

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BB*  
DATE: AUGUST 6, 2008

**AGENDA ITEM**  
**E-1**  
**AUGUST 13, 2008**

**WILLOW ROAD WATERLINE EXTENSION PROJECT PHASE 1  
DESIGN AGREEMENT**

**ITEM**

Authorize negotiation of design agreement for Willow Road Waterline Extension Project Phase 1 [RECOMMEND AUTHORIZATION OF NEGOTIATIONS].

**BACKGROUND**

San Luis Obispo County is planning to extend Willow Road from Pomeroy Road to Hetrick Road early next year. The District's 2007 Water and Sewer Master Plan Update recommended the construction of a 12 inch diameter waterline in this segment of roadway. Installation of the District's waterline concurrent with the County's roadway project is more cost-effective than installing the line in the future since the water line can be installed now before the roadway is paved. The County is finalizing the design for the roadway and the District needs to develop a design for the waterline so that the projects can be bid concurrently.

Staff mailed an RFP to eleven engineering firms on July 2, 2008 and opened proposals on July 31, 2008 (Distributed to Board under separate cover and available for review at the NCSD Office). Seven firms submitted proposals (Bethel, Boyle, Cannon, Garing Taylor, MNS, Penfield & Smith, and Wallace) and these proposals were evaluated by staff. Staff ranked Cannon Associates as the most responsive and qualified firm although Wallace Group was a very close second. The proposal from Bethel was deemed non-responsive. Attached is a summary of staff's ranking of the proposals.

Cannon's proposed budget for the work is \$124,300, which was the second lowest estimate of the six responsive proposers. This budget includes all of the assigned tasks set forth in the RFP. Cannon recommended that the Scope of Work be expanded to include the portion of new waterline in Pomeroy recommended in the Water and Sewer Master Plan that will be within the County's project area. If the Board authorizes staff to negotiate an agreement with Cannon, staff intends to ask Cannon to provide a revised budget to include this additional work.

Attached is a draft "Scope of Work", "Budget" and "List of Key Personnel" that could be used as attachments to the draft agreement (also attached).

**RECOMMENDATION**

Staff recommends that your Honorable Board authorize staff to negotiate an agreement with Cannon Associates for consideration at the August 27, 2008 or September 10, 2008 Board Meeting.

**ATTACHMENTS**

- Staff Ranking of Proposals
- Draft Scope of Work and Schedule
- Draft Budget
- Draft List of Key Personnel
- Draft Agreement

**NIPOMO COMMUNITY SERVICES DISTRICT**

| <b>WILLOW ROAD WATERLINE EXTENSION PROJECT PHASE 1 DESIGN PROPOSAL RANKING FORM</b> |           |        |       |        |     |     |     |         |  |
|---|-----------|--------|-------|--------|-----|-----|-----|---------|--|
|   |           |        |       | FIRMS  |     |     |     |         |  |
|   | Pt. Range | Bethel | Boyle | Cannon | GTA | MNS | P&S | Wallace |  |
| Bruce Buel  | 0 to 100  |        | 85    | 94     | 74  | 74  | 83  | 92      |  |
| Tina Grietens   | 0 to 100  |        | 95    | 93     | 52  | 52  | 90  | 96      |  |
| Peter Sevcik  | 0 to 100  |        | 84    | 93     | 67  | 69  | 75  | 91      |  |
| <b>Total</b>  | 0 to 300  | NR***  | 264   | 280    | 193 | 195 | 248 | 279     |  |
| <b>Ranking</b>  |           |        | 3     | 1      | 6   | 5   | 4   | 2       |  |
| *** Proposal was deemed non-responsive.   |           |        |       |        |     |     |     |         |  |



## Scope of Services and Timeline

### PROJECT MANAGEMENT SERVICES

Effective consultation and coordination between all parties involved is essential for the successful completion of this project. We are committed to regular communication with District and the County in order to guarantee efficient flow of information and consistent project direction. "Communicate, communicate, communicate" is a rule we live and work by here at Cannon.

Project management services will include regular reports, meetings, and presentations to the Board. Specifically, we will perform the following tasks on a monthly basis, throughout the duration of design:

- *Task i – Prepare and submit monthly progress reports.* These reports will include a progress to date summary for the major design tasks, and an estimate of remaining tasks and duration prior to completion. We will submit these reports via email, but will be appropriate for formal distribution if needed.
- *Task ii – Meet with District staff.* Each meeting will offer a key interaction opportunity for the representatives of the District to review progress, look at plans, and direct the project. Furthermore, should project issues arise midstream, these meetings will allow for the immediate resolution of such issues. Meetings allow all parties a chance to voice concerns, propose suggestions, and walk away with an understanding of the resolution.

### PHASE I: PRELIMINARY ENGINEERING SERVICES

- *Task 1 – Project Kick-off Meeting.* We will orchestrate and attend a Project Kick-off Meeting with appropriate personnel from the District. This meeting agenda will focus on project understanding, team involvement, project constraints, and the anticipation of design development impediments. This meeting will also include a project introduction, review of background information and project scope, and an overview of the project schedule. This meeting represents a key opportunity for representatives from the District to steer the consultant team and further clarify critical elements of the project scope.
- *Task 2 – Coordination Meeting with County.* We will orchestrate and attend a coordination meeting with the appropriate personnel from the County of San Luis Obispo. The purpose of this meeting will be to confirm schedule and phasing of the County's project, establish preferred communication methods between the County design staff and our design staff, determine milestones for design review and coordination, secure a hard copy of their geotechnical report and electronic copies of their topographic survey and roadway improvement plans. This meeting will establish guidelines for ongoing coordination between the District's waterline project and the County's roadway project.
- *Task 3 – Assist District in Securing Right-of-Entry Agreements.* In accordance with applicable provisions of the California Civil code, we will prepare proper notification letters to impacted property owners within the project limits in order for us to perform the necessary preliminary engineering services, including the field survey and geotechnical investigations. These letters will be provided to the District for mailing on District's letterhead for proper distribution to the landowners.
- *Task 4 – Supplemental Geotechnical Evaluation.* We will coordinate with the County to obtain the geotechnical evaluation used for their design of the proposed roadway. We will review this report to determine if it addresses the design considerations needed to properly install the waterlines: recommendations for pipe bedding and backfill requirements, thrust blocks, suitability of existing soils for use in subsequent trench backfill, shoring and bracing, and depth to groundwater (if applicable). *If the geotechnical information is lacking sufficient detail, we will provide an additional scope of work to provide these services.*



## Scope of Services and Timeline

- **Task 5 – Supplemental Topographic Survey and Utility Research.** We will coordinate with the County to obtain the topographic survey used for their design of the proposed roadway. We will review the survey to determine if it contains the level of detail needed to prepare design plans for the proposed pipeline. Details we will look for include but are not limited to basis of bearing, benchmark, boundary information (proposed and existing), and existing utility information. *If the topographic survey is lacking sufficient detail, we will provide an additional scope of work to provide these services.*  
Additionally, we will conduct utility research with the public and private utility providers who have existing facilities within the proposed project areas and obtain record drawings and as-built information. Potential utility conflicts and/or relocation requirements will be identified and evaluated as needed to minimize unexpected design modifications or construction delays. We will compile and review the documents for inclusion into the electronic base map to use in preliminary design and related tasks defined below.
- **Task 6 – Preliminary Design Drawings.** With the topographic survey, record data boundary information, utility research and geotechnical evaluation from the previous tasks, we will prepare a Preliminary design package for your review and comment. The purpose of the Preliminary design package will be to resolve critical issues along each run of pipe prior to proceeding with final design. The Preliminary Design Drawings will include sufficient information to verify that the overall design concept will meet both the needs of the District and the County. Ten sets of the conceptual drawings will be provided in full size (24" x 36"). Additionally, we will submit these drawings to the County for their review and invite them to attend a Preliminary Design Submittal Review Meeting.
- **Task 7 – Preliminary Design Submittal Review Meeting.** Upon your review of the Preliminary Design Drawings, we will attend a meeting with the District staff to review and discuss the submittal. The County will be invited for coordination purposes. This meeting will allow opportunity for detailed discussion on project issues at the 30% design level. We will receive direction from staff on requested revisions to incorporate prior to the next phase of review.

### PHASE II: DESIGN AND CONSTRUCTION DOCUMENT SERVICES

- **Tasks 8 and 9 – Prepare and submit design documents, bid specifications and cost estimates (50%/95%):** Based on the findings and results of the previous tasks, we will prepare and submit 10 design plan packages at the 50% and 95% approximate completion levels. The design plan packages will include the title sheet, notes sheet, plan and profile sheets, detail sheets, technical specifications and cost estimate necessary to construct the project. Plans will be prepared in accordance with District standards. Technical specifications shall be prepared using District standard boilerplate specifications. We will attend a meeting with the District staff to review and discuss the design submittal for both the 50% and 95% submittals.
- **Task 10 – Assist in securing permits.** We understand that the District is exploring the feasibility of building these improvements in conjunction with the County's Willow Road improvements. Should these projects be worked jointly, no additional permitting is anticipated. However, in the event that the waterline construction cannot be included with the County's work, we will assist the District in securing the necessary encroachment permits from the County. No other permitting requirements are anticipated at this time.
- **Task 11 – Prepare and submit design documents, bid specifications and cost estimates (Final).** Based on the finalized project design issues resolved during the preceding tasks, we will prepare and submit a Final Construction Documents Bid package. This submittal package will contain complete Construction Plans, technical specifications, known permit conditions, and an Opinion of Probable Construction Costs. The final plans will incorporate comments from the District and County reviews



## Scope of Services and Timeline

of the 95% Design Plan package. (See Appendix B: Sample Work for an example of design plans.) Bid documents will be prepared in the District's standard format. We will provide electronic copies and 20 hard copy sets of the complete bid package to the District.

### PHASE III: BID SUPPORT SERVICES

- *Task 12 – Advertise bidding, interact with bidders, and open bids.* We will develop a list of qualified contractors from which to solicit proposals, with the intention of receiving at least four or five responsive bids. We will act as an extension of District staff to advertise the project(s), develop and send bid invitations and schedule and attend a pre-bid site meeting with the interested contractors. We will provide hard copies of the bid documents to qualified bidders and send out Bid Addenda as necessary. During bidding, we will take questions from contractors and issue addenda or respond to RFIs as required. We will assist in proposal evaluation and selection of the contractor.
- *Task 13 – Provide electronic clearinghouse.* The complete set of bid documents, including PDF files of all drawings, technical specifications, permits, cost estimates, reports, etc. will be made available to qualified bidders via an internet-accessible FTP site.
- *Task 14 – Present bids/recommendations to the Board for award.* We will complete a tabulated bid review matrix of all responsive bids. This matrix will provide an objective review of received bids, to select the best value (lowest cost for services offered) responsive bidder.
- *Task 15 – Assist the District in resolving bid protests.* The bid review matrix provides an objective and quantifiable basis for bid selection. Should protests arise, either from bidders or from a third party, we will assist the District in preparing a response to the protest(s), based on this objective review.
- *Task 16 – Secure contract submittals.* We will coordinate with the successfully selected contractor to acquire necessary contract submittals.

### PHASE IV: CONSTRUCTION ENGINEERING SERVICES

Construction engineering services will include attendance at pre-construction meetings, construction engineering, site visits and observation, and preparation of record drawings upon completion of construction.

- *Task 17 – Participate in job walk with construction team(s).* We will attend a Pre-Construction meeting and job walk with the selected contractor, District staff, and other appropriate agency representatives. The meetings will allow an opportunity for thorough review of the project plans, compliance requirements, and construction schedule, prior to the start of work.
- *Task 18 – Provide engineering services during construction.* Throughout construction, we will provide on-site engineering coordination. Tasks will include verification of compliance with drawings, specifications and permit conditions, review of contractor submittals, verification of contractor's schedule and progress tracking, and response to RFIs. We will provide a final walkdown of the completed project, as directed by the District. If requested, we will prepare a punch-list and recommendations for corrections and/or completion of remaining work. Utilizing as-built information and project revision documentation provided by the construction contractor, we will prepare and submit project Record Drawings on permanent drawing medium (Mylar film). These plans will be based on the final Construction Documents and incorporated the as-constructed survey data and contractor's red-line comments showing changes made during construction.
- *Task 19 – Provide Construction management services.* We will provide construction management services for this project including interacting with contractors and the County, administer the



## Scope of Services and Timeline

construction contract, provide progress photos, observation, quality review, daily reports, materials testing, construction staking, final walkdown and project closeout.

- *Task 20 – Participate in forums/workshops as requested.* We have included in our proposed fees budget to participate in up to 8 hours of forums and workshops as requested by the District. We will prepare a separate proposal should the District require additional time.
- *Task 21 – Prepare exhibits for public meetings as requested by the District.* We have included a nominal budget to provide construction drawings or other exhibits for use in public meetings, as requested. Additional exhibits requested beyond this budget will be provided on a time and materials basis.
- *Task 22 – Submit electronic copies of all work product deliverables in format acceptable to District.* We will provide electronic copies of all final project deliverables throughout the course of the project. The main deliverables will include but are not limited to: Construction Drawings, Technical Specifications, Opinion of Probable Cost, and Supplementary Topographic Survey and/or Geotechnical report.

### EXCLUSIONS

Certain services that typically accompany a project of this type are excluded from this Scope of work at this time. These services may be added to our Scope of Work on a Time and Materials basis and include the following:

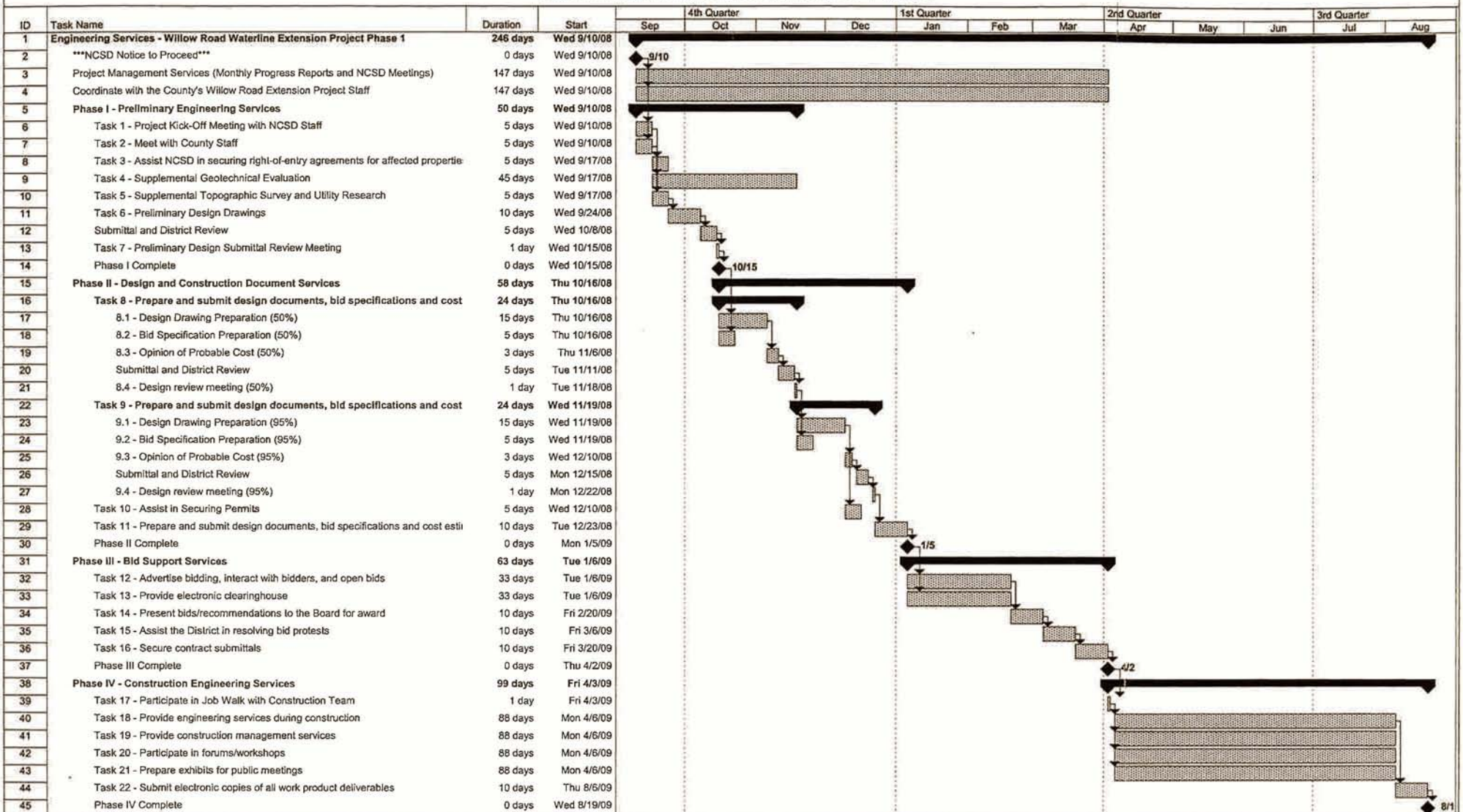
- Field verification and/or determination of property boundaries, easements, and public right-of-way, right-of-way dedications, and easement acquisitions.
- Survey monumentation, records of survey, and legal descriptions and exhibits.
- Project meetings (other than those described in the Scope of Work), local agency liaison, and application and permit processing and tracking.
- NPDES compliance reporting, Storm Water Pollution Prevention Plans (SWPPP), and Erosion and Sediment Control Drawings.
- Archeological, botanical, biological, geotechnical, and landscaping project services.

Additional work will be billed on a Time and Materials basis or as an addendum to this proposal with prior written authorization from the District.

### PROPOSED TIMELINE

Cannon Associates understands the importance of meeting project schedules and deliverable deadlines. We have included an anticipated Project Schedule on the following page. This schedule is based on project timeline presented in the RFP, our careful evaluation of the project, its objectives and scope, and the logical sequencing needed to adequately fulfill the components of this project. Every effort has been made to propose a realistic schedule that allows appropriate timeframes for District and other agency review.

Willow Road Waterline Extension Project - Phase I



Project: 080732\_Proposal Schedule-J Date: Thu 7/31/08

Task [Pattern] Progress [Pattern] Summary [Pattern] External Tasks [Pattern] Deadline [Symbol]

Split [Pattern] Milestone [Symbol] Project Summary [Pattern] External Milestone [Symbol]







Cost Summary for Willow Road Waterline Extension, Phase 1  
Nipomo Community Services District

|   | Project Manager | Associate Civil Engineer | Civil Engineer II | Administrative Assistant III | Senior Survey Consultant | Chief Surveyor | Two-Man Survey Crew | Total Hours | Fee Estimate Subtotal | Geotechnical Engineering | Reimbursable Expenses | Fee Estimate TOTAL |
|---|-----------------|--------------------------|-------------------|------------------------------|--------------------------|----------------|---------------------|-------------|-----------------------|--------------------------|-----------------------|--------------------|
| RATES   | \$160           | \$130                    | \$100             | \$60                         | \$160                    | \$150          | \$210               |             |                       |                          |                       |                    |
| HOURS   |                 |                          |                   |                              |                          |                |                     |             |                       |                          |                       |                    |
| <b>Project Management Services</b>  | 8               | 16                       |                   | 16                           |                          |                |                     | 40          | \$4,320               |                          |                       | \$4,320            |
| Coordinate with the County's Willow Road Extension Project Staff                          | 16              | 32                       |                   |                              |                          |                |                     | 48          | \$6,720               |                          |                       | \$6,720            |
| <b>Phase I: Preliminary Engineering Services</b>  |                 |                          |                   |                              |                          |                |                     |             |                       |                          |                       |                    |
| Task 1. Project Kick-off Meeting with NCSA Staff  | 3               | 3                        |                   |                              |                          |                |                     | 6           | \$870                 |                          |                       | \$870              |
| Task 2. Meet with County Staff  | 3               | 3                        |                   |                              |                          |                |                     | 6           | \$870                 |                          |                       | \$870              |
| Task 3. Assist the District in Securing Right-of-Entry Agreements                         |                 | 6                        |                   |                              |                          |                |                     | 6           | \$780                 |                          |                       | \$780              |
| Task 4. Supplemental Geotechnical Evaluation  |                 | 2                        |                   |                              |                          |                |                     | 2           | \$260                 |                          |                       | \$260              |
| Task 5. Supplemental Topographic Survey and Utility Research                              |                 |                          | 5                 |                              |                          |                |                     | 5           | \$500                 |                          |                       | \$500              |
| Task 6. Preliminary Design Drawings   | 8               | 20                       | 60                |                              |                          |                |                     | 88          | \$9,880               |                          |                       | \$9,880            |
| Submittal and District Review   |                 |                          |                   |                              |                          |                |                     |             |                       |                          | \$200                 | \$200              |
| Task 7. Preliminary Design Submittal Review Meeting                                       | 4               | 4                        |                   |                              |                          |                |                     | 8           | \$1,160               |                          |                       | \$1,160            |
|   |                 |                          |                   |                              |                          |                |                     |             |                       |                          | Phase I Subtotal:     | \$25,680           |
| <b>Phase II: Design and Construction Document Services</b>                                |                 |                          |                   |                              |                          |                |                     |             |                       |                          |                       |                    |
| Task 8. Prepare and Submit 50% Design Documents, Bid Specifications, and Cost             | 16              | 20                       | 40                |                              |                          |                |                     | 76          | \$9,160               |                          | \$200                 | \$9,360            |
| Task 9. Prepare and Submit 95% Design Documents, Bid Specifications, and Cost             | 16              | 20                       | 40                |                              |                          |                |                     | 76          | \$9,160               |                          | \$200                 | \$9,360            |
| Task 10. Assist in Securing Permits   |                 | 12                       |                   |                              |                          |                |                     | 12          | \$1,560               |                          |                       | \$1,560            |
| Task 11. Prepare and Submit Final Design Documents, Bid Specifications, and Cost Estimate | 20              | 20                       | 20                |                              |                          |                |                     | 60          | \$7,800               |                          | \$400                 | \$8,200            |
|   |                 |                          |                   |                              |                          |                |                     |             |                       |                          | Phase II Subtotal:    | \$28,480           |
| <b>Phase III: Bid Support Services</b>  |                 |                          |                   |                              |                          |                |                     |             |                       |                          |                       |                    |
| Task 12. Advertise Bidding, Interact with Bidders, and Open Bids                          | 8               | 24                       |                   |                              |                          |                |                     | 32          | \$4,400               |                          |                       | \$4,400            |
| Task 13. Provide Electronic Clearinghouse   |                 | 12                       |                   |                              |                          |                |                     | 12          | \$1,560               |                          |                       | \$1,560            |
| Task 14. Present Bids/Recommendations to the Board for Award                              | 12              | 12                       |                   |                              |                          |                |                     | 24          | \$3,480               |                          |                       | \$3,480            |
| Task 15. Secure Contract Submittals   | 8               | 16                       |                   |                              |                          |                |                     | 24          | \$3,360               |                          |                       | \$3,360            |
|   |                 |                          |                   |                              |                          |                |                     |             |                       |                          | Phase III Subtotal:   | \$12,800           |
| <b>Phase IV: Construction Engineering Services</b>  |                 |                          |                   |                              |                          |                |                     |             |                       |                          |                       |                    |
| Task 17. Participate in Job Walk with Construction Team                                   | 4               | 4                        |                   |                              |                          |                |                     | 8           | \$1,180               |                          |                       | \$1,180            |
| Task 18. Provide Engineering Services During Construction                                 |                 | 70                       | 6                 |                              |                          |                |                     | 76          | \$9,700               |                          |                       | \$9,700            |
| Task 19. Provide Construction Management Services   | 60              | 60                       |                   |                              | 8                        | 16             | 16                  | 160         | \$24,440              | \$7,500                  | \$1,500               | \$33,440           |
| Task 20. Participate in Forums/Workshops  |                 | 8                        |                   |                              |                          |                |                     | 8           | \$1,040               |                          |                       | \$1,040            |
| Task 21. Prepare Exhibits for Public Meetings   |                 | 8                        |                   |                              |                          |                |                     | 8           | \$1,040               |                          |                       | \$1,040            |
| Task 22. Submit Electronic Copies of All Work Product Deliverables                        |                 | 8                        | 3                 |                              |                          |                |                     | 9           | \$1,080               |                          |                       | \$1,080            |
|   |                 |                          |                   |                              |                          |                |                     |             |                       |                          | Phase IV Subtotal:    | \$46,420           |
|   |                 |                          |                   |                              |                          |                |                     |             |                       |                          | <b>PROJECT TOTAL:</b> | <b>\$124,300</b>   |



**PERSONNEL AND SUB-CONSULTANTS**

| Team Member  | Role   | Areas of Expertise   |
|--|--|--|
| <p><b>Larry Kraemer, PE</b><br/>Project Manager and Design Team Leader<br/>San Luis Obispo, CA</p>     | <ul style="list-style-type: none"> <li>• Project Management, Scheduling, Client Communication</li> <li>• Coordination with the County of SLO</li> <li>• Technical Specifications</li> <li>• Bidding Services</li> <li>• Construction Engineering</li> <li>• Construction Administration</li> </ul> | <ul style="list-style-type: none"> <li>• 21 years experience in municipal engineering for public and private sectors</li> <li>• Senior Engineer for Water Resources, Wastewater, and Transportation projects</li> <li>• Technical direction and design for pipelines, wells, pump stations, lift stations</li> <li>• Construction contract administration and construction management</li> </ul> |
| <p><b>Michael F. Cannon, PE</b><br/>Principal-in-Charge and Client Liaison<br/>San Luis Obispo, CA</p> | <ul style="list-style-type: none"> <li>• Quality Control</li> <li>• Client Sponsor</li> </ul>  | <ul style="list-style-type: none"> <li>• Over 24 years experience as a consulting engineer</li> </ul>  |
| <p><b>Jeff Spannbauer, PE</b><br/>Water System Design<br/>San Luis Obispo, CA</p>                      | <ul style="list-style-type: none"> <li>• Lead Design Engineer</li> <li>• Coordination with the County of SLO</li> <li>• Construction Engineering</li> <li>• Construction Observation</li> <li>• Assist with Bidding Strategy</li> </ul>  | <ul style="list-style-type: none"> <li>• Over 10 years experience preparing plans and specifications for municipal, agricultural, and subdivision projects</li> <li>• Knowledge of operations and testing of water systems</li> <li>• Technical capabilities in water modeling technologies</li> </ul>   |
| <p><b>Erin Westmoreland</b><br/>Civil Engineering<br/>San Luis Obispo, CA</p>                          | <ul style="list-style-type: none"> <li>• Design Documents</li> <li>• Prepare Exhibits</li> <li>• Prepare Record Drawings</li> </ul>  | <ul style="list-style-type: none"> <li>• 5 years of design experience</li> <li>• CADD Manager</li> <li>• Preparation of plans and specifications for municipal projects</li> <li>• Experienced in agency coordination</li> <li>• Drainage analysis</li> </ul>  |
| <p><b>Anthony Severy</b><br/>Civil Engineering<br/>San Luis Obispo, CA</p>                             | <ul style="list-style-type: none"> <li>• Design Documents</li> <li>• Prepare Exhibits</li> <li>• Prepare Record Drawings</li> </ul>  | <ul style="list-style-type: none"> <li>• 2 years of design experience for waterline relocations, sewer lines and manhole repair</li> </ul>   |
| <p><b>Lester Carter, Jr., PLS</b><br/>Project Surveyor<br/>San Luis Obispo, CA</p>                     | <ul style="list-style-type: none"> <li>• Review Survey Data</li> <li>• Oversee preparation of design-level base map</li> <li>• Coordinate additional surveys (as needed)</li> </ul>  | <ul style="list-style-type: none"> <li>• 30 years experience in land surveying</li> <li>• Multi-level coordination between government agencies, construction contractors, and architectural and design consultants</li> <li>• Develops GIS services</li> </ul>   |



Personnel

| Team Member  | Role   | Areas of Expertise   |
|--|--|--|
| <p><b>Daniel Hutchinson, PLS</b><br/>Project Surveyor<br/>San Luis Obispo, CA</p>                            | <ul style="list-style-type: none"> <li>• Review Survey Data</li> <li>• Prepare Design-Level Base Map</li> <li>• Assist in securing right-of-entry agreements</li> <li>• Provide Construction Staking services</li> </ul>   | <ul style="list-style-type: none"> <li>• 30 years experience in land surveying</li> <li>• Supervises preparation of aerial, topographic and boundary surveys, ALTAs, legal descriptions, and as-built surveys</li> </ul>   |
| <p><b>Rebekah Oulton, LEED AP</b><br/>Environmental Coordinator<br/>San Luis Obispo, CA</p>                  | <ul style="list-style-type: none"> <li>• Prepare permit applications</li> <li>• Facilitate communication between agencies</li> <li>• Coordinate with consultants as necessary to incorporate permit conditions and mitigation measures into drawings and technical specifications</li> </ul> | <ul style="list-style-type: none"> <li>• Over five years experience in engineering</li> <li>• Permitting and agency coordination for construction and remediation projects</li> <li>• LEED Consulting</li> </ul>   |
| <p><b>Doug Dunham, PE</b><br/>Geotechnical Engineering<br/>Earth Systems Pacific<br/>San Luis Obispo, CA</p> | <ul style="list-style-type: none"> <li>• Review soils report</li> <li>• Prepare and submit a supplemental soils report (if needed)</li> </ul>  | <ul style="list-style-type: none"> <li>• Over 20 years of experience in the geotechnical field</li> <li>• Conducts soils engineering investigations</li> <li>• Authors soils engineering reports</li> <li>• Supervises testing and inspection personnel during construction phase of projects</li> </ul> |



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

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES**

- Exhibit "A"** – Scope of Services or Service including Schedule of Submittals  
**Exhibit "B"** – Compensation for Services, Not Exceed Amount, Hourly Rates and Reimbursable Costs  
**Exhibit "C"** - Key Personnel including Design Team Leader and Designated Engineers  
**Exhibit "D"** - [place holder]

**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 \_\_\_\_\_ (herein referred to as "Design Professional"), with reference to the following Recitals:

**RECITALS**

- A. NCSD desires to retain professional engineering services in part to design Phases I of the Willow Road Waterline Extension Project (hereinafter referred to as "Project"), support Project bidding, and provide engineering services and construction management during construction of the Project.
- B. NCSD desires to engage Design Professional to provide the above referenced services by reason of its qualifications and experience in performing such services 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, District General Manager, ("Contract Administrator") at telephone number (805) 929-1133 is the representative of NCSD and will administer this Agreement for and on behalf of NCSD. \_\_\_\_\_ at telephone number (805) \_\_\_\_\_ is the authorized representative for Design Professional. Changes in designated representatives shall be made only after advance written notices to the other party.
2. **NOTICE.** Notices required under this Agreement shall be sent to the following:

**NCSD :** Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444  
Attn: Bruce Buel  
Facsimile No. (805) 929-1932



**DESIGN PROFESSIONAL:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile:(805) \_\_\_\_\_

Notices given pursuant to this Agreement shall be deemed received as follows:

- (a) If sent by United States Mail - five (5) calendar days after deposit into the United States Mail, first class postage prepaid.
- (b) If by facsimile - upon transmission and actual receipt by the receiving party.
- (c) If by express courier service or hand delivery - on the date of receipt by the receiving party.

The addresses to notices set forth in this Section 2 may be changed upon written notice of such change to either the NCSD or Design Professional, as appropriate.

**3. ATTACHMENTS.** Attached to this Agreement are the following Exhibits that are incorporated into this Agreement by reference.

- A. **Exhibit "A"** – Scope of Services or Services, including Schedule of Submittals
- B. **Exhibit "B"** – Compensation for Services, Not Exceed Amount, Hourly Rates and Reimbursable Costs
- C. **Exhibit "C"** – Key Personnel including Design Team Leader and Designated Engineers
- D. **Exhibit "D"** – [place holder]

**4. SCOPE OF SERVICES.**

A. Design Professional agrees to provide the Services and submit deliverables to NCSD in accordance with this Agreement.

B. By executing this Agreement, Design Professional represents that Design Professional (a) has thoroughly investigated and considered the Scope of Services referenced in the Agreement 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 Design Professional.

**5. TERM.** Design Professional shall commence performance within five (5) days of NCSD's Notice to Proceed and unless otherwise directed in writing by NCSD or unless earlier terminated as provided in this Agreement, shall complete performance and make deliverables in accordance with Exhibit "A".



## 6. COMPENSATION OF DESIGN PROFESSIONAL.

A. Design Professional will be paid for the Services provided to NCSD on a time and material basis pursuant to the hourly rates and reimbursable expenses referenced in Exhibit "B", subject to the Not to Exceed Amount of \_\_\_\_\_.

B. Design Professional 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, the amount of time spent on performing the services. Additionally, each invoice shall reflect the percentage of completion of each Task and the remaining budget ("Not to Exceed Amount").

C. NCSD shall review each invoice submitted by Design Professional to determine whether it accurately reflects the Services performed and Reimbursable Expenses incurred in compliance with the provisions of this Agreement. 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 Design Professional for correction and resubmission, however, the undisputed amount shall be paid as indicated above. Disputed amounts shall be resolved pursuant to paragraph 21, below.

D. NCSD shall not pay Design Professional more than the Not-to-Exceed Amount without the prior written authorization of the NCSD. In order for NCSD to increase the Not-To-Exceed Amount Design Professional shall promptly notify the NCSD and prior to the expenditure of sixty percent (60%) of the budget for each Task, for which Design Professional seeks to increase the Not to Exceed Amount, 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 Exhibit "B". The NCSD retains the discretion to: deny the request, to increase the Not to Exceed Amount, or amend the Scope of Services.

E. Payment to Design Professional 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 Design Professional 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 Design Professional to make payments properly to its employees or sub-Design Professionals; or (5) Design Professional's failure to adhere to the Schedules or to achieve sufficient progress with the Services such that Design Professional is unlikely to achieve timely completion.

## **7. STATUS OF DESIGN PROFESSIONAL.**

A. Design Professional is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of NCSD. Design Professional 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 Design Professional shall at all times be under Design Professional'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 Design Professional or any of Design Professional's officers, employees or agents, except as set forth in this Agreement. Design Professional shall not at any time or in any manner represent that Design Professional or any of Design Professional's officers, employees, subcontractors, or agents are in any manner officials, officers, employees or agents of NCSD.

C. Neither Design Professional, nor any of Design Professional'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. Design Professional expressly waives any claim Design Professional may have to any such rights.

## **8. PERFORMANCE STANDARDS.**

A. Compliance with laws. Design Professional shall (and shall cause its agents and sub-contractors), at its sole cost and expense, to comply with NCSD, County, State and Federal ordinances, regulations and statutes now in force or which may hereafter be in force with regard to the Services referenced in this Agreement, provided, however, that any change in ordinance, regulation, or statute, that occurs subsequent to the execution of the Agreement, that significantly affects the cost or schedule of the Services may be brought to the attention of NCSD as a request for extra services. If NCSD agrees that there is a significant change required in the Services on account of the change, NCSD and Design Professional shall negotiate a mutually agreeable adjustment to the schedule and/or compensation. The judgment of any court of competent jurisdiction, or the admission of Design Professional in any action or proceeding against Design Professional, whether NCSD be a party thereto or not, that Design Professional has violated any such ordinance or statute, shall be conclusive of that fact as between Design Professional and NCSD. Except as provided above, any corrections to Design Professional's Services which become necessary as a result of



the Design Professional's failure to comply with these requirements shall be made at Design Professional's expense.

B. **Standard of Performance.** Design Professional represents that it has, or will have, the skills, expertise, allotted staff time and licenses necessary to perform the Services required under this Agreement. Design Professional shall perform all such Services in the manner and according to the standards observed by professionals experienced in providing Services identified in the Agreement. All documents and services of whatsoever nature that Design Professional delivers to NCSD pursuant to this Agreement shall conform to the standards of quality normally observed by professionals experienced in providing Services identified in the Agreement. Design Professional 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 Design Professional without additional compensation throughout the term of this Agreement

C. Design Professional shall examine carefully all documents, including studies, reports and materials, prepared by NCSD Staff or other NCSD design professionals, (collectively "District Materials") provided by NCSD to Design Professional. District Materials provided to Design Professional are believed by NCSD to reflect the conditions or data contained therein; but delivery is neither intended or to be inferred that conditions or data, as shown in the District Materials, constitute a representation by NCSD that such conditions or data are true and correct. It is expressly understood and agreed by Design Professional that the NCSD assumes no responsibility whatsoever with respect to the sufficiency or accuracy of the information contained in District Materials. Design Professional shall satisfy itself through its own investigations as to whether or not the conditions or data contained in District Materials are true and correct. The Design Professional's reliance on NCSD supplied materials will not, in any way, relieve Design Professional from any risk for properly fulfilling the terms of this Agreement.

D. **Professional Seal.** Design Professional shall have documents stamped by registered professionals, at Design Professional's cost when required by prevailing law, usual and customary professional practice, by NCSD, or by any governmental agency having jurisdiction over the project to which the Scope of Services relate.

**9. TAXES.** Design Professional 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 Design Professional.

**10. CONFLICT OF INTEREST.** Design Professional covenants that neither it, nor any officer or principal of its firm, or subcontractors retained by Design Professional has, or shall acquire any interest, directly or indirectly, which would conflict in any manner



with the interests of NCSD or which would in any way hinder Design Professional's performance of services under this Agreement. Design Professional 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. Design Professional agrees to at all times avoid conflicts of interest, with the interests of the NCSD in the performance of the Services. The NCSD may require Design Professional to file a Form 700 Statement of Economic Interests pursuant to the Fair Political Practices Act. Examples of Form 700 Statements are available on the web at <http://www.fppc.ca.gov/forms>

**11. RESPONSIBILITIES OF NCSD.** NCSD shall provide District Materials requested by Design Professional that are reasonably necessary to perform the services provided herein.

**12. 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 Design Professional during the performance of this Agreement (the "Documents") shall be and become the property of NCSD. Design Professional 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. However, Design Professional shall not be liable for NCSD's use of documents and instruments of professional service if used for other than the Services referenced in Agreement. Design Professional shall not release Documents to third parties without the prior written authorization of NCSD.

**13. RECORDS, AUDIT AND REVIEW.** Design Professional and Design Professional's subcontractors shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Design Professional'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 Design Professional's regular business hours or upon reasonable notice.

**14. INDEMNIFICATION.**

A. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782.8). Design Professional shall defend (with legal counsel reasonably acceptable to the NCSD) indemnify and hold harmless the 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 Design Professional 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 Design Professional, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). 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, active negligence, or willful misconduct of such Indemnitee.

B. To the extent there is an obligation to indemnify under this section 14, Design Professional shall be responsible for incidental and consequential damages resulting from Design Professional's negligence, recklessness, or willful misconduct.

C. Nothing contained in the foregoing indemnity provisions shall be construed to require Design Professional to indemnify NCSD, against any responsibility or liability in contravention of Civil Code §2782.8.

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

E. Neither termination of this Agreement or completion of the Scope of Services under this Agreement shall release Design Professional from its obligations of Section 14 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 Design Professional, its employees, agents or subconsultants / subcontractors, or the employee, agent or consultant of any one of them.

F. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in this Agreement does not relieve Design Professional from liability referenced in this Section 14. The obligations of this section shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

## **15. INSURANCE.**

A. Design Professional and its subconsultants/subcontractors 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<br>(Including coverage for premises, products<br>and completed operations, independent<br>Design Professionals/vendors, personal injury and<br>contractual obligations with combined single<br>limits of coverage of at least | \$ 2 Million per occurrence.<br>\$ 4 Million in the aggregate |
| (ISO Form CG001 11/85)<br>Commercial Automobile Liability Insurance   | \$ 1 Million per accident                                     |
| (ISO Form CA001 12/90)<br>Workers' Compensation Insurance   | Statutory   |
| Employer's Liability Insurance  | \$ 1 Million policy limit                                     |
| Professional Liability Insurance  | \$ 3 Million per claim<br>\$ 5 Million in the aggregate       |

B. 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; and

(2) This policy shall be considered primary insurance with respect to the NCSD, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the NCSD, including any self-insured retention the NCSD may have, shall be considered excess insurance only and shall not contribute with it .

(3) This insurance shall act for each insured and Additional Insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

(4) 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.

(5) The insurer waives all rights of subrogation against the NCSD, its elected or appointed officers, officials, employees or agents.

C. Prior to commencing work under this Agreement, Design Professional 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.



D. 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 Design Professional hereunder. Any failure to comply with this requirement shall constitute a material breach of this Agreement.

**16. PERSONNEL.** The Design Professional 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 Design Professional or under Design Professional's supervision, and all personnel engaged in the work shall be qualified to perform such Services.

**17. CONTINUITY OF PERSONNEL.**

A. The NCSD desires that Design Professional be committed to providing the Design Team Leader and Designated Engineers referenced in Exhibit "C" for the duration of the Services to be performed pursuant to this Agreement (herein "Key Personnel"). The Key Personnel will work closely with NCSD and its representatives. Design Professional will not change the Key Personnel without providing the NCSD with notice and the opportunity to review the qualifications of the person proposed to replace one or more of the Key Personnel. Design Professional will not appoint a Key Personnel replacement to whom NCSD has an objection.

B. In the event that Design Team Leader (designated in Exhibit "C") ceases to act as the Team Leader (except for death or incapacitating illness, as determined by a licensed physician), before the completion of the Services, the Parties recognize the NCSD will suffer additional costs and delays in the Engineering Services contemplated in this Agreement and that the value of those costs and delays may be difficult to establish. Accordingly, if Design Team Leader ceases to act as the Team Leader, except as provided above, Design Professional shall pay NCSD fifty thousand dollars (\$50,000), as liquidated damages and not as a penalty.

C. The damages described in the preceding paragraph are to compensate NCSD only for costs and delays attributable to the Team Leader's departure. They do not affect any right that NCSD may have to recover other damages in connection with Design Professional's performance under this Agreement. NCSD may deduct said damages referenced in the preceding paragraph from invoices submitted by Design Professional for payment.

D. In the event that NCSD agrees that Design Professional may replace Key Personnel, NCSD shall not be charged any fees or reimbursable expenses in



connection with that transition, including the cost of having the new Key Personnel become familiar with the Services to be performed pursuant to this Agreement, or any other related matter.

**18. TEMPORARY SUSPENSION.** The NCSD's Contract Administrator shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as he/she deems necessary due to unfavorable conditions or to the failure on the part of the Design Professional to perform any provision of this Agreement. Design Professional will be paid for services performed through the date of temporary suspension. In the event that Design Professional's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Design Professional's reasonable control, then the Not to Exceed Amount shall be subject to renegotiation.

**19. TERMINATION.**

A. If Design Professional at any time refuses or neglects to perform the Services in a timely fashion or in accordance with the Schedule referenced in Scope of Work, 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, Design Professional shall be in default.

B. If Design Professional 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 Design Professional 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 Design Professional under this Agreement; or (b) terminate Design Professional'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 Design Professional, whether located at the NCSD Office, at Design Professional'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, Design Professional 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 Design Professional, but, if such expense shall exceed such unpaid balance, then Design Professional 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 Design Professional'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 Design Professional. In the event of termination without cause, Design Professional shall be entitled to payment in an amount not to exceed the Not to Exceed Amount referenced in the Scope of Work, 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 Design Professional; plus (3) reasonable termination costs incurred by Design Professional 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 Design Professional prior to the date of termination of the Services. Design Professional 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 Design Professional shall be entitled to receive only the amounts payable hereunder in the event of a Termination for Convenience.

F. Should NCSD fail to pay Design Professional undisputed payments set forth in Section 6 above, Design Professional may, at Design Professional'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.

**20. BREACH OF LAW.** In the event the Design Professional 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 Design Professional or Design Professional; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraphs 10, 24, 25, 26 or 27 of this Agreement; or for any other cause the NCSD determines to be so serious and compelling as to affect Design Professional's responsibility as a public Design Professional or Design Professional, 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.

**21. DISPUTED INVOICES** Unless otherwise agreed to in writing the following sections shall apply only to disputes related to non-payment of disputed amounts as referenced in paragraph 6, above:

A. The Parties agree in good faith to attempt to resolve amicably disputed amounts. 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 resolve the dispute. If the Parties are unable to agree on a mediator, then either Party can request the Presiding Judge of the San Luis Obispo County Superior Court to appoint a mediator. Said appointment shall be binding on the Parties. The mediator's fee shall be shared equally by the Parties. If the dispute is not settled by mediation, then the Parties agree to submit the dispute to binding arbitration as provided in Section B, below.

B. Either Party may demand arbitration by filing a written demand with the other Party within thirty (30) days from the date of the informal non-binding opinion of the mediator, in accordance with the prevailing provisions of the California Arbitration Act at the time of the written demand. The arbitration procedures are as follows:

(1) The parties may agree on one arbitrator. If they cannot agree on one arbitrator, there shall be three: one named in writing by each of the parties within five days after demand for arbitration is given, and a third chosen by the two appointed. Should either party refuse or neglect to join in the appointment of the arbitrator(s) or to furnish the arbitrator(s) with any papers or information demanded, the arbitrator(s) may proceed ex parte.

(2) A hearing on the matter to be arbitrated shall take place before the arbitrator(s) within the County of San Luis Obispo, State of California, at the time and place selected by the arbitrator(s). The arbitrator(s) shall select the time and place promptly and shall give each party written notice of the time and place at least sixty (60) days before the date selected. The procedures of the California Arbitration Act are incorporated herein by reference.

(3) If there is only one arbitrator, his or her decision shall be binding and conclusive on the parties, and if there are three arbitrators, the decision of the two shall be binding and conclusive. The submission of a dispute to the arbitrator(s) and the rendering of a decision by the arbitrator(s) shall be binding on the parties. A judgment confirming the award may be given by any Superior Court having jurisdiction, or that Court may vacate, modify, or correct the award in accordance with the prevailing provision of the California Arbitration Act.



(4) If three arbitrators are selected, but no two of the three are able to reach an agreement regarding the determination of the dispute, then the matter shall be decided by three new arbitrators who shall be appointed and shall proceed in the same manner, and the process shall be repeated until a decision is agreed on by two of the three arbitrators selected.

(5) The costs of the arbitration shall be borne by the losing party or shall be borne in such proportions as the arbitrator(s) determine(s).

**22. PROGRESS AND PERFORMANCE OF SERVICES.** 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 or any changes thereto, and Design Professional 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 Design Professional 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.

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

**24. NON-DISCRIMINATION.** Design Professional 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.

**25. UNAUTHORIZED ALIENS.** Design Professional 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 Design Professional 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, Design Professional 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. Design Professional 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.

**26. PREVAILING WAGE.** Design Professional shall keep informed and take all measures necessary to ensure compliance with Labor Code requirements, including, but not limited to Section 1720 et seq. of the Labor Code regarding public works, limitations on use of volunteer labor (Labor Code Section 1720.4) and payment of prevailing wages to workers and professionals for work done under this Agreement, as determined by the Director of Industrial Relations of the State of California pursuant to



California Labor Code Part 7, Chapter 1, Article 2. Copies of prevailing wage determinations are on file at NCSD offices or otherwise available on the Web at [www.cslp.ca.gov](http://www.cslp.ca.gov).

**27. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.**

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

B. Design Professional, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the NCSD Manager or unless requested by the NCSD 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 Design Professional gives NCSD notice of such court order or subpoena.

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

D. Design Professional shall promptly notify NCSD should Design Professional, 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 thereunder. NCSD retains the right, but has no obligation, to represent Design Professional or be present at any deposition, hearing or similar proceeding. Design Professional agrees to cooperate fully with NCSD and to provide NCSD with the opportunity to review any response to discovery requests provided by Design Professional. However, this right to review any such response does not imply or mean the right by NCSD to control, direct, or rewrite said response.

**28. ASSIGNMENT.** The expertise and experience of Design Professional 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 Design Professional under this Agreement. In recognition of that interest, Design Professional shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Design Professional's duties or obligations under this Agreement without the prior written consent of the NCSD 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 Design Professional, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

**29. 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.

**30. 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.

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

**32. REMEDIES NOT EXCLUSIVE.** Except for (a) disputes related solely to the payment for Services performed by Design Professional and (b) the termination provisions of Section 19 (E), 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.

**33. NONEXCLUSIVE AGREEMENT.** Design Professional 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 Design Professional as the NCSD desires.

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

**35. 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.

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

**37. 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.

**38. EXTRA SERVICES.**

A. Should Design Professional propose to provide services that NCSD considers to be beyond the Scope of Services, Design Professional shall present a written request to amend the Scope of Services and a proposal for compensation for additional services to the NCSD. The NCSD Contract Administrator will make due consideration of the request to amend the Scope of Services and compensation for additional services. Design Professional shall not provide additional services until Design Professional has received a written amendment to this Agreement. . Should Design Professional elect to proceed prior to the amendment being approved by the NCSD for additional services, the Design Professional does so at Design Professional's own risk and with the understanding that the NCSD will not be obligated for payment of additional compensation.

B. Should NCSD request Design Professional to provide services that are beyond the Scope of Services, Design Professional shall provide the NCSD with a written proposal for additional services. The NCSD will make due consideration of the proposal. Design Professional shall not provide additional services until Design Professional has received a written amendment to this Agreement. Should Design Professional elect to proceed prior to the amendment being approved by the NCSD for additional services, the Design Professional does so at Design Professional's own risk and with the understanding that the NCSD will not be obligated for payment of additional compensation.

**39. 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.

**40. 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.

**41. 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.

**42. 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.

**43. PRECEDENCE.** In the event of a conflict between the Exhibits and this Agreement, the provisions of this Agreement shall control.

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

**45. 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, Design Professional hereby warrants that it shall not have breached the terms or conditions of any other contract or Agreement to which Design Professional 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.

**DESIGN PROFESSIONAL:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



**NIPOMO COMMUNITY SERVICES DISTRICT:**

\_\_\_\_\_  
Michael Winn, President  
Nipomo Community Service District  
Board of Directors

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

**ATTEST:**

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

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

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