resources, Inc  
dba Hamner, Jewell & Associates

Date: July 16, 2008

NIPOMO COMMUNITY SERVICES DISTRICT

  
Bruce S. Buel, General Manager  
Nipomo Community Service District

Date: July 18, 2008

ATTEST:  
  
Donna K. Johnson, Secretary  
to the Board of Directors  
Date: 7-18-08

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TASK ORDER  
to  
CONSULTANT SERVICES AGREEMENT  
Between  
NIPOMO COMMUNITY SERVICES DISTRICT  
and HAMNER, JEWELL & ASSOCIATES

Dated: July 1, 2008

TASK ORDER # 08-001

**AUTHORIZATION FOR SERVICES:**

At the request of the Nipomo Community Services District, Hamner, Jewell & Associates is to provide the services as described herein. The terms and conditions of the Agreement for Professional Services, dated July 1, 2008, are incorporated herein by this reference. The scope of services requested, along with a schedule of fees and reimbursable for said services and the Not to Exceed Amount, are set forth below as follows:

**SERVICES TO BE PERFORMED** (Additional information may be attached as an exhibit.):

Attached as Exhibit "A"

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**SCHEDULE OF FEES (HOURLY RATES) INCLUDING REIMBURSABLE EXPENSES**

(Additional information may be attached as an exhibit.):

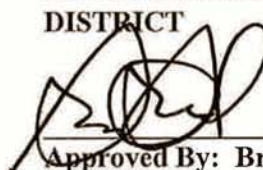
**Time and Materials as set forth in Exhibit A with a not to exceed expenditure limit of twenty thousand dollars (\$20,000)**

**SCHEDULE OF SERVICES** (Additional information may be attached as an Exhibit.):

See Exhibit "A"

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NIPOMO COMMUNITY SERVICES  
DISTRICT

  
Approved By: Bruce Buel  
Title: General Manager

Date:

7/18/08

HAMNER, JEWELL &  
ASSOCIATES

  
Approved By: Lillian D. Jewell  
Title: President  
Beacon Integrated Professional Resources, Inc  
dba Hamner, Jewell & Associates

Date:

7/17/08

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## HAMNER, JEWELL AND ASSOCIATES

*a division of BEACON INTEGRATED PROFESSIONAL RESOURCES, INC.*

**2008**

### **TIME AND MATERIALS FEE SCHEDULE** **For Annual and Multi-Annual Professional Services Contract Clients**

Managing Senior Associate	\$150 an hour
Legal Support	\$150 an hour*
Senior Associate II	\$140 an hour
Senior Associate I	\$110 an hour
Associates II	\$ 90 an hour
Associates I	\$ 80 an hour
Assistants	\$ 70 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.

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

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\* 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 and 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.





## **HAMNER, JEWELL & ASSOCIATES**

### **Government Real Estate Services**

*a division of Beacon Integrated Professional Resources, Inc.*

Ventura County Office: 3639 Harbor Boulevard, Suite 210, Ventura, California 93001

Tel: (805) 658-8844 Fax: (805) 658-8859

San Luis Obispo County Office: 340 James Way, Suite 150, Pismo Beach, California 93449

Tel: (805) 773-1459 Fax: (805) 773-2418

Writer's e-mail address: [ljewell@hamner-jewell.com](mailto:ljewell@hamner-jewell.com)

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June 23, 2008

Bruce Buel, General Manager  
Nipomo Community Services District  
148 S. Wilson Street  
Nipomo, CA 93444

Subject: Nipomo Community Services District—Waterline Intertie Project  
Proposal for Right of Way Acquisition Services

Dear Bruce,

Thank you for contacting my firm to solicit our assistance in acquiring property rights in conjunction with the Nipomo Community Services District's Waterline Intertie Project. As we have discussed, I would be pleased to have our firm assist you with these efforts.

As you are aware, Hamner, Jewell & Associates specializes in acquiring right of way and other property rights in conformance with the provisions of the California Government Code and eminent domain laws. Since 1977, we have assisted public agencies throughout Ventura, Santa Barbara, and San Luis Obispo counties with acquiring right of way and other property interests for roadways, waterlines, sewerlines, lift stations, pump stations, water treatment plants, and various other types of public projects. We are highly experienced in acquiring right of way specifically for waterline projects, both large and small. We have handled all of the right of way acquisition work for the Central Coast Water Authority and Calleguas Municipal Water District for many years, and have also recently completed the right of way acquisition for the Nacimiento Water Project. We are therefore very experienced and capable of assisting you with the property acquisition aspects of your pending project.

From our conversation, it is my understanding that that you seek our assistance with acquiring property rights for waterline easements, temporary construction easements, and a pump station and storage reservoir for the subject Intertie Project. You have indicated that these rights will need to be acquired from six property ownerships, and that you have had communications with each owner to date so that they are aware of the proposed project. You further indicated that the District would be directly retaining an appraiser, will obtain title reports, and will provide us with legal descriptions of the easements to be acquired, along with a set of project plans. You will provide us with appraisals and legal descriptions for use in our work in acquiring the sought property rights for the project.

**EXHIBIT A**



Bruce Buel  
Nipomo Community Services District  
Proposal for Right of Way Acquisition Services  
June 23, 2008  
Page 2 of 2

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We would pursue the right of way acquisition process on the District's behalf in accordance with Government Code and eminent domain requirements. Our work would include the preparation of offer packages based upon the appraisals. Our offer packages will include an offer letter, Appraisal Summary Statement, proposed Right of Way Agreement, and Deed. These documents would be presented to you for your review and pre-approval prior to presenting offers to property owners. In general, we make every effort to meet personally with owners to present these offers. After offer presentation, we would handle follow up communications with owners and District staff while pursuing amicable agreement terms with each owner to finalize the right of way transfers and, in the event of any that do not culminate in mutually acceptable amicable agreements, we could coordinate with you and the District's attorney in conjunction with any required Necessity Hearing scheduling. We have a high success rate of obtaining mutually acceptable agreements. For all cases that result in agreements, we would process all documents for necessary approvals and coordinate escrows, title insurance, and assure closings.

To assist you with these services, we would propose to bill monthly in accordance with the terms and provisions of our current Time and Materials Fee Schedule, a copy of which is attached. We would work closely with you and your project team to assure that we are investing our efforts in accordance with your needs and preferences. In any case where one is working with people rather than completing an independently controllable task, it is always difficult to speculate in advance the specific amount of time that may be required to complete our goals. Our efforts are largely impacted by the level of accessibility and responsiveness of the property owners from whom we seek agreement. Obviously, some will require much more time than others in coming to terms and finalizing documents required for the purposes of the project. We will bill only for time and expenses actually expended on the project's behalf, in accordance with the provisions of our attached Fee Schedule. For budgetary purposes for the six acquisitions expected to be needed for this project, we suggest that a budget sufficient to cover an average of 50 hours per parcel of Hamner, Jewell & Associates staff time, plus approximately \$1,500 for reimbursable expenses such as mileage, postage, and special delivery charges be allocated for this work. Hamner, Jewell & Associates offers two rate schedule options. If you wish to retain us on an annual on-call professional services contract, we offer a reduced rate schedule to our annual, ongoing clients. This is the approach I would recommend for the District. Project-specific contracts are at our standard Project-based rates; I have attached our Project-based rate schedule as well so that you can compare the difference and decide which contract approach to use. If you have any questions about these rate schedule options, please feel free to call on me.

We realize that time is of the essence to you and your project and we are prepared to assist you in this effort at the present time. If you have any questions or will require anything further in order to retain us to assist you with these efforts, please contact me at either (805) 773-1459 or [ljewell@hamner-jewell.com](mailto:ljewell@hamner-jewell.com).

We would look forward to the opportunity to work with you again and to assist you and the District with this project!

Sincerely,

*Lillian D. Jewell*

Lillian D. Jewell

Att: 2008 Time and Materials Fee Schedules for Annual Contract and Project-based Work

Copy of document found at [www.NoNewWipTax.com](http://www.NoNewWipTax.com)

**EXHIBIT A**



TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BBB*  
DATE: JULY 18, 2008



ACKNOWLEDGE EXECUTION OF REEDER, GILMAN & MILLION AGREEMENT

**ITEM**

Acknowledge execution of Reeder, Gilman & Million Agreement for property appraisal services [NO ACTION REQUIRED].

**BACKGROUND**

On June 25, 2008, your Honorable Board authorized execution of an agreement with Reeder, Gilman & Million for property appraisal services related to the Waterline Intertie Project. Attached is an executed agreement.

**RECOMMENDATION**

Staff recommends that your Honorable Board acknowledge execution of the agreement

**ATTACHMENTS**

- Reeder, Gilman & Million Agreement

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**Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444**

**TASK ORDER AGREEMENT FOR PROFESSIONAL SERVICES  
REEDER, GILMAN & MILLION**

**THIS AGREEMENT** (hereinafter referred to as "Agreement") is made by and between the Nipomo Community Services District, a Community Services District duly existing and operating pursuant to the provisions of Government Code Section 61000 et seq. (hereinafter referred to as "NCSD" or "District") and Reeder, Gilman & Million (herein referred to as "Consultant"), with reference to the following Recitals:

**RECITALS**

A. NCSD desires to retain professional property appraisal services on an on-call, as needed basis, to perform services identified in individual task orders ("Task Orders").

B. NCSD desires to engage Consultant to provide services by reason of its qualifications and experience in performing such services, and Consultant has offered to provide the required services through Task Orders on the terms and in the manner set forth herein.

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

- 1. DESIGNATED REPRESENTATIVES.** Bruce Buel, General Manager, at telephone number (805) 929-1133 is the representative of NCSD and will administer this Agreement for and on behalf of NCSD. Lisa Million, at telephone number (805) 925-2603, is the authorized representative for Consultant. Changes in designated representatives shall be made only after advance written notices to the other party.
- 2. NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first-class mail, postage prepaid, or otherwise delivered as follows:

**NCSD:** Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444  
Attn: Bruce Buel, General Manager  
Facsimile: (805) 929-1133



**CONSULTANT:** Reeder, Gilman & Million  
1101 South Broadway, Suite A  
Santa Maria, CA 93454  
Attn: Lisa Million  
Facsimile: (805) 925-0840  
Email: lmillion@rgmappraisers.com

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

### **3. TASK ORDERS.**

A. Task Orders shall:

1. Describe the Scope of Services to be performed by Consultant;
2. Include Compensation Schedules for services including reimbursable expenses.
3. Include a "Not To Exceed Amount".
4. Be signed by the Consultant prior to execution by NCSD.

B. The terms and conditions of this Agreement are incorporated into individual Task Orders.

**4. SCOPE OF SERVICES.** Consultant agrees to provide the Services and submit deliverables to NCSD in accordance with the individual Task Orders and this Agreement, subject to the direction of NCSD as provided from time to time. Consultant represents and warrants that the Not To Exceed Amount represented in individual Task Orders will be sufficient to provide the Services and submit the deliverables Identified in individual Task Orders. In addition and prior to submitting monthly invoices, Consultant shall participate in at least one (1) phone conference with District General Manager and/or other District representative regarding Consultant's efforts.

**5. TERM.** Consultant shall commence performance within five (5) days of NCSD's Execution of Task Orders and unless otherwise directed in writing by NCSD or unless earlier terminated as provided in this Agreement, shall complete performance and make deliverable as provided in this Agreement and individual Task Orders.

## 6. COMPENSATION OF CONSULTANT.

A. Consultant will be paid for the Services provided to NCSD in accordance with the Schedule set forth in the Task Orders and subject to the Not to Exceed Amount.

B. Consultant shall submit invoices no more often than monthly for Services performed and Reimbursable Expenses incurred. Each invoice shall identify the person providing the service, the services performed, a report on the services performed that at a minimum summarizes the meetings and conferences attended by Consultant on behalf of the District, and the corresponding Task Order.

C. NCSD shall review each invoice submitted by Consultant to determine whether it accurately reflects the Services performed and Reimbursable Expenses incurred in compliance with the provisions of this Agreement and the Task Order. In the event no charges or expenses are disputed, the invoice shall be approved and paid within forty five (45) days of receipt of the invoice. In the event NCSD disputes any charge or expenses, it shall return the original invoice to Consultant for correction and resubmission, however, the undisputed amount shall be paid as indicated above.

D. NCSD shall not pay Consultant more than the Not-to-Exceed Amount referenced in individual Task Orders without the prior written authorization of the NCSD. In order for NCSD to increase the Not-To-Exceed Amount Consultant must timely, and prior to sixty percent (60%) completion of the services referenced in individual Task Orders, identify and document how circumstances beyond its reasonable control have increased the time and/or costs of performing the Services beyond the amounts identified in the Task Orders. The NCSD, in its sole discretion, may deny in part or in whole the request to increase the Not to Exceed Amount, modify the Scope of Services, or approve the increase in the Not to Exceed Amount.

E. Payment to Consultant shall be full compensation for all personnel, materials, supplies, and equipment used in carrying out the Services.

F. Payment of an invoice by NCSD shall not constitute acceptance of defective Services, and NCSD's failure to discover or object to any unsatisfactory Services or billing prior to payment will not constitute a waiver of NCSD's right to:

1. Require Consultant to correct such work or billings; or
2. Seek any other legal remedy.

G. NCSD may withhold, or on account of subsequently discovered evidence nullify, the whole or a part of any payment to such extent as may be necessary to protect NCSD from loss, including costs and attorneys' fees, on account of (1) defective or deficient work product not remedied; (2) subsequently discovered errors in invoices previously paid; (3) claims filed or reasonable evidence indicating probable filing of a



claim or claims; (4) failure of Consultant to make payments properly to its employees or sub-consultants; or (5) Consultant's failure to adhere to the Schedules or to achieve sufficient progress with the Services such that Consultant is unlikely to achieve timely completion.

## **7. STATUS OF CONSULTANT.**

A. Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of NCSD. Consultant shall have no authority to bind NCSD in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against NCSD, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by NCSD.

B. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither NCSD, nor any elected or appointed boards, officers, officials, employees or agents of NCSD, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, subcontractors, or agents are in any manner officials, officers, employees or agents of NCSD.

C. Neither Consultant, nor any of Consultant's officers, employees, subcontractors, or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to NCSD's employees. Consultant expressly waives any claim Consultant may have to any such rights.

## **8. PERFORMANCE STANDARDS.**

A. Compliance with laws. Consultant shall (and shall cause its agents and sub-contractors), at its sole cost and expense, to comply with all State and Federal ordinances, regulations and statutes now in force or which may hereafter be in force with regard to the Services referenced in individual Task Orders, and this Agreement. The judgment of any court of competent jurisdiction, or the admission of Consultant in any action or proceeding against Consultant, whether NCSD be a party thereto or not, that Consultant has violated any such ordinance or statute, shall be conclusive of that fact as between Consultant and NCSD. Except as provided above, any corrections to Consultant's Services which become necessary as a result of the Consultant's failure to comply with these requirements shall be made at Consultant's expense.

B. Standard of Performance. Consultant represents that it has the skills, expertise, and licenses necessary to perform the Services required under this Agreement and subsequently executed Task Orders. Consultant shall perform all such Services in the manner and according to the standards observed by professionals experienced in providing Services identified in individual Task Orders. All documents and services of whatsoever nature that Consultant delivers to NCSD pursuant to this



Agreement and individual Task Orders shall conform to the standards of quality normally observed by professionals experienced in providing Services identified in individual Task Orders. Consultant shall promptly correct or revise any errors or omissions at NCSD's request without additional compensation. Licenses required to perform such services shall be obtained and maintained by Consultant without additional compensation throughout the term of this Agreement

**9. FAMILIARITY WITH SERVICES TO BE PERFORMED.** By executing individual Task Orders, Consultant represents that Consultant (a) has thoroughly investigated and considered the Scope of Services referenced in Task Orders to be performed; (b) has carefully considered how the services should be performed; (c) fully understands the difficulties and restrictions attending performance of the services under this Agreement; and (d) that the "not to exceed amount" is adequate for the Services to be performed by Consultant.

**10. TAXES.** Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

**11. CONFLICT OF INTEREST.** Consultant covenants that neither it, nor any officer or principal of its firm, or subcontractors retained by Consultant has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of NCSD for Task Order work or which would in any way hinder Consultant's performance of services under this Agreement or Task Order. Consultant further covenants that in the performance of the Services, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the prior express written consent of the NCSD Manager. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the NCSD in the performance of the Services pursuant to Individual Task Orders.

**12. RESPONSIBILITIES OF NCSD.** NCSD shall provide all information reasonably necessary by Consultant in performing the services provided herein.

**13. OWNERSHIP OF DOCUMENTS.** All reports, documents, drawings, photographs, videotape, specifications, data, and other instruments of professional service, in paper and electronic form, whether in draft or final, prepared by Consultant during the performance of this Agreement (the "Documents") shall be and become the property of NCSD. Consultant shall deliver the Documents to the NCSD promptly upon completion of the Services or termination of this Agreement, for any reason, whichever shall occur first.

**14. RECORDS, AUDIT AND REVIEW.** Consultant and Consultant's subcontractors shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Consultant's profession and shall maintain such



records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. NCSD shall have the right to audit and review all such documents and records at any time during Consultant's regular business hours or upon reasonable notice.

## **15. INDEMNIFICATION**

A. To the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to the NCSD) indemnify and hold harmless NCSD and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, court costs, attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities") in performing services pursuant to Task Orders. Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, or willful misconduct of such Indemnitee.

B. Neither termination of this Agreement or completion of the services referenced in individual Task Orders under this Agreement shall release Consultant from its obligations referenced in subsection A, above, as to any claims, so long as the event upon which such claims is predicated shall have occurred prior to the effective date of any such termination or completion and arose out of or was in any way connected with performance or operations under this Agreement by Consultant, its employees, agents or consultants, or the employee, agent or consultant of any one of them.

C. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement and individual Task Orders. If Consultant fails to obtain such indemnity obligations from others as required, Consultant shall be fully responsible for all obligations under this Section. NCSD's failure to monitor compliance with this requirement imposes no additional obligations on NCSD and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend NCSD as set forth herein is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

D. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in the Agreement does not relieve Consultant from liability referenced in this Section 15. The obligations of this Section 15



shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

**16. INSURANCE.**

A. Consultant and its subconsultants shall procure and maintain insurance with companies authorized to do business in the State of California and assigned an A.M. Best's rating of no less than A-(IX), the following insurance coverage on an "occurrence basis", written on the ISO form shown below (or its equivalent) at the limits of liability specified for each:

General Liability Insurance	((ISO Form CG001 11/85)
(including coverage for premises, products and completed operations, independent Consultants/vendors, personal injury and contractual obligations with combined single limits of coverage of at least	
	\$ 1 Million per occurrence.
	\$ 2 Million in the aggregate

Workers' Compensation Insurance	<del>Statutory</del>
Employer's Liability Insurance	<del>\$ 1 Million policy limit.</del>
Professional Liability Insurance or	\$ 1 Million per claim
Errors and Omissions Insurance	\$ 1 Million in the aggregate

NO EMPLOYEES  
MLM 7/3/08  
BBB 7/17/08

B. If Consultant or its employees and agents will use personal automobiles in any way in performing the services under this Agreement, Consultant shall provide evidence of personal auto liability coverage for each such person.

C. The General and Commercial Automobile liability policies shall be endorsed to include the following:

(1) NCSD, its officers, directors, employees and agents shall be named as Additional Insureds using ISO endorsement No. CG-2010; and

(2) The coverage afforded NCSD shall be primary and non-contributing with any other insurance maintained by NCSD.

(3) If not covered separately under a business automobile liability policy, the general liability policy shall also be endorsed to include non-owned and hired automobile liability.

D. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.



E. Prior to commencing work under this Agreement, Consultant shall provide NCSD with Certificates of Insurance evidencing compliance with the foregoing requirements, accompanied by copies of the required endorsements. Certificates of Insurance for commercial general liability, automobile liability, workers' compensation, employer's liability, and professional liability insurance shall specify that the insurer shall give NCSD thirty (30) days advance written notice by the insurer prior to cancellation of the policy except ten (10) days for nonpayment of premium.

F. All insurance coverage required hereunder shall be kept in full force and effect for the term of this Agreement. Professional liability insurance shall be maintained for an additional, uninterrupted period of three (3) years after termination of this Agreement, provided such insurance is commercially available at rates reasonably comparable to those currently in effect. Certificates of Insurance evidencing renewal of the required coverage shall be provided within ten (10) days of the expiration of any policy at any time during the period such policy is required to be maintained by Consultant hereunder. Any failure to comply with this requirement shall constitute a material breach of this Agreement.

G. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against NCSD regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

H. All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the NCSD or its operations limits the application of such insurance coverage.

I. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to NCSD and approved of in writing.

J. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

K. Consultant agrees to provide immediate notice to NCSD of any claim or loss against Consultant arising out of the work performed under this agreement. NCSD assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve NCSD.

## **17. PERSONNEL.**

A. The Consultant represents that it has, or will secure at its own expense, all personnel, sub-consultants and/or subcontractors required in performing the Services under this Agreement. All of the Services required hereunder will be performed by the



Consultant or under Consultant's supervision, and all personnel engaged in the work shall be qualified to perform such Services.

B. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's employees, associates and subconsultants assigned to perform the Services required under this Agreement.

## **18. TERMINATION.**

A. If Consultant at any time refuses or neglects to perform the Services in a timely fashion or in accordance with the Schedule referenced in Task Orders, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without NCSD's written consent, or fails to make prompt payment to persons furnishing labor, equipment, or materials, or fails in any respect to properly and diligently prosecute the Services, or otherwise fails to perform fully any and all of the Agreements herein contained, Consultant shall be in default.

B. If Consultant fails to cure the default within seven (7) days after written notice thereof, NCSD may, at its sole option, take possession of any documents, files (including CAD and other electronic files), or other materials prepared or used by Consultant in connection with the Services and (a) provide any such services, labor, or materials as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (b) terminate Consultant's right to proceed with the Services.

C. In the event NCSD elects to terminate this Agreement, NCSD shall have the right to immediate possession of all Documents and other work in progress prepared by or on behalf of Consultant, whether located at the District Office, at Consultant's place of business, or at the offices of a subcontractor, and may employ any other person or persons to provide the Services and provide the materials therefore. In case of such default termination, Consultant shall not be entitled to receive any further payment under this Agreement until the Services are completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by NCSD in obtaining Services, such excess shall be paid by NCSD to Consultant, but, if such expense shall exceed such unpaid balance, then Consultant shall promptly pay to NCSD the amount by which the expenses exceeds the unpaid balance. The expense referred to in the last sentence shall include expenses incurred by NCSD in obtaining the Services from others, for attorneys' fees, and for any damages sustained by NCSD by reason of Consultant's default or defective Services.

D. In addition to the foregoing right to terminate for default, NCSD reserves the absolute right to terminate the Services authorized by this Agreement without cause ("Terminate for Convenience"), upon 72-hours' written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the Not to Exceed Amount referenced in Task Orders, which shall be calculated as follows: (1) Payment for any Services then satisfactorily completed and



accepted by NCSD, plus (2) Reimbursable Costs actually incurred by Consultant; plus (3) reasonable termination costs incurred by Consultant solely on account of the termination for convenience. There shall be deducted from such sums as provided in this section the amount of any payment made to Consultant prior to the date of termination of the Services. Consultant shall not be entitled to any claim or lien against NCSD or the proposed project for any additional compensation or damages in the event of such termination and payment. In addition, the NCSD's right to hold funds pursuant to Section 6 G shall be applicable in the event of a termination for convenience.

E. If this Agreement is terminated by NCSD for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a Termination for Convenience under Section D, above, and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a Termination for Convenience.

F. Should NCSD fail to pay Consultant undisputed payments set forth in Section 6 above, Consultant may, at Consultant's option, suspend its services if such failure is not remedied by NCSD within thirty (30) days of written notice to NCSD of such late payment.

**19. BREACH OF LAW.** In the event the Consultant or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or Consultant; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraphs 11, 23, 24, 25 of this Agreement; or for any other cause the NCSD determines to be so serious and compelling as to affect Consultant's responsibility as a public consultant or Consultant, including but not limited to, debarment by another governmental agency, then the NCSD reserves the unilateral right to terminate this Agreement, seek indemnification and/or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper.

## **20. DISPUTE RESOLUTION.**

A. The parties agree in good faith to attempt to resolve amicably, without litigation, any dispute arising out of or relating to this agreement. In the event that any dispute cannot be resolved through direct discussions, the parties agree to endeavor to settle the dispute by mediation. Either party may make a written demand for mediation, which demand shall specify the facts of the dispute. The matter shall be submitted to a mediator who shall hear the matter and provide an informal nonbinding opinion and advice in order to help resolve the dispute. The mediator's fee shall be shared equally by the parties. If the dispute is not resolved through mediation, the matter may be



submitted to the judicial system, in which event all litigation and collection expenses, witness fees, court costs and attorneys' fees shall be paid to the prevailing party.

B. No claim, potential claim, dispute or controversy, except non-payment by NCSD of undisputed amounts, shall interfere with the progress and performance of the Services referenced in Task Orders, or any changes thereto, and Consultant shall proceed as directed by the NCSD in all instances with its Services, including any disputed Services, or any changes thereto and any failure of Consultant to proceed shall be deemed a material breach of this Agreement entitling NCSD to all remedies available under Section 19 or other provision of the Agreement and/or applicable law. Except as provided elsewhere in this Agreement, NCSD shall continue to make payments in accordance with the Agreement.

**21. NCSD NOT OBLIGATED TO THIRD PARTIES.** NCSD shall not be obligated or liable for payment hereunder to any party other than the Consultant.

**22. NON-DISCRIMINATION.** Consultant shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with, or related to, the performance of this Agreement.

**23. UNAUTHORIZED ALIENS.** Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against NCSD for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse NCSD for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by NCSD. Consultant shall comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein.

**24. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.**

A. All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than NCSD without prior written authorization from the District Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the District Manager or unless requested by the District Legal Counsel of NCSD, voluntarily provide declarations, letters of support,



testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives NCSD notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then NCSD shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

D. Consultant shall promptly notify NCSD should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there-under. NCSD retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with NCSD and to provide NCSD with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by NCSD to control, direct, or rewrite said response.

**25. ASSIGNMENT.** The expertise and experience of Consultant are material considerations for this Agreement. NCSD has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the District Board of Directors. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling NCSD to any and all remedies at law or in equity, including summary termination of this Agreement. NCSD acknowledges, however, that Consultant, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

**26. COSTS AND ATTORNEY'S FEES.** Except for disputes that are resolved by non-binding mediation, the prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

**27. SECTION HEADINGS.** The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.



**28. SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

**29. REMEDIES NOT EXCLUSIVE.** Except for disputes related solely to the payment for Services performed by Consultant, no remedy herein conferred upon or reserved to the Parties is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

**30. NONEXCLUSIVE AGREEMENT.** Consultant understands that this is not an exclusive Agreement and that NCSD shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Consultant as the NCSD desires.

**31. ASSIGNMENT.** Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of NCSD and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

**32. NON-LIABILITY OF DISTRICT OFFICERS AND EMPLOYEES.** No officer or employee of NCSD will be personally liable to Consultant, in the event of any default or breach by the NCSD or for any amount that may become due to Consultant.

**33. INTERPRETATION OF THIS AGREEMENT.** The parties acknowledge that each party and its attorney had the opportunity to review, negotiate and revise this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the obligations contemplated by this Agreement.

**34. TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

**35. NO WAIVER OF DEFAULT.** No delay or omission of NCSD to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to NCSD shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of NCSD.



**36. ENTIRE AGREEMENT AND AGREEMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and Agreement of the parties and there have been no promises, representations, Agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral Agreements, course of conduct, waiver or estoppel.

**37. SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**38. CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of San Luis Obispo, if in state court, or in the federal court nearest to San Luis Obispo County, if in federal court.

**39. EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

**40. PRECEDENCE.** In the event of a conflict between the Task Orders and this Agreement, the provisions of this Agreement shall control.


**41. RECITALS.** Recitals A through B are incorporated herein by reference as though set forth at length.

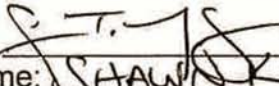
**42. AUTHORITY TO EXECUTE.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Consultant hereby warrants that it shall not have breached the terms or conditions of any other contract or Agreement to which Consultant is obligated, which breach would have a material effect hereon.



IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by the NCSD.

CONSULTANT: Reeder, Gilman & Million

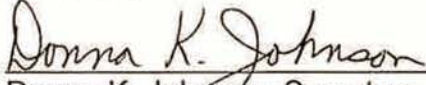
By:   
Name: Lisa Million  
Title: Certified General Real Estate Appraiser  
Date: 7/3/08

By:   
Name: SHAWN KNIGHT  
Title: GM  
Date: 7/3/08

NIPOMO COMMUNITY SERVICES DISTRICT

  
Bruce S. Buel, General Manager  
Nipomo Community Service District  
Date: 7/8/08

ATTEST:

  
Donna K. Johnson, Secretary  
to the Board of Directors  
Date: 7-8-08

T:\DISTRICT PROJECTS\ENGINEERING\REEDER GILMAN MILLION\TASK ORDER AGREEMENT.DOC



TASK ORDER  
to  
CONSULTANT SERVICES AGREEMENT  
Between  
NIPOMO COMMUNITY SERVICES DISTRICT and REEDER, GILMAN & MILLION

Dated: July 1, 2008

TASK ORDER # 08-001

AUTHORIZATION FOR SERVICES:

At the request of the Nipomo Community Services District, Reeder, Gilman & Million is to provide the services as described herein. The terms and conditions of the Agreement for Professional Services, dated July 1, 2008, are incorporated herein by this reference. The scope of services requested, along with a schedule of fees and reimbursable for said services and the Not to Exceed Amount, are set forth below as follows:

SERVICES TO BE PERFORMED (Additional information may be attached as an exhibit.):

Attached as Exhibit "A"

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SCHEDULE OF FEES (HOURLY RATES) INCLUDING REIMBURSABLE EXPENSES

(Additional information may be attached as an exhibit.):

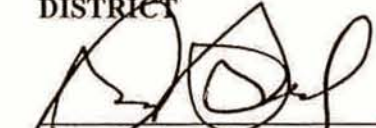
Time and Materials as set forth in Exhibit A with a not to exceed expenditure limit of ten thousand five hundred dollars (\$10,500)

SCHEDULE OF SERVICES (Additional information may be attached as an Exhibit.):

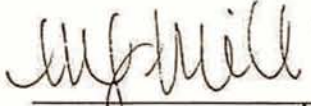
See Exhibit "A"

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NIPOMO COMMUNITY SERVICES  
DISTRICT

  
Approved By: Bruce Buel  
Title: General Manager  
Date: 7/8/08

REEDER, GILMAN & MILLION

  
Approved By: Lisa Million  
Title:  
Date: 7/3/08



file

# REEDER, GILMAN & MILLION

*Appraisers and Consultants • Real and Personal Property*

WARREN REEDER • MAI, SR/WA  
SCREA, CA # AG006521  
Senior Member - APPRAISAL INSTITUTE  
INTERNATIONAL RIGHT OF WAY ASSOCIATION

1101 South Broadway, Suite A, Santa Maria, California 93454

P. O. Box 726, Santa Maria, California 93456

Telephone: (805) 925-2603

LESLIE J. GILMAN • MBA, SR/WA  
SCREA, CA # AG014980  
Senior Member - INTERNATIONAL RIGHT OF WAY ASSOCIATION

Fax: (805) 925-0840

Email: [info@rgmappraisers.com](mailto:info@rgmappraisers.com)

M. LISA MILLION  
SCREA, CA # AG014431  
Member - INTERNATIONAL RIGHT OF WAY ASSOCIATION

Website: [WWW.RGMAPPRAISERS.COM](http://WWW.RGMAPPRAISERS.COM)

Federal Tax ID #77-0555850

June 30, 2008

Mr. Bruce Buel  
District Manager  
Nipomo Community Services District  
148 South Wilson Street  
P.O. Box 326  
Nipomo, CA 93444-0326

RE: Appraisal Proposal – Nipomo Waterline Intertie Project, Alignment 1, Blosser Road to Joshua Street, Santa Maria to Nipomo, California

Dear Mr. Buel:

As you requested we are submitting this proposal for an appraisal of the Nipomo Waterline Intertie Project, Alignment 1, Blosser Road to Joshua Street, Santa Maria to Nipomo, California, and more specifically described as:

- Linda Vista Farms APN 090-291-039,040,041, & 042  
Potential Permanent and Temporary Construction Easements  
Tank Site in Fee
- Biorn APN 090-341-033  
Potential Permanent and Temporary Construction Easements
- McLanahan APN 090-341-019  
Potential Permanent and Temporary Construction Easements
- County of San Luis Obispo APN 090-341-032.  
Potential reciprocal access agreement



The appraisal is to consider the real property only. The function of the appraisal will be its use as a guide to value.

The purpose of the appraisal is to estimate just compensation for the acquisition for the underground easement rights of way for the subject water pipeline and tank site. The exact number of larger parcels is yet to be determine at the present time. Therefore we have based this proposal on the data we have received. It appears there are four larger parcels, involved in the project at this time. We have estimated the appraisal as follows:

One Tank site on the Linda Vista Farms to be acquired in fee, appraisal fee for these surface rights, \$2,500.

Four Larger Parcels affected by the underground pipeline easement. We have estimated appraisal fees to average \$2,000 each, for a total of \$8,000.

Therefore, the total as proposed is \$10,500. The above fee does not include charges for any additional work, if such should be required. The fee for such services as consultation, court preparation time, attendance at depositions, and appearances before a court or administrative agency shall be billed at our current rate at the time the services are performed. Our current rate for such services is \$250 per hour. All additional work will be billed on a periodic basis (monthly, quarterly, etc.) at our discretion. Payment for additional work is due within 30 days of billing. This agreement will remain in effect 45 days from its date.

Due to our present workload, we anticipate that the preparation of the appraisal report will take approximately six to eight weeks after receipt of your authorization to proceed, and receipt of the retainer amount. Due to the need to schedule appraisal assignments in advance, this estimate is subject to revision upon changes in our work load. It is important to note that the above time frame is our best estimate at this time, but is not a guarantee. However, we will make every effort to complete the report as indicated above. By replying promptly, you will be assured that your project will receive our earliest attention.

In order to expedite this assignment, we will require the items listed below. The above completion date cannot be met if these items are not provided to us as soon as possible.

1. Detailed engineering maps including area calculations for the easements and fee proposed aquisition sites. Easement legal descriptions and rights to be aquired.
2. Title report of the larger parcel, including copy of the current encumbering easements, or leases.
3. Any other data that would be pertinent to the appraisal.

June 30, 2008

This appraisal report will be made in conformity with and subject to the requirements of the Uniform Standard of Professional Practice.

We thank you for your interest in our firm's services and for giving us the opportunity to be of service to you. If this proposal meets with your approval, please sign in the space provided below and return a signed copy of the letter to us with the required retainer fee. Our Qualifications can be found on our website, [www.rgmappraisers.com](http://www.rgmappraisers.com)

Very truly yours,

REEDER, GILMAN & MILLION  
REAL ESTATE APPRAISERS

---

M. Lisa Million  
Certified General Real Estate Appraiser, CA#AG014431

/MLM

ACCEPTED BY:

---

PLEASE TYPE OR PRINT NAME

---

TITLE

---

SIGNATURE

---

DATE



TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *B&B*  
DATE: JULY 18, 2008



APPROVE TASK ORDER WITH GTA FOR PEER REVIEW SERVICES

**ITEM**

Approve Task Order with Garing Taylor Associates (GTA) for property peer review services [RECOMMEND ADOPTION].

**BACKGROUND**

On June 25, 2008, your Honorable Board authorized negotiation of a Task Order with GTA for peer review services related to the Waterline Intertie Project. Attached is a draft Task Order authorizing Jim Garing of GTA to provide these services on a time and materials basis with a not-to-exceed expenditure limit of \$10,000. It should be noted that NCSD and GTA have an active Task Order Agreement.

**RECOMMENDATION**

Staff recommends that your Honorable Board approve execution of the attached Task Order.

**ATTACHMENTS**

- GTA Task Order and Proposal

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**ATTACHMENT #1 To EXHIBIT "A"**

to

**ENGINEERING SERVICES AGREEMENT**

**Between**

**NIPOMO COMMUNITY SERVICES DISTRICT and GARING TAYLOR AND ASSOCIATES**

**Dated: July 1, 2008**

**"REQUEST FOR SERVICES – TASK ORDER # 08-002"**

**AUTHORIZATION FOR SERVICES:**

At the request of the Nipomo Community Services District, GARING TAYLOR AND ASSOCIATES is to provide Engineering assistance to the Board of Directors and staff of the District as noted hereafter. The terms and conditions of the Agreement for Professional Engineering Services, dated April 18, 2005, are incorporated herein by this reference. The scope of services requested along with the schedule and fees for said services are set forth below as follows:

**SCOPE OF SERVICES REQUESTED (Additional information may be attached as an Exhibit.):**

Participate on Peer Review Panel for Waterline Intertie Project (WIP) and comment on WIP Design Submittals prepared by Boyle Engineering Corporation.

**TIME FOR PERFORMANCE (Additional information may be attached as an Exhibit.):**

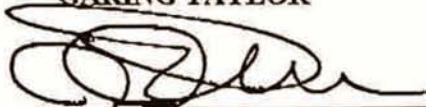
As requested by District from July 1, 2008 through end of WIP Design currently scheduled for November 2009.

**ENGINEERING FEES:**

Time and Materials as set forth in attached Rate Sheet with a not to exceed expenditure limit of \$10,000.

**NIPOMO COMMUNITY SERVICES DISTRICT**

\_\_\_\_\_  
**Approved By: Bruce Buel**  
**Title: General Manager**  
**Date:**

**GARING TAYLOR**  
  
\_\_\_\_\_  
**Approved By:**  
**Title: *CSG***  
**Date: *7.2.08***



TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BBB*  
DATE: JULY 18, 2008

**AGENDA ITEM**  
**D-7**  
JULY 23, 2008

APPROVE TASK ORDER WITH PAUL KARP FOR PEER REVIEW SERVICES

**ITEM**

Approve Task Order Agreement with Paul J. Karp, P.E. (Paul Karp) for property peer review services [RECOMMEND ADOPTION].

**BACKGROUND**

On June 25, 2008, your Honorable Board authorized negotiation of a Task Order Agreement with Paul Karp for peer review services related to the Waterline Intertie Project. Attached is a draft Task Order Agreement authorizing Paul Karp to provide these services on a time and materials basis with a not-to-exceed expenditure limit of \$10,000.

**RECOMMENDATION**

Staff recommends that your Honorable Board approve execution of the attached Task Order.

**ATTACHMENTS**

- Paul Karp Task Order Agreement

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**Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444**

**TASK ORDER AGREEMENT FOR PROFESSIONAL SERVICES  
PAUL J. KARP, P.E.**

**THIS AGREEMENT** (hereinafter referred to as "Agreement") is made by and between the Nipomo Community Services District, a Community Services District duly existing and operating pursuant to the provisions of Government Code Section 61000 et seq. (hereinafter referred to as "NCSD" or "District") and Paul J. Karp (herein referred to as "Consultant"), with reference to the following Recitals:

**RECITALS**

A. NCSD desires to retain professional engineering services on an on-call, as needed basis, to perform services identified in individual task orders ("Task Orders").

B. NCSD desires to engage Consultant to provide services by reason of its qualifications and experience in performing such services, and Consultant has offered to provide the required services through Task Orders on the terms and in the manner set forth herein.

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

1. **DESIGNATED REPRESENTATIVES.** Bruce Buel, General Manager, at telephone number (805) 929-1133 is the representative of NCSD and will administer this Agreement for and on behalf of NCSD. Paul Karp, at telephone number (805) 481-2560, is the authorized representative for Consultant. Changes in designated representatives shall be made only after advance written notices to the other party.
2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first-class mail, postage prepaid, or otherwise delivered as follows:

**NCSD:** Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444  
Attn: Bruce Buel, General Manager  
Facsimile: (805) 929-1133



**CONSULTANT:** Paul J. Karp  
596 Woodland Drive  
Arroyo Grande, CA 93420  
Attn: Lillian Jewell

Email: [pjkarp@sbcglobal.net](mailto:pjkarp@sbcglobal.net)

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

### **3. TASK ORDERS.**

#### **A. Task Orders shall:**

1. Describe the Scope of Services to be performed by Consultant;
2. Include Compensation Schedules for services including reimbursable expenses.
3. Include a "Not To Exceed Amount".
4. Be signed by the Consultant prior to execution by NCSD.

**B.** The terms and conditions of this Agreement are incorporated into individual Task Orders.

**4. SCOPE OF SERVICES.** Consultant agrees to provide the Services and submit deliverables to NCSD in accordance with the individual Task Orders and this Agreement, subject to the direction of NCSD as provided from time to time. Consultant represents and warrants that the Not To Exceed Amount represented in individual Task Orders will be sufficient to provide the Services and submit the deliverables Identified in individual Task Orders. In addition and prior to submitting monthly invoices, Consultant shall participate in at least one (1) phone conference with District General Manager and/or other District representative regarding Consultant's efforts.

**5. TERM.** Consultant shall commence performance within five (5) days of NCSD's Execution of Task Orders and unless otherwise directed in writing by NCSD or unless earlier terminated as provided in this Agreement, shall complete performance and make deliverable as provided in this Agreement and individual Task Orders.

## **6. COMPENSATION OF CONSULTANT.**

A. Consultant will be paid for the Services provided to NCSD in accordance with the Schedule set forth in the Task Orders and subject to the Not to Exceed Amount.

B. Consultant shall submit invoices no more often than monthly for Services performed and Reimbursable Expenses incurred. Each invoice shall identify the person providing the service, the services performed, a report on the services performed that at a minimum summarizes the meetings and conferences attended by Consultant on behalf of the District, and the corresponding Task Order.

C. NCSD shall review each invoice submitted by Consultant to determine whether it accurately reflects the Services performed and Reimbursable Expenses incurred in compliance with the provisions of this Agreement and the Task Order. In the event no charges or expenses are disputed, the invoice shall be approved and paid within forty five (45) days of receipt of the invoice. In the event NCSD disputes any charge or expenses, it shall return the original invoice to Consultant for correction and resubmission, however, the undisputed amount shall be paid as indicated above.

D. NCSD shall not pay Consultant more than the Not-to-Exceed Amount referenced in individual Task Orders without the prior written authorization of the NCSD. In order for NCSD to increase the Not-To-Exceed Amount Consultant must timely, and prior to sixty percent (60%) completion of the services referenced in individual Task Orders, identify and document how circumstances beyond its reasonable control have increased the time and/or costs of performing the Services beyond the amounts identified in the Task Orders. The NCSD, in its sole discretion, may deny in part or in whole the request to increase the Not to Exceed Amount, modify the Scope of Services, or approve the increase in the Not to Exceed Amount.

E. Payment to Consultant shall be full compensation for all personnel, materials, supplies, and equipment used in carrying out the Services.

F. Payment of an invoice by NCSD shall not constitute acceptance of defective Services, and NCSD's failure to discover or object to any unsatisfactory Services or billing prior to payment will not constitute a waiver of NCSD's right to:

1. Require Consultant to correct such work or billings; or
2. Seek any other legal remedy.

G. NCSD may withhold, or on account of subsequently discovered evidence nullify, the whole or a part of any payment to such extent as may be necessary to protect NCSD from loss, including costs and attorneys' fees, on account of (1) defective or deficient work product not remedied; (2) subsequently discovered errors in invoices previously paid; (3) claims filed or reasonable evidence indicating probable filing of a claim or claims; (4) failure of Consultant to make payments properly to its employees or



sub-consultants; or (5) Consultant's failure to adhere to the Schedules or to achieve sufficient progress with the Services such that Consultant is unlikely to achieve timely completion.

## **7. STATUS OF CONSULTANT.**

A. Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of NCSD. Consultant shall have no authority to bind NCSD in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against NCSD, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by NCSD.

B. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither NCSD, nor any elected or appointed boards, officers, officials, employees or agents of NCSD, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, subcontractors, or agents are in any manner officials, officers, employees or agents of NCSD.

C. Neither Consultant, nor any of Consultant's officers, employees, subcontractors, or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to NCSD's employees. Consultant expressly waives any claim Consultant may have to any such rights.

## **8. PERFORMANCE STANDARDS.**

A. Compliance with laws. Consultant shall (and shall cause its agents and sub-contractors), at its sole cost and expense, to comply with all State and Federal ordinances, regulations and statutes now in force or which may hereafter be in force with regard to the Services referenced in individual Task Orders, and this Agreement. The judgment of any court of competent jurisdiction, or the admission of Consultant in any action or proceeding against Consultant, whether NCSD be a party thereto or not, that Consultant has violated any such ordinance or statute, shall be conclusive of that fact as between Consultant and NCSD. Except as provided above, any corrections to Consultant's Services which become necessary as a result of the Consultant's failure to comply with these requirements shall be made at Consultant's expense.

B. Standard of Performance. Consultant represents that it has the skills, expertise, and licenses necessary to perform the Services required under this Agreement and subsequently executed Task Orders. Consultant shall perform all such Services in the manner and according to the standards observed by professionals experienced in providing Services identified in individual Task Orders. All documents and services of whatsoever nature that Consultant delivers to NCSD pursuant to this Agreement and individual Task Orders shall conform to the standards of quality



normally observed by professionals experienced in providing Services identified in individual Task Orders. Consultant shall promptly correct or revise any errors or omissions at NCSD's request without additional compensation. Licenses required to perform such services shall be obtained and maintained by Consultant without additional compensation throughout the term of this Agreement

**9. FAMILIARITY WITH SERVICES TO BE PERFORMED.** By executing individual Task Orders, Consultant represents that Consultant (a) has thoroughly investigated and considered the Scope of Services referenced in Task Orders to be performed; (b) has carefully considered how the services should be performed; (c) fully understands the difficulties and restrictions attending performance of the services under this Agreement; and (d) that the "not to exceed amount" is adequate for the Services to be performed by Consultant.

**10. TAXES.** Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

**11. CONFLICT OF INTEREST.** Consultant covenants that neither it, nor any officer or principal of its firm, or subcontractors retained by Consultant has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of NCSD for Task Order work or which would in any way hinder Consultant's performance of services under this Agreement or Task Order. Consultant further covenants that in the performance of the Services, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the prior express written consent of the NCSD Manager. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the NCSD in the performance of the Services pursuant to Individual Task Orders.

**12. RESPONSIBILITIES OF NCSD.** NCSD shall provide all information reasonably necessary by Consultant in performing the services provided herein.

**13. OWNERSHIP OF DOCUMENTS.** All reports, documents, drawings, photographs, videotape, specifications, data, and other instruments of professional service, in paper and electronic form, whether in draft or final, prepared by Consultant during the performance of this Agreement (the "Documents") shall be and become the property of NCSD. Consultant shall deliver the Documents to the NCSD promptly upon completion of the Services or termination of this Agreement, for any reason, whichever shall occur first.

**14. RECORDS, AUDIT AND REVIEW.** Consultant and Consultant's subcontractors shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Consultant's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All



accounting records shall be kept in accordance with generally accepted accounting practices. NCSD shall have the right to audit and review all such documents and records at any time during Consultant's regular business hours or upon reasonable notice.

**15. INDEMNIFICATION**

*BK 7/1/08*

A. To the fullest extent permitted by law, <sup>Delete</sup> Consultant shall defend (with legal counsel reasonably acceptable to the NCSD) indemnify and hold harmless NCSD and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, court costs, attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities") in performing services pursuant to Task Orders. Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, or willful misconduct of such Indemnitee.

B. Neither termination of this Agreement or completion of the services referenced in individual Task Orders under this Agreement shall release Consultant from its obligations referenced in subsection A, above, as to any claims, so long as the event upon which such claims is predicated shall have occurred prior to the effective date of any such termination or completion and arose out of or was in any way connected with performance or operations under this Agreement by Consultant, its employees, agents or consultants, or the employee, agent or consultant of any one of them.

C. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement and individual Task Orders. If Consultant fails to obtain such indemnity obligations from others as required, Consultant shall be fully responsible for all obligations under this Section. NCSD's failure to monitor compliance with this requirement imposes no additional obligations on NCSD and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend NCSD as set forth herein is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

D. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in the Agreement does not relieve ~~Consultant from liability referenced in this Section 15. The obligations of this Section 15~~



~~shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.~~

**16. INSURANCE.**

*Delete*

A. Consultant and its subconsultants shall procure and maintain insurance with companies authorized to do business in the State of California and assigned an A.M. Best's rating of no less than A-(IX), the following insurance coverage on an "occurrence basis", written on the ISO form shown below (or its equivalent) at the limits of liability specified for each:

General Liability Insurance ((ISO Form CG001 11/85) (including coverage for premises, products and completed operations, independent Consultants/vendors, personal injury and contractual obligations with combined single limits of coverage of at least	\$ 1 Million per occurrence. \$ 2 Million in the aggregate
Workers' Compensation Insurance Employer's Liability Insurance Professional Liability Insurance or Errors and Omissions Insurance	Statutory \$ 1 Million policy limit \$ 1 Million per claim \$ 1 Million in the aggregate

*OK  
7/1/08*

B. If Consultant or its employees and agents will use personal automobiles in any way in performing the services under this Agreement, Consultant shall provide evidence of personal auto liability coverage for each such person.

C. The General and Commercial Automobile liability policies shall be endorsed to include the following:

- (1) NCSD, its officers, directors, employees and agents shall be named as Additional Insureds using ISO endorsement No. CG-2010; and
- (2) The coverage afforded NCSD shall be primary and non-contributing with any other insurance maintained by NCSD.
- (3) If not covered separately under a business automobile liability policy, the general liability policy shall also be endorsed to include non-owned and hired automobile liability.

D. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.



~~E. Prior to commencing work under this Agreement, Consultant shall provide NCSD with Certificates of Insurance evidencing compliance with the foregoing requirements, accompanied by copies of the required endorsements. Certificates of Insurance for commercial general liability, automobile liability, workers' compensation, employer's liability, and professional liability insurance shall specify that the insurer shall give NCSD thirty (30) days advance written notice by the insurer prior to cancellation of the policy except ten (10) days for nonpayment of premium.~~

~~F. All insurance coverage required hereunder shall be kept in full force and effect for the term of this Agreement. Professional liability insurance shall be maintained for an additional, uninterrupted period of three (3) years after termination of this Agreement, provided such insurance is commercially available at rates reasonably comparable to those currently in effect. Certificates of Insurance evidencing renewal of the required coverage shall be provided within ten (10) days of the expiration of any policy at any time during the period such policy is required to be maintained by Consultant hereunder. Any failure to comply with this requirement shall constitute a material breach of this Agreement.~~ Delete

2/1/08  
~~G. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against NCSD regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.~~

~~H. All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the NCSD or its operations limits the application of such insurance coverage.~~

~~I. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to NCSD and approved of in writing.~~

~~J. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.~~

~~K. Consultant agrees to provide immediate notice to NCSD of any claim or loss against Consultant arising out of the work performed under this agreement. NCSD assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve NCSD.~~

## 17. PERSONNEL.

A. The Consultant represents that it has, or will secure at its own expense, all personnel, sub-consultants and/or subcontractors required in performing the Services under this Agreement. All of the Services required hereunder will be performed by the



Consultant or under Consultant's supervision, and all personnel engaged in the work shall be qualified to perform such Services.

B. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's employees, associates and subconsultants assigned to perform the Services required under this Agreement.

## **18. TERMINATION.**

A. If Consultant at any time refuses or neglects to perform the Services in a timely fashion or in accordance with the Schedule referenced in Task Orders, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without NCSD's written consent, or fails to make prompt payment to persons furnishing labor, equipment, or materials, or fails in any respect to properly and diligently prosecute the Services, or otherwise fails to perform fully any and all of the Agreements herein contained, Consultant shall be in default.

B. If Consultant fails to cure the default within seven (7) days after written notice thereof, NCSD may, at its sole option, take possession of any documents, files (including CAD and other electronic files), or other materials prepared or used by Consultant in connection with the Services and (a) provide any such services, labor, or materials as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (b) terminate Consultant's right to proceed with the Services.

C. In the event NCSD elects to terminate this Agreement, NCSD shall have the right to immediate possession of all Documents and other work in progress prepared by or on behalf of Consultant, whether located at the District Office, at Consultant's place of business, or at the offices of a subcontractor, and may employ any other person or persons to provide the Services and provide the materials therefore. In case of such default termination, Consultant shall not be entitled to receive any further payment under this Agreement until the Services are completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by NCSD in obtaining Services, such excess shall be paid by NCSD to Consultant, but, if such expense shall exceed such unpaid balance, then Consultant shall promptly pay to NCSD the amount by which the expenses exceeds the unpaid balance. The expense referred to in the last sentence shall include expenses incurred by NCSD in obtaining the Services from others, for attorneys' fees, and for any damages sustained by NCSD by reason of Consultant's default or defective Services.

D. In addition to the foregoing right to terminate for default, NCSD reserves the absolute right to terminate the Services authorized by this Agreement without cause ("Terminate for Convenience"), upon 72-hours' written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the Not to Exceed Amount referenced in Task Orders, which shall be calculated as follows: (1) Payment for any Services then satisfactorily completed and



accepted by NCSD, plus (2) Reimbursable Costs actually incurred by Consultant; plus (3) reasonable termination costs incurred by Consultant solely on account of the termination for convenience. There shall be deducted from such sums as provided in this section the amount of any payment made to Consultant prior to the date of termination of the Services. Consultant shall not be entitled to any claim or lien against NCSD or the proposed project for any additional compensation or damages in the event of such termination and payment. In addition, the NCSD's right to hold funds pursuant to Section 6 G shall be applicable in the event of a termination for convenience.

E. If this Agreement is terminated by NCSD for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a Termination for Convenience under Section D, above, and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a Termination for Convenience.

F. Should NCSD fail to pay Consultant undisputed payments set forth in Section 6 above, Consultant may, at Consultant's option, suspend its services if such failure is not remedied by NCSD within thirty (30) days of written notice to NCSD of such late payment.

**19. BREACH OF LAW.** In the event the Consultant or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or Consultant; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraphs 11, 23, 24, 25 of this Agreement; or for any other cause the NCSD determines to be so serious and compelling as to affect Consultant's responsibility as a public consultant or Consultant, including but not limited to, debarment by another governmental agency, then the NCSD reserves the unilateral right to terminate this Agreement, seek indemnification and/or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper.

## **20. DISPUTE RESOLUTION.**

A. The parties agree in good faith to attempt to resolve amicably, without litigation, any dispute arising out of or relating to this agreement. In the event that any dispute cannot be resolved through direct discussions, the parties agree to endeavor to settle the dispute by mediation. Either party may make a written demand for mediation, which demand shall specify the facts of the dispute. The matter shall be submitted to a mediator who shall hear the matter and provide an informal nonbinding opinion and advice in order to help resolve the dispute. The mediator's fee shall be shared equally by the parties. If the dispute is not resolved through mediation, the matter may be



submitted to the judicial system, in which event all litigation and collection expenses, witness fees, court costs and attorneys' fees shall be paid to the prevailing party.

B. No claim, potential claim, dispute or controversy, except non-payment by NCSD of undisputed amounts, shall interfere with the progress and performance of the Services referenced in Task Orders, or any changes thereto, and Consultant shall proceed as directed by the NCSD in all instances with its Services, including any disputed Services, or any changes thereto and any failure of Consultant to proceed shall be deemed a material breach of this Agreement entitling NCSD to all remedies available under Section 19 or other provision of the Agreement and/or applicable law. Except as provided elsewhere in this Agreement, NCSD shall continue to make payments in accordance with the Agreement.

**21. NCSD NOT OBLIGATED TO THIRD PARTIES.** NCSD shall not be obligated or liable for payment hereunder to any party other than the Consultant.

**22. NON-DISCRIMINATION.** Consultant shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with, or related to, the performance of this Agreement.

**23. UNAUTHORIZED ALIENS.** Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against NCSD for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse NCSD for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by NCSD. Consultant shall comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein.

**24. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.**

A. All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than NCSD without prior written authorization from the District Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the District Manager or unless requested by the District Legal Counsel of NCSD, voluntarily provide declarations, letters of support,



testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives NCSD notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then NCSD shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

D. Consultant shall promptly notify NCSD should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there-under. NCSD retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with NCSD and to provide NCSD with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by NCSD to control, direct, or rewrite said response.

**25. ASSIGNMENT.** The expertise and experience of Consultant are material considerations for this Agreement. NCSD has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the District Board of Directors. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling NCSD to any and all remedies at law or in equity, including summary termination of this Agreement. NCSD acknowledges, however, that Consultant, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

~~**26. COSTS AND ATTORNEY'S FEES.** Except for disputes that are resolved by non-binding mediation, the prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.~~

BK  
7/11/08

Delete

**27. SECTION HEADINGS.** The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.



**28. SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

**29. REMEDIES NOT EXCLUSIVE.** Except for disputes related solely to the payment for Services performed by Consultant, no remedy herein conferred upon or reserved to the Parties is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

**30. NONEXCLUSIVE AGREEMENT.** Consultant understands that this is not an exclusive Agreement and that NCSD shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Consultant as the NCSD desires.

**31. ASSIGNMENT.** Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of NCSD and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

**32. NON-LIABILITY OF DISTRICT OFFICERS AND EMPLOYEES.** No officer or employee of NCSD will be personally liable to Consultant, in the event of any default or breach by the NCSD or for any amount that may become due to Consultant.

**33. INTERPRETATION OF THIS AGREEMENT.** The parties acknowledge that each party and its attorney had the opportunity to review, negotiate and revise this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the obligations contemplated by this Agreement.

**34. TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

**35. NO WAIVER OF DEFAULT.** No delay or omission of NCSD to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to NCSD shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of NCSD.



**36. ENTIRE AGREEMENT AND AGREEMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and Agreement of the parties and there have been no promises, representations, Agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral Agreements, course of conduct, waiver or estoppel.

**37. SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**38. CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of San Luis Obispo, if in state court, or in the federal court nearest to San Luis Obispo County, if in federal court.

**39. EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

**40. PRECEDENCE.** In the event of a conflict between the Task Orders and this Agreement, the provisions of this Agreement shall control.

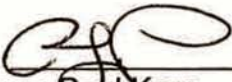
**41. RECITALS.** Recitals A through B are incorporated herein by reference as though set forth at length.

**42. AUTHORITY TO EXECUTE.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Consultant hereby warrants that it shall not have breached the terms or conditions of any other contract or Agreement to which Consultant is obligated, which breach would have a material effect hereon.



**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by the NCSD.

CONSULTANT: Paul J. Karp, P.E.

By:   
Name: Paul Karp  
Title: P. E.  
Date: 7/1/08

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**NIPOMO COMMUNITY SERVICES DISTRICT**

\_\_\_\_\_  
Bruce S. Buel, General Manager  
Nipomo Community Service District

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Donna K. Johnson, Secretary  
to the Board of Directors  
Date: \_\_\_\_\_

T:\DISTRICT PROJECTS\ENGINEERING\PAUL KARP\TASK ORDER AGREEMENT.DOC



## Nipomo Community Services District-2008

### Fee Schedule

Paul J. Karp will bill his time at a rate of \$185.00/hour. This rate will remain constant for a period of one year from the date of this proposal.

Expert testimony, deposition, court appearance and research related thereto will be charged at 2.0 times the applicable hourly rate.

Direct expenses connected with job related work will be billed for at cost. Reimbursement for mileage will be billed for at the rate stipulated by the Internal Revenue Service as the deductible expense per mile.

Paul J. Karp will provide statements of account on a monthly basis, or on a frequency determined appropriate by NCSD and agreed upon by Paul J. Karp.

Either party to the other may dissolve this arrangement upon 10 days notice.

**ATTACHMENT #1 To EXHIBIT "A"**

to

**ENGINEERING SERVICES AGREEMENT**

**Between**

**NIPOMO COMMUNITY SERVICES DISTRICT and PAUL J. KARP, P.E.**

**Dated: July 1, 2008**

**"REQUEST FOR SERVICES – TASK ORDER # 08-001**

**AUTHORIZATION FOR SERVICES:**

At the request of the Nipomo Community Services District, PAUL J. KARP, P.E. is to provide Engineering assistance to the Board of Directors and staff of the District as noted hereafter. The terms and conditions of the Agreement for Professional Engineering Services, dated July 1, 2008, are incorporated herein by this reference. The scope of services requested along with the schedule and fees for said services are set forth below as follows:

**SCOPE OF SERVICES REQUESTED (Additional information may be attached as an Exhibit.):**

Participate on Peer Review Panel for Waterline Intertie Project (WIP) and comment on WIP Design Submittals prepared by Boyle Engineering Corporation.

**TIME FOR PERFORMANCE (Additional information may be attached as an Exhibit.):**

As requested by District from July 1, 2008 through end of WIP Design currently scheduled for November 2009.

**ENGINEERING FEES:**

Time and Materials as set forth in attached Rate Sheet with a not to exceed expenditure limit of \$10,000.

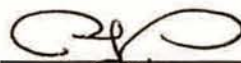
**NIPOMO COMMUNITY SERVICES DISTRICT**

**PAUL J. KARP, P.E.**

\_\_\_\_\_  
Approved By: Bruce Buel

Title: General Manager

Date:



\_\_\_\_\_  
Approved By: Paul J. Karp

Title:

Date: 7/1/08



TO: BOARD OF DIRECTORS  
 FROM: BRUCE BUEL *BB*  
 DATE: JULY 18, 2008

**AGENDA ITEM  
 D-8  
 JULY 23, 2008**

**INVESTMENT POLICY – SECOND QUARTER REPORT**

The Board of Directors have adopted an Investment Policy for NCSD which states that the Finance Officer shall file a quarterly report that identifies the District's investments and their compliance with the District's Investment Policy. The quarterly report must be filed with the District's auditor and considered by the Board of Directors.

Below is the June 30, 2008 Quarterly Report for your review. As District Finance Officer and Treasurer, I am pleased to inform the Board of Directors that the District is in compliance with the 2008 Investment Policy and that the objectives of safety, liquidity, and yield have been met. The District has the ability to meet cash flow requirements for the next six months.

**INVESTMENT POLICY-SECOND QUARTER REPORT 6/30/08**

Investment	Institution	Amount of Deposit 6/30/08	Rate of Interest	Quarterly Interest Earned or Accrued 6/30/08	Amount of Deposit 6/30/07	Rate of Interest	Quarterly Interest Earned or Accrued 6/30/07
Money Market	Rabobank	\$95,137.39	.10%	\$31.78	\$248,606.04	0.25%	\$20.75
Savings	Rabobank	\$923.57	.34%	\$0.81	\$918.46	0.75%	\$2.29
Pooled Money Investment	Local Agency Investment Fund (LAIF)	\$21,917,209.91	3.11%	\$166,521.67	\$19,172,054.72	5.23%	\$247,450.55
Certificate of Deposit (COP)	Rabobank	\$2,004,569.08	2.90%	\$4,993.38	\$1,937,623.03	4.5%	\$7,238.94

**RECOMMENDATION**

After Board consideration and public comment, it is recommended that your Honorable Board accept the quarterly report by motion and minute order.

**ATTACHMENTS**

None