

TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *BSB*
DATE: AUGUST 22, 2008

AGENDA ITEM
E-4
AUGUST 27, 2008

PHASE 1 WATERLINE INTERTIE PROJECT CONSTRUCTION MANAGEMENT

ITEM

Authorize Execution of Agreement with MNS Engineers for Phase 1 of Waterline Intertie Project Construction Management Services [RECOMMEND APPROVAL or PROVIDE POLICY GUIDANCE].

BACKGROUND

At the July 9, 2008 Board Meeting your honorable Board reviewed staff's proposed RFP (attached) and authorized circulation to qualified firms. The RFP was mailed to eleven firms on July 10, 2008. Five firms (Garing Taylor and Associates; Montgomery Watson Harza; MNS Engineers; Penfield and Smith and Vanir) responded with proposals by the August 5, 2008 deadline (Proposals previously distributed to the Board and available for review at the NCSD office). Staff evaluated the proposals and developed the attached ranking sheet with MNS Engineers as the top ranked firm. The WIP Design and Construction Committee discussed the submittals at their August 11, 2008 but choose not to make a recommendation (Directors Eby and/or Trotter may wish to comment).

MNS Engineers proposed to perform the Phase 1 scope of work for \$53,700 (See attached Quote Sheet and Breakout). Of the \$53,700 Phase 1 budget, \$22,280 is for peer review and constructability feedback. The \$31,420 remainder is proposed for Bid Service Activities that are not part of Boyle's Design Scope of Work. MNS Engineers rough cost estimate for Phase 2 services is \$1,321,800 (See attached Breakout).

The FY08-09 Budget includes \$1,550,000 in Supplemental Water Fund (Fund #500) funding for development of Supplemental Water with additional funding expected in FY09-10 & 10-11.

RECOMMENDATION

Staff believes that the \$22,280 Peer Review and Constructability Analysis will result in equal or greater savings in construction cost. Staff recommends that your Honorable Board select MNS Engineers as the WIP Construction Management Firm; authorize the President to execute a Phase 1 agreement with MNS Engineers for \$53,700; and authorize staff to negotiate a Phase 2 proposal for subsequent consideration by the Board once the design is completed.

Should your honorable Board not wish to retain MNS to perform the Peer Review and Constructability Analysis, staff respectfully requests that the Board authorize the President to execute an Agreement with MNS Engineers for just the \$31,420 Bid Service Activities set forth in the MNS Proposal.

ATTACHMENTS

- WIP CM RFP
- Staff Ranking Sheet
- MNS Phase 1 Quote and Breakout Sheet
- MNS Phase 2 Cost Estimate

NIPOMO COMMUNITY

BOARD MEMBERS

MICHAEL WINN, PRESIDENT
JIM HARRISON, VICE PRESIDENT
LARRY VIERHEILIG, DIRECTOR
CLIFFORD TROTTER, DIRECTOR
ED EBY, DIRECTOR



SERVICES DISTRICT

STAFF

BRUCE BUEL, GENERAL MANAGER
LISA BOGNUDA, ASSISTANT ADMINISTRATOR
JON SEITZ, GENERAL COUNSEL
PETER SEVCIK, DISTRICT ENGINEER

148 SOUTH WILSON STREET POST OFFICE BOX 326 NIPOMO, CA 93444 - 0326
(805) 929-1133 FAX (805) 929-1932 Website address: NCSD.CA.GOV

July 10, 2008

«Engineer»
«Firm»
«Address»
«City_State»

SUBJECT: REQUEST FOR PROPOSAL FOR CONSTRUCTION MANAGEMENT SERVICES – WATERLINE INTERTIE PROJECT

Dear «Engineer»:

Nipomo Community Services District (DISTRICT) intends to construct Phase I and II of the Santa Maria Waterline Intertie Project (WIP) as described in the May 2008 "Preliminary Engineering Memorandum" posted on NCSD's website. DISTRICT expects to complete Environmental Review by the end of January 2009; complete the Final Design by October 2009, open Bids in November 2009; start construction by December 2009; and complete construction by October 2010 (see attached project schedule). The PROJECT ENGINEER is Mike Nunley of Boyle Engineering, San Luis Obispo. The PROJECT ENGINEER'S estimate of project construction cost is \$20 million.

DISTRICT is seeking proposals from qualified Construction Management firms (CONSTRUCTION MANAGER) to initially provide QA/QC during design phase and the under a separate agreement, Construction Management Services during the construction of WORKS by the CONTRACTORS (NCSD expects to retain 5 separate prime CONTRACTORS). CONSTRUCTION MANAGER would be expected to execute NCSD's standard CONSTRUCTION MANAGER Services Agreement and to work on a time-and-materials basis with a not-to-exceed expenditure limit. CONSTRUCTION MANAGER would interact with the CONTRACTOR(S), PROJECT ENGINEER, PEER REVIEW TEAM, DISTRICT staff and the DISTRICT Board to implement the tasks detailed in the attached Task Listings.

SERVICES REQUESTED

See the attached listings of Pre-Construction Tasks and Construction Phase Tasks.

QUOTE REQUIREMENTS

Ten copies of the proposal must be received by DISTRICT in a sealed envelope by **3 p.m. on Tuesday August 5, 2008**, to be considered. The exterior of the envelope must identify the quote as "WIP Construction Management Services". Faxes, E-Mails, proposals not enclosed in a sealed/labeled envelope, and proposals received after 3:00 p.m. on Tuesday August 5, 2008, will not be considered and will be returned to the submitter.

The Proposal shall include, as a minimum, the following:

1. Cover Letter/Introduction
 - Present your understanding of the project and the services requested.
 - The Cover Letter shall be signed by an official authorized to bind the firm and shall contain a statement that the proposal is valid for ninety (90) Days.
2. Scope of Services
 - Detail your proposed approach to both phases of the assignment.
 - Describe any proposed scope amendments; exceptions to the attached Task Listings or exceptions to the terms of the attached Construction Management Agreement.
3. Personnel
 - Identify the Team Leader and provide résumé.
 - Identify any additional team members and provide résumés.
 - Include an Organization chart depicting the name and position of each participant
 - Describe the role of each team member
4. Experience & References
 - Describe your experience in providing similar services to local government entities in California
 - Provide references for projects of similar scope and nature performed over the last four years.
5. Cost Estimate
 - Complete and submit the attached Quote Sheet for the Pre-Construction Phase that has been signed by a principal authorized to represent the firm.
 - Submit a listing of fees and charges.
 - For the Pre-Construction Phase, include line item cost estimates for each task and sub-task including staff classification, hourly rates, and hours as well as all other costs including sub-consultant costs and project expenses.
 - For the Construction Phase, provide a budget assuming 1 FTE inspector during the actual construction of the project.

SELECTION PROCESS

NCSD will screen proposals from August 5, 2008 to August 27, 2008. The Board is tentatively scheduled to select a firm at its August 27, 2008 meeting. NCSD may conduct interviews during the screening process.

PROPOSAL EVALUATION

Proposals will be evaluated on the following:

- Responsiveness to Request for Quote
- Scope Amendments and Exceptions to Task Listing and/or Agreement
- Experience of the team to perform the requested services
- Qualifications of the personnel proposed for the project
- Cost for Pre-Construction Phase including fees and reimbursables (Not-to-Exceed Expenditure Limit)

Notes:

This is a time-sensitive project.

The selected CONSTRUCTION MANAGER will be expected to execute a standard CONSTRUCTION MANAGER Services agreement (attached).

NCSD reserves the right to reject any and all submittals and/or solicit new submittals at its discretion. NCSD reserves the right to negotiate with lesser ranked firms, if the negotiation with the top ranked firm is unsuccessful. The submitter retains no interest in the proposal once received by NCSD. Proposers are responsible for all costs associated with the proposal.

For more information on the project or this RFP, contact NCSD General Manager Bruce Buel at 805-929-1133 or bbuel@ncsd.ca.gov.

Sincerely,

NIPOMO COMMUNITY SERVICES DISTRICT

Bruce Buel
General Manager

CC: Mike Nunley, Boyle Engineering
Peter Sevcik, District Engineer
WIP File

Enclosures

- Quote Sheet
- Listing of Tasks
- Project Schedule
- Standard CONSTRUCTION MANAGER Agreement

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**WATERLINE INTERTIE PROJECT
PRE-CONSTRUCTION CM SERVICES QUOTE SHEET**

Date: _____

NAME OF FIRM: _____

NAME OF PRINCIPAL: _____

NAME OF CM TEAM LEADER: _____

ADDRESS: _____

PHONE: _____ FAX: _____

E-MAIL: _____

NOT-TO-EXCEED EXPENDITURE LIMIT FOR ALL FEES & CHARGES: _____

Signature of Principal Authorized to Sign for Firm and Date

This quote shall be valid for 90 Days from the date of Signature

A. LISTING OF PRE-CONSTRUCTION PHASE TASKS

1. Design Review Activities

- a. **CONCEPT REVIEW** – The **CONSTRUCTION MANAGER** shall coordinate with the **PEER REVIEW TEAM** to critique the 30% design for possible project design changes to reduce cost and issue a memorandum to the **DISTRICT** and **PROJECT ENGINEER** regarding any such possible changes.
- b. **Review of Design Documents** - The **CONSTRUCTION MANAGER** shall review the design documents at 60% and 95% completion for clarity, consistency, bidability, constructability and coordination among the trades. The **CONSTRUCTION MANAGER** shall provide the results of the review in writing and as notations on the documents. The **CONSTRUCTION MANAGER** shall make recommendations to the **DISTRICT** and **PROJECT ENGINEER** with respect to constructability, construction cost, sequence of construction, and construction duration.

2. Bid Service Activities

- a. **Construction Management Process Plan** - The **CONSTRUCTION MANAGER** shall prepare a Construction Management Process Plan for the Project including all bid schedules. In preparing the Construction Management Process Plan, the **CONSTRUCTION MANAGER** shall consider the Mitigation and Monitoring Program and the **DISTRICT's** schedule, cost and design requirements for the Project. The Construction Management Process Plan shall describe how the various **GENERAL CONTRACTORS** shall coordinate their respective bid schedules. The **CONSTRUCTION MANAGER** shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the **DISTRICT**. The Construction Management Process Plan shall be presented to the **PROJECT ENGINEER** for review and the **DISTRICT** for acceptance.
- b. **Master Schedule** - The **CONSTRUCTION MANAGER** shall prepare a Master Schedule for each component/bid schedule of the Project in accordance with the Construction Management Plan. The Master Schedule shall specify the proposed start and finish dates for each major activity, including permits, design, construction, testing and start up. The **CONSTRUCTION MANAGER** shall submit the Master Schedule to the **DISTRICT** for review and acceptance. As necessary throughout the Pre-construction Phase, the **CONSTRUCTION MANAGER** shall recommend revisions to the Master Schedule, subject to **PROJECT ENGINEER'S** review and **DISTRICT'S** approval.

- c. Contract Submittals - CONSTRUCTION MANAGER will review all CONTRACTORS contract submittals including bonds and insurance documents; determine compliance of each such submittal with contract requirements; and take appropriate actions to secure suitable submittals.
- d. Contract Time - CONSTRUCTION MANAGER will the set the dates for contract time; prepare a draft Notice to Proceed; secure required signatures; and forward Notice(s) to Proceed to CONTRACTOR(S).
- e. Pre-Construction Briefing - CONSTRUCTION MANAGER will organize and conduct a Pre-Construction Briefing for CONTRACTOR(S); PROJECT ENGINEER (responsible for Engineering Services During Construction); DISTRICT; regulatory representatives; utility representatives and other relevant parties.
- f. Pre-Construction Training - CONSTRUCTION MANAGER will arrange for instruction and certification of CONTRACTOR(S) personnel to comply with project Mitigation and Monitoring Program.
- g. Pre-Construction Condition Documentation - CONSTRUCTION MANAGER will perform a digital still photo and video survey of all frontages to be affected by WORKS to document preconstruction conditions. All such images will be electronically marked as to date, time, location, and subject, and available to DISTRICT upon request during construction.
- h. Partnering Sessions - CONSTRUCTION MANAGER will coordinate partnering sessions with CONTRACTORS and PROJECT ENGINEER.

B. LISTING OF CONSTRUCTION MANAGEMENT PHASE TASKS

1. Contract Administration

- a. Construction Management Plan - CONSTRUCTION MANAGER will, in consultation with the DISTRICT and other relevant team members, prepare a project-specific Construction Management Plan that describes roles and responsibilities of DISTRICT, PROJECT ENGINEER and CONSTRUCTION MANAGER's construction management personnel. The Construction Management Plan will include Engineering Services During Construction (ESDC) procedures, and contract administration and inspection procedures and forms.
- b. Correspondence - CONSTRUCTION MANAGER's staff will handle the logging, filing, tracking and processing of correspondence, submittals, RFIs/RFCs and other documents, all of which shall be directed to CONSTRUCTION MANAGER, prepare and distribute meeting minutes, evaluate progress payment applications and change orders and make recommendations regarding payment, to support other field services and services included under this Agreement.
- c. Review of Submittals - Submittals, including but not limited to Shop Drawings, Product Data, and Samples, will be received/logged and then transmitted to the PROJECT ENGINEER. CONSTRUCTION MANAGER shall forward PROJECT ENGINEER's determination to CONTRACTORS with due diligence. CONSTRUCTION MANAGER shall maintain and update a record of submittals, copies of submittals supplied by the CONTRACTORS and a record of all actions taken on submittals.
- d. RFCs/RFIs - Requests for Clarification (RFCs) and Requests for Information (RFIs) will be received/logged and then transmitted to the PROJECT ENGINEER for review. (Selected RFCs/RFIs may be handled in the field by CONSTRUCTION MANAGER when possible.) Where the RFC/RFI is transmitted to the PROJECT ENGINEER, the CONSTRUCTION MANAGER shall forward PROJECT ENGINEER's determination to the relevant CONTRACTOR and DISTRICT with due diligence. This subtask will be coordinated with the potential change order (PCO) process.
- e. Construction Delays – CONSTRUCTION MANAGER shall track construction schedule and weather delays. CONSTRUCTION MANAGER will review CONTRACTORS' requests for time extensions and make recommendations to DISTRICT regarding entitlement and the amount of time extension, if any. CONSTRUCTION MANAGER shall forward all such determinations to the relevant CONTRACTOR.

- f. Material Substitution Requests – CONSTRUCTION MANAGER shall receive material and equipment substitutions that may be proposed during construction; log all such proposals; and forward to PROJECT ENGINEER (Selected material and equipment substitutions may be handled in the field by CONSTRUCTION MANAGER when possible). Where the substitution is transmitted to the PROJECT ENGINEER, the CONSTRUCTION MANAGER shall forward PROJECT ENGINEER's determination to CONTRACTORS and DISTRICT with due diligence. In either case, CONSTRUCTION MANAGER will respond to substitution in writing with due diligence.
- g. Progress Meetings – CONSTRUCTION MANAGER shall conduct weekly construction progress meetings with each general CONTRACTOR, key SUB-CONTRACTORS and PROJECT ENGINEER, when needed, to review the Construction CONTRACTORS' three week look ahead schedule, review submittal, RFI/C, and PCO status and address issues affecting performance of the Work; prepare and distribute meeting minutes.
- h. Progress Reporting - CONSTRUCTION MANAGER will prepare written Monthly Progress Reports to the DISTRICT that will include a report on progress, report on budget, representative construction photos, submittal status, RFC/RFI and change order status, problem areas and proposed resolutions, testing performed, approved progress payments, and other pertinent information as the DISTRICT may request. CONSTRUCTION MANAGER shall present Monthly Progress Report to DISTRICT BOARD at one of the two regularly scheduled DISTRICT BOARD meetings.
- i. Certified Payroll - CONSTRUCTION MANAGER will periodically review the CONTRACTORS' certified payroll reports in accordance with requirements of applicable law and shall notify the DISTRICT of any suspected noncompliance.

2. Progress Photos.

CONSTRUCTION MANAGER will on a daily work basis during construction take representative still photos and video to document the site conditions and status of the Work. The construction records will be organized and identified as to date, location, and subject. All construction photos will be digital images electronically marked with the date and time stamped on each such photo. The photos and video will be available for use by DISTRICT during construction, and delivered to the DISTRICT upon completion of the Project.

3. Inspection.

- a. Inspections – CONSTRUCTION MANAGER shall manage and perform inspection services for the Project. CONSTRUCTION MANAGER shall provide all appropriate construction inspection and maintain testing logs

and reports, maintain lists of non-conforming work and prepare punchlists, take videos and photographs, and coordinate with DISTRICT and PROJECT ENGINEER. All inspections shall be performed by appropriately qualified personnel. CONSTRUCTION MANAGER will deliver written test reports to the DISTRICT within two working days of receipt. CONSTRUCTION MANAGER will notify CONTRACTORS of unsatisfactory test results and follow up regarding corrective work and retesting.

- b. Special Inspections and Testing – CONSTRUCTION MANAGER shall recommend, arrange and contract for special inspection or testing of the Work in accordance with the provisions of the Contract Documents.
- c. Review inspection and testing reports – CONSTRUCTION MANAGER shall advise DISTRICT of results and make recommendations regarding further testing or inspection as appropriate.

4. Quality Review.

- a. Quality Review – CONSTRUCTION MANAGER shall establish and implement a program to monitor the quality of the construction for compliance with the Contract Documents. The purpose of the program shall be to guard the DISTRICT against defects and deficiency in the work of the CONTRACTOR(s).
- b. Evaluation of Work – CONSTRUCTION MANAGER shall recommend to DISTRICT, in writing, the rejection of Defective Work and Work that does not conform to the Contract Documents, code requirements, approved Shop Drawings, Product Data and Samples, or Clarification Drawings.
- c. Authority Limitations - CONSTRUCTION MANAGER is not authorized as a part of the Services to change, revoke, alter, enlarge, relax, or release any requirements of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.

5. Site Visits & Meetings.

The CONSTRUCTION MANAGER shall visit the site on each work day to observe the progress of the Project and to become generally familiar with the progress and quality of the work performed. CONSTRUCTION MANAGER shall promptly notify DISTRICT of work that does not conform to the Contract Documents. CONSTRUCTION MANAGER shall provide written reports of work and conditions observed to DISTRICT promptly following each site visit. The priorities for site visits and meeting attendance will be included in the Construction Management Plan.

6. Daily Reports.

CONSTRUCTION MANAGER will prepare daily written reports that describe the work performed, staffing, construction equipment used, major equipment deliveries, weather, delays and other events. The reports will identify work performed on a time and materials basis and the resources employed on that work. CONSTRUCTION MANAGER will take date-stamped electronic photographs as appropriate to document conditions and events at the site. CONSTRUCTION MANAGER will deliver the daily reports to the DISTRICT no less than once each week.

7. Materials Testing.

CONSTRUCTION MANAGER will retain a materials testing firm to perform soil compaction and concrete strength testing to verify that the Work complies with the Contract Documents. Compaction testing reports will be filed and logs of compaction testing results will be maintained including confirming that failing tests are covered by a passing retest and/or materials are corrected. (NCSD's preferred testing firm is Fugro West, however, other firms may be used).

8. Surveying.

CONSTRUCTION MANAGER will retain a California licensed surveyor to periodically verify grades during installation of pipelines and structures as often as CONSTRUCTION MANAGER considers necessary and appropriate to address conditions in the field to assure that the work complies with the Contract Documents.

9. Payment Applications.

- a. Application Evaluation - CONSTRUCTION MANAGER shall review the payment applications submitted by CONTRACTORS and determine whether the application is complete. If the application is complete, CONSTRUCTION MANAGER shall determine whether the amount requested reflects the actual status of the CONTRACTORS' work. If the application is not complete, CONSTRUCTION MANAGER shall return the payment application to CONTRACTORS with a written notice of non-compliance. CONSTRUCTION MANAGER shall make appropriate adjustments and administrative deductions to each payment application and shall prepare and forward a Progress (or Final) Payment report to the DISTRICT. CONSTRUCTION MANAGER shall take appropriate action on each payment application so that NCSD can respond in accordance with the time periods set forth in Public Contract Code Section 20104.50.

- b. Progress Payment Report - The Progress Payment Report shall state the total contract price, including adjustments to the Contract Price (pending and approved), administrative deductions, payments to date, current payment requested, including any payment for stored materials, retainage earned, administrative deductions, status of the contingency, and a recommendation regarding amounts to be paid for the current period. In addition to these items, the Final Payment Report shall state whether the CONTRACTORS has complied with the project closeout requirements, including record documents, warranties, and operations and maintenance manuals.
- c. Certification of Payment - CONSTRUCTION MANAGER's certification for payment shall constitute a representation to the DISTRICT, based on CONSTRUCTION MANAGER's observations at the site and on the data comprising the CONTRACTORS' Application for Payment, that the Work has progressed to the point indicated, that the Work for which payment is certified is in accordance with the Contract Documents, and that CONTRACTORS have satisfied all of the contract requirements for payment. The foregoing representations are subject to an evaluation of the WORK for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, and to minor deviations from the Contract Documents correctable prior to completion. The CONSTRUCTION MANAGER'S recommendation for payment will further constitute a representation that the CONTRACTORS are entitled to payment in the amount certified.

10. Schedules.

- a. Schedule Tracking - CONSTRUCTION MANAGER shall review each CONTRACTORS' baseline construction schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents.
- b. Schedule Evaluation - CONSTRUCTION MANAGER will review each CONTRACTORS' baseline construction schedule and monthly schedule updates to evaluate logic between construction activities, key activity durations, and critical path activities. CONSTRUCTION MANAGER will confirm that all specified submittal reviews, construction sequencing requirements, milestones and project constraints, startup and testing activities, and punchlist and closeout activities are included.
- c. Schedule Reporting - CONSTRUCTION MANAGER shall, on a monthly basis, review the progress of construction of each CONTRACTOR, evaluate the percentage complete of each construction activity as indicated in the CONTRACTORS' Construction Schedule, and review such percentages with each CONTRACTOR. Based upon this

information, CONSTRUCTION MANAGER will prepare and distribute to the DISTRICT a Construction Schedule Report. The Report shall indicate the actual progress of each CONTRACTOR compared to scheduled progress and shall help to verify the amount of progress payments to CONTRACTOR(s). CONSTRUCTION MANAGER shall advise and make recommendations to the DISTRICT concerning the alternative courses of action that the DISTRICT may take in its efforts to achieve contract compliance by the CONTRACTOR(s).

- d. Evaluation of Change Requests - CONSTRUCTION MANAGER shall advise the DISTRICT as to the merits and effect of time extensions requested by the CONTRACTOR(s).
- e. Authority to Secure Information - CONSTRUCTION MANAGER may require the CONTRACTORS to prepare and submit a Recovery Schedule, as specified in the Contract Documents. CONSTRUCTION MANAGER shall evaluate any recovery schedule submitted by a CONTRACTOR for compliance with the Contract Documents and effectiveness.

11. Change Orders

- a. PCO Process - CONSTRUCTION MANAGER shall establish and implement a Potential Change Order (PCO) tracking system in which each DISTRICT initiated change order and each CONTRACTOR initiated claimed extra work item and/or time order change request is assigned a discrete number for tracking, filing, and processing purposes. All proposed change orders shall first be described in detail by CONSTRUCTION MANAGER in a change proposal request to the CONTRACTORS and DISTRICT and shall be accompanied by technical drawings and specifications, if necessary.
- b. Change Proposal Requests - In response to the change proposal request, the CONTRACTORS shall submit to CONSTRUCTION MANAGER for evaluation detailed information as specified in the Contract Documents concerning the cost and time adjustments, if any, as may be necessary to perform the proposed change order work. CONSTRUCTION MANAGER shall review the CONTRACTORS' information and request for changes to the Contract Time and/or Contract Price submitted by a CONTRACTOR, assemble information concerning the request, endeavor to determine the cause of the requests, and forward said information to PROJECT ENGINEER and DISTRICT. If requested by the DISTRICT, CONSTRUCTION MANAGER will provide a written recommendation regarding approval or denial of the change order request.

- c. Change Proposal Evaluation - CONSTRUCTION MANAGER shall receive PROJECT ENGINEER's written recommendations to the DISTRICT concerning the proposed change order prior to the DISTRICT's execution of change orders. CONSTRUCTION MANAGER shall verify that change order work and adjustments of Contract Time, if any, required by approved change orders are incorporated into the CONTRACTORS' Construction Schedule. CONSTRUCTION MANAGER will prepare a written response to the relevant CONTRACTOR stating rationale for decision if requested by the DISTRICT.
- d. Change Order Preparation - CONSTRUCTION MANAGER will prepare Change Orders and related documents once the DISTRICT has approved the change, secure signatures, and forward the executed Change Order to the relevant CONTRACTOR, the DISTRICT and the PROJECT ENGINEER.
- e. Authority to Secure Cost Information - In instances when a lump sum or unit price is not determined prior to performing work described in a change proposal request, CONSTRUCTION MANAGER shall request from the CONTRACTORS records of the cost of labor, materials, and equipment, and the amount of payments to SUB-CONTRACTORS incurred by the CONTRACTORS in performing the work as specified in the Contract Documents. CONSTRUCTION MANAGER shall review the cost information and make a written recommendation to the DISTRICT regarding the amount of the change order to be issued.
- f. Authority to Secure Time Information - In instances when a change to the Contract Time is not determined prior to performing work described in a change proposal request, CONSTRUCTION MANAGER shall request from the CONTRACTORS information regarding the schedule impact of the change as specified in the Contract Documents, review the time request, and make a written recommendation to the DISTRICT regarding any adjustment to the contract time.

12. CONTRACTOR Claims and Disputes.

- a. Claims Review - CONSTRUCTION MANAGER shall review all claims and supporting documents filed by a CONTRACTOR in connection with the Project. CONSTRUCTION MANAGER shall promptly notify the DISTRICT in writing of any claim. CONSTRUCTION MANAGER shall request and review supporting documents from the CONTRACTORS that filed the claim, consult with PROJECT ENGINEER, and prepare and deliver to DISTRICT a written analysis of each claim. The analysis will include documents, photographs, and other materials appropriate for the DISTRICT's use in understanding and evaluating the CONTRACTORS'

claim, address the CONTRACTORS' entitlement for the claim and include a recommended response to the claim.

- b. Claims Processing - CONSTRUCTION MANAGER will implement the DISTRICT's decision on each claim by preparing and delivering all appropriate written response to the CONTRACTORS and any other necessary documents, such as Change Orders, necessary or appropriate to resolve the claim.
- c. Claims Discussion - CONSTRUCTION MANAGER will participate in meetings and claims resolution proceedings.

13. Third Party Claims and Disputes.

- a. Third Party Claims - CONSTRUCTION MANAGER shall review all claims and supporting documents filed by third parties in connection with the Project. CONSTRUCTION MANAGER shall promptly notify the DISTRICT and CONTRACTORS in writing of any claim. CONSTRUCTION MANAGER shall request and review supporting documents from the claimant, and prepare and deliver to DISTRICT and CONTRACTORS a written analysis of each claim. The analysis will include documents, photographs, and other materials appropriate for the DISTRICT's use in understanding and evaluating the third party's claim and include a recommended response to the claim.
- b. Third Party Claims Discussion - CONSTRUCTION MANAGER will participate in meetings and claims resolution proceedings.

14. Project Closeout.

- a. Submittal Review - CONSTRUCTION MANAGER shall receive CONTRACTORS submittals and marked up-drawings and forward all such submittals to PROJECT ENGINEER for preparation of Record Drawings.
- b. Manual, Warranty and Guarantee Evaluation - CONSTRUCTION MANAGER shall evaluate CONTRACTOR(s) submitted operation and maintenance manuals, warranties and guarantees for materials and equipment installed on the Project as required by the Contract Documents in consultation with PROJECT ENGINEER.
- c. Substantial Completion - In consultation with the DISTRICT and PROJECT ENGINEER, CONSTRUCTION MANAGER shall review each CONTRACTOR'S request for substantial completion and final completion and recommend to the DISTRICT when each CONTRACTOR'S work is substantially and finally complete. CONSTRUCTION MANAGER shall, prior to issuing a Certificate of Substantial Completion on any contract or

phase of the work, compile a list of incomplete work and work that does not conform to the Contract Documents. This list shall be attached to the Certificate of Substantial Completion. CONSTRUCTION MANAGER shall, upon DISTRICT's approval, issue the Certificate of Substantial Completion and Certification of Final Completion to the relevant CONTRACTOR.

- d. Final Inspection of Works – CONSTRUCTION MANAGER with consultation with PROJECT ENGINEER shall confirm the satisfactory completion of contract and change order work and to perform a final inspection of project WORKS. Prepare the final punchlist and verify completion of punch-list items.
- e. Final Project Report – CONSTRUCTION MANAGER shall prepare Final Project Report that states the adjusted contract price, including all approved adjustments to the contract price, payments made, administrative deductions for stop notices, liquidated damages, etc., final accounting of the contingency, schedule summary and pending claims or disputes. Turn over all project records including field office video and still photo files to the DISTRICT upon project completion.
- f. Notice of Completion – CONSTRUCTION MANAGER shall prepare recommendation for filing of the Notice of Completion and initiating the stop notice-filing period and prepare the final payment.
- g. Warranty Closeout – CONSTRUCTION MANAGER shall establish a “Need for Warranty Work Notification” system to be used by the DISTRICT during the applicable warranty period. Prior to end of warranty period schedule and participate in a walk through of all warranty systems and submit written recommendations to DISTRICT regarding acceptance or rejection of all such systems.

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Schedule

Draft Concept Design Report	Within 210 calendar days of Notice to Proceed, assuming Right of Entry Agreements and approvals for boring in Santa Maria River are acquired within 30 calendar days of Notice to Proceed.
Final Concept Design Report	Within 15 calendar days of receiving comments on the Draft Report
Narrative Report	Within 15 calendar days of receiving comments on the Draft Concept Design Report
60% Design Submittal (Last of 5 Bid Packages)	Within 110 calendar days of submitting the Final Concept Design Report
90% Design Submittal (Last of 5 Bid Packages)	Within 155 calendar days of submitting the Final Concept Design Report
Final Construction Documents	Within 15 calendar days of receiving comments on the last 90% Design Submittal

Partial list of factors that could affect this schedule:

- Changes requested by the District
- Negotiations with City of Santa Maria
- Negotiations, review time, or conditions of approval imposed by permitting agencies
- CEQA certification or related delays
- Easement or Right of Entry negotiation
- Value engineering or peer review recommendations and subsequent design changes as directed by the Board

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

AGREEMENT FOR PROFESSIONAL SERVICES

Exhibit "A" – Scope of Services or Service including Schedule of Submittals

Exhibit "B" – Compensation for Services, Not-To-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 "Construction Manager"), with reference to the following Recitals:

RECITALS

A. NCSD desires to retain professional services in part to provide construction management services for Phases I and II of the Waterline Intertie Project (hereinafter referred to as "Project")

B. NCSD desires to engage 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 Construction Manager. 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

CONSTRUCTION MANAGER: _____

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 NCS D or Construction Manager, 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-To-Exceed Amount, Hourly Rates and Reimbursable Costs
- C. **Exhibit "C"** – Key Personnel including Team Leader and Designated Engineers
- D. **Exhibit "D"** – [place holder]

4. SCOPE OF SERVICES.

- A. Construction Manager agrees to provide the Services and submit deliverables to NCS D in accordance with this Agreement.
- B. By executing this Agreement, Construction Manager represents that Construction Manager (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 Construction Manager.

5. **TERM.** Construction Manager 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 CONSTRUCTION MANAGER.**

A. Construction Manager 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. Construction Manager 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 Construction Manager 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 Construction Manager for correction and re-submission, 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 Construction Manager 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 Construction Manager shall promptly notify the NCSD and prior to the expenditure of sixty percent (60%) of the budget for each Task, for which Construction Manager 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 Construction Manager 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 Construction Manager to correct such work or billings; or
2. Seek any other legal remedy.

G. NCS D 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 NCS D 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 Construction Manager to make payments properly to its employees or sub-Construction Managers; or (5) Construction Manager's failure to adhere to the Schedules or to achieve sufficient progress with the Services such that Construction Manager is unlikely to achieve timely completion.

7. STATUS OF CONSTRUCTION MANAGER.

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

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

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

8. PERFORMANCE STANDARDS.

A. Compliance with laws. Construction Manager shall (and shall cause its agents and sub-contractors), at its sole cost and expense, to comply with NCS D, 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 NCS D as a request for extra services. If NCS D agrees that there is a significant change required in the Services on account of the change, NCS D and Construction Manager shall negotiate a mutually agreeable adjustment to the schedule and/or compensation. The judgment of any court

of competent jurisdiction, or the admission of Construction Manager in any action or proceeding against Construction Manager, whether NCSD be a party thereto or not, that Construction Manager has violated any such ordinance or statute, shall be conclusive of that fact as between Construction Manager and NCSD. Except as provided above, any corrections to Construction Manager's Services which become necessary as a result of the Construction Manager's failure to comply with these requirements shall be made at Construction Manager's expense.

B. **Standard of Performance.** Construction Manager represents that it has, or will have, the skills, expertise, allotted staff time and licenses necessary to perform the Services required under this Agreement. Construction Manager 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 Construction Manager 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. Construction Manager 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 Construction Manager without additional compensation throughout the term of this Agreement

C. Construction Manager shall examine carefully all documents, including studies, reports and materials, prepared by NCSD Staff or other NCSD Construction Managers, (collectively "District Materials") provided by NCSD to Construction Manager. District Materials provided to Construction Manager 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 Construction Manager that the NCSD assumes no responsibility whatsoever with respect to the sufficiency or accuracy of the information contained in District Materials. Construction Manager 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 Construction Manager's reliance on NCSD supplied materials will not, in any way, relieve Construction Manager from any risk for properly fulfilling the terms of this Agreement.

D. **Professional Seal.** Construction Manager shall have documents stamped by registered professionals, at Construction Manager'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. Construction Manager 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 Construction Manager.

10. CONFLICT OF INTEREST. Construction Manager covenants that neither it, nor any officer or principal of its firm, or subcontractors retained by Construction Manager 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 Construction Manager's performance of services under this Agreement. Construction Manager 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. Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager during the performance of this Agreement (the "Documents") shall be and become the property of NCSD. Construction Manager 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, Construction Manager 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. Construction Manager shall not release Documents to third parties without the prior written authorization of NCSD.

13. RECORDS, AUDIT AND REVIEW. Construction Manager and Construction Manager's subcontractors shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Construction Manager'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 Construction Manager'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). Construction Manager 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 Construction Manager 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 Construction Manager, 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, Construction Manager shall be responsible for incidental and consequential damages resulting from Construction Manager's negligence, recklessness, or willful misconduct.

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

D. Construction Manager 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 Construction Manager in the performance of this Agreement. If Construction Manager fails to obtain such indemnity obligations from others as required, Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager, its employees, agents or sub-consultants / 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 Construction Manager 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. Construction Manager 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 (Including coverage for premises, products and completed operations, independent Construction Managers/vendors, personal injury and contractual obligations with combined single limits of coverage of at least	\$ 2 Million per occurrence. \$ 4 Million in the aggregate
(ISO Form CG001 11/85) Commercial Automobile Liability Insurance	\$ 1 Million per accident
(ISO Form CA001 12/90) Workers' Compensation Insurance	Statutory
Employer's Liability Insurance	\$ 1 Million policy limit
Professional Liability Insurance	\$ 3 Million per claim \$ 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, Construction Manager 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 Construction Manager hereunder. Any failure to comply with this requirement shall constitute a material breach of this Agreement.

16. PERSONNEL. The Construction Manager 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 Construction Manager or under Construction Manager'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 Construction Manager 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. Construction Manager 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. Construction Manager 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, Construction Manager 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 Construction Manager's performance under this Agreement. NCSD may deduct said damages referenced in the preceding paragraph from invoices submitted by Construction Manager for payment.

D. In the event that NCSD agrees that Construction Manager 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 Construction Manager to perform any provision of this Agreement. Construction Manager will be paid for services performed through the date of temporary suspension. In the event that Construction Manager's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Construction Manager's reasonable control, then the Not-to-Exceed Amount shall be subject to renegotiation.

19. TERMINATION.

A. If Construction Manager 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, Construction Manager shall be in default.

B. If Construction Manager 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 Construction Manager 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 Construction Manager under this Agreement; or (b) terminate Construction Manager'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 Construction Manager, whether located at the NCSD Office,

at Construction Manager'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, Construction Manager 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 NCS D in obtaining Services, such excess shall be paid by NCS D to Construction Manager, but, if such expense shall exceed such unpaid balance, then Construction Manager shall promptly pay to NCS D the amount by which the expenses exceeds the unpaid balance. The expense referred to in the last sentence shall include expenses incurred by NCS D in obtaining the Services from others, for attorneys' fees, and for any damages sustained by NCS D by reason of Construction Manager's default or defective Services.

D. In addition to the foregoing right to terminate for default, NCS D reserves the absolute right to terminate the Services authorized by this Agreement without cause ("Terminate for Convenience"), upon 72-hours' written notice to Construction Manager. In the event of termination without cause, Construction Manager 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 NCS D, plus (2) Reimbursable Costs actually incurred by Construction Manager; plus (3) reasonable termination costs incurred by Construction Manager 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 Construction Manager prior to the date of termination of the Services. Construction Manager shall not be entitled to any claim or lien against NCS D or the proposed project for any additional compensation or damages in the event of such termination and payment. In addition, the NCS D'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 NCS D 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 Construction Manager shall be entitled to receive only the amounts payable hereunder in the event of a Termination for Convenience.

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

20. BREACH OF LAW. In the event the Construction Manager 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 Construction Manager or Construction Manager; (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 Construction Manager's responsibility as a public Construction Manager or Construction Manager, 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 Construction Manager 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 Construction Manager 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 Construction Manager.

24. NON-DISCRIMINATION. Construction Manager 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. Construction Manager 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 Construction Manager 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, Construction Manager 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. Construction Manager 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. Construction Manager 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.

27. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

A. All information gained or work product produced by Construction Manager in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Construction Manager. Construction Manager 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. Construction Manager, 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 Construction Manager gives NCSD notice of such court order or subpoena.

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

D. Construction Manager shall promptly notify NCSD should Construction Manager, 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 Construction Manager or be present at any deposition, hearing or similar proceeding. Construction Manager agrees to cooperate fully with NCSD and to provide NCSD with the opportunity to review any response to discovery requests provided by Construction

Manager. 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 Construction Manager 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 Construction Manager under this Agreement. In recognition of that interest, Construction Manager shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Construction Manager'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 Construction Manager, 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 Construction Manager 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. Construction Manager 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 Construction Manager as the NCSD desires.

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

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 Construction Manager propose to provide services that NCSD considers to be beyond the Scope of Services, Construction Manager 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. Construction Manager shall not provide additional services until Construction Manager has received a written amendment to this Agreement. . Should Construction Manager elect to proceed prior to the amendment being approved by the NCSD for additional services, the Construction Manager does so at Construction Manager's own risk and with the understanding that the NCSD will not be obligated for payment of additional compensation.

B. Should NCSD request Construction Manager to provide services that are beyond the Scope of Services, Construction Manager shall provide the NCSD with a written proposal for additional services. The NCSD will make due consideration of the proposal. Construction Manager shall not provide additional services until Construction Manager has received a written amendment to this Agreement. Should Construction Manager elect to proceed prior to the amendment being approved by the NCSD for additional services, the Construction Manager does so at Construction Manager'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, Construction Manager hereby warrants that it shall not have breached the terms or conditions of any other contract or Agreement to which Construction Manager 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.

CONSTRUCTION MANAGER:

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: _____

T:\DISTRICT PROJECTS\ENGINEERING\AGREEMENT 080507.DOC

NIPOMO COMMUNITY SERVICES DISTRICT

WIP CONSTRUCTION MANAGEMENT PROPOSALS RANKING SHEET						
				FIRMS		
	Pt. Range	GTA	MWH	MNS	P&S	Vanir
Bruce Buel	0 to 100	59	80	88	72	65
Tina Grietens	0 to 100	34	64	87	74	75
Peter Sevcik	0 to 100	60	70	81	68	62
Total	0 to 300	153	214	256	214	202
Ranking		5	2T	1	2T	4

**WATERLINE INTERTIE PROJECT
PRE-CONSTRUCTION CM SERVICES QUOTE SHEET**

Date: August 5, 2008

NAME OF FIRM: MNS Engineers, Inc.

NAME OF PRINCIPAL: Gregory Chelini, P.E.

NAME OF CM TEAM LEADER: Gregory Chelini, P.E.

ADDRESS: 2231 Broad Street, San Luis Obispo, CA 93401

PHONE: (805) 787-0326 FAX: (805) 787-0437

E-MAIL: gchelini@mnsengineers.com

NOT-TO-EXCEED EXPENDITURE LIMIT FOR ALL FEES & CHARGES: \$53,700.00

 V.P. 8-5-08
Signature of Principal Authorized to Sign for Firm and Date

This quote shall be valid for 90 Days from the date of Signature

**Pre-Construction Phase
CM & Inspection Services
Waterline Intertie Project
Nipomo Community Services District**

Task	Principal In Charge	Construction Manager	Construction Inspector	Total Hours	Total
Hourly Rate	\$180.00	\$150.00	\$115.00		
1.0 DESIGN REVIEW					
1.1 Concept Review	8	40		48	\$ 7,440.00
1.2 60%/95% Document Review	12	60	32	104	\$ 14,840.00
Direct Expense					
2.0 BID SERVICE ACTIVITIES					
2.1 CM Process Plan	6	16		22	\$ 3,480.00
2.2 Master Schedule	4	16		20	\$ 3,120.00
2.3 Bid Assistance		12		12	\$ 1,800.00
2.4 Notice to Proceed		4		4	\$ 600.00
2.5 Pre Construction Meeting		32	8	40	\$ 5,720.00
2.6 Pre Construction Training		16	12	28	\$ 3,780.00
2.7 Pre Construction Photo & Video		20	16	36	\$ 4,840.00
2.8 Partnering Sessions		40	12	52	\$ 7,380.00
Direct Expense					
Total Hours	30	256	80	366	\$ 53,000.00
Total Direct Expense					\$ 700.00
PRE-CONSTRUCTION PHASE TOTAL					\$ 53,700.00



**Construction Phase
CM & Inspection Services
Waterline Intertie Project
Nipomo Community Services District**

Project Schedule																															
PHASE	2009												2010												2011		TOTAL COST				
	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep		Oct	Nov	Dec	Jan
Pre-Construction																															\$ 53,700.00
Construction																														\$ 1,215,660.00	
Closeout																														\$ 106,140.00	

PHASE	Role	Staff	2009												2010												TOTAL HOURS	HOURLY RATE	TOTAL COST				
			Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul				Aug	Sep	Oct	Nov
CONSTRUCTION MANGEMENT																																	
Principal-In-Charge	Greg Chelini, P.E.																														160	180.00	\$ 28,800.00
Construction Manager	Kim Lindbery, P.E.																														1942	150.00	\$ 291,300.00
Inspector #1	Steve Doyle	See separate, attached Fee Estimate for Pre-Construction Services.																													1892	115.00	\$ 217,580.00
Inspector #2	Ken Koski																														1320	115.00	\$ 151,800.00
Office Engineer	Priscilla Susman																														1916	105.00	\$ 201,180.00
CONSTRUCTION MANAGEMENT SUB-TOTAL																															7230		\$ 890,660.00
PROJECT CLOSEOUT																																	
Principal-In-Charge	Greg Chelini, P.E.																														35	180.00	\$ 6,480.00
Construction Manager	Kim Lindbery, P.E.																														312	150.00	\$ 46,800.00
Inspector #1	Steve Doyle	See separate, attached Fee Estimate for Pre-Construction Services.																													120	115.00	\$ 13,800.00
Inspector #2	Ken Koski																														0	115.00	\$ -
Office Engineer	Priscilla Susman																														372	105.00	\$ 39,060.00
PROJECT CLOSEOUT SUB-TOTAL																															840		\$ 106,140.00
TOTAL HOURS																															8070		\$ 996,800.00

Direct Expenses	TOTAL COST
Survey Oversight	\$ 60,000.00
Direct Expenses	\$ 15,000.00
SUB-TOTAL	\$ 75,000.00

Sub Consultants	TOTAL COST
Geotechnical Services Fugro West	\$ 150,000.00
Biological Monitoring Padre Associates	\$ 100,000.00
SUB CONSULTANTS SUB-TOTAL	\$ 250,000.00

CONSTRUCTION PHASE TOTAL	\$ 1,321,800.00
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- Notes:
1. Assuming Construction begins December 2009 and ends October 2010 per RFP
 2. Used an average of 172 hours per month based upon 8 hour working days with no overtime.
 3. Staffing estimate based upon multiple contract project

