

RESOLUTION NO. 2016-345

**A RESOLUTION OF THE BOARD OF SOUTH SAN LUIS
OBISPO COUNTY SANITATION DISTRICT AUTHORIZING AND
DIRECTING THE INTERIM DISTRICT ADMINISTRATOR OR
DESIGNEE TO ENTER INTO AN AGREEMENT WITH KEVIN
MERK ASSOCIATES, LLC, FOR ENVIRONMENTAL REVIEW
SERVICES FOR THE CHERRY AVENUE SEWER BRIDGE
MAINTENANCE PROJECT**

WHEREAS, the District needs to perform maintenance consisting of removing some vegetation, installing a scaffold and repairing and painting its Cherry Avenue sewer bridge in Arroyo Grande; and

WHEREAS, in order to proceed with the project, the District needs to perform environmental review under the California Environmental Quality Act ("CEQA"); and

WHEREAS, the District currently does not have staff available to complete these tasks; and

WHEREAS, the District has obtained a proposal dated April 4, 2016 from Kevin Merk Associates, LLC, offering to prepare documentation under the California Environmental Quality Act; and

WHEREAS, based on Consultant's qualifications, experience, and familiarity with the project (having previously completed a biological study of the area), it appears that Consultant's proposal best meets District's needs for the project; and

WHEREAS, hiring Kevin Merk Associates, LLC to provide environmental review services for District is consistent with District's Purchasing Guidelines, as adopted by Resolution 2014-314, which provide that the District Manager is the District's agent for purchasing services less than \$45,000 and establish objectives including that District services procurement be efficient, at lowest possible cost, of a quality to assure efficient running of the wastewater plant, and give a local preference in contracts with a bid price less than \$45,000.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of South San Luis Obispo County Sanitation District as follows:

1. An AGREEMENT FOR PROFESSIONAL SERVICES - ENVIRONMENTAL REVIEW SERVICES with Kevin Merk Associates, LLC is hereby approved in substantially the form attached hereto as Exhibit "1;" and
2. The Interim District Administrator, or his/her designee, is hereby authorized and directed to execute the Agreement on behalf of the District, to

AGREEMENT FOR PROFESSIONAL SERVICES - ENVIRONMENTAL REVIEW SERVICES

This Agreement is made on April 18, 2016, by and between Kevin Merk Associates, LLC, a California Limited Liability Company ("Consultant"), and the South San Luis Obispo County Sanitation District ("District"), in Oceano, California, based on the following recitals:

1. The District needs to perform maintenance consisting of removing some vegetation, installing a scaffold and repairing and painting its Cherry Avenue sewer bridge in Arroyo Grande; and
2. In order to proceed with the project, the District needs to perform environmental review under the California Environmental Quality Act ("CEQA"); and
3. The District currently does not have staff available to complete these tasks; and
4. The District has obtained a proposal dated April 4, 2016 from Consultant, offering to prepare documentation under the California Environmental Quality Act; and
5. Based on Consultant's qualifications, experience, and familiarity with the project (having previously completed a biological study of the area), it appears that Consultant's proposal best meets District's needs for the project; and
6. Hiring Consultant to provide environmental review services for District is consistent with District's Purchasing Guidelines, as adopted by Resolution 2014-314, which provide that the District Manager is the District's agent for purchasing services less than \$45,000 and establish objectives including that District services procurement be efficient, at lowest possible cost, of a quality to assure efficient running of the wastewater plant, and give a local preference in contracts with a bid price less than \$45,000.

NOW, THEREFORE, IT IS AGREED:

1. **Recitals true.** The above recitals are true.
2. **General.**

2.01. Term and Termination. The term of this contract is 6 months, beginning on the date first written above. This contract may be extended by consent of the parties. This contract may be terminated for breach of its terms or conditions, or because of discovery of any act which violates local, state or federal law. Termination is effective 14 days after mutual deposit of notice as specified in this Agreement.

2.02. Services to be Performed. Consultant shall determine the method, details and means of providing environmental review services related to the District's proposed Cherry Avenue sewer bridge maintenance project. More specifically, Consultant agrees to perform the specific services listed in Exhibit "A."

2.03 District's Duties. District's duties under this Agreement are to cooperate with Consultant in the performance of the contract and timely pay invoices.

2.04. Payment. Payment terms under this Agreement are listed in Exhibit "B."

2.05. Insurance. Consultant shall provide insurance as listed in Exhibit "C."

2.06. Exhibits. Exhibits "A," "B," and "C" are attached and incorporated.

3. Consultant's Obligations.

3.01. Minimum Amount of Service. Consultant shall devote sufficient time to perform services under this agreement efficiently and effectively. Consultant may represent, perform services for and be employed by additional individuals or entities, in Consultant's sole discretion, as long as the performance of these extra-contractual services does not interfere with or present a conflict with District's business.

3.02. Tools and Equipment. Except as otherwise stated in this Agreement, Consultant will supply all tools and equipment necessary to perform this Agreement.

3.03. Status. Consultant (including its employees) is an independent contractor. No employer/employee relationship exists between Consultant and the District. Consultant's assigned personnel shall not be entitled to any benefits payable to employees of the District. The District is not required to make any deductions or withholdings from the compensation payable to Consultant under this agreement.

3.04. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify, defend (with independent counsel approved by the District) and hold harmless the District, and its directors, officers, and employees from and against all liabilities (including without limitation all claims, losses, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs and costs of alternative dispute resolution) regardless of nature or type that arise out of, pertain to, or relate to the negligence, reckless, or willful misconduct of the Consultant or the acts or omissions of an employee, agent or subcontractor of the Consultant. The provisions of this paragraph survive completion of the services or the termination of this contract. The provisions of this Section are not limited by the provisions of the Section relating to insurance.

4. Miscellaneous

4.01. Notices. All communication relating to the day-to-day activities of this Agreement shall be exchanged between a designated representative of the District and a representative of Consultant, listed below. All notices shall be addressed as follows unless a written change is filed with the District:

To District:
Attn. District Administrator
P.O. Box 339
Jceano, CA 93475

To Consultant:
Kevin Merk Associates, LLC
P.O. Box 318
San Luis Obispo, CA 93406

If the designated Representative or address of either party changes during the term of this agreement, a written notice shall be given to the other party prior to the effective date of change. Any written notices required under this agreement shall be effective five (5) days after deposit into United States mail, postage prepaid, addressed to the designated Representative, or upon confirmation of receipt of delivery if another notification process is used.

4.02. Compliance With Laws, etc. Consultant shall comply with all laws, including but not limited to the rules and policies of the District, in performing this agreement.

4.03. Integration. This agreement constitutes the entire agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties.

4.04. Interpretation. This agreement shall be interpreted in accordance with the laws of the State of California.

4.05. Jurisdiction. Jurisdiction and venue of all disputes over the terms of this agreement shall be in the County of San Luis Obispo, State of California.

4.06. Warranty of authority. Each person signing this agreement on behalf of a party warrants that he or she has authority to do so.

4.07. No Waiver. Failure to enforce with respect to a default shall not be construed as a waiver.

4.08. Severability. The provisions of this agreement are severable. If any part of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

4.09. Submittals. In addition to any other submittals required by this agreement,

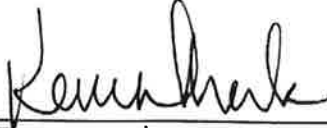
Consultant shall submit copies of its current business license and current certificate of workers compensation coverage to the District before beginning work on this project.

4.10 Prevailing Wage. Prevailing Wage. If applicable, Consultant and all subconsultants are required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 et seq. of the California Labor Code. The Director's determination is on file and open to inspection at www.dir.ca.gov and is referred to and made a part hereof; the wage rates therein ascertained, determined and specified are referred to and made a part hereof as though fully set forth herein.

4.11 Exclusive Ownership. All plans, specifications, reports, electronic media, records, and other design documents prepared by Contractor pursuant to this agreement shall be the property of the District; District is entitled to full and unrestricted use of such plans, specifications, reports and other design documents prepared by Contractor pursuant to this agreement; such plans, specifications, reports, and other design documents prepared by Contractor pursuant to this agreement shall be used exclusively on this project and shall not be used on any other work unless deemed necessary by the District.

IN WITNESS WHEREOF, this agreement is executed by the parties on the date first written above.

CONSULTANT


By: Kevin Keck

SOUTH SAN LUIS OBISPO COUNTY
SANITATION DISTRICT


By: District Admin

APPROVED AS TO FORM:


District Counsel

EXHIBIT "A"

Consultant will prepare a mitigated negative declaration ("MND") for the Cherry Avenue sewer bridge maintenance project, based on the project description contained in Consultant's proposal dated April 4, 2016.

The MND effort will focus on the following impact issue areas: • Biological Resources; • Geology/Soils (erosion and sedimentation) • Hazards and Hazardous Materials. The MND will be prepared in accordance with CEQA and the State CEQA Guidelines.

The MND will provide an analysis of the impact areas identified above as having potentially significant impacts and needing a greater level of review. The analysis for the remainder of the impact issue areas will be incorporated into the MND under the assumption that they will be considered "Less Than Significant". The analysis for these impact areas and the studies prepared in support of the initial CEQA determination will be peer reviewed for quality and consistency, and updated as necessary.

The MND will focus on these issue areas as outlined in Appendix G of the CEQA Guidelines:

- **Review of Biological Resources Assessment prepared by Consultant and others.** Make full use of all existing analyses to ensure a complete and up-to-date reporting of the presence and likelihood of critical habitat and special status plant and wildlife species on-site and an analysis of impacts to these resources as a result of project implementation.
- **Geologic and Soils Hazards.** Evaluate the potential for geologic hazards and soils to impact the project based on review of the existing available information. Geologic hazards will be reviewed in accordance with the applicable provisions of CEQA and District/County/City planning documents. This assessment will be based on review of the studies and documents prepared by others for the project and other relevant information provided by the project team including site plans, grading plans and proposed erosion controls. Obtain copies of recent environmental documents, fault reports, and geotechnical studies for relevant previous development projects from the District/County/City, and perform a site visit to review the site terrain and geologic conditions. It is anticipated that the geotechnical analysis will identify potential geologic hazards that could impact the project such as: • Slope instability and landsliding; • Grading and Soil Erosion; • Seismic Settling and Fault Rupture Potential; • Strong Ground Motion; • Liquefaction and Seismic Settlement; and • Settlement and Subsidence from Fluid Withdraw. These issue areas will be independently reviewed and incorporated into the impact analysis as part of the MND process. Utilize existing industry standards to deal with this issue area.
- **Hazards and Hazardous Materials.** Perform environmental impact analysis necessary to identify potential hazards related to the use, storage, containment and possibility of release of hazardous materials (including, but not limited to, lead based paint) related to the preventative maintenance activities proposed as part of the project. This includes identification of industry standard mitigation measures to address containment protocols and response to hazardous material release related to the proposed pipe maintenance.

The MND will include the following tasks:

- Review existing documents prepared for the project (including, but not limited to the project designs, technical reports prepared for the project, project permit applications and

regulatory agency stipulations, similar CEQA determinations from other agencies, County and City General Plan and Zoning Code, exemplary staff reports, project maps, digital and GIS files, etc.).

- Coordinate and communicate between the District, project team members and consultants, regulatory agencies (e.g., California Department of Fish and Wildlife – “CDFW”), as well as other agencies, consultants and organizations involved in the project to ensure timely completion of project milestones.
- Project environmental review (includes coordination and communication with the District to determine any up-front needs for CEQA determinations and land use permits, and preparation of the appropriate CEQA environmental determinations - assumed to be a Mitigated Negative Declaration). Coordinate with regulatory agencies (e.g., CDFW) to determine Responsible Agency concerns and issues to ensure a comprehensive environmental review and to ensure the CEQA determination meets their needs. Project CEQA determination will focus on key impact issue areas discussed above. This will include the preparation of the Initial Study, preparation of a Mitigated Negative Declaration and Notice of Intent, and preparation of a Mitigation Monitoring and Reporting Program (MMRP) per CEQA Guideline requirements.
- Project management duties. This includes attendance at up to two (2) meetings, communication with District staff, project team members, response to comments and questions as applicable, a site visit to tour the project location and assess any environmental constraints, establishing timetables for milestone completion, etc.

Consultant to provide a timetable for this work for approval by the District Administrator.

For this scope of work it is assumed that the District will print, distribute, notice and complete all filing requirements for the project. Document printing, distribution, noticing and filing is an optional task which can be fulfilled at the price shown in Exhibit “B” upon District request.

EXHIBIT "B"

Consultant will provide the services in accordance with this Agreement for a not-to-exceed fee of up to \$9,190. This fee assumes:

- No extraordinary or undeveloped issues are associated with the project not previously identified in the biological report (environmental, design or community related) or issues such as Cultural Resources that would require additional investigation or analysis;
- Project timeframes will depend on the ability of District staff (and CDFW, if applicable) to expedite review of draft project deliverables and will depend on the nature of the comments and the level of effort required to respond to comments and revise the draft documents;
- Volume of comments received from the public and reviewing agencies on the project do not exceed reasonable levels and the level of effort required to respond to comments is not unreasonable. Consultant will work with the District and their representatives to establish these assumptions;
- Unless the optional task is selected, we will not be responsible for required noticing, filing, or document distribution;
- Document deliverables will not exceed identified budget. Consultant will work with the District to finalize requested deliverables; and
- Consultant will finalize project schedule and timing upon receipt of all relevant application materials, including the final project site plan and any other requested information.

Consultant will invoice District for services on a monthly basis. Additional work not included within the proposal or exceeding \$9,190 will be completed only upon written authorization from District. Additional work may include the optional task of necessary noticing, printing, distribution and filing as required by the California Environmental Quality Act, for the not-to-exceed cost of up to \$2,520.

EXHIBIT "C"
INSURANCE REQUIREMENTS

Consultant shall procure and maintain for the duration of the contact insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his/her agents, representatives, or employees.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office Business Auto Coverage Form Number CA 0001, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions liability insurance appropriate to the Consultant's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

B. Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. General Liability - \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability - \$1,000,000 per accident for bodily injury and property damage.
3. Employee's Liability - \$1,000,000 per accident for bodily injury or disease.
4. Errors and Omissions Liability - \$1,000,000 per occurrence.

C. Deductibles and Self-insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its trustees, officers, employees and volunteers; or the Consultant shall provide a

financial guarantee satisfactory to the District guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The District, its trustees, officers, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.

2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the District, its trustees, officers, employees and volunteers. Any insurance or self-insurance maintained by the District, its trustees, officers, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice stating the title of this contract has been given to the District. **All notices provided pursuant to this Agreement shall be given to the District representative listed for notice in this agreement and shall specify the title of this Agreement.** Notice may be given by overnight mail, facsimile with confirmation of receipt, or certified mail with return-receipt requested. In the case of a reduction in coverage, the Consultant shall provide thirty (30) days' prior written notice as provided in this subparagraph.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

F. Verification of Coverage

Consultant shall furnish the District with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the District or on other than the District's forms provided those endorsements conform to District requirements. All certificates and endorsements are to be received and approved by the District before work commences. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.