



**SOUTH SAN LUIS OBISPO COUNTY
SANITATION DISTRICT**

Post Office Box 339, Oceano, California 93475-0339
1600 Aloha, Oceano, California 93445-9735
Telephone (805) 489-6666 FAX (805) 489-2765
www.sslocsd.us

**AGENDA
BOARD OF DIRECTORS MEETING**

VIRTUAL ZOOM MEETING

Please click the link below to join the webinar:

Wednesday, November 18, 2020 at 6:00 p.m.

Please click the link below to join the webinar:
<https://us02web.zoom.us/j/82259434617>

Or Telephone Dial

1 669 900 6833
1 408 638 0968
1 346 248 7799
1 253 215 8782

Webinar ID: 822 5943 4617

International numbers available: <https://us02web.zoom.us/j/82259434617>

Or iPhone one-tap :

US: +16699006833,,82259434617# or +14086380968,,82259434617#

Board Members

Caren Ray Russom, Chair
Jeff Lee, Vice Chair
Linda Austin, Director

Agencies

City of Arroyo Grande
City of Grover Beach
Oceano Community Services District

Alternate Board Members

Karen Bright, Director
Lan George, Director
Shirley Gibson, Director

City of Grover Beach
City of Arroyo Grande
Oceano Community Services District

-
- 1. CALL TO ORDER AND ROLL CALL**
 - 2. PLEDGE OF ALLEGIANCE**
 - 3. AGENDA REVIEW**
 - 4. PUBLIC COMMENTS ON ITEMS NOT APPEARING ON AGENDA**

Public Participation:

In order to prevent and mitigate the effects of the COVID-19 pandemic, the District, in accordance with Executive Order N-29-20, will not make available a physical location from which members of the public may observe the meeting and offer public comment. Remote public participation is allowed in the following ways:

Community members are encouraged to submit agenda correspondence in advance of the meeting via email to the District Secretary at amy@sslocsd.us prior to the meeting and will be published on the District website. Agenda correspondence received less than 3 hours before the meeting start time may not be posted until after the meeting. Members of the public may watch the meeting either on cable Channel 20 or as streamed on SLOSPAN <https://slo-span.org/static/index.php>

Alternatively, members of the public may watch the meeting and speak during general Public Comment or on a specific agenda item by logging in to the Zoom webinar using the information provided above. Please use the “raise hand” feature to indicate your desire to provide public comment. Each speaker will be allowed three minutes to provide input.

This public comment period is an invitation to members of the community to present comments, thoughts or suggestions on matters not scheduled on this agenda. Comments should be limited to those matters which are within the jurisdiction of the District. The Brown Act restricts the Board from taking formal action on matters not published on the agenda. In response to your comments, the Chair or presiding Board Member may:

- Direct Staff to assist or coordinate with you.
- Direct Staff to place your issue or matter on a future Board meeting agenda.

Please adhere to the following procedures when addressing the Board:

- Comments should be limited to three (3) minutes or less.
- Your comments should be directed to the Board as a whole and not directed to individual Board members.
- Slanderous, profane or personal remarks against any Board Member, Staff or member of the audience shall not be permitted

Any writing or document pertaining to an open-session item on this agenda which is distributed to a majority of the Board after the posting of this agenda will be available for public inspection at the time the subject writing or document is distributed. The writing or document will be available for public review in the offices of the Oceano CSD, a member agency located at 1655 Front Street, Oceano, California. Consistent with the Americans with Disabilities Act (ADA) and California Government Code §54954.2, requests for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires modification or accommodation in order to participate at the above referenced public meeting by contacting the District Administrator or Bookkeeper/Secretary at (805) 481-6903. So that the District may address your request in a timely manner, please contact the District two business days in advance of the meeting.

5. CONSENT AGENDA:

The following routine items listed below are scheduled for consideration as a group. Each item is recommended for approval unless noted. Any member of the public who wishes

to comment on any Consent Agenda item may do so at this time. Any Board Member may request that any item be withdrawn from the Consent Agenda to permit discussion or to change the recommended course of action. The Board may approve the remainder of the Consent Agenda on one motion.

5A. Approval of Warrants

5B. Approval of Meeting Minutes of November 4, 2020

6. ACTION ITEMS:

6A. PRESENTATION AND APPROVAL OF FISCAL YEAR ENDING JUNE 2020 FINANCIAL AUDIT

Recommendation: That the Board receive a presentation of the audit report of the District's financial records by Moss Levy & Hartzheim, LLP, the District's independent auditor, resolve questions, call for any necessary revisions and file the 2019-20 Financial Audit.

6B. RESOLUTION NO. 2020-424 FOR EXECUTION, DELIVERY AND SALE OF WASTEWATER REVENUE CERTIFICATES OF PARTICIPATION AND INCREASING MAXIMUM AUTHORIZED AMOUNT THEREOF TO \$28,000,000

Recommendation: Adopt Resolution No. 2020-424 replacing Resolution No. 2020-423 for the execution, delivery and sale of wastewater revenue certificates of participation and increasing the maximum principal amount to \$28,000,000.

6C. AUTHORIZE EXECUTION OF UPDATED CONTRACT FOR WWTP REDUNDANCY PROJECT CONSTRUCTION MANAGEMENT SERVICES WITH MNS ENGINEERS, INC.

Recommendation: Authorize the District Administrator to execute an updated contract for Construction Management Services for the Wastewater Treatment Plant Redundancy Project with MNS Engineers, Inc. in the amount of \$2,616,044.

7. BOARD MEMBER COMMUNICATIONS:

8. ADJOURNMENT:

The next regularly scheduled Board Meeting will be held December 2, 2020, at 6:00 pm. This meeting will be held either virtually via ZOOM or depending on the status of the COVID-19 Emergency at the Grover Beach City Hall, Council Chamber, 154 South Eighth Street, Grover Beach, California 93433

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
WARRANT REGISTER
11/18/2020

VENDOR	BUDGET LINE ITEM	DETAIL	WARRANT NO.	ACCT	ACCT BRKDN	TOTAL
AGP VIDEO	PROFESSIONAL SERVICE	OCTOBER 2020	111020-4910	7080	460.00	460.00
ALLIED ADMINISTRATORS	EMPLOYEE DENTAL	DECEMBER 2020	4911	6025	815.10	815.10
ARAMARK	UNIFORMS	10/23/20; 10/30/20	4912	7025	896.68	896.68
BRENNTAG	PLANT CHEMICALS	BPI91128; BPI92550	4913	8050	11,842.91	11,842.91
CHARTER COMMUNICATIONS	COMMUNICATIONS	10/29/20-11/28/20	4914	7013	309.95	309.95
CHRIS RIGONI	PROFESSIONAL CERTS	PER DIEM	4915	7055	28.81	28.81
COASTAL ROLL OFF	RUBBISH	OCTOBER 2020	4916	7093	796.41	796.41
DE JESUS GARDENING	STRUCTURE MAINTENANCE	OCTOBER 2020	4917	8060	450.00	450.00
EMPLOYMENT DEVELOPMENT	UNEMPLOYMENT INSURANCE	07/01/20-09/30/20	4918	6095	606.84	606.84
ENGEL & GRAY	BIOSOLIDS HANDLING	OCTOBER 2020	4919	7085	6,219.52	6,219.52
EVERYWHERE RIGHT NOW	PROFESSIONAL SERVICE	Nov-20	4920	7082	100.00	100.00
FED EX	CHEMICAL ANALYSIS	LUBE WATCH	4921	7078	19.34	19.34
GRAINGER	EQUIPMENT MAINTENANCE	9704334391	4922	8030	249.28	249.28
I.I. SUPPLY	SAFETY SUPPLIES	73110; 73039	4923	8056	55.16	97.53
	EQUIPMENT MAINTENANCE	73040		8030	42.37	
JAN PRO	STRUCTURE MAINTENANCE	NOVEMBER 2020	4934	8060	333.00	333.00
JB DEWAR	FUEL	121690; 950340	4925	8020	306.92	306.92
MICHAEL K NUNLEY	REDUNDANCY	ADMINISTRATION	4926	20-7080	8,517.33	16,475.37
	DIGESTER CLEANING	8200		26-8065	2,648.13	
	OES GRANT ASSISTANCE	8316		7077	5,309.91	
MINERS	EQUIPMENT MAINTENANCE	OCTOBER 2020	4927	8030	505.36	505.36
MOSS, LEVY & HARTZHEIM LLP	AUDIT	2020	4928	7072	6,320.00	6,320.00
NATES PLUMBING & HVAC	STRUCTURE MAINTENANCE	03212	4929	8060	383.00	383.00
OILFIELD ENVIRONMENTAL	BRINE SAMPLING	GOLDEN STATE LOS OSOS	4930	7086	216.00	686.00
	CHEMICAL ANALYSIS	2004461; 2004204		7078	470.00	
OVIVO	EQUIPMENT MAINTENANCE	8479697	4931	8030	197.34	197.34
PACE ANALYTICAL	CHEMICAL ANALYSIS	1291385; 1283296	4932	7078	930.00	930.00
PETROLEUM SOLIDS	DIGESTER CLEANING	NOVEMBER 2020	4933	26-8065	26,567.00	26,567.00
POLYDYNE	PLANT CHEMICALS	1495132	4934	8050	6,331.65	6,331.65
PRAXAIR DISTRIBUTION	RENTAL EQUIPMENT	09/20/20-10/20/20	4935	7032	33.49	33.49
READY REFRESH BY NESTLE	ADMIN BUILDING	09/25/20-10/24/20	4936	8045	127.43	127.43
REASONS CONSTRUCTION & FENCE	STRUCTURE MAINTENANCE	12527	4937	8060	275.00	275.00
SANTA MARIA FAMCON	EQUIPMENT MAINTENANCE	S100038854.001	4938	8030	375.19	375.19
SITE ONE LANDSCAPE	EQUIPMENT MAINTENANCE	104467327-001	4939	8030	52.25	52.25
SO CAL GAS	UTILITY	09/29/20-10/29/20	4940	7092	1,979.07	1,979.07
SO CO SANITARY SERVICE	GARBAGE	NOVEMBER 2020	4941	8020	391.48	391.48
STANLEY SECURITY	ALARMS	DECEMBER 2020	4942	7011	75.55	75.55
THE TRIBUNE	ADVERTISING	BID OPENING	4943	7005	372.68	372.68
U.S. POST OFFICE	OFFICE SUPPLIES	ANNUAL PO BOX RENEWAL	4944	8045	254.00	254.00
UMPQUA	CREDIT CARD	OCTOBER 2020	4945		3,061.13	3,061.13
VWR INTERNATIONAL	LAB SUPPLIES	8802554618	4946	8040	38.91	38.91
SSLOCS	OCTOBER TRANSFER	PAYROLL	4947		62,417.61	103,300.25
		RETIREMENT		6060	16,960.80	
		MEDICAL		6010	19,604.24	
		LIFE INSURANCE		6030	64.17	
		WORK COMP INSURANCE		6080	4,217.83	
		ANALYSIS CHARGES		7068	35.60	
TOTAL					192,264.44	192,264.44

We hereby certify that the demands numbered serially from 111020-4910 to 111020-4947 together with the supporting evidence have been examined, and that they comply with the requirements of the SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT. The demands are hereby approved by motion of the SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT, together with warrants authorizing and ordering the issuance of checks numbered identically with the particular demands and warrants.

BOARD OF DIRECTORS:

DATE:

Chairman

Board Member

Board Member

Secretary



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SUMMARY ACTION MINUTES Virtual Zoom Meeting of Wednesday, November 4, 2020

1. CALL TO ORDER AND ROLL CALL

Chair Ray Russom called the meeting to order and recognized a quorum.

Present: Caren Ray Russom, Chair, City of Arroyo Grande
Jeff Lee, Vice Chair, City of Grover Beach
Linda Austin, Director, Oceano Community Services District

District Staff: Jeremy Ghent, District Administrator
Keith Collins, District Legal Counsel
Amy Simpson, District Bookkeeper/Secretary

2. PLEDGE OF ALLEGIANCE

Chair Ray Russom led the Pledge of Allegiance.

3. AGENDA REVIEW

Approved as presented.

4. PUBLIC COMMENTS ON ITEMS NOT APPEARING ON AGENDA

There was no public comment.

5. CONSENT AGENDA:

5A. Approval of Warrants

5B. Approval of Meeting Minutes of October 7, 2020

There was no public comment.

Motion: Director Austin motioned to approve the Consent Agenda as presented.

Second: Director Lee

Action: Approved unanimously by roll call vote.

6. ACTION ITEMS:

6A. CONSIDERATION OF FISCAL YEAR 2020/21 FIRST QUARTER (Q1) BUDGET REVIEW

The Board had a brief discussion regarding how Covid has affected the budget. Administrator Ghent said the District impact from Covid on the expense side has been minimal. There may be a disruption to revenue due to the schools being closed. School revenue is based on Average Daily Attendance and will not be known until after June.

There was no public comment.

Action: The Board received and filed this report.

6B. BOARD CONFIRMATION OF THE EXECUTION, DELIVERY AND SALE OF WASTEWATER REVENUE CERTIFICATES OF PARTICIPATION, APPROVING PRELIMINARY OFFICIAL STATEMENT, AND APPROVING RELATED DOCUMENTS AND ACTIONS

Alex Handlers, Financial Advisor and Bond Counsel James Wawrzyniak were present. Administrator Ghent opened this item and reported that this item gives permission to advertise the District's bond sale. Alex handlers said that the two documents before the Board are the Preliminary Official Statement and the Notice of Sale. He gave a brief description of the documents. Mr. Handlers explained that the authorization is for up to \$25M but if bids come in higher staff will return for additional authorization. The Preliminary Official Statement (POS) is a legally required offering document that gives the investors material information they need to make an informative decision as to whether they want to buy District debt. The staff report contains a preliminary form and the final version will be completed after construction are received on November 10, 2020. The second document is the Notice of Sale. The District is planning for a Competitive Sale. If it is a bad bidding environment, staff may return to the Board and change to a Negotiated Sale.

The Board had no questions and feels comfortable relying on the experts to guide them through this process.

There was no public comment.

Motion: Director Lee motioned to Adopt Resolution 2020-423 confirming the execution, delivery and sale of wastewater revenue Certificates of Participation, approving Preliminary Official Statement, and approving related documents and actions.

Second: Director Austin

Action: Approved unanimously by roll call vote.

6C. RECOMMENDATION OF AWARD FOR WWTP REDUNDANCY PROJECT COMMUNITY WORKFORCE AGREEMENT (CWA) CONSULTING SERVICES CONTRACT WITH PACIFIC RESOURCES SERVICES

Director Ghent presented this item. He provided the scope of work that the Agreement will cover.

The Board had questioned page 12 regarding grievances. Administrator Ghent responded that an advantage to the District is that grievances will be handled behind the scenes and no work will be stopped on site. If there are no grievances, the work would be non-performed and the budget for grievances would not be charged.

Public Comment

Eric Christen and Richard Markuson are not in favor of this agreement.

Sean Perry and David Baldwin spoke in favor of the CWA

Legal Counsel Collins explained that none of the actions being taken this evening present any conflict or financial interest. Collins additionally addressed the email from Richard Markuson that alleged there may be an appearance of conflict of interest. Counsel Collins explained that campaign contributions are not considered a financial interest for purposes of conflict of interest analysis and out of an abundance of caution, the board has directed him to solicit an opinion from the Fair Political Practices Commission.

Motion: Director Lee motioned to Authorize the District Administrator to execute a contract for Community Workforce Agreement Consulting Services for the Wastewater Treatment Plant Redundancy Project with Pacific Resources Services. in the amount of \$79,828 and authorize the District Administrator to review and approve changes to the contract for up to 15% of the initial amount, or \$11,974, for a total potential amount of \$91,802.

Second: Director Austin

Action: Motion approved unanimously by roll call vote.

6D. AWARD A CONTRACT FOR THE DIGESTER NO. 2 CLEANING PROJECT TO MP ENVIRONMENTAL SERVICES, INC.

Superintendent Jones read this staff report.

There was no public comment.

Motion: Director Austin motioned to Award a contract for the Digester No. 2 Cleaning Project to MP Environmental Services, Inc. in the amount of \$142,078 and authorize the District Administrator to review and approve changes to the contract up to 15% of the initial amount, or \$21,312 for a total potential amount of \$163,390.

Second: Director Lee

Action: Approved unanimously by roll call vote.

6E. AWARD A CONTRACT FOR THE CLEANING AND CLOSED-CIRCUIT TELEVISION OF THE DISTRICT'S TRUNK SEWER LINES

Superintendent Jones read this staff report. There was a correction to Financial Consideration. The budget for the cleaning will be from Operating Fund 19.

There was no Public Comment

Motion: Director Lee motioned to Award a contract for the cleaning and closed-circuit television of the remainder of the District's trunk sewer lines to Mainline Utility Co. in the amount of \$87,011 and authorize the District Administrator to review and approve changes to the contract for up to 10% of the initial amount, or \$8,701 for a total potential amount of \$95,712.

Second: Director Austin

Action: Motion approved unanimously by roll call vote.

6F. DISTRICT ADMINISTRATOR AND PLANT OPERATIONS REPORT

Administrator Ghent presented this item. He said the District continues to be in Covid 19 precautions. He also reported that last Thursday the District became aware of a CalOES grant opportunity. Staff worked with MKN to apply for the grant that will fund a larger fuel tank if awarded to the District. There will be a second meeting in the months of November and December. NBS has begun compiling information from agencies to put rates and charges on County tax roll for the cities of Arroyo Grande and Grover Beach.

Superintendent Jones said the District did meet its NPDS permit as required. He provided operations and maintenance tasks and staff training.

The Board thanked him for the report and said they appreciate the pictures.

There was no public comment.

Action: The Board received and filed this report.

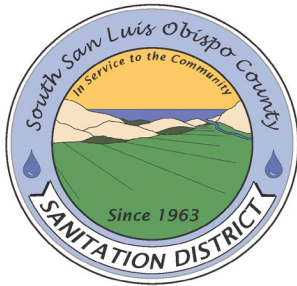
7. BOARD MEMBER COMMUNICATIONS

The Board acknowledged and thanked the staff for their work.

8. ADJOURNMENT:

7:16 p.m.

THESE MINUTES ARE DRAFT AND NOT OFFICIAL UNTIL APPROVED BY THE BOARD OF DIRECTORS AT A SUBSEQUENT MEETING.



SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT

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www.sslocsd.org

Staff Report

To: Board of Directors
From: Jeremy Ghent, District Administrator
Via: Amy Simpson, Bookkeeper/Secretary
Date: November 18, 2020
Subject: **PRESENTATION AND APPROVAL OF FISCAL YEAR ENDING JUNE
2020 FINANCIAL AUDIT**

RECOMMENDATION:

That the Board receive a presentation of the audit report of the District's financial records by Moss Levy & Hartzheim, LLP, the District's independent auditor, resolve questions, call for any necessary revisions and file the 2019-20 Financial Audit.

BACKGROUND:

MLH was hired as the District's independent auditor to review District financial statements and records and met with District Staff to develop the Fiscal Year 2019-20 Audit Report at a cost of \$10,320.

DISCUSSION:

Alex Hom, CPA from MLH will present the firm's final audit report of the District's financial records. Mr. Hom and staff are available to respond to questions from the Board members regarding the Fiscal Year 2019-20 audit. If the Board finds it is satisfied, Staff asks approval of the audit with any appropriate revisions by motion.

Attachment: 2019/20 Audit

**SOUTH SAN LUIS OBISPO COUNTY
SANITATION DISTRICT**

FINANCIAL STATEMENTS
June 30, 2020

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
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June 30, 2020

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors
South San Luis Obispo County Sanitation District
Oceano, California

Report on the Financial Statements

We have audited the accompanying financial statements of the South San Luis Obispo County Sanitation District (District) as of and for the fiscal year ended June 30, 2020, and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the South San Luis Obispo County Sanitation District, as of June 30, 2020, and the respective changes in financial position and cash flows thereof for the fiscal year then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 3 through 5, the schedule of Proportionate Share of Net Pension Liability on page 24, the schedule of Pension Contributions on page 25, the schedule of Changes in OPEB Liability and Related Ratios on page 26, and the schedule of OPEB Contributions on page 27 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, of the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated November 6, 2020, on our consideration of the South San Luis Obispo County Sanitation District's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the District's internal control over financial reporting and compliance.

Moss, Remy & Haugheim LLP

Santa Maria, CA
November 6, 2020

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
POST OFFICE BOX 339
1600 ALOHA PLACE
OCEANO, CA 93475

Management's Discussion and Analysis
Fiscal Year Ending June 30, 2020

The following is a discussion of the consolidated financial condition and the results of operations of the South San Luis Obispo County Sanitation District (the District) for the year ending June 30, 2020. This discussion refers to and is qualified by information contained in the financial statements and in the notes to the financial statements. Thus, it should be read together with these statements in the Audit Report. The financial audit of the South San Luis Obispo County Sanitation District has been performed by Moss, Levy & Hartzheim, CPAs, in accordance with U.S. generally accepted auditing standards.

Financial Highlights

- At June 30, 2020 the District's total net position was \$18.14 million. Fiscal Year 2019 ended with a total net position of \$15.02 million. This is an increase of 20.8% for net position.
- Total operating revenues increased by 8.8% from \$5.14 million in 2019 to \$5.59 million at June 30, 2020.
- Depreciation expense decreased 8.9% from \$817 thousand in Fiscal Year 2019 to \$744 thousand in Fiscal Year 2020.
- Total operating expenses decreased by 10.6% from \$3.32 million to \$2.97 million.
- Non-operating revenues increased from \$146 thousand in Fiscal Year 2019 to \$181 thousand in Fiscal Year 2020.
- Overall increase of cash and cash equivalents realized a 38.1% increase from \$7.82 million in Fiscal Year 2019 to \$10.80 million in Fiscal year 2020.
- Net cash remaining after operating activities increased 33.4% from \$2.42 million in Fiscal year 2019 to \$3.23 million in Fiscal Year 2020.

Overview of the Financial Statements:

This annual report consists of a series of financial statements. The Statement of Net Position, Statement of Revenues, Expenses and Changes in Net Position, and Statement of Cash Flows all provide information about the District's activities and present a long-term view of its finances.

These statements are prepared using the accrual basis of accounting which recognizes expenses when incurred and revenue when earned rather than when payment is made or received and is widely used by most private sector companies. These statements also report on the District's net position and changes in the position resulting from the current years' activity. Over time, increases or decreases in the District's net position is one indicator of whether its financial position is improving or declining.

Fund Financial Statements. A fund is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The District, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. The various accounts are presented in the accompanying financial statements as a proprietary fund category, enterprise fund type.

Notes to the Financial Statements. The notes provide additional information that is essential to a full understanding of the data provided in the financial statements. The notes to the financial statements can be found on pages 10-23 of this report.

Other Information. In addition to the basic financial statements and accompanying notes, this report also presents certain required supplementary information concerning the District's progress in funding its obligation to provide pension benefits to its employees.

Government-wide Financial Analysis

As noted earlier, net position may serve over time as a useful indicator of a government's financial position. In the case of the District, net position increased from \$15.02 million at June 30, 2019 to \$18.14 million at the close of June 30, 2020.

More than half of the net position, \$9.5 million as of June 30, 2020, reflects its investment in capital assets (e.g., land, buildings, machinery, and equipment), less any related debt used to acquire those assets that is still outstanding. The District uses these capital assets to provide services to citizens; consequently, these fixed capital assets are not available for future spending. Although the District's investment in its capital assets is reported net of related debt, it should be noted that the monies needed to repay any District debt must be provided from other sources, since the capital assets themselves cannot be used to liquidate these liabilities.

Business-type Activities.

The business-type activities increased the District's net position by \$3.11 million. The key elements are as follows: operating and non-operating revenues exceeded operating and non-operating expenses as of June 30, 2020. Capital contributions to the District's

system totaled \$311 thousand as of June 30, 2020. The total revenues exceeded expenses during the 2020 fiscal year. The District's Construction in Progress value has been recorded as capitalized amounts as detailed in Note 4 on page 16.

Capital Asset and Debt Administration

Capital Assets. The District's investments in capital assets for its business type activities as of June 30, 2020 amounts to \$9.5 million (net of accumulated depreciation and related debt). This investment in capital assets includes land, buildings and systems, improvements, machinery and equipment.

Additional information on the South San Luis Obispo County Sanitation District capital assets can be found in Note 4 on page 16 of this report.

Long-term Debt. At the end of June 30, 2020, the District held debt of compensated absences.

Additional information on the District's long-term debt can be found in Notes 5 and 6 on page 16 of this report.

Economic Factors and Next Year's Budgets and Rates

Financial Plan. In order to appropriately develop and finance the District's Redundancy Project Bartle Wells has been regularly updating the District's financial plan tracking the evolving project capital and routine maintenance needs and the District's ability to accommodate these needs within the existing rate structure.

Rate Increase. No increase to rates is currently needed. The District recently implemented a series of annual rate increases beginning July 1, 2016 and ending July 1, 2019. The new rates are designed to meet the District's operational and capital funding needs, comply with legal requirements and be fair to all customers. Rate increases were phased in to minimize the annual impact on District customers. Upon completion of the District's Redundancy Project the District may benefit from a review of rates as actual operation and maintenance expenses of the new facilities become known.

Other Post-Employment Benefits. The District provides other post-employment benefits (OPEB) through the California Employers' Retiree Benefit Fund which is administered by CalPERS. In 2000, the District joined the CalPERS medical program. An actuarial was performed with a measurement date of June 30, 2018 that was rolled forward to determine the District's June 30, 2019 total OPEB obligation.

Requests for Information

This financial report is designed to provide a general overview of the South San Luis Obispo County Sanitation District's finances for all those with an interest in the government's finances. Questions concerning any of the information should be addressed to the District Administrator, South San Luis Obispo County Sanitation District 1600 Aloha Place, Oceano, CA 93445.

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
STATEMENT OF NET POSITION - PROPRIETARY FUND
June 30, 2020

ASSETS

Current Assets:

Cash and investments	\$ 10,800,911
Accounts receivable	491,379
Interest receivable	9,411
Prepaid expenses	72,603
Total current assets	<u>11,374,304</u>

Noncurrent Assets:

Capital assets	
Land	431,425
Construction in progress	3,385,945
Property, plant & equipment	25,540,037
Accumulated depreciation	(19,837,470)
Total noncurrent assets	<u>9,519,937</u>

Total assets	<u>20,894,241</u>
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DEFERRED OUTFLOWS OF RESOURCES

Deferred pensions	330,168
Deferred OPEB	<u>117,669</u>
Total deferred outflows of resources	<u>447,837</u>

LIABILITIES

Current Liabilities:

Accounts payable	197,893
Accrued liabilities	19,943
Compensated absences	18,922
Brine deposits	10,000
Total current liabilities	<u>246,758</u>

Long-Term Liabilities:

Compensated absences	34,547
Net pension liability	1,262,383
Other post employment benefits	1,485,404
Total long term liabilities	<u>2,782,334</u>

Total liabilities	<u>3,029,092</u>
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DEFERRED INFLOWS OF RESOURCES

Deferred pensions	83,972
Deferred OPEB	<u>91,961</u>
Total deferred inflows of resources	<u>175,933</u>

NET POSITION

Net investment in capital assets	9,519,937
Restricted for capital expansion	3,469,065
Unrestricted	<u>5,148,051</u>
Total net position	<u>\$ 18,137,053</u>

The notes to basic financial statements are an integral part of this statement.

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
STATEMENT OF REVENUES, EXPENSES, AND CHANGES IN NET POSITION -
PROPRIETARY FUND
For the Fiscal Year Ended June 30, 2020

Operating Revenues:

Sewer services fees	\$ 5,586,969
Total operating revenues	<u>5,586,969</u>

Operating Expenses:

Gross wages	784,070
Payroll taxes and benefits	59,567
Employee benefits	174,891
Retirement contribution	256,700
OPEB expense	(268,378)
Uniforms	16,012
Repairs and maintenance	214,516
Equipment rental	3,421
Insurance	37,442
Depreciation	743,777
Communications	14,641
Utilities	241,646
Property tax	31,876
Special services	87,550
Office and supplies	14,355
Fuel and oil	5,155
Membership, permits, and license fees	77,992
Legal	52,728
Accounting	16,997
Plant chemicals, lab, and analysis	319,283
Employee training	18,809
Solids handling	52,666
Small tools	<u>10,662</u>
Total operating expenses	<u>2,966,378</u>
Net operating income	<u>2,620,591</u>

Non-Operating Revenues (Expenses):

Interest income	176,837
Lease income	<u>4,026</u>
Total non-operating revenues (expenses)	<u>180,863</u>

Capital Contributions:

Connection fees	<u>311,223</u>
Change in net position	3,112,677

Net Position:

Net position, beginning of fiscal year	<u>15,024,376</u>
Net position, end of fiscal year	<u>\$ 18,137,053</u>

The notes to basic financial statements are an integral part of this statement.

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
STATEMENT OF CASH FLOWS - PROPRIETARY FUND
For the Fiscal Year Ended June 30, 2020

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 5,709,484
Payments to vendors	(1,481,339)
Payments to employees	<u>(993,754)</u>
Net cash provided by operating activities	<u>3,234,391</u>

CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES

Lease income	<u>4,026</u>
Net cash provided by noncapital financing activities	<u>4,026</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Capital contributions	311,223
Acquisition and construction of capital assets	<u>(753,058)</u>
Net cash used by capital and related financing activities	<u>(441,835)</u>

CASH FLOWS FROM INVESTING ACTIVITIES

Interest received	<u>183,529</u>
Net cash provided by investing activities	<u>183,529</u>

Net change in cash and cash equivalents	2,980,111
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Cash and cash equivalents, July 1, 2019	<u>7,820,800</u>
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Cash and cash equivalents, June 30, 2020	<u><u>\$ 10,800,911</u></u>
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SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
STATEMENT OF CASH FLOWS - PROPRIETARY FUND (Continued)
For the Fiscal Year Ended June 30, 2020

Reconciliation of operating income to net cash provided

by operating activities:

Operating income	\$ 2,620,591
Adjustments to reconcile operating income to net cash used by operating activities:	
Depreciation	743,777
Change in assets, deferred outflows, liabilities, and deferred inflows:	
Accounts receivable	120,498
Prepaid expenses	(905)
Deposits	2,922
Deferred outflows of resources relating to pensions	(3,055)
Deferred outflows of resources relating to OPEB	(47,979)
Accounts payable	(42,808)
Accrued liabilities	5,723
Compensated absences	18,922
OPEB liability	(303,864)
Net pension liability	106,082
Deferred inflows of resources relating to pensions	(8,250)
Deferred inflows of resources relating to OPEB	<u>22,737</u>
Net cash provided by operating activities	<u><u>\$ 3,234,391</u></u>

The notes to basic financial statements are an integral part of this statement.

NOTE 1 - REPORTING ENTITY

The reporting entity is the South San Luis Obispo County Sanitation District. The District is responsible for trunk main and sewer pipes from the Cities of Arroyo Grande, Grover Beach, and the Oceano Community Services District. The District is governed by a three-member body, known as the District Board, who are appointed by the respective member agencies on a yearly basis. The District Board includes one representative from each of its Member Agencies, specifically, the City of Arroyo Grande, City of Grover Beach and the Oceano Community Services District. The District provides wastewater disposal services.

There are no component units included in this report which meet the criteria of Governmental Accounting Standards Board (GASB) Statement No. 14, *The Financial Reporting Entity*, as amended by GASB Statements No. 39, No. 61 and No. 80.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- A. Accounting Policies - The accounting policies of the District conform to accounting principles generally accepted in the United States of America as prescribed by the Governmental Accounting Standards Board and the American Institute of Certified Public Accountants.

Private-sector standards of accounting and financial reporting issued prior to December 1, 1989, are generally followed in the proprietary fund financial statements to the extent that those standards do not conflict with or contradict guidance of the Governmental Accounting Standards Board. Governments also have the *option* of following subsequent private-sector guidance for their business-type activities and enterprise funds, subject to this same limitation. The District has elected not to follow subsequent private-sector guidance.

- B. Accounting Method - The District is organized as an Enterprise Fund and follows the accrual method of accounting, whereby revenues are recorded as earned, and expenses are recorded when incurred.

- C. Fund Financial Statements - The fund financial statements provide information about the District's proprietary fund.

Proprietary fund operating revenues, such as charges for services, result from exchange transactions associated with the principal activity of the fund. Exchange transactions are those in which each party receives and gives up essentially equal values. Nonoperating revenues, such as subsidies and investment earnings, result from nonexchange transactions or ancillary activities.

- D. Proprietary Fund Type

Enterprise Fund

Enterprise fund is used to account for operations (a) that are financed and operated in a manner similar to private business enterprises – where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or (b) where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes.

- E. Cash and Cash Equivalents - For purposes of the statement of cash flows, cash and cash equivalents include restricted and unrestricted cash and restricted and unrestricted certificates of deposit with original maturities of three months or less.
- F. Property, Plant, and Equipment - Capital assets purchased by the District are recorded at cost. Contributed or donated capital assets are recorded at fair value when acquired.
- G. Depreciation – Capital assets owned by the District are depreciated over their estimated useful lives (ranging from 5-40 years) under the straight-line method of depreciation.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

- H. Receivables - The District did not experience bad debt losses; accordingly, no adjustment has been made for doubtful accounts, and accounts receivable is shown at the adjusted value.
- I. Encumbrances - Encumbrances represent commitments related to unperformed contracts for goods or services. Encumbrance accounting, under which purchase orders, contracts, and other commitments for the expenditure of resources are recorded to reserve that portion of the applicable appropriation, is not utilized by the District.
- J. Compensated Absences - Accumulated unpaid employee vacation and sick leave benefits are recognized as liabilities of the District. The amounts are included in current liabilities.
- K. Restricted Assets - Restricted assets are financial resources segregated for a special purpose such as construction of improvements and financing of debt obligations. These assets are for the benefit of a distinct group and as such are legally or contractually restricted.
- L. Use of Estimates
The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America, as prescribed by the GASB and the AICPA, requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reported period. Actual results could differ from those estimates.
- M. Net Position
GASB Statement No. 63, requires that the difference between assets added to the deferred outflows of resources and liabilities be added to the deferred inflows of resources be reported as net position. Net position is classified as either net investment in capital assets, restricted, or unrestricted.

Net position that is net investment in capital assets consists of capital assets, net of accumulated depreciation, and reduced by the outstanding principal of related debt. Restricted net position is the portion of net position that has external constraints placed on them by creditors, grantors, contributors, laws, or regulations of other governments, or through constitutional provisions, or enabling legislation. Unrestricted net position consists of net position that does not meet the definition of net investment in capital assets or restricted net position.
- N. Pensions
For purposes of measuring the net pension liability and deferred outflows/inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the South San Luis Obispo County Sanitation District's Public Employee's Retirement System (CalPERS) plan (Plan) and additions to/deductions from the Plan fiduciary net position have been determined on the same basis as they are reported by CalPERS. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.
- O. Deferred Outflows and Inflows of Resources
Pursuant to GASB Statement No. 63, "*Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position*," and GASB Statement No. 65, "*Items Previously Reported as Assets and Liabilities*," the District recognizes deferred outflows and inflows of resources.

In addition to assets, the Statement of Net Position will sometimes report a separate section for deferred outflows of resources. A deferred outflow of resources is defined as a consumption of net position by the government that is applicable to a future reporting period. The District has two items which qualify for reporting in this category; refer to Note 6 and Note 7 for a detailed listing of the deferred outflows of resources the District has reported.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

O. Deferred Outflows and Inflows of Resources (Continued)

In addition to liabilities, the Statement of Net Position will sometimes report a separate section for deferred inflows of resources. A deferred inflow of resources is defined as an acquisition of net position by the District that is applicable to a future reporting period. The District has two items which qualifies for reporting in this category; refer to Note 6 and Note 7 for a detailed listing of the deferred inflows of resources the District has reported.

P. Other Postemployment Benefits (OPEB)

For purposes of measuring the net OPEB liability and deferred outflows/inflows of resources related to OPEB, and OPEB expense, information about the fiduciary net position of the District's plan (OPEB plan) and additions to/deductions from the Plans' fiduciary net position have been determined on the same basis. For this purpose, benefit payments are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

Q. Future Accounting Pronouncements

GASB Statements listed below will be implemented in future financial statements:

Statement No. 84	"Fiduciary Activities"	The provisions of this statement are effective for fiscal years beginning after December 15, 2019.
Statement No. 87	"Leases"	The provisions of this statement are effective for fiscal years beginning after June 15, 2021.
Statement No. 89	"Accounting for Interest Cost Incurred before the End of a Construction Period"	The provisions of this statement are effective for fiscal years beginning after December 15, 2020.
Statement No. 90	"Majority Equity Interests-an Amendment of GASB Statements No. 14 and No. 61"	The provisions of this statement are effective for fiscal years beginning after December 15, 2019.
Statement No. 91	"Conduit Debt Obligations"	The provisions of this statement are effective for fiscal years beginning after December 15, 2021.
Statement No. 92	"Omnibus 2020"	The provisions of this statement are effective for fiscal years beginning after June 15, 2021.
Statement No. 93	"Replacement of Interbank Offered Rates"	The provision of this statement except for paragraphs 11b, 13, and 14 are effective for fiscal years beginning after June 15, 2020. Paragraph 11b is effective for fiscal years beginning after December 31, 2021. Paragraphs 13 and 14 are effective for fiscal years beginning after June 15, 2021.
Statement No. 94	"Public-Private and Public-Public Partnerships and Availability Payment Arrangements"	The provisions of this statement are effective for fiscal years beginning after June 15, 2022.

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
June 30, 2020

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Q. Future Accounting Pronouncements (Continued)

Statement No. 96	"Subscription-Based Information Technology Arrangements"	The provisions of this statement are effective for fiscal years beginning after June 15, 2022.
Statement No. 97	"Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans - an amendment of GASB Statements No. 14 and No. 84, and a supersession of GASB Statement No. 32"	The provisions of this statement are effective for fiscal years beginning December 15, 2019.

NOTE 3 - CASH AND INVESTMENTS

Investments are carried at fair value in accordance with GASB Statement No. 31. On June 30, 2020, the District had the following cash and investments on hand:

Cash on hand	\$	40
Cash in Bank		173,873
Cash and investments with County Treasurer		8,047,769
Local Agency Investment Fund (LAIF)		<u>2,579,229</u>
Total cash and investment	\$	<u>10,800,911</u>

The District categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. These principles recognize a three-tiered fair value hierarchy. Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; Level 3 inputs are significant unobservable inputs. The District had investments in the San Luis Obispo County Investment Pool and the Local Agency Investment Fund, however, those external pools measured under Level 2.

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
June 30, 2020

NOTE 3 - CASH AND INVESTMENTS (Continued)

Investments Authorized by the California Government Code

The table below identifies the investment types that are authorized for the District by the California Government Code. The table also identifies certain provisions of the California Government Code that address interest rate risk, credit risk, and concentration of credit risk.

<u>Authorized Investment Type</u>	<u>Maximum Maturity</u>	<u>Maximum Percentage Of Portfolio</u>	<u>Maximum Investment in One Issuer</u>
Local Agency Bonds	5 years	None	None
U.S. Treasury Obligations	5 years	None	None
Federal Agency Securities	N/A	None	None
Bankers' Acceptances	180 days	40%	30%
Commercial Paper	270 days	25%	10%
Negotiable Certificates of Deposit	5 years	30%	None
Repurchase and Reverse Repurchase Agreements	92 days	20% of base value	None
Medium-Term Notes	5 years	30%	None
Mutual Funds	5 years	15%	10%
Money Market Mutual Funds	N/A	None	None
Mortgage Pass-Through Securities	N/A	20%	None
County Pooled Investment Fund	N/A	None	None
Local Agency Investment Fund (LAIF)	N/A	None	None
State Registered Warrants, Notes, or Bonds	5 years	None	None
Notes and Bonds of other Local California Agencies	5 years	None	None

Disclosures Relating to Interest Rate Risk

Interest rate risk is the risk that changes in market interest rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates. One of the ways that the District manages its exposure to interest rate risk is by purchasing a combination of shorter term and longer term investments and by timing cash flows from maturities so that a portion of the portfolio is maturing or coming close to maturity evenly over time as necessary to provide the cash flow and liquidity needed for operations.

Information about the sensitivity of the fair values of the District's investments to market interest rate fluctuations is provided by the following table that shows the distribution of the District's investments by maturity:

<u>Investment Type</u>	<u>Carrying Amount</u>	<u>Remaining Maturity (in Months)</u>			
		<u>12 Months or Less</u>	<u>13 - 24 Months</u>	<u>25 - 60 Months</u>	<u>More than 60 Months</u>
San Luis Obispo Investment Pool	\$ 8,047,769	\$ 8,047,769	\$ -	\$ -	\$ -
State Investment Pool (LAIF)	2,579,229	2,579,229			
	<u>\$ 10,626,998</u>	<u>\$ 10,626,998</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
June 30, 2020

NOTE 3 - CASH AND INVESTMENTS (Continued)

Disclosures Relating to Credit Risk

Generally, credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. This is measured by the assignment of rating by a nationally recognized statistical rating organization. Presented below is the minimum rating required by (where applicable) the California Government Code and the District's investment policy, and the actual rating as of fiscal year end for each investment type.

Investment Type	Carrying Amount	Minimum Legal Rating	Rating as of Fiscal Year End			
			AAA	Aa	Baa	Not Rated
San Luis Obispo Investment Pool	\$ 8,047,769	N/A	\$ -	\$ -	\$ -	\$ 8,047,769
State Investment Pool (LAIF)	2,579,229	N/A				2,579,229
	<u>\$ 10,626,998</u>		<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 10,626,998</u>

Concentration of Credit Risk

The investment policy of the District contains no limitations on the amount that can be invested in any one issuer beyond that stipulated by the California Government Code. There are no investments in any one issuer that represent 5% or more of total District investments.

Custodial Credit Risk

Custodial credit risk for deposits is the risk that, in the event of the failure of a depository financial institution, a government will not be able to recover its deposits or will not be able to recover collateral securities that are in the possession of an outside party. The custodial credit risk for investments is the risk that, in the event of the failure of the counterparty (e.g., broker-dealer) to a transaction, a government will not be able to recover the value of its investment or collateral securities that are in the possession of another party. The California Government Code and the District's investment policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for deposits or investments, other than the following provision for deposits: The California Government Code requires that a financial institution secure deposits made by state or local governmental units by pledging securities in an undivided collateral pool held by a depository regulated under state law (unless so waived by the governmental unit). The fair value of the pledged securities in the collateral pool must equal at least 110% of the total amount deposited by the public agencies. California law also allows financial institutions to secure the District's deposits by pledging first trust deed mortgage notes having a value of 150% of the secured public deposits.

As of June 30, 2020, none of the District's deposits with financial institutions in excess of federal depository insurance limits were held in uncollateralized accounts.

Investment in State Pool (LAIF)

The District is a voluntary participant in the Local Agency Investment Fund (LAIF) that is regulated by the California Government Code under the oversight of the Treasurer of the State of California. The fair value of the District's investment in this pool is reported in the accompanying financial statements at amounts based upon the District's pro-rata share of the fair value provided by LAIF for the entire LAIF portfolio (in relation to the amortized cost of that portfolio). The balance available for withdrawal is based on the accounting records maintained by LAIF, which are recorded on an amortized cost basis.

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
June 30, 2020

NOTE 4 - SCHEDULE OF CAPITAL ASSETS

A schedule of changes in capital assets and depreciation for the fiscal year ended June 30, 2020, is shown below:

	Balance July 1, 2019	Additions	Deletions	Transfers	Balance June 30, 2020
Land	\$ 431,425	\$ -	\$ -	\$ -	\$ 431,425
Construction in Progress	2,761,195	691,367		(66,617)	3,385,945
Property, Plant, & Equipment	25,411,729	61,691		66,617	25,540,037
Total capital assets	28,604,349	753,058			29,357,407
Less Accumulated Depreciation	(19,093,693)	(743,777)			(19,837,470)
Net capital assets	<u>\$ 9,510,656</u>	<u>\$ 9,281</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 9,519,937</u>

NOTE 5 – LONG-TERM LIABILITIES

The changes in long-term liabilities at June 30, 2020, are as follows:

	Balance July 1, 2019	Additions	Retirements	Balance June 30, 2020	Due within One year
Compensated Absences	\$ 34,547	\$ 42,692	\$ (23,770)	\$ 53,469	\$ 18,922
OPEB	1,789,268	206,248	(510,112)	1,485,404	
Net Pension Liability	1,156,301	242,877	(136,795)	1,262,383	
Total	<u>\$ 2,980,116</u>	<u>\$ 491,817</u>	<u>\$ (670,677)</u>	<u>\$ 2,801,256</u>	<u>\$ 18,922</u>

NOTE 6 – DEFINED BENEFIT PENSION PLAN

A. General Information about the Pension Plans

Plan Descriptions

All qualified permanent and probationary employees are eligible to participate in the District's Miscellaneous Employee Pension Plans, cost-sharing multiple employer defined benefit plans administered by the California Public Employees' Retirement System (CalPERS). Benefit provisions under the Plans are established by State statute and District resolution. CalPERS issues publicly available reports that include a full description of the pension plans regarding benefit provisions, assumptions and membership information that can be found on the CalPERS website.

Benefits Provided

CalPERS provides service retirement and disability benefits, annual cost of living adjustments and death benefits to plan members, who must be public employees and beneficiaries. Benefits are based on years of credited service, equal to one year of full time employment. Members with five years of total service are eligible to retire at age 50 with statutorily reduced benefits. All members are eligible for nonduty disability benefits after 10 years of service. The death benefit is one of the following: the Basic Death Benefit, the 1957 Survivor Benefit, or the Optional Settlement 2W Death Benefit. The cost of living adjustments for each plan are applied as specified by the Public Employees' Retirement Law.

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
June 30, 2020

NOTE 6 – DEFINED BENEFIT PENSION PLAN (Continued)

A. General Information about the Pension Plans (Continued)

The Plans' provisions and benefits in effect at June 30, 2020, are summarized as follows:

	Miscellaneous	
	Prior to January 1, 2013	On or after January 1, 2013
Hire Date		
Benefit formula	2.0% @ 60	2% @ 62
Benefit vesting schedule	5 years service	5 years service
Benefit payments	monthly for life	monthly for life
Retirement age	50-63	52-67
Monthly benefits, as a % of eligible compensation	1.09% to 2.42%	1.0% to 2.5%
Required employee contribution rates	7.95%	6.75%
Required employer contribution rates	10.823%+\$77,520	6.985%+\$806

Contributions

Section 20814(c) of the California Public Employees' Retirement Law requires that the employer contribution rates for all public employers be determined on an annual basis by the actuary and shall be effective on the July 1 following notice of a change in the rate. Funding contributions for the Plan is determined annually on an actuarial basis as of June 30 by CalPERS. The actuarially determined rate is the estimated amount necessary to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. The District is required to contribute the difference between the actuarially determined rate and the contribution rate of employees. Contributions to the pension plan from the District were \$161,923 for the fiscal year ended June 30, 2020.

B. Pension Liabilities, Pension Expenses and Deferred Outflows/Inflows of Resources Related to Pensions

At June 30, 2020, the District reported a liability of \$1,262,383 for its proportionate share of the net pension liability. The net pension liability was measured as of June 30, 2019 and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of June 30, 2018 rolled forward to June 30, 2019 using standard update procedures. The District's proportion of the net pension liability was based on a projection of the District's long-term share of contributions to the pension plan relative to the projected contributions of all Pension Plan participants, actuarially determined. At June 30, 2019, the District's proportion was 0.03152%, which increased by 0.00084% from June 30, 2018.

For the year ended June 30, 2020, the District recognized pension expense of \$256,701. Pension expense represents the change in the net pension liability during the measurement period, adjusted for actual contributions and the deferred recognition of changes in investment gain/loss, actuarial gain/loss, actuarial assumptions or method, and plan benefits. At June 30, 2020, the District reported deferred outflows of resources and deferred inflows of resources related to pension from the following sources:

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
June 30, 2020

NOTE 6 – DEFINED BENEFIT PENSION PLAN (Continued)

B. Pension Liabilities, Pension Expenses and Deferred Outflows/Inflows of Resources Related to Pensions (Continued)

	Deferred Outflows of Resources	Deferred Inflows of Resources
Pension contributions subsequent to measurement date	\$ 161,923	\$ -
Differences between expected and actual experience	87,678	6,793
Changes in assumptions	60,196	21,339
Net difference between projected and actual earnings on retirement plan investments		22,070
Adjustment due to differences in proportions	20,371	4,802
Difference in actual contributions and proportionate share of contributions		28,968
	<u>\$ 330,168</u>	<u>\$ 83,972</u>

\$161,923 reported as deferred outflows of resources related to pensions resulting from District contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ended June 30, 2021. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in the pension expenses as follows:

Fiscal Year Ended June 30	Amount
2021	\$ 81,847
2022	(15,290)
2023	13,255
2024	4,461
	<u>\$ 84,273</u>

Actuarial Assumptions

The total pension liability in the June 30, 2019 actuarial valuation was determined using the following actuarial assumptions:

	Miscellaneous
Valuation Date	June 30, 2018
Measurement Date	June 30, 2019
Actuarial Cost Method	Entry-Age Normal Cost Method
Actuarial Assumptions:	
Discount Rate	7.15%
Inflation	2.50%
Salary Increases	Varies by Entry Age and Service
Investment Rate of Return	7.0% Net of Pension Plan Investment and Administrative Expenses; includes Inflation
Mortality Rate Table (1)	Derived using CalPERS' Membership Data for all Funds
Post Retirement Benefit Increase	Contract COLA up to 2.50% until Purchasing Power Protection Allowance Floor on Purchasing Power applies, 2.75% thereafter.

- (1) The mortality table used was developed based on CALPERS' specific data. The table includes 15 years of mortality improvements using 90% Scale MP 2016 published by the Society of Actuaries. For more details on this table, please refer to the 2017 experience study.

NOTE 6 – DEFINED BENEFIT PENSION PLAN (Continued)

B. Pension Liabilities, Pension Expenses and Deferred Outflows/Inflows of Resources Related to Pensions (Continued)

Discount Rate

The discount rate used to measure the total pension liability was 7.15%. To determine whether the municipal bond rate should be used in the calculation of a discount rate for public agency plans (including PERF C), CalPERS stress tested plans that would most likely result in a discount rate that would be different from the actuarially assumed discount rate. Based on the testing, none of the tested plans run out of assets. Therefore, the current 7.15 percent discount rate is adequate and the use of the municipal bond rate calculation is not necessary. The long term expected discount rate of 7.15 percent will be applied to all plans in the Public Employees Retirement Fund, including PERF C. The stress test results are presented in a detailed report called “GASB Crossover Testing Report” that can be obtained at CalPERS’ website under the GASB No. 68 section.

CalPERS is scheduled to review all actuarial assumptions as part of its regular Asset Liability Management (ALM) review cycle that is scheduled to be completed in February 2022. Any changes to the discount rate will require Board action and proper stakeholder outreach. For these reasons, CalPERS expects to continue using a discount rate net of administrative expenses for GASB No. 67 and No. 68 calculations through at least the 2021-22 fiscal year. CalPERS will continue to check the materiality of the difference in calculation until such time as we have changed our methodology.

The long-term expected rate of return on pension plan investments was determined using a building-block method in which best-estimate ranges of expected future real rates of return (expected returns, net pension plan investment expense and inflation) are developed for each major asset class.

In determining the long-term expected rate of return, CalPERS took into account both short-term and long-term market return expectations as well as the expected pension fund cash flows. Using historical returns of all the funds’ asset classes, expected compound returns were calculated over the short-term (first 10 years) and the long-term (11-60 years) using a building-block approach. Using the expected nominal returns for both short-term and long-term, the present value of benefits were calculated for each fund. The expected rate of return was set by calculating the single equivalent expected return that arrived at the same present value of benefits for cash flows as the one calculated using both short-term and long-term returns. The expected rate of return was then set equivalent to the single equivalent rate calculated above and rounded down to the nearest one quarter of one percent.

The table on the below reflects the long-term expected real rate of return by asset class. The rate of return was calculated using the capital market assumptions applied to determine the discount rate and asset allocation. These rates of return are net of administrative expenses.

<u>Asset Class</u>	<u>New Strategic Allocation</u>	<u>Real Return Years 1-10(a)</u>	<u>Real Return Years 11+(b)</u>
Global Equity	50.0%	4.80%	5.98%
Global Fixed Income	28.0%	1.00%	2.62%
Inflation Sensitive	0.0%	0.77%	1.81%
Private Equity	8.0%	6.30%	7.23%
Real Estate	13.0%	3.75%	4.93%
Liquidity	1.0%	0.00%	-0.92%
Total	<u>100%</u>		

(a) An expected inflation of 2.00% used for this period.

(b) An expected inflation of 2.92% used for this period.

NOTE 6 – DEFINED BENEFIT PENSION PLAN (Continued)

B. Pension Liabilities, Pension Expenses and Deferred Outflows/Inflows of Resources Related to Pensions (Continued)

Sensitivity of the Proportionate Share of the Net Pension Liability to Changes in the Discount Rate

The following represents the District's proportionate share of the net pension liability calculated using the discount rate of 7.15 percent, as well as what the District's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1-percentage point lower (6.15 percent) or 1- percentage point higher (8.15 percent) than the current rate:

	1% Decrease 6.15%	Discount Rate 7.15%	1% Increase 8.15%
District's proportionate share of the net pension plan liability	\$ 1,922,750	\$ 1,262,383	\$ 717,296

Pension Plan Fiduciary Net Position

Detailed information about the pension plan's fiduciary net position is available in the separately issued CalPERS financial reports.

C. Payable to the Pension Plan

At June 30, 2020, the District had no amount outstanding for contributions to the pension plan required for the fiscal year ended June 30, 2020.

NOTE 7 – POST EMPLOYMENT BENEFITS OTHER THAN PENSIONS

Plan Description

The District provides post-retirement health benefits to all retirees with five years of service who retire from the District, and must have reached the minimum age of 50. Benefits continue for the lifetime of the retiree. No assets are accumulated in a trust that meets the criteria in paragraph 4 of GASB Statement 75.

Change in Benefit Terms

In fiscal year ending June 30, 2019, there were changes in benefit terms. For those hired prior to 2013, the employee shall receive 100% of the stipulated amount. For those hired between 2013 through 2017, they shall receive 50% of the premium. For any employees hired after 2017, they will receive the minimum employer contribution.

Employees Covered

As of the June 30, 2019, actuarial valuation, the following current and former employees were covered by the benefit terms under the District's Plan:

Active plan members	8
Inactive employees or beneficiaries currently receiving benefits	7
Total	15

The District currently finances benefits on a pay-as-you-go basis.

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
June 30, 2020

NOTE 7 – POST EMPLOYMENT BENEFITS OTHER THAN PENSIONS (Continued)

OPEB Liability

The District's OPEB liability was measured as of June 30, 2019 and the total OPEB liability was determined by an actuarial valuation dated June 30, 2018 that was rolled forward to determine the June 30, 2019 total OPEB liability, based on the following assumptions:

Discount Rate	3.50%
Inflation	2.75%
Salary Increases	2.75%
Healthcare Trend Rate	4.00%
Mortality Rate	Derived from 2014 CalPERS Active Mortality for Miscellaneous Employees
Pre-Retirement Turnover	2009 CalPERS Turnover for Miscellaneous employees.

Actuarial assumptions used in the June 30, 2019 valuation were based on a review of plan experience during the period July 1, 2015 to June 30, 2017.

The long-term expected rate of return on OPEB plan investments was determined using a building-block method in which best-estimate ranges of expected future real rates of return (expected returns, net of investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. To achieve the goal set by the investment policy, plan assets will be managed to earn, on a long-term basis, a rate of return equal to or in excess of the target rate of return of 3.50 percent.

Change of assumptions. The discount rate was decreased from 3.80 percent to 3.50 percent.

Discount rate. GASB 75 requires a discount rate that reflects the following:

- a) The long-term expected rate of return on OPEB plan investments — to the extent that the OPEB plan's fiduciary net position (if any) is projected to be sufficient to make projected benefit payments and assets are expected to be invested using a strategy to achieve that return;
- b) A yield or index rate for 20-year, tax-exempt general obligation municipal bonds with an average rating of AA/Aa or higher — to the extent that the conditions in (a) are not met.

To determine a resulting single (blended) rate, the amount of the plan's projected fiduciary net position (if any) and the amount of projected benefit payments is compared in each period of projected benefit payments. The discount rate used to measure the District's total OPEB liability is based on these requirements and the following information:

Reporting Date	Measurement Date	Long Term Expected Return of Plan Investments	Municipal 20 Year High Grade Rate Index	Discount Rate
June 30, 2020	June 30, 2019	3.50%	3.50%	3.50%
June 30, 2019	June 30, 2018	3.80%	3.80%	3.80%

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
June 30, 2020

NOTE 7 – POST EMPLOYMENT BENEFITS OTHER THAN PENSIONS (Continued)

Changes in the OPEB Liability

	Total OPEB Liability
Balance at June 30, 2019 (Valuation Date, June 30, 2019)	\$ 1,789,268
Changes recognized for the measurement period:	
Service cost	71,936
Interest	68,087
Changes of assumptions	63,487
Experience (Gains)/Losses	(33,833)
Changes in Benefit Terms	(403,851)
Contributions - employer	
Net investment income	
Benefit payments	(69,690)
Net Changes	(303,864)
Balance at June 30, 2020 (Measurement Date, June 30, 2019)	\$ 1,485,404

Sensitivity of the OPEB liability to changes in the discount rate. The following presents the net OPEB liability, as well as what the net OPEB liability would be if it were calculated using a discount rate that is 1-percentage point lower (2.50 percent) or 1-percentage-point higher (4.50 percent) than the current discount rate:

	1% Decrease 2.50%	Current Rate 3.50%	1% Increase 4.50%
OPEB Liability	\$ 1,737,007	\$ 1,485,404	\$ 1,290,836

Sensitivity of the OPEB liability to changes in the healthcare trend rates. The following presents the OPEB liability, as well as what the OPEB liability would be if it were calculated using a healthcare cost trend rates that are 1-percentage point lower (3.00 percent) or 1-percentage-point higher (5.00 percent) than the current healthcare cost trend rates:

	1% Decrease (3.00%)	Healthcare Cost Trend Rate (4.00%)	1% Increase (5.00%)
OPEB Liability	\$ 1,411,453	\$ 1,485,404	\$ 1,588,432

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
June 30, 2020

NOTE 7 – POST EMPLOYMENT BENEFITS OTHER THAN PENSIONS (Continued)

OPEB Expense and Deferred Outflows/Inflows of Resources Related to OPEB

For the fiscal year ended June 30, 2020, the District recognized OPEB expense of \$(268,378). As of the fiscal year ended June 30, 2020, the District reported deferred outflows and deferred inflows of resources related to OPEB from the following sources:

	<u>Deferred Outflows of Resources</u>	<u>Deferred Inflows of Resources</u>
OPEB contributions subsequent to measurement date	\$ 60,728	\$ -
Change in assumptions	56,941	61,616
Differences between expected and actual experience		30,345
Net difference between projected and actual earnings on retirement plan investments		
	<u>\$ 117,669</u>	<u>\$ 91,961</u>

Deferred outflows of resources and deferred inflows of resources above represent the unamortized portion of changes to OPEB liability to be recognized in future periods in a systematic and rational manner. \$60,728 reported as deferred outflows of resources related to OPEB resulting from District contributions subsequent to the measurement date will be recognized as a reduction of the OPEB liability in the year ended June 30, 2021. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to OPEB will be recognized in the pension expense as follows:

Fiscal year Ending June 30,	<u>Amount</u>
2021	\$ (4,550)
2022	(4,550)
2023	(4,550)
2024	(4,550)
2025	(4,550)
Thereafter	(12,270)
	<u>\$ (35,020)</u>

NOTE 8 – COMMITMENTS AND CONTINGENCIES

According to the District's staff and attorney, no contingent liabilities are outstanding and no lawsuits are pending of any real financial consequence.

REQUIRED SUPPLEMENTARY INFORMATION

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
SCHEDULE OF PROPORTIONATE SHARE OF NET PENSION LIABILITY
Last 10 Years*
As of June 30, 2020

The following table provides required supplementary information regarding the District's Pension Plan.

	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>
Proportion of the net pension liability	0.01232%	0.01200%	0.01186%	0.01163%
Proportionate share of the net pension liability	\$ 1,262,383	\$ 1,156,301	\$ 1,176,202	\$ 1,006,552
Covered payroll	\$ 702,820	\$ 762,177	\$ 776,359	\$ 648,335
Proportionate share of the net pension liability as percentage of covered payroll	179.6%	151.7%	151.5%	155.3%
Plan's total pension liability	\$ 41,426,453,489	\$ 38,944,855,364	\$ 37,161,348,332	\$ 33,358,627,624
Plan's fiduciary net position	\$ 31,179,414,067	\$ 29,308,589,559	\$ 27,244,095,376	\$ 24,705,532,291
Plan fiduciary net position as a percentage of the total pension liability	75.26%	75.26%	73.31%	74.06%
	<u>2016</u>	<u>2015</u>		
Proportion of the net pension liability	0.01117%	0.00894%		
Proportionate share of the net pension liability	\$ 766,801	\$ 556,113		
Covered payroll	\$ 512,061	\$ 496,070		
Proportionate share of the net pension liability as percentage of covered payroll	149.7%	112.1%		
Plan's total pension liability	\$ 31,771,217,402	\$ 30,829,966,631		
Plan's fiduciary net position	\$ 24,907,305,871	\$ 24,607,502,515		
Plan fiduciary net position as a percentage of the total pension liability	78.40%	79.82%		

Notes to Schedule:

Changes in assumptions

In 2018, inflation was changed from 2.75 percent to 2.50 percent and individual salary increases and overall payroll growth was reduced from 3.00 percent to 2.75 percent.

In 2017, as part of the Asset Liability Management review cycle, the discount rate was changed from 7.65 percent to 7.15 percent.

In 2016, the discount rate was changed from 7.5 percent (net of administrative expense) to 7.65 percent to correct for an adjustment to exclude administrative expense.

In 2015, amounts reported as changes in assumptions resulted primarily from adjustments to expected ages of general employees.

*- Fiscal year 2015 was the 1st year of implementation, thus only six years are shown.

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT

SCHEDULE OF PENSION CONTRIBUTIONS

Last 10 Years*

As of June 30, 2020

The following table provides required supplementary information regarding the District's Pension Plan.

	2020	2019	2018	2017
Contractually required contribution (actuarially determined)	\$ 161,923	\$ 136,795	\$ 98,219	\$ 104,648
Contribution in relation to the actuarially determined contributions	161,923	136,795	98,219	104,648
Contribution deficiency (excess)	\$ -	\$ -	\$ -	\$ -
Covered payroll	\$ 784,070	\$ 702,820	\$ 762,177	\$ 776,539
Contributions as a percentage of covered payroll	20.65%	19.46%	12.89%	13.48%
	2016	2015		
Contractually required contribution (actuarially determined)	\$ 77,019	\$ 48,422		
Contribution in relation to the actuarially determined contributions	77,019	48,422		
Contribution deficiency (excess)	\$ -	\$ -		
Covered payroll	\$ 648,335	\$ 512,061		
Contributions as a percentage of covered payroll	11.88%	9.46%		

Notes to Schedule

Valuation Date:	6/30/2014		
Actuarial cost method	Entry Age Normal		
Asset valuation method	5-year smoothed market		
Amortization method	The unfunded actuarial accrued liability is amortized over an open 17 year period as a level percentage of payroll.		
Discount rate	7.50%		
Amortization growth rate	3.75%		
Price inflation	3.25%		
Salary increases	3.75% plus merit component based on employee classification and years of service		
Mortality	Sex distinct RP-2000 Combined Mortality projected to 2010 using Scale AA with a 2 year setback for males and a 4 year setback for females.		
Valuation Date:	6/30/2017	6/30/2016	6/30/2015
Discount Rate:	7.375%	7.375%	7.65%
Inflation:	2.625%		

*- Fiscal year 2015 was the 1st year of implementation, therefore only six years are shown.

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
SCHEDULE OF CHANGES IN OPEB LIABILITY AND RELATED RATIOS
Last 10 Years*
As of June 30, 2020

	<u>2020</u>	<u>2019</u>	<u>2018</u>
Total OPEB Liability			
Service cost	\$ 71,936	\$ 75,519	\$ 73,498
Interest on the total OPEB liability	68,087	68,178	60,374
Actual and expected experience difference	(33,833)		
Changes in assumptions	63,487	(76,832)	
Change in benefit terms	(403,851)		
Benefit payments	<u>(69,690)</u>	<u>(68,012)</u>	<u>(65,396)</u>
Net change in total OPEB Liability	(303,864)	(1,147)	68,476
Total OPEB liability - beginning	<u>1,789,268</u>	<u>1,790,415</u>	<u>1,721,939</u>
Total OPEB liability - ending	<u><u>\$ 1,485,404</u></u>	<u><u>\$ 1,789,268</u></u>	<u><u>\$ 1,790,415</u></u>
Covered payroll	\$ 702,820	\$ 762,177	\$ 776,359
Total OPEB liability as a percentage of covered payroll	211.35%	234.76%	230.62%

*- Fiscal year 2018 was the 1st year of implementation, therefore only three years are shown.

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
SCHEDULE OF OPEB CONTRIBUTIONS

Last 10 Years*

As of June 30, 2020

The District's contribution for the fiscal year ended June 30, 2020 was \$60,728. The District did not have an actuary calculate the Actuarially Determined Contribution for the fiscal year ended June 30, 2020, therefore the District does not need to comply with GASB 75's Required Supplementary Information requirements.

The District's contribution for the fiscal year ended June 30, 2019 was \$69,690. The District did not have an actuary calculate the Actuarially Determined Contribution for the fiscal year ended June 30, 2019, therefore the District does not need to comply with GASB 75's Required Supplementary Information requirements.

The District's contribution for the fiscal year ended June 30, 2018 was \$73,106. The District did not have an actuary calculate the Actuarially Determined Contribution for the fiscal year ended June 30, 2018, therefore the District does not need to comply with GASB 75's Required Supplementary Information requirements.

*- Fiscal year 2018 was the 1st year of implementation, therefore only three years are shown.



SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT

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Staff Report

To: Board of Directors

From: Jeremy Ghent, District Administrator

Date: November 18, 2020

Subject: RESOLUTION NO. 2020-424 FOR EXECUTION, DELIVERY AND SALE OF WASTEWATER REVENUE CERTIFICATES OF PARTICIPATION AND INCREASING MAXIMUM AUTHORIZED AMOUNT THEREOF TO \$28,000,000

RECOMMENDATION:

Adopt Resolution No. 2020-424 replacing Resolution 2020-423 for the execution, delivery and sale of wastewater revenue certificates of participation and increasing the maximum principal amount to \$28,000,000.

BACKGROUND AND DISCUSSION:

At the November 4, 2020 Board Meeting, the Board adopted Resolution No. 2020-423, which confirmed the execution, delivery, and sale of wastewater revenue certificates of participation and approved the preliminary official statement and related documents. The Resolution confirmed a maximum principal amount of \$25 million for the Certificates of Participation.

On November 10, 2020, the District received two bids for the Project. As summarized in the table below, the apparent low bid is approximately \$26.9M from Filanc Construction, Inc.

Engineer's Opinion of Cost (April 2019)	PCL	Filanc
\$21,300,000	\$30,465,303	\$26,939,042

The District's team has discussed the bid results briefly with Filanc. There is a spread of approximately 13% between the two bids. However, Filanc asserts confidence in their bid and provided a letter as such, attached.

The District's Financial Consultant, Bartle Wells Associates, has re-evaluated the financial projections and determined that the District will be able to fund the project without increasing rates. The District's plan is to maintain the current rates for the next three years. After the WWTP Redundancy Project is completed, expenses and revenues will be re-evaluated to assess ongoing operating costs. The current financial projections assume inflationary rate increases (approximately 3 to 3.5%) will occur starting in year 2023.

In order to finance project construction a \$3M increase in the maximum principal amount for the Certificates of Participation from \$25M to \$28M is necessary. The attached Resolution is before you to authorize this amount and replace resolution No. 423-2020.

Although the total bid prices came in higher than the engineer's opinion of cost, there are several factors that reduce the impact to the District. The District plans to fund the project with a combination of sources consisting of a low-interest rate USDA loan, Certificates of Participation (COPs), and cash funding. The District's wastewater rate increases were adopted in February 2016. Rates were put in place to fund the WWTP Redundancy Project and ongoing operation and maintenance costs. The rate study assumed funding would come through a low interest loan from the State's Clean Water State Revolving Fund and the projections assumed no cash contribution and the loan terms would be 3% for a 30-year loan term.

The District pursued a loan with USDA Rural Development and received a letter of conditions from USDA which indicates a funding amount of \$4.464M at a maximum interest rate of 1.375% and a loan term of 40 years. Additionally, delays due to the USDA loan application process has resulted in bidding the project during a period with some of the lowest interest rates we have seen in recent history. It has also allowed the District to build reserve funds, which has partially offset the size of the required new debt.

Team Evaluation of Bid Results and Engineer's Opinion of Cost

The final Engineer's Opinion of Probable Construction Cost (OPCC) for the Redundancy Project was submitted in April 2019, and at that time it was anticipated that the project would bid shortly thereafter. Due to issues outside of the project team's direct control, the project was not bid until November 2020 – approximately 19 months later. During these 19 months, work was added to the project, federally listed species habitat was identified near the site, adjustments were made to the project approach based on a risk register prepared by the District's Construction Management Team, a global pandemic began, and a host of other unforeseeable events occurred that may have impacted the cost of the project. Below is a list of items that may have increased the cost of the project since the final OPCC was issued, followed by a table illustrating costs the approximated costs.

Some of these items were adjustments made by the Project Team to reduce risk and likelihood of change orders during construction, like prequalification of contractors, protection of existing utilities and structures with compaction grouting, and coordination with the Water Board to allow for discharge of dewatered groundwater to the outfall. Though these may have increased the bid price, these clarifying instructions protect the District from unanticipated problems and high-cost change orders during construction.

Work that was added to the project that has a **quantifiable** impact on the project cost relative to the final OPCC:

- 1) **DELAY (quantified)** The project bid was delayed by approximately 19 months from what was anticipated.
- 2) **ADDED SCOPE (quantified)** Coating of the exterior surfaces of the Primary and Secondary digesters was added to fulfill requirements of the District's Coastal Development Permit. This was previously planned to be completed separately by the District. Cost to the District was always anticipated but was accounted for outside of the Redundancy Project.

- 3) **ADDED SCOPE (quantified)** A new 24" gate valve downstream of FFR was added based on a risk assessment that some of the existing equipment planned for use during construction may be non-functional and not repairable.

Work included in the project or events that occurred that may have had an impact on the project but is **not readily quantifiable**:

- 1) **PROTECTION OF EXISTING UTILITIES AND STRUCTURES (estimated)**
The project involves excavation, dewatering, and ground improvement activities that could result in settlement of existing structures at the plant. Originally, the requirements for the contractor's protection of existing structures was strictly performance based – the contractor was responsible for determining what provisions were needed to prevent existing structures from settling. During a risk review prepared by MNS, it was decided that this performance-based approach may involve risk in that an optimistic contractor could approach the project without adequate provisions and budget for stabilizing the existing structures in place. To mitigate this risk, the District and the project team decided to modify the contract documents to explicitly require a minimum amount of compaction grouting below existing adjacent structures and pipelines. The cost impact of this change is not easily quantifiable because the original specification was exclusively performance based, and the amount of compaction grouting the Contractor would have included was based on what they were willing to risk. A minimum amount of compaction grouting was added to reduce that risk of damage to existing facilities. This effort establishes comparative bid-pricing and protects the District from some potential change orders.
- 2) **DEWATERING TREATMENT PERFORMANCE (estimated)** Groundwater level at the treatment plant is just 4 to 5 feet below ground surface, and a significant amount of dewatering water will be generated during the project's excavation. The final OPCC anticipated that the Contractor would discharge dewatering water to the treatment plant, under a low-threat discharge permit, or as an allowed non-stormwater discharge under the contractor's stormwater pollution prevention plan (SWPPP). It was also anticipated that a small desilting tank would be required for sediment removal, however, numerical performance limits for discharges were not anticipated. Through subsequent discussions with the Regional Water Quality Control Board (RWQCB), it was determined that the District was not eligible for a low-threat discharge permit, discharge under the contractor's SWPPP would not be allowed, and during the risk review by MNS there was concern about the magnitude of dewatering water generated and the risk associated with running that water through the plant. The RWQCB indicated that dewatering water could be discharged directly to the District's outfall if it met the numerical effluent quality requirements of the District's permit. The treatment system required to meet the more stringent numerical requirements in the District NPDES permit may have added cost.
- 3) **EXPOSURE TO ENDANGERED SPECIES (no estimate)** Environmental surveys revealed the potential for federally listed species (California Red Legged Frog) habitat near the project site and the potential for nesting birds near the project site. New environmental protection requirements came into the project as the District pursued USDA funding. These requirements could result in work stoppages, and therefore they could involve risk for the Contractor for which the Bidders may have added cost in their bids.
- 4) **PANDEMIC (no estimate)** The COVID-19 pandemic has affected construction around the country. Contractors and suppliers are required to provide additional PPE for their employees, screening for site entry and additional sanitation of the construction site facilities. In addition, work productivity is affected by COVID -19 protective measures

and social distancing requirements. It is likely that the bid price will be affected by the recommended COVID-19 protocols, but the magnitude of the impact cannot be accurately estimated because there is not sufficient information in the industry regarding this impact to formulate an estimate.

- 5) **GLOBAL MATERIAL PRICING (no estimate)** Tariffs over the last 19-months have been in a state of flux, and phasing in or increases in tariffs may have increased the project cost. Additionally, material shortages are being experienced globally compounded by supply chain disruptions and
- 6) **LABOR AGREEMENT (no estimate)** A community workforce agreement (CWA) was entered into by the District after the development of the final OPCC. The CWA requires the contractor hire union labor, with a certain percentage of local labor. Accordingly, a contractor cannot use their regular personnel and there is some uncertainty with the availability of qualified workers and the productivity of those that are available. There is not unanimous agreement regarding whether adoption of a CWA increases contractor bids, and the impact is likely situational and based on the project location, proximity to union labor pools, and percent share of local labor amongst other things. Anecdotally, KJ saw a cost bump after bids were submitted on the Pure Water Monterrey project and, when asked, contractors attributed some of the cost increase to adoption of a similar work force agreement. Based feedback from one of the prequalified contractors on the Redundancy Project, implementation of the CWA resulted that contractor declining to submit a bid on the project. As such, it is possible that CWA may have had increased the bid price either from thinning the pool of available bidders or due to perceived issues over required contracting from a local union labor pool.
- 7) **PREQUALIFICATION (no estimate)** The District's team decided to prequalify contractors following submittal of the final OPCC. When it became apparent that the USDA loan pursuit was going to result in delays in project bidding, the District considered performing a prequalification of contractors. Given the complexity of the project, prequalification was determined to be a benefit to the District to protect against potentially underqualified bidders and to mitigate possible bid protests, and to reduce risk of change orders during construction. Because contractor prequalification reduces the pool of potential bidders on the project. Prequalification adds value by ensuring that the District is only receiving bids from highly qualified competent contractors.

The table below summarizes some of the items that did or may have impacted the bid prices since the April 2019 OPCC was developed.

Item	Reason	Estimated Amount
April 2019 OPCC		\$21,300,000
Escalated April 2019 OPCC (quantified)	Inflation at 3.5% per year for 19 months	\$22,471,500
Added Scope since April 2019 Design		
Digester Painting (quantified)	CDP Permit requirement	\$142,220
24" Gate Valve on FFR Discharge Bypass (quantified)	Reduce risk of change order during construction due to existing inoperable gate	\$28,500
Compaction Grouting (estimated)	Reduce risk of damage to existing facilities	\$100,000 to \$300,000

Treatment of Dewatering Discharge (estimated)	Required by RWQCB, reduced risk of high dewatering flows through the plant	\$300,000 to \$400,000
Added Scope Subtotal		\$570,720 to \$870,720
Added Scope Subtotal with markups	29% avg markup, 5% contingency, 3% escalation to mid-point of construction	\$796,230 to \$1,214,770
Adjusted April 2019 OPCC for Quantifiable Items		\$23,267,730 to \$23,686,270

The difference between the Apparent Low Bid and the Escalated Engineer's Opinion of Probable Cost with the Cost Increases is between 15.7% and 17.3%. This difference may be explained by the items described above labeled as **(no estimate)**.

Fiscal Consideration:

Based on the bid results, it is necessary to increase in the maximum principal amount for the Certificates of Participation from \$25M to \$28M. The higher project cost and the resulting debt will result in an annual debt service of approximately \$1,360,000. However, the financial analysis shows that because of the District's healthy fund reserve and low interest rates, no rate increases are required at this time. Projections indicate that the District will maintain reserves of approximately 164% of Operating Expenses during the project. Revenues and expenses will be re-evaluated at completion of the WWTP Redundancy Project.

Attachments:

1. Bartle Wells Updated Financial Projections
2. Letter dated November 13, 2020 from Bob Zaiser, Filanc

RESOLUTION NO. 2020-424

A RESOLUTION OF THE SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT BOARD OF DIRECTORS CONFIRMING THE EXECUTION, DELIVERY AND SALE OF WASTEWATER REVENUE CERTIFICATES OF PARTICIPATION AND INCREASING MAXIMUM AUTHORIZED AMOUNT THEREOF TO \$28,000,000

WHEREAS, the South San Luis Obispo County Sanitation District (the "District") owns and operates facilities and property for the transportation, treatment and disposal of wastewater within the service area of the District (the "Wastewater System"); and

WHEREAS, the District is undertaking a capital improvement project for the Wastewater System referred to as the "Redundancy Project" (the "Project");

WHEREAS, to finance a portion of the cost of the Project, on August 5, 2020, the Board of Directors of the District adopted Resolution No. 2020-419, which, among other things, approved the execution and delivery of the District's 2020 Wastewater Revenue Certificates of

Participation, in one or more series (collectively, the "Certificates"), in the maximum principal amount of \$25,000,000, pursuant to a Trust Agreement among the District, Public Property Financing Corporation of California, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation") and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"); and

WHEREAS, on November 4, 2020, the Board of Directors of the District adopted Resolution No. 2020-423, confirming the execution and delivery of the Certificates and approving a form of Preliminary Official Statement and a form of Notice of Sale relating to the sale of the Certificates; and

WHEREAS, after receiving and opening the bids for the Project, the District anticipates that it may need to issue up to \$28,000,000 principal amount of Certificates, and the Board of Directors of the District wishes to confirm the execution and delivery of the Certificates up to such increased principal amount;

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

Section 1. Confirmation of Financing Plan; Increase to Maximum Principal Amount. The Board of Directors hereby confirms the execution, delivery and sale of the Certificates as set forth in Resolution No. 2020-419 and Resolution No. 2020-423, except that the maximum principal amount of Certificates that may be sold is hereby increased to \$28,000,000. Except as set forth in the preceding sentence, the provisions of Resolution No. 2020-419 and Resolution No. 2020-423 are hereby confirmed and ratified in all respects.

Section 2. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED at a regular meeting of the South San Luis Obispo County Sanitation District Board of Directors held this ____ day of _____ 2020.

On the motion of Director _____, seconded by Director _____, and by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

South San Luis Obispo County Sanitation District



Wastewater Financial Projections

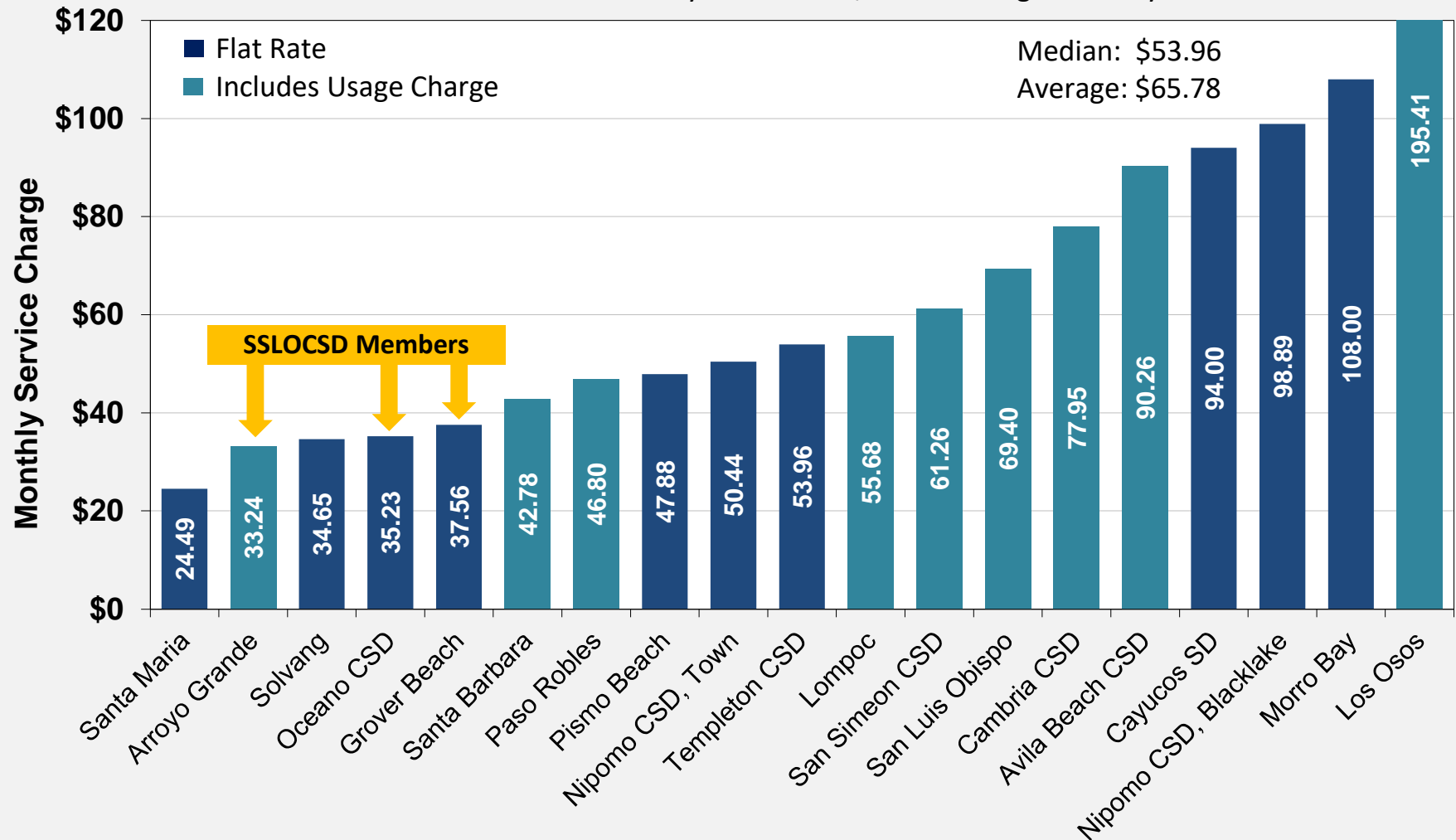
Updated 11/12/20



BARTLE WELLS ASSOCIATES
INDEPENDENT PUBLIC FINANCE ADVISORS

Monthly Single Family Residential Sewer Rate Survey

Based on Flat Rate or 6 hcf Monthly Winter Use / 8 hcf Average Monthly Use



Rates Effective September 2020

Table 1
South San Luis Obispo County Sanitation District
Historical Wastewater Treatment Rates

	Prior Rates	Jan 1 2007	May 1 2007	May 1 2008	May 1 2009	May 1 2010	July 1 2017	July 1 2018	July 1 2019
a. Residences & Apartments	\$6.50	\$8.93	\$10.70	\$12.31	\$13.52	\$14.86	\$21.56	\$23.52	\$25.48
b. Hotel Units with Kitchens	5.20	9.41	11.29	12.98	14.28	15.71	18.85	20.56	22.27
c. Hotel Units without Kitchens	4.40	6.02	7.22	8.30	9.12	10.02	12.12	13.22	14.32
d. Hotel Room	4.55	6.22	7.46	8.58	9.42	10.36	12.12	13.22	14.32
e. Commercial Establishments	6.73	4.59	5.51	6.26	6.97	7.65	9.69	10.57	11.45
Each additional employee above 5	0.44	0.92	1.10	1.25	1.39	1.53	1.95	2.13	2.31
f. Beauty Shops	8.66	8.49	10.19	11.60	12.73	13.97	19.39	21.15	22.91
Each additional operator above 5	0.86	1.41	1.70	1.93	2.12	2.33	2.93	3.20	3.47
g. Eating Establishments w/o Grinders	9.31	9.11	10.92	12.56	13.79	15.16	30.17	32.91	35.65
Each additional 5 seats above 30	1.01	1.52	1.82	2.09	2.30	2.53	4.53	4.94	5.35
h. Restaurants (w/Grinders) less than 30 seats	14.78	17.30	20.67	24.31	28.12	31.07	48.50	52.91	57.32
Restaurants (w/Grinders) over 30 seats	18.29	22.18	26.51	31.17	36.06	39.84	67.89	74.06	80.23
i. Laundromats - per washing machine	2.96	5.83	7.01	7.98	8.85	9.71	13.89	15.15	16.41
Minimum Charge	8.71	17.50	21.03	23.93	26.54	29.14	41.70	45.49	49.28
j. Service Stations - no wash/rack	7.86	23.26	27.91	31.84	34.11	37.41	57.11	62.30	67.49
Service Stations - with wash/rack	12.47	34.18	41.06	46.56	49.65	54.40	81.92	89.37	96.82
k. Factories	12.47	13.34	16.02	18.30	20.08	22.05	32.33	35.27	38.21
Each additional employee above 20	0.38	0.66	0.80	0.91	1.00	1.10	1.62	1.77	1.92
l. Churches	6.71	7.57	9.10	10.34	11.44	12.56	17.89	19.52	21.15
Per ADA with elementary school	0.21	0.21	0.25	0.28	0.31	0.34	0.54	0.59	0.64
Per ADA with other school	0.30	0.30	0.36	0.42	0.46	0.51	0.79	0.86	0.93
m. Bottling Plants	12.47	13.34	16.02	18.30	20.08	22.05	38.81	42.34	45.87
n. Schools (Non-boarding)	3.25	4.27	5.13	5.83	6.44	7.07	10.74	11.72	12.70
Per ADA with elementary school	0.21	0.20	0.24	0.27	0.30	0.33	0.54	0.59	0.64
Per ADA with other school	0.30	0.31	0.36	0.43	0.47	0.52	0.79	0.86	0.93
o. Schools (Boarding)	3.25	4.27	5.13	5.83	6.44	7.07	10.78	11.76	12.74
Per ADA with elementary school	0.38	0.43	0.51	0.59	0.65	0.71	1.08	1.18	1.28
Per ADA with other school	0.48	0.57	0.68	0.78	0.86	0.95	1.52	1.66	1.80
p. Trailer/Mobile Home Space	6.50	2.52	3.02	3.47	3.81	4.19	12.95	14.13	15.31
q. RV Dump Stations - Less than 50 services	21.00	25.22	30.15	35.20	38.75	42.69	100.23	109.34	118.45
r. Brine (per gallon)	0.1125	0.1125	0.1125	0.1125	0.1125	0.1125	0.1125	0.1125	0.1125

Table 2
 South San Luis Obispo County Sanitation District
 Fund Reserve Balances (All Funds Combined)

	06/30/10	06/30/11	06/30/12	06/30/13	06/30/14	06/30/15	06/30/16	06/30/17	06/30/18	06/30/19	06/30/20
Fund Reserves											
Fund 19 - Operating	(\$838,066)	(\$629,362)	(\$623,451)	(\$527,497)	\$403,148	\$1,396,658	\$1,214,964	\$2,374,578	\$3,453,512	\$3,758,368	\$5,089,630
Fund 20 - Expansion	5,246,270	4,519,502	4,302,673	4,432,637	4,156,882	4,089,538	3,935,732	3,166,715	2,759,562	3,220,291	4,651,828
Fund 26 - Replacement	<u>879,665</u>	<u>693,096</u>	<u>298,303</u>	<u>12,943</u>	<u>0</u>	<u>59,460</u>	<u>396,513</u>	<u>266,331</u>	<u>219,726</u>	<u>843,589</u>	<u>857,127</u>
Fund Balances (Cash)	5,287,869	4,583,236	3,977,525	3,918,083	4,560,030	5,545,655	5,547,209	5,807,624	6,432,800	7,822,248	10,598,585

Source: South San Luis Obispo County Sanitation District, Cash Reconciliation Worksheets

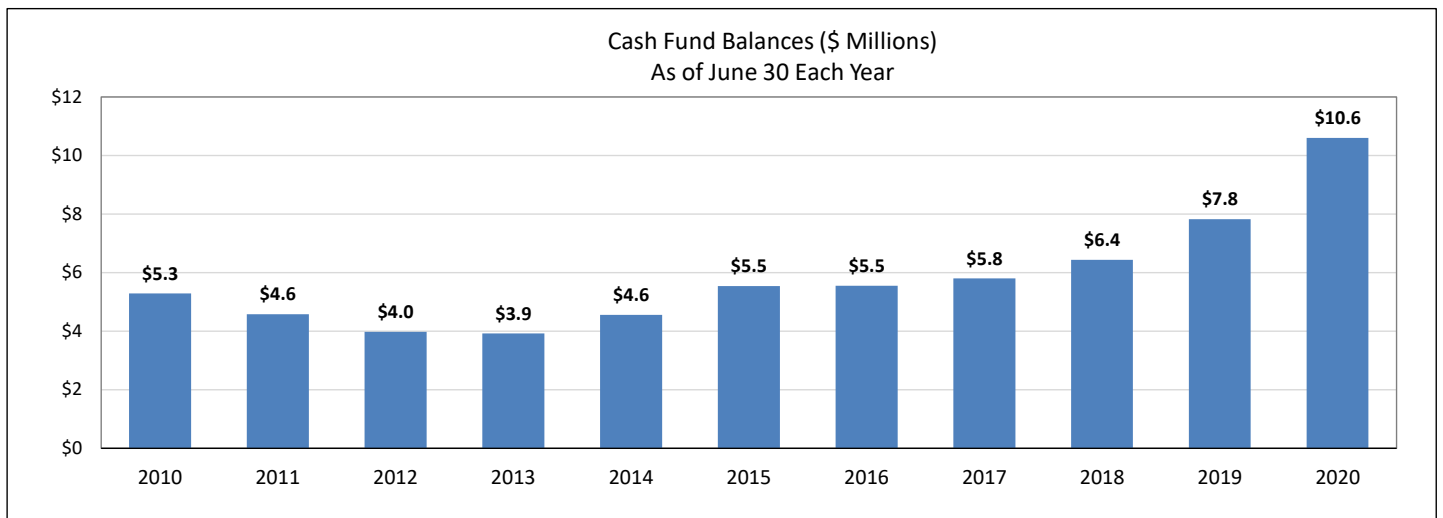


Table 3
South San Luis Obispo County Sanitation District
Historical Revenues

	2016/17	2017/18	2018/19	2019/20
Service Charges & Fees				
Arroyo Grande	\$2,133,753	\$2,174,692	\$2,312,362	\$2,609,324
Grover Beach	1,431,214	1,639,029	1,713,329	1,835,059
Oceano CSD	740,394	912,745	911,699	966,986
Schools/Other Service Income	41,055	51,973	70,719	59,283
<i>Subtotal</i>	<i>4,346,416</i>	<i>4,778,439</i>	<i>5,008,109</i>	<i>5,470,653</i>
Connection Fees				
Arroyo Grande	89,100	74,249	198,584	188,098
Grover Beach	27,843	54,445	238,765	111,988
Oceano CSD	0	7,425	4,950	11,137
<i>Subtotal</i>	<i>116,943</i>	<i>136,119</i>	<i>442,299</i>	<i>311,223</i>
Other Revenues				
Brine Disposal Services	345,647	237,266	135,076	120,343
Interest Earnings: Fund 19	21,269	42,969	81,180	124,230
Interest Earnings: Fund 20	15,756	28,779	44,202	52,607
Other/Grants	140,176	76,881	0	0
<i>Subtotal</i>	<i>522,848</i>	<i>148,628</i>	<i>125,382</i>	<i>176,837</i>
Total Revenues	4,986,207	5,063,186	5,575,790	5,958,713

Source: South San Luis Obispo County Sanitation District, Profit & Loss Statements

Note: Excludes interfund transfers

Table 4
South San Luis Obispo County Sanitation District
Historical Expenses

	2016/17	2017/18	2018/19	2019/20
Operating & Maintenance Expenses				
Salaries & Wages	776,539	799,010	702,820	784,071
Benefits & Other Personnel Costs	449,017	443,335	416,488	457,114
Admin/Professional Svcs	533,820	803,741	341,491	264,643
Permits/Licenses/Commun/Comp Supt	38,282	34,547	48,189	64,675
Maintenance, Tools, & Replacements	194,014	111,629	154,901	184,819
Materials, Services, & Supplies	267,870	313,709	327,353	351,730
Utilities	189,397	192,719	239,424	241,646
Disposal Services	50,764	115,485	47,648	52,939
Training/Memberships/Other	77,500	84,305	18,660	31,111
Equipment/Replacements Fund 26	11,640	17,807	0	24,185
Subtotal	2,588,845	2,916,287	2,296,974	2,456,933
Capital & Non-Operating Expenses				
Redundancy Project	142,528	573,724	1,109,468	310,726
Other Capital Expenditures	1,127,379	1,320,200	518,929	442,332
Equipment Lease	74,796	74,796	0	0
RWQCB ACL Fine	0	221,963	0	0
Subtotal	1,344,703	2,190,683	1,628,397	753,058
Total Expenses	3,933,548	5,106,970	3,925,371	3,209,991

Source: Based on information provided by South San Luis Obispo County Sanitation District;
excludes interfund transfers.

Table 5
South San Luis Obispo County Sanitation District
Historical Revenues & Expenses Based on Audits

	Fiscal Year Ending June 30					
	2015	2016	2017	2018	2019	2020
Gross Revenues						
Sewer Service Fees ¹	\$3,398,643	\$3,458,839	\$4,687,671	\$4,965,954	\$5,139,093	\$5,586,969
Interest Income	15,041	24,231	42,633	77,832	141,484	176,837
Connection Fees	207,335	189,155	116,943	139,935	442,299	311,223
Other Revenues ^{2,3}	34,279	28,374	144,568	22,634	4,092	4,026
Total	3,655,298	3,700,599	4,991,815	5,206,355	5,726,968	6,079,055
Operation & Maintenance Expenses⁴						
Salaries & Benefits ⁵	1,168,035	1,290,006	1,460,474	1,310,185	1,294,275	1,006,850
Other Expenses	1,313,878	1,455,082	1,488,625	1,609,661	1,207,592	1,215,751
Total	2,481,913	2,745,088	2,949,099	2,919,846	2,501,867	2,222,601
Net Revenues	1,173,385	955,511	2,042,716	2,286,509	3,225,101	3,856,454
Non-Operating Expenses						
Capital Improvements	202,514	996,714	1,269,907	1,893,924	1,628,397	753,058
Equipment Lease	74,796	74,796	74,796	74,796	0	0
Other	0	0	0	221,963	0	0
Total	277,310	1,071,510	1,344,703	2,190,683	1,628,397	753,058
Revenues Less Expenses	896,075	(115,999)	698,013	95,826	1,596,704	3,103,396
Cash & Investments as of June 30	5,554,693	5,575,929	5,807,764	6,440,940	7,820,800	10,800,911

1 Increased revenues starting 2017 are primarily due to rate increases.

2 Amount shown for fiscal year ending June 30, 2016 includes \$109,500 of grant funding.

3 Amount shown for fiscal year ending June 30, 2018 excludes a \$221,962 reduction to a settlement payable by the District that was listed as Non-Operating Revenue in the audit.

4 Excludes depreciation.

5 Amount shown for fiscal year ending June 30, 2020 accounts for a one-time OPEB credit of \$268,378 resulting in reduced expenses.

Source: Audited Financial Statements.

Table 6
 South San Luis Obispo County Sanitation District
 WWTP Redundancy Project Cost & Funding Estimates

WWTP Redundancy Project Cost Estimate¹	
Permits, Fees, Environmental & Utilities	\$315,000
Design	1,877,000
Contractor Prequalification	22,000
Design Team Services During Bid & Construction	845,000
Construction Management	2,616,000
Project Administration & Legal	655,000
Project Construction	26,939,000
Start-Up Support & SOPs	300,000
Construction Contingency	3,354,000
Professional Services Contingency	397,000
Total	37,320,000
Projected Funding Sources	
Cash Contribution ²	9,556,000
2020 Wastewater COPs	23,300,000
USDA Loan ³	4,464,000
Total	37,320,000
Estimated Project Funding Schedule by Fiscal Year	
<i>Assumes 30-month construction: January 2021 - June 2023</i>	
Prior Expenditures	2,090,000
2020/21	10,000,000
2021/22	15,000,000
2022/23	10,230,000
Total	37,320,000
1 Source: Based on actual construction bid and MKN Associates estimates. 2 Includes roughly \$2.1 million of prior cash expenditures for design/CEQA/planning/misc. 3 Proceeds will be provided as a reimbursement to interim financing.	

Table 7
South San Luis Obispo County Sanitation District
Projected Debt Service (rounded)
Net of USDA Loan Refunding of Series B COPs

Fiscal Year Ending 6/30	2020 Wastewater COPs		USDA Loan Payments ²	Total Payments
	Series A	Series B ¹		
2021	175,000	10,000	-	185,000.00
2022	1,210,000	40,000	-	1,250,000.00
2023	1,210,000	40,000	-	1,250,000.00
2024	1,210,000	USDA Reimbursement	146,000	1,356,000.00
2025	1,210,000		146,000	1,356,000.00
2026	1,210,000		146,000	1,356,000.00
2027	1,210,000		146,000	1,356,000.00
2028	1,210,000		146,000	1,356,000.00
2029	1,210,000		146,000	1,356,000.00
2030	1,210,000		146,000	1,356,000.00
2031	1,220,000		146,000	1,366,000.00
2032	1,220,000		146,000	1,366,000.00
2033	1,220,000		146,000	1,366,000.00
2034	1,220,000		146,000	1,366,000.00
2035	1,220,000		146,000	1,366,000.00
2036	1,220,000		146,000	1,366,000.00
2037	1,220,000		146,000	1,366,000.00
2038	1,220,000		146,000	1,366,000.00
2039	1,220,000		146,000	1,366,000.00
2040	1,220,000		146,000	1,366,000.00
2041	1,230,000		146,000	1,376,000.00
2042	1,230,000		146,000	1,376,000.00
2043	1,230,000		146,000	1,376,000.00
2044	1,230,000		146,000	1,376,000.00
2045	1,230,000		146,000	1,376,000.00
2046	1,230,000		146,000	1,376,000.00
2047	1,230,000		146,000	1,376,000.00
2048	1,230,000		146,000	1,376,000.00
2049	1,230,000		146,000	1,376,000.00
2050	1,230,000		146,000	1,376,000.00
2051	1,230,000		146,000	1,376,000.00
2052			146,000	146,000.00
2053			146,000	146,000.00
2054			146,000	146,000.00
2055			146,000	146,000.00
2056			146,000	146,000.00
2057			146,000	146,000.00
2058			146,000	146,000.00
2059			146,000	146,000.00
2060			146,000	146,000.00
2061			146,000	146,000.00
2062			146,000	146,000.00
2063			146,000	146,000.00
Total	36,795,000.00	90,000.00	5,840,000.00	42,725,000.00

1 Series B Payments are net of the anticipated repayment from the USDA Loan.

2 Actual timing of initial USDA Loan payment may vary.

Table 8
South San Luis Obispo County Sanitation District
Capital Improvement Plan

	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	Total
Capital Improvement Program¹									
Redundancy Project	10,000,000	15,000,000	10,230,000	-	-	-	-	-	35,230,000
Digester Cleaning & Coating	965,000	-	-	-	-	-	-	-	965,000
Trunk Sewer Maintenance	100,000	-	-	-	-	-	-	-	100,000
Cogeneration Unit Design	100,000	-	-	-	-	-	-	-	100,000
MCC Electrical Boxes	-	-	-	394,000	-	-	-	-	394,000
Fixed Film Reactor	-	-	-	511,000	1,067,000	-	-	-	1,578,000
Headworks	-	-	-	-	-	7,000	93,000	433,000	533,000
Splitter Box	-	-	-	-	-	984,000	244,000	-	1,228,000
Plant Well Water System	-	-	-	-	-	-	276,000	-	276,000
SCADA System	-	-	-	-	-	-	305,000	-	305,000
Secondary Clarifier #1	-	-	-	-	-	-	-	687,000	687,000
Other/Miscellaneous	387,000	500,000	500,000	131,000	4,000	119,000	221,000	61,000	1,923,000
Total	11,552,000	15,500,000	10,730,000	1,036,000	1,071,000	1,110,000	1,139,000	1,181,000	43,319,000
Anticipated Funding Sources									
2020 Wastewater Revenue COPs ²	9,000,000	14,000,000	4,764,000						27,764,000
Cash Funding ³	2,552,000	1,500,000	5,966,000	1,036,000	1,071,000	1,110,000	1,139,000	1,181,000	15,555,000
Total	11,552,000	15,500,000	10,730,000	1,036,000	1,071,000	1,110,000	1,139,000	1,181,000	43,319,000

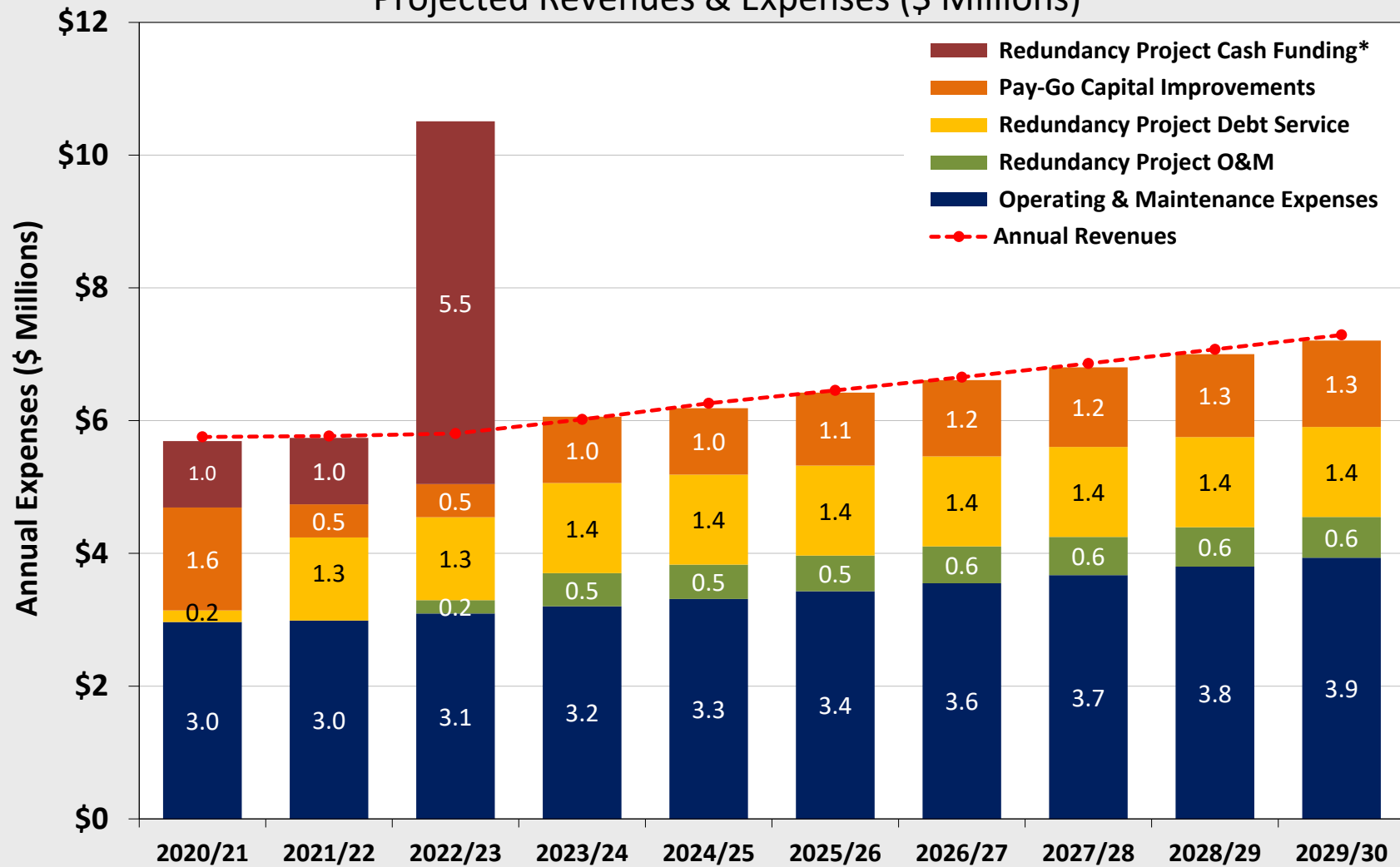
1 Cost estimates are escalated to future dollars.

2 District anticipates a \$4,464,000 USDA Loan will refund a portion of the 2020 Wastewater COPs when the Redundancy Project is complete.

3 District anticipates partially drawing down accrued fund reserves to help fund the Redundancy Project in 2021/22 and 2022/23.

Table 9	South San Luis Obispo CSD Cash Flow Projections									Revised 11-12-20
	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30
	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected
Rate Increases	0.0%	0.0%	0.0%	4.0%	4.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Monthly Residential Sewer Charge	\$25.48	\$25.48	\$25.48	\$26.50	\$27.56	\$28.39	\$29.24	\$30.12	\$31.02	\$31.95
Growth (ERUs)	40	40	40	40	40	40	40	40	40	40
Est. Growth %	0.22%	0.22%	0.22%	0.22%	0.22%	0.22%	0.22%	0.22%	0.22%	0.22%
Cost Escalation		3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%
Interest Earnings Rate	0.5%	0.5%	0.75%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%
Beginning Fund Reserves	\$10,599,000	\$10,663,000	\$10,691,000	\$5,987,000	\$5,932,000	\$5,991,000	\$6,009,000	\$6,037,000	\$6,079,000	\$6,136,000
REVENUES										
Sewer Treatment Charges	5,482,000	5,494,000	5,506,000	5,739,000	5,982,000	6,175,000	6,374,000	6,580,000	6,792,000	7,011,000
Brine Disposal	120,000	120,000	120,000	120,000	120,000	120,000	120,000	120,000	120,000	120,000
Investment Earnings	53,000	53,000	80,000	60,000	59,000	60,000	60,000	60,000	61,000	61,000
Connection Fees	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
Total Revenues	5,755,000	5,767,000	5,806,000	6,019,000	6,261,000	6,455,000	6,654,000	6,860,000	7,073,000	7,292,000
Drawdown of 2020 COP Project Proceeds	9,000,000	14,000,000	4,764,000							
USDA Loan Refinancing (shown for timing only)			4,464,000							
EXPENSES										
<u>Operating & Maintenance</u>	<u>Budget</u>									
Personnel Costs	1,327,000	1,373,000	1,421,000	1,471,000	1,522,000	1,575,000	1,630,000	1,687,000	1,746,000	1,807,000
Admin/Professional Svcs	471,000	487,000	504,000	522,000	540,000	559,000	579,000	599,000	620,000	642,000
Maintenance, Tools & Replacements	367,000	200,000	207,000	214,000	221,000	229,000	237,000	245,000	254,000	263,000
Equipment/Short Lived Assets	incl above	100,000	104,000	108,000	112,000	116,000	120,000	124,000	128,000	132,000
Materials, Services, & Supplies	371,000	384,000	397,000	411,000	425,000	440,000	455,000	471,000	487,000	504,000
Utilities	241,000	249,000	258,000	267,000	276,000	286,000	296,000	306,000	317,000	328,000
Other Operating Expenses	189,000	196,000	203,000	210,000	217,000	225,000	233,000	241,000	249,000	258,000
Redundancy Project Operating Expenses	-	-	200,000	500,000	518,000	536,000	555,000	574,000	594,000	615,000
Subtotal	2,966,000	2,989,000	3,294,000	3,703,000	3,831,000	3,966,000	4,105,000	4,247,000	4,395,000	4,549,000
<u>Debt Service</u>										
2020 Wastewater Revenue COPs	175,000	1,250,000	1,250,000	1,210,000	1,210,000	1,210,000	1,210,000	1,210,000	1,210,000	1,210,000
USDA Loan	-	-	-	146,000	146,000	146,000	146,000	146,000	146,000	146,000
Subtotal	175,000	1,250,000	1,250,000	1,356,000	1,356,000	1,356,000	1,356,000	1,356,000	1,356,000	1,356,000
<u>Capital Improvements</u>										
Redundancy Project	10,000,000	15,000,000	10,230,000	-	-	-	-	-	-	-
Other Capital Improvements	1,550,000	500,000	500,000	1,000,000	1,000,000	1,100,000	1,150,000	1,200,000	1,250,000	1,300,000
Subtotal	11,550,000	15,500,000	10,730,000	1,000,000	1,000,000	1,100,000	1,150,000	1,200,000	1,250,000	1,300,000
Total Expenses	14,691,000	19,739,000	15,274,000	6,059,000	6,187,000	6,422,000	6,611,000	6,803,000	7,001,000	7,205,000
Revenues Less Expenses	64,000	28,000	(4,704,000)	(40,000)	74,000	33,000	43,000	57,000	72,000	87,000
Transfer to USDA Debt Service Rsrv Fund	-	-	-	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)
Ending Fund Reserves	10,663,000	10,691,000	5,987,000	5,932,000	5,991,000	6,009,000	6,037,000	6,079,000	6,136,000	6,208,000
Ending USDA Debt Svc Reserve Fund	-	-	-	15,000	30,000	45,000	60,000	75,000	90,000	105,000
Debt Service Coverage	15.94	2.22	2.01	1.71	1.79	1.84	1.88	1.93	1.97	2.02

South San Luis Obispo County Sanitation District Projected Revenues & Expenses (\$ Millions)



* Includes cash contribution from fund reserves and rate revenues.

Note: Expenses shown exclude Redundancy Project costs financed via debt.

2020 Wastewater Revenue Certificates of Participation

Table A-1

South San Luis Obispo County Sanitation District
Estimated Sources & Uses of Funds

Dated Date/Closing Date	12/16/20
--------------------------------	----------

		Series A	Series B*	Total
Sources				
Principal Series A		\$21,225,000.00	-	\$21,225,000.00
Principal Series B		-	4,465,000.00	4,465,000.00
Original Issue Premium		2,353,661.66	0.00	2,353,661.66
Total Sources		23,578,661.66	4,465,000.00	28,043,661.66
% of Total		84.078%	15.922%	100.000%
Uses				
Project Fund, Series A		23,300,000.00	-	23,300,000.00
Project Fund, Series B*		-	4,415,608.28	4,415,608.28
Underwriter's Discount	tbd	106,125.00	22,325.00	128,450.00
Costs of Issuance	tbd	142,933.28	27,066.72	170,000.00
Bond Insurance	tbd	-	-	0.00
Reserve Surety	tbd	27,438.75	-	27,438.75
Rounding	tbd	2,164.63	0.00	0.00
Total Uses		23,578,661.66	4,465,000.00	28,041,497.03

* Provides interim financing for share of project costs to be funded by USDA Loan

Table A-2

South San Luis Obispo County Sanitation District
2020 Wastewater Revenue COPs, Series A

Dated Date	12/16/20
First Call Date	09/01/28

Payment Date	Principal	Rate	Price	Yield	Interest	Installment Payment	Annual Payments	Fiscal Year Payments
03/01/21					176,875.00	176,875.00		176,875.00
09/01/21	370,000	4.000%	102.5434	0.400%	424,500.00	794,500.00	971,375.00	
03/01/22					417,100.00	417,100.00		1,211,600.00
09/01/22	385,000	4.000%	105.9457	0.500%	417,100.00	802,100.00	1,219,200.00	
03/01/23					409,400.00	409,400.00		1,211,500.00
09/01/23	400,000	4.000%	109.1196	0.600%	409,400.00	809,400.00	1,218,800.00	
03/01/24					401,400.00	401,400.00		1,210,800.00
09/01/24	420,000	4.000%	111.8632	0.750%	401,400.00	821,400.00	1,222,800.00	
03/01/25					393,000.00	393,000.00		1,214,400.00
09/01/25	435,000	4.000%	114.2584	0.900%	393,000.00	828,000.00	1,221,000.00	
03/01/26					384,300.00	384,300.00		1,212,300.00
09/01/26	455,000	4.000%	116.0012	1.100%	384,300.00	839,300.00	1,223,600.00	
03/01/27					375,200.00	375,200.00		1,214,500.00
09/01/27	470,000	4.000%	119.4167	1.000%	375,200.00	845,200.00	1,220,400.00	
03/01/28					365,800.00	365,800.00		1,211,000.00
09/01/28	490,000	4.000%	118.9337	1.400%	365,800.00	855,800.00	1,221,600.00	
03/01/29					356,000.00	356,000.00		1,211,800.00
09/01/29	510,000	4.000%	119.4350 C	1.338%	356,000.00	866,000.00	1,222,000.00	
03/01/30					345,800.00	345,800.00		1,211,800.00
09/01/30	535,000	4.000%	118.5353 C	1.450%	345,800.00	880,800.00	1,226,600.00	
03/01/31					335,100.00	335,100.00		1,215,900.00
09/01/31	555,000	4.000%	117.0870 C	1.632%	335,100.00	890,100.00	1,225,200.00	
03/01/32					324,000.00	324,000.00		1,214,100.00
09/01/32	580,000	4.000%	116.2443 C	1.739%	324,000.00	904,000.00	1,228,000.00	
03/01/33					312,400.00	312,400.00		1,216,400.00
09/01/33	605,000	4.000%	115.6519 C	1.815%	312,400.00	917,400.00	1,229,800.00	
03/01/34					300,300.00	300,300.00		1,217,700.00
09/01/34	630,000	4.000%	114.8090 C	1.923%	300,300.00	930,300.00	1,230,600.00	
03/01/35					287,700.00	287,700.00		1,218,000.00
09/01/35	655,000	4.000%	113.7349 C	2.063%	287,700.00	942,700.00	1,230,400.00	
03/01/36					274,600.00	274,600.00		1,217,300.00
09/01/36	680,000	4.000%	112.4494 C	2.233%	274,600.00	954,600.00	1,229,200.00	
03/01/37					261,000.00	261,000.00		1,215,600.00
09/01/37	710,000	4.000%	111.6641 C	2.337%	261,000.00	971,000.00	1,232,000.00	
03/01/38					246,800.00	246,800.00		1,217,800.00
09/01/38	740,000	4.000%	111.4657 C	2.364%	246,800.00	986,800.00	1,233,600.00	
03/01/39					232,000.00	232,000.00		1,218,800.00
09/01/39	770,000	4.000%	111.1923 C	2.400%	232,000.00	1,002,000.00	1,234,000.00	
03/01/40					216,600.00	216,600.00		1,218,600.00
09/01/40	800,000	4.000%	110.8483 C	2.447%	216,600.00	1,016,600.00	1,233,200.00	
03/01/41					200,600.00	200,600.00		1,217,200.00
09/01/41	835,000	4.000%	110.4380 C	2.502%	200,600.00	1,035,600.00	1,236,200.00	
03/01/42					183,900.00	183,900.00		1,219,500.00
09/01/42	865,000	4.000%	109.1547 C	2.677%	183,900.00	1,048,900.00	1,232,800.00	
03/01/43					166,600.00	166,600.00		1,215,500.00
09/01/43	900,000	4.000%	109.1031 C	2.684%	166,600.00	1,066,600.00	1,233,200.00	

Table A-2

South San Luis Obispo County Sanitation District
2020 Wastewater Revenue COPs, Series A

Dated Date	12/16/20
First Call Date	09/01/28

Payment Date	Principal	Rate	Price	Yield	Interest	Installment Payment	Annual Payments	Fiscal Year Payments
03/01/44					148,600.00	148,600.00		1,215,200.00
09/01/44	940,000	4.000%	108.8528 ^C	2.719%	148,600.00	1,088,600.00	1,237,200.00	
03/01/45					129,800.00	129,800.00		1,218,400.00
09/01/45	975,000	4.000%	108.2201 ^C	2.806%	129,800.00	1,104,800.00	1,234,600.00	
03/01/46					110,300.00	110,300.00		1,215,100.00
09/01/46	1,015,000	4.000%	107.5419 ^C	2.901%	110,300.00	1,125,300.00	1,235,600.00	
03/01/47					90,000.00	90,000.00		1,215,300.00
09/01/47	1,060,000	4.000%	107.5391 ^C	2.901%	90,000.00	1,150,000.00	1,240,000.00	
03/01/48					68,800.00	68,800.00		1,218,800.00
09/01/48	1,100,000	4.000%	107.5221 ^C	2.903%	68,800.00	1,168,800.00	1,237,600.00	
03/01/49					46,800.00	46,800.00		1,215,600.00
09/01/49	1,145,000	4.000%	107.4914 ^C	2.908%	46,800.00	1,191,800.00	1,238,600.00	
03/01/50					23,900.00	23,900.00		1,215,700.00
09/01/50	1,195,000	4.000%	107.4479 ^C	2.914%	23,900.00	1,218,900.00	1,242,800.00	1,218,900.00
Total	21,225,000				15,416,975.00	36,641,975.00	36,641,975.00	36,641,975.00

^C Priced to first optional redemption date of September 1, 2028.

Table A-3
 South San Luis Obispo County Sanitation District
 Wastewater Revenue COPs, Series B

USDA Loan Interim Financing

Dated Date	12/16/20
------------	----------

Payment Date	Principal	Rate	Price	Yield	Interest	Installment Payment	Annual Payments	Fiscal Year Payments
03/01/21					8,371.88	8,371.88		8,371.88
09/01/21					20,092.50	20,092.50	28,464.38	
03/01/22					20,092.50	20,092.50		40,185.00
09/01/22					20,092.50	20,092.50	40,185.00	
03/01/23					20,092.50	20,092.50		40,185.00
09/01/23					20,092.50	20,092.50	40,185.00	
03/01/24					20,092.50	20,092.50		40,185.00
09/01/24					20,092.50	20,092.50	40,185.00	
03/01/25					20,092.50	20,092.50		40,185.00
09/01/25	4,465,000	0.900%	100.0000	0.900%	20,092.50	4,485,092.50	4,505,185.00	4,505,185.00
Total	4,465,000				189,204.38	4,654,204.38	4,654,204.38	4,674,296.88

Note: Series B Bonds will be refunded by a USDA Loan after project completion, anticipated on or about July 1, 2023.

November 13, 2020

Mr. Jeremy Ghent, P.E.
South San Luis Obispo County Sanitation District
1600 Aloha Place
Oceano, San Luis Obispo, CA 93445

Re: WWTP Redundancy Project

Subject: Letter of Bid Assurance

Dear Mr. Ghent,

J.R. Filanc Construction, Inc.'s bid for the South San Luis Obispo County Sanitation District WWTP Redundancy Project is a fair, accurate, reasonable, and complete bid for construction of the project pursuant to the contract documents in the Request for Proposal ("RFP") issued by the District. As specified in the RFP, Filanc has accounted for all contractually required foreseeable costs of construction, overhead and profit in the bid submitted. Assuming no change in scope or unforeseeable interferences, changes, or disruptions, the Project will be completed for the price quoted by Filanc, and within the contract time specified in the Contract Documents. Filanc stands ready after the project is awarded and a start date is established, to commence work immediately and expeditiously as required by the Contract.

Best regards,
J.R. Filanc Construction Company


Bob Zaiser
Vice President



SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT

Post Office Box 339 Oceano, California 93475-0339

1600 Aloha Oceano, California 93445-9735

Telephone (805) 489-6666 FAX (805) 489-2765

www.sslcsd.org

Staff Report

To: Board of Directors

From: Jeremy Ghent, District Administrator

Date: November 18, 2020

Subject: **AUTHORIZE EXECUTION OF UPDATED CONTRACT LANGUAGE FOR WWTP REDUNDANCY PROJECT CONSTRUCTION MANAGEMENT SERVICES WITH MNS ENGINEERS, INC.**

RECOMMENDATION:

Authorize the District Administrator to execute an updated contract for Construction Management Services for the Wastewater Treatment Plant Redundancy Project with MNS Engineers, Inc. in the amount of \$2,616,044.

BACKGROUND AND DISCUSSION:

The District has been working to develop the Wastewater Treatment Plant (WWTP) Redundancy Project, the largest capital improvements project the District has undertaken since the 1986 WWTP Improvements. The project is intended to allow major process units to be removed from service for maintenance or repairs without risking violation of effluent permit limits.

The District advertised a Request for Qualifications in May 2019 for Construction Management Services for the Redundancy Project. Statements of Qualifications were received, and District staff interviewed and evaluated the proposing teams, ultimately bringing the recommendation to your Board on October 30, 2019 to enter into a contract with MNS Engineers, Inc. The Board passed a motion authorizing the District Administrator to execute the contract, and that contract was finalized, dated December 10, 2019.

At that time, the project loan application to USDA was not yet complete. The District completed the loan application and USDA issued a Letter of Conditions, dated June 3, 2020, which indicates the loan terms and conditions to be met prior to finalizing the loan agreement. One of these conditions is to complete an Agreement for Engineering Services using the USDA Guidance Document or other USDA-approved form of agreement. District staff submitted the December 10, 2019 Agreement with MNS to USDA for review and USDA is requiring a revised agreement, based on Engineers Joint Contract Documents (EJCDC) as indicated in the USDA RUS Bulletin 1780-26.

The proposed scope of services and fee is unchanged, and remains as follows:

- Bid phase services, including development of a risk registry and constructability review of the final plans and specifications
- Conduct the preconstruction conference and weekly progress meetings
- Provide monthly construction project reports to the District
- Monitor construction schedule and cost
- Document project correspondence and manage submits, RFIs, change order requests, etc. utilizing an online project management software
- Review and submit paperwork for compliance with permitting and federal funding requirements
- Perform field observation, special inspection, and materials testing
- Inspect and monitor startup and commissioning
- Coordinate project closeout, including final project walkthroughs, punch lists, and corrective work as needed

The District will issue a letter of termination for convenience, indicating the new contract will be executed to comply with USDA requirements for funding a portion of the project.

Fiscal Consideration:

There are no fiscal impacts to execute the revised contract. The cost was previously approved at \$2,616,044 and remains unchanged. This authorization replaces the existing contract by inserting USDA guidance language to comply with receiving the USDA funding in compliance with the USDA Letter of Conditions.

Attachments:

1. Draft Revised Contract
2. Original Contract

AGREEMENT
BETWEEN OWNER AND ENGINEER FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of [] ("Effective Date") between
South San Luis Obispo County Sanitation District ("Owner") and
MNS Engineers, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

WWTP Redundancy Project ("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

Construction Project Management Engineer – provide construction project management professional civil engineering services as described in the California Professional Engineers Act.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. The Construction Project Management Engineer (referred to as Engineer in this agreement) shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer's services;
 2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. **Invoices must include a breakdown of services provided.** Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.
- B. *The Engineer's opinion of the Total Project Cost, including a Construction Cost, and any revisions thereof will be based on compliance with the American Iron and Steel Requirements that are applicable to this project.*

5.02 *Designing to Construction Cost Limit*

- A. *If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.*

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 Standards of Performance

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall, at all time, exercise the standard of care to comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make

This document is a MODIFIED version of EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

- G. ~~The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.~~ The general conditions for the construction contract documents were prepared by Kennedy Jenks Consultants, the project Design Engineer. The Construction Project Management Engineer (MNS Engineers, Inc.) is referred to in the general conditions as the "Engineer" and Kennedy Jenks Consultants is referred to as the "Design Engineer".
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 ~~Design Without Construction Phase Services~~

- A. ~~Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims,~~

~~Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.~~

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations:
 - (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 - (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants;
 - (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and
 - (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer **may** jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same,

then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.

- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 Indemnification and Mutual Waiver

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants and subject to final adjudication. ~~This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."~~
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations. ~~and to the extent (if any) required in Exhibit I, "Limitations of Liability."~~
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys' fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share, based on final adjudication, that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement **as the Construction Project Management Engineer, which is MNS Engineers, Inc.**
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part

thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
38. *Agency*—The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.
39. *American Iron and Steel Requirements*—The USDA’s Rural Utilities Service (RUS) American Iron and Steel (AIS) Requirements that are based on a statute described in Section 746 Division A Title VII of the Consolidated Appropriations Act of 2017 (Agriculture, Rural Development, Food and Drug administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative
- E. Exhibit E, Notice of Acceptability of Work
- F. Exhibit F, Construction Cost Limit - **DELETED**
- G. Exhibit G, Insurance
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability - **DELETED**
- J. Exhibit J, Special Provisions - **DELETED**
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 Federal Requirements

- A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 (2014) hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.
- B. Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. Restrictions on Lobbying. Engineer and each Consultant shall comply with the "Byrd anti-lobbying amendment (31 U.S.C. 1352)" if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. Suspension and Debarment. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.
- E. American Iron and Steel Requirements. As defined in Article 7.01 A.39. The Engineer's responsibilities and certification forms that are attached to this engineering agreement are included as guidance for the Engineer's compliance with the USDA Rural Development's American Iron and Steel (AIS) Requirements that are applicable to this project.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: South San Luis Obispo County Sanitation District

Engineer: MNS Engineers, Inc.

By: _____
Print name: Jeremy Ghent
Title: District Administrator
Date Signed: _____

By: _____
Print name: Jim Salvito
Title: President & CEO
Date Signed: _____

Address for Owner's receipt of notices:

P.O. Box 339
Oceano, CA 93475-0339

Designated Representative (Paragraph 8.03.A):

Jeremy Ghent
Title: District Administrator
Phone Number: 805-439-6666
E-Mail Address: jeremy@sslcsd.us

Engineer License or Firm's Certificate No. (if required):

[]

State of: []

Address for Engineer's receipt of notices:

201 N. Calle Cesar Chavez, Suite 300
Santa Barbara, CA 93103

Designated Representative (Paragraph 8.03.A):

Tanveer Rao, PE, CCM
Title: Principal Construction Manager
Phone Number: 714-313-5964
E-Mail Address: trao@mnsengineers.com

This is **EXHIBIT A**, consisting of [8] pages,

referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 *Study and Report Phase* **Not Used**

A1.02 *Preliminary Design Phase* **Not Used**

A1.03 *Final Design Phase* **Not Used**

A1.04 *Bidding Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. **Support the Design Engineer in the issuance of addenda as needed.**
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.

Exhibit A – Engineer's Services

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Page 1

Item 6C Attachment No. 1

6. Not Used
 7. Attend and chair the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
 9. Perform or provide the following other Bidding Phase tasks or deliverables:
 - a. Complete a Kick-off Meeting with the District and Design Engineer to establish lines of communication in compliance with the General Conditions of the Construction Contract as well as discuss project procedures, protocol and concerns related to coordination, operational, permitting or funding.
 - b. Develop a project Risk Matrix to identify potential project risks and to provide recommendations to the District, Agency and Design Engineer for risk mitigation.
 - c. Complete a Constructability Review of the project construction documents including 100% plans and specifications, proposed bid schedule and other related components of the bidding and construction documents.
 - d. Prepare a Project Management Plan that defines project administration and document control processes.
- B. The Bidding Phase will be considered complete upon commencement of the Construction Phase.

A1.05 Construction Phase

- A. Upon successful completion of the Bidding Phase, and upon written authorization from Agency and Owner, Engineer shall:
 1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the General Conditions of the Construction Contract. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of the Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through the Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR)*: Provide the services of an RPR (resident inspector) at the Site to assist the Project Design Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify the Project Design Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selection of Independent Testing Laboratory*: Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
4. *Pre-Construction Conference*: Participate in **and chair** a pre-construction conference prior to commencement of Work at the Site. **The Engineer shall record the items of discussion on a form approved by USDA.**
5. *Electronic Transmittal Protocols*: If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post Construction Phase.
6. *Original Documents*: Maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules*: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8.  *Guidelines and Benchmarks*: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction*: In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as the Engineer deems necessary, to observe as an experienced and qualified **Construction Project Management** professional **civil engineer** the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. **Not Used**
 - c. **The visits described in Article A1.05.A.9.a. shall be at least monthly, and the Construction Project Management Engineer shall document all visits to the project with copies furnished to the Owner, Design Engineer and Agency.**
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner **and Design Engineer** of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* **Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs) or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents. Provide documentation to the Design Engineer for additional review and written comment as needed.**
13. *Non-reviewable Matters:* **If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.**
14. *Field Orders:* **Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.**
15. *Change Orders and Work Change Directives:* **Recommend Change Orders and Work Change Directives to Owner and Design Engineer, as appropriate, and prepare Change Orders and Work Change Directives as required for review and authorization by the Owner and Design Engineer.**
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner, **Agency and Design Engineer.**

17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted. Submit Contractor documents to the Design Engineer for review and written comment as desired. Engineer is to ensure that all Contractor submittals shall include a Manufacturer's Certification to verify compliance with American Iron and Steel Requirements, as applicable, for iron and steel products proposed for use in the project construction that are not under a waiver.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. Submit contractor documents to the Design Engineer for additional review and written comment as desired.
19. *Inspections and Tests:*
- Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests **after submitting the compliance information to the Design Engineer for evaluation and written comment as desired.**
 - As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims:*
- Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. Submit the Contractor's documents to the Design Engineer for additional review and written comment as desired.**
 - Provide information or data to Owner and Design Engineer regarding engineering or technical matters pertaining to Claims.**

21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified **Construction Project Management professional civil engineer** and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
- b. By recommending payment, Engineer shall not be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner and **Design Engineer as appropriate**, maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.

23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner, Agency, Design Engineer and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the establishment of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final Substantial Completion date. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:
- a. Act as agent for District to complete the notification and application required for a new electrical power supply connection from the appropriate power service provider and manage the new service connection process for completion as soon as practicable.
 - b. Review the draft Operations and Maintenance (O&M) Manual provided by the Contractor that includes equipment and processes included in the Contractor's work that need an O&M Manual. Modify as needed and submit the final O&M Manual to the District.
 - c. Conduct with District Staff the facility startup and training of equipment and processes included in the Contractor's work.
 - d. Document and submit to District, Agency, and Design Engineer the compliance with the following project items at the end of the project:
 1. Environmental permit, mitigation measures and/or restoration requirements.
 2. Submittal of a letter describing and certifying the completed facility upgrade work to the Regional Water Quality Control Board – Central Coast Region and other appropriate regulatory agencies.
 3. Document compliance with the California Regional Water Quality Control Board (RWQCB) requirements to operate the facility to consistently meet required effluent disposal limits for fecal coliform and TSS as described in Section 3 of the PER, paragraph 3.1 and in the RWQCB Facility Waste Discharge Requirements and Notice of Violations located in Appendix E and I of the PER.
 - e. Conduct regularly scheduled construction progress meetings with the Contractor and other meetings as needed for the coordinated completion of the construction work. Distribute the meeting minutes to the District, Agency and Design Engineer.
 - f. Prepare and submit a monthly Progress Report, including a monthly schedule progress review, to the District, Agency and Design Engineer.
 - g. Document the project work with videos and a minimum of 4 photographs per day taken continuously throughout the project. Photos will be used to document existing conditions, construction progress, contractor forces, equipment on site, and defective work. Each photograph and video will have a description, time and date and will become part of the official project record. All digital photos will be saved into a networked project directory viewable by the Design Engineer. Digital photos for each day will be saved in folder, with each folder chronologically titled by date.

Exhibit A – Engineer's Services

- h. Manage the project materials testing and special inspections that are to be conducted by Earth Systems.
 - i. Monitor project compliance with State labor law requirements including certified payroll and State prevailing wage requirements.
 - j. Complete the Construction Project Management Engineer responsibilities for compliance with the USDA Rural Development American Iron and Steel (AIS) project requirements that are appended to this agreement.
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable for the recommendation of final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner, Agency, Design Engineer and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 Post-Construction Phase

- A. 1. Visit the project site with Owner, Agency, and Contractor within one month before the end of the Construction Contract's one-year guarantee period to ascertain the need for correction of any part of the Work by the Contractor.

PART 2 – ADDITIONAL SERVICES Not Used

This is **EXHIBIT B**, consisting of [6] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Exhibit B

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.

Exhibit B – Owner's Responsibilities

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2. Zoning, deed, and other land use restrictions.
 3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. ~~Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.~~
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews,

Exhibit B – Owner's Responsibilities

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approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- J. If Owner designates a construction project manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of the Design Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

Exhibit B – Owner's Responsibilities

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7. Perform or provide the following: ~~[] [List any other Owner responsibilities here.]~~

Owners are responsible for project compliance with the American Iron and Steel Requirements as described in the Letter of Conditions for project funding. Owner's compliance actions include the following:

- a. Signing project change order forms and partial payment request forms that include iron and steel products compliant with applicable American Iron and Steel Requirements.
- b. Receiving the Engineer's Certification Letter at Substantial Completion and retaining for the life of the loan.
- c. Including American Iron and Steel contract requirements in all Owner's direct procurement contracts and obtaining and providing Manufacturer's Certification Letters for the items procured to the Engineer as applicable for compliance with the American Iron and Steel Requirements.

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Exhibit B – Owner's Responsibilities

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USDA Engineering Agreements
Responsibilities for Bidding and Construction Phase Services
 WWTP Redundancy Project
 SSLOCSD

		<i>Responsibilities</i>	
USDA Required Engineer Services Exhibit A		Project Design Engineer Kennedy Jenks Consultants	Construction Project Management Engineer MNS Engineers, Inc.
A1.04	<i>Bidding Phase</i>		
A.1.	<i>Obtaining Bids</i>	Services in Exhibit A, Phase 6	Services in A1.04 – A.1.
	<i>Pre-Bid Meeting</i>	Services in Exhibit A, Phase 6	Services in A1.04 – A.1.
A.2.	<i>Addenda</i>	Services in Exhibit A, Phase 6	Services in A1.04 – A.2
A.3.	<i>Assist Owner</i>	Services in Exhibit A, Phase 6	Services in A1.04 – A.3.
A.4	<i>Contractor Qualifications</i>	No Services	Services in A1.04 – A.4.
A.5	<i>Subcontractor Qualifications</i>	No Services	Services in A1.04 – A.5.
A.7.	<i>Bid Opening</i>	No Services	Services in A1.04 – A.7.
A.1.05	<i>Construction Phase</i>		
A.1.	<i>General Administration of Construction Contract</i>	No Services	Services in A1.05 – A.1.
A.2.	<i>Resident Project Representative (RPR) (resident inspector)</i>	No Services	Services in A1.05 – A.2.
A.3.	<i>Selection of Independent Testing Laboratory Services</i>	No Services	Services in A1.05 – A.3.
A.4.	<i>Pre-Construction Conference</i>	No Services	Services in A1.1.05 – A.4.
A.5.	<i>Electronic Transmittal Protocols</i>	No Services	Services in A1.05 – A.5.
A.6.	<i>Original Documents</i>	No Services	Services in A1.05 – A.6.
A.7.	<i>Schedules</i>	No Services	Services in A1.05 – A.7.
A.8.	<i>Baselines and Benchmarks</i>	No Services	Services in A1.05 – A.8.
A.9.	<i>Visits to Site and Observation of Construction</i>	Services in Exhibit A, Task 7.6	Services in A1.05 – A.2. and A.9.
A.10.	<i>Defective Work</i>	Services in Exhibit A, Task 7.8 (as needed)	Services in A1.05 – A.2. and A.10.
A.11.	<i>Compatibility with Design Concept</i>	Services in Exhibit A, Task 7.8 (as needed)	Services in A1.05 – A.11.
A.12.	<i>Clarifications and Interpretations</i>	Services in Exhibit A, Task 7.2	Services in A1.05 – A.12.
A.14.	<i>Field Orders</i>	Services in Exhibit A, Task 7.3 (for review)	Services in A1.05 – A.14.
A.15.	<i>Change Orders and Work Change Directives</i>	Services in Exhibit A, Task 7.3	Services in A1.05 – A.15.
A.16.	<i>Differing Site Conditions</i>	Services in Exhibit A, Task 7.8 (as needed)	Services in A1.05 – A.16. and A.2.

A.17.	<i>Shop Drawings, Samples, and Other Submittals</i>	Services in Exhibit A, Task 7.4	Services in A1.05 – A.17.
A.18.	<i>Substitutes and “Or-equal”</i>	Services in Exhibit A, Task 7.4 (as needed)	Services in A1.05 – A.18.
A.19.	<i>Inspections and Tests</i>	Services in Exhibit A, Task 7.8 (as needed)	Services in A1.05 – A.19.
A.20.	<i>Change Proposals and Claims</i>	Services in Exhibit A, Task 7.8 (as needed)	Services in A1.05 – A.20.
A.21.	<i>Applications for Payment</i>	No Services	Services in A1.05 – A.21.
A.22.	<i>Contractor’s Completion Documents</i>	Services in Exhibit A, Task 7.7 (as needed)	Services in A1.05 – A.22.
A.23.	<i>Substantial Completion</i>	Services in Exhibit A, Task 7.6	Services in A1.05 – A.23.
A.24.	<i>a. New Electrical Power</i>	No Services	Services in A1.05 – A.24.a.
	<i>b. O&M Manual</i>	Services in Exhibit A, Task 7.8 (as needed)	Services in A1.05 – A.24.b.
	<i>c. Startup and Training</i>	Services in Exhibit A, Task 7.8 (as needed)	Services in A1.05 – A.24.c.
	<i>d. Project Compliance</i>	No Services	Services in A1.05 – A.24.d.
	<i>e. Conduct Meetings</i>	No Services	Services in A1.05 – A.24.e.
	<i>f. Progress Reports</i>	No Services	Services in A1.05 – A.24.f.
	<i>g. Document Project Work</i>	No Services	Services in A.1.05 – A.24.g.
	<i>h. Testing and Inspection Management</i>	No Services	Services in A.1.05 – A.24.h.
	<i>i. Wage & Labor Compliance</i>	No Services	Services in A.1.05. – A.24.i.
	<i>j. American Iron & Steel Responsibilities</i>	Services as required by USDA AIS program	Services in A1.05 – A.24.j.
A.25.	<i>Final Notice of Acceptability of the Work</i>	Services in Exhibit A, Task 7.8 (as needed)	Services in A1.05 – A.25.
A.26.	<i>Standards for Certain Construction Phase Decisions</i>	Services in Exhibit A, Task 7.8 (as needed)	Services in A1.05 – A.26.
A.1.06	<i>Post-Construction Phase</i>		
A.1.	<i>Construction Contract One-Year Guarantee (Warranty) Inspection</i>	No Services	Services in A1.06 – A.2.

This is **EXHIBIT C**, consisting of [6] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:


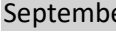
ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation For Basic Services (other than Resident Project Representative) – Standard Hourly Rates Method of Payment


- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants' charges, if any.
 2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer’s Consultants’ charges.
 3. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
 4. The total compensation for services under Paragraph C2.01 is estimated to be \$ 2,059,434.19 based on the following estimated distribution of compensation:

a. Study and Report Phase	-
b. Preliminary Design Phase	
c. Final Design Phase	
d. Bidding Phase	\$ 57,200.00
e. Construction Phase	\$ 1,977,196.95
f. Post-Construction Phase	\$ 25,037.24
 5. Engineer, **with Owner approval and Agency concurrence**, may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered but shall not exceed the total estimated compensation amount unless approved in writing by Owner **and Agency**. See also C2.03.C.2 below.


Exhibit C – Compensation Packet BC-2: Basic Services (other than RPR) – Standard Hourly Rates Method of Payment.
EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

6. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultants' charges.
7. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
8. The Standard Hourly Rates and Reimbursable Expenses Schedule will be  adjusted annually (as of ) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

C2.02 *Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of .

C2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of .
- B. **Factors:** The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. *Estimated Compensation Amounts:*

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner and Agency written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.

- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

COMPENSATION PACKET RPR-2:
Resident Project Representative – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$[556,608.84] based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a 820 day construction schedule.

B. Compensation for Reimbursable Expenses:

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of 1.15.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of September 2022) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

C. Other Provisions Concerning Payment Under this Paragraph C2.04:

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.15.

**Exhibit C – Compensation Packet RPR-2: Resident Project Representative Services—
Standard Hourly Rates Method of Payment.**

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Item 6C Attachment No. 1

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner and Agency written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at no cost.

USDA Funding Certification Page

COMPENSATION FOR ENGINEER'S SERVICES

The Construction Project Management Engineer's fees are described below:

Exhibit C

Compensation Packet BC-2

Bidding Phase	\$ <u>57,200.00</u>
Construction Phase	\$ <u>1,977,196.95</u>
Post Construction Phase	\$ <u>25,037.24</u>

Compensation Packet RPR-2

Resident Project Representative Services	\$ <u>556,608.84</u>
--	----------------------

Total Amount: \$ 2,616,043.03__

- a. The Engineer's invoices shall include a breakdown and description of the services provided based on the line items above and the invoices shall only include work that has been completed. The invoiced charges shall be based on Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
- b. A copy of the Engineer's current Standard Rate Schedule is attached. The Standard Rate Schedule includes descriptions of standard hourly rates and the service performed for each rate and a description of the charge rates for reimbursable expenses.
- c. The Engineer's billing shall not exceed the Total Amount shown. Any changes to the Engineering fees must be approved by USDA Rural Development and the Owner. Any approved adjustments to the Engineering fees shall be made by written amendment.

AGENCY CONCURRENCE

As lender or insurer of funds to defray the costs of this Agreement, and without liability for any payments thereunder, USDA Rural Development hereby concurs in the form, content, and execution of this Agreement in accordance with the Letter of Conditions for project funding.

Signature - USDA Rural Development Representative

Date

Print Name and Title

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

8"x11" Copies/Impressions	\$ [0.16]/page
Copies of Drawings	\$ [0.16]/sq. ft.
Mileage (auto)	\$ [0.575]/mile
Air Transportation	at cost
CAD Charge	\$ [150]/hour
Laboratory Testing	at cost
Health and Safety Level D	\$ []/day
Health and Safety Level C	\$ []/day
Meals and Lodging	at cost

[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this specific Project.]

DRAFT

This is **EXHIBIT D**, consisting of [5] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. **Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency. This does not include days when there is no Work activity being performed by the Contractor on the project site.**
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. **General:** RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. **Schedules:** Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.

9. *Review of Work; Defective Work:*

- a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals; **American Iron and Steel Manufacturers Certificates, waivers, inspection notes and photos**; and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
- 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
- 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
- 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
- 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
- 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 8. Authorize Owner to occupy the Project in whole or in part.



NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To:

Owner

And To:

Contractor

From:

Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

Exhibit E – Notice of Acceptability of Work.

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2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

Exhibit G

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

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. If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor.

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), including products and completed operations, property damage, bodily injury and personal & advertising injury.
2. Insurance Services Office Business Auto Coverage Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired (Code 8) and non-owned autos (Code 9).
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 - \$2,000,000 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 (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. The required limit may be satisfied by a standalone insurance policy or in combination with an excess/umbrella policy.
2. Automobile Liability - \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation: Statutory limits.
4. Employer's Liability - \$1,000,000 per accident for bodily injury or disease.
5. Errors and Omissions Liability - \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

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C. Self-insured Retentions

Self-insured retentions must be declared to and approved by the District. The District may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention.

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 officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form or an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38 and CG 20 37 forms if later revisions are used).
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the District, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, 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 or reduced, except with notice stating the title of this contract 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.
4. Consultant hereby grants to District a waiver of any right to subrogation which any insurer of said Consultant may acquire against the District by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.
5. If any of the required policies provide claims-made coverage:
 - a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

Exhibit G - Insurance.

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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 of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. 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.

G. Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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Exhibit G - Insurance.

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Exhibit H

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 Dispute Resolution

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by **Creative Mediation, part of Wilshire Health and Community Services, Inc. in San Luis Obispo**. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

Exhibit H – Dispute Resolution.

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This is **EXHIBIT K**, consisting of [2] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- _____ Additional Services to be performed by Engineer
- _____ Modifications to services of Engineer
- _____ Modifications to responsibilities of Owner
- _____ Modifications of payment to Engineer
- _____ Modifications to time(s) for rendering services
- _____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

Exhibit K – Amendment to Owner-Engineer Agreement.

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The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

By: _____
Print
name: _____
Title: _____
Date Signed: _____

By: _____
Print
name: _____
Title: _____
Date Signed: _____

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Exhibit K – Amendment to Owner-Engineer Agreement.

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AMERICAN IRON AND STEEL REQUIREMENTS

USDA Rural Development

Construction Project Management Engineer Responsibilities

- A. Require that Contractors provide a Manufacturer's Certification for proposed "or-equal" or substitute iron and steel products during bidding, submittal reviews, and for construction change proposals.
- B. Submit waiver requests to USDA Rural Development
- C. Document project AIS compliance by:
 - Maintaining a record of all iron and steel products that are not covered under a waiver,
 - Obtaining a Manufacturer's Certification Letter for each recorded iron and steel product that will be kept in an on-site project file.
 - Maintaining a list of iron and steel products that are under a de minimis waiver.
 - Providing copies of Manufacturer's Certification Letters to USDA with the following:
 - Two photos of a representative iron and steel product – one close up showing the "Made in USA" stamp on the product, and one back far enough to see the product.
 - A brief description of the product
- D. Provide copies of the Design Engineer's Certification Letter, the Contractor's Certification Letter and all Manufacturer's Certification Letters with the Construction Project Management Engineer's record of iron and steel products used in the project to the District and USDA Rural Development at Substantial Completion.



United States Department of Agriculture

AD-1048

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552(a), as amended). This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 C.F.R. §§ 180.300, 180.355, Participants' responsibilities. The regulations were amended and published on August 31, 2005, in 70 Fed. Reg. 51865-51880. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

According to the Paperwork Reduction Act of 1995 an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0027. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal and civil fraud privacy, and other statutes may be applicable to the information provided.

(Read Instructions On Page Two Before Completing Certification)

- A. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
- B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ORGANIZATION NAME

PR/AWARD NUMBER OR PROJECT NAME

NAME(S) AND TITLE(S) OF AUTHORIZED REPRESENTATIVE(S)

SIGNATURE(S)

DATE

The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider, employer and lender.

Instructions for Certification

- (1) By signing and submitting this form, the prospective lower tier participant is providing the certification set out on page 1 in accordance with these instructions.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to the person(s) to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, at 2 C.F.R. Parts 180 and 417. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- (5) The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- (6) The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management (SAM) database.
- (8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (9) Except for transactions authorized under paragraph (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form – LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(Name)

(Date)

(Title)

(08-21-91) PN 171

**AGREEMENT
BETWEEN OWNER AND RESIDENT PROJECT REPRESENTATIVE
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of December 10, 2019 ("Effective Date") between
South San Luis Obispo County Sanitation District ("Owner") and
MNS Engineers, Inc. ("Resident Project Representative").

Owner's Project, of which RPR's services under this Agreement are a part, is generally identified as follows:
Wastewater Treatment Plant Redundancy Project ("Project").

Other terms used in this Agreement are defined in Article 7. RPR's services under this Agreement are generally identified as follows: Construction Management Services as described herein.

Owner and RPR further agree as follows:

ARTICLE 1 – SERVICES OF RESIDENT PROJECT REPRESENTATIVE

1.01 Scope

- A. RPR shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay RPR as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to RPR pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to RPR pursuant to this Agreement. RPR may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to RPR whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of RPR's services;
 2. the presence at the Site of any Constituent of Concern; or
 3. any relevant, material defect or nonconformance in: (a) RPR's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. RPR is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. RPR shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of RPR, such periods of time or dates are changed, or the orderly and continuous progress of RPR's services is impaired, or RPR's services are delayed or suspended, then the time for completion of RPR's services, and the rates and amounts of RPR's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or RPR's services, then the time for completion of RPR's services, and the rates and amounts of RPR's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the RPR's performance of its services.
- E. If RPR fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* RPR shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Invoices must include a breakdown of services provided. RPR shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to RPR and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due RPR for services and expenses within 30 days after receipt of RPR's invoice, then:
 - 1. amounts due RPR will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. RPR may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against RPR for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise RPR in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on RPR's services or compensation under this Agreement, then RPR may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse RPR for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which RPR is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. RPR's opinions (if any) of probable Construction Cost are to be made on the basis of RPR's experience, qualifications, and general familiarity with the construction industry. However, because RPR has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, RPR cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by RPR. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.
- B. The RPR's opinion of the Total Project Cost, including a Construction Cost, and any revisions thereof will be based on compliance with the American Iron and Steel Requirements that are applicable to this project.

5.02 ~~*Designing to Construction Cost Limit*~~

- A. ~~If a Construction Cost limit is established between Owner and RPR, such Construction Cost limit and a statement of RPR's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.~~

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of RPR with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. RPR assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by RPR under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. RPR makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by RPR.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of RPR's services. RPR shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* RPR may retain such Consultants as RPR deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, RPR and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. RPR and Owner shall comply with applicable Laws and Regulations.
 - 2. RPR shall comply with any and all policies, procedures, and instructions of Owner that are applicable to RPR's performance of services under this Agreement and that Owner provides to RPR in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to RPR's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by RPR after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. RPR shall not be required to sign any document, no matter by whom requested, that would result in the RPR having to certify, guarantee, or warrant the existence of conditions whose existence the RPR cannot ascertain. Owner agrees not to make resolution of any

dispute with the RPR or payment of any amount due to the RPR in any way contingent upon the RPR signing any such document.

- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. RPR shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall RPR have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. RPR shall not be responsible for the acts or omissions of any Constructor.
- I. RPR neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. RPR shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by RPR or its Consultants.
- K. RPR is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. RPR's services do not include providing legal advice or representation.
- M. RPR's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, RPR, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which RPR has been informed in writing.

~~6.02 Design Without Construction Phase Services~~

- ~~A. RPR shall be responsible only for those Construction Phase services expressly required of RPR in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, RPR shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims,~~

~~Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the RPR that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of RPR in Exhibit A.~~

6.03 *Use of Documents - DELETED*

- ~~A. All Documents are instruments of service, and RPR shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the RPR) whether or not the Project is completed.~~
- ~~B. If RPR is required to prepare or furnish Drawings or Specifications under this Agreement, RPR shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.~~
- ~~C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. RPR grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by RPR of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by RPR, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by RPR; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by RPR, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to RPR or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless RPR and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by RPR; and (4) such limited license to Owner shall not create any rights in third parties.~~
- ~~D. If RPR at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate RPR at rates or in an amount to be agreed upon by Owner and RPR.~~

6.04 *Electronic Transmittals*

- A. Owner and RPR may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and RPR shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 Insurance

- A. RPR shall procure and maintain insurance as set forth in Exhibit G. RPR shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by RPR.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause RPR and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and RPR's interests in the Project. Owner shall require Contractor to cause RPR and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and RPR shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of RPR's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against RPR or its Consultants. Owner and RPR waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and RPR shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

- G. At any time, Owner may request that RPR or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, RPR shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to RPR.
- 2. *By RPR:* RPR may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay RPR for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by RPR:
 - 1) upon seven days written notice if Owner demands that RPR furnish or perform services contrary to RPR's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the RPR's services for the Project are delayed or suspended for more than 90 days for reasons beyond RPR's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) RPR shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon RPR's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow RPR to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
 1. In the event of any termination under Paragraph 6.06, RPR will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 2. In the event of termination by Owner for convenience or by RPR for cause, RPR shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with RPR's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and RPR are hereby bound and the successors, executors, administrators, and legal representatives of Owner and RPR (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and RPR) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor RPR may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or RPR to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and RPR and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and RPR agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to RPR that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to RPR, exist at or adjacent to the Site.
- B. If RPR encounters or learns of an undisclosed Constituent of Concern at the Site, then RPR shall notify (1) Owner and (2) appropriate governmental officials if RPR reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that RPR's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If RPR or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then RPR may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of RPR's services under this Agreement, then the RPR shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that RPR is performing professional services for Owner and that RPR is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which

are or may be encountered at or near the Site in connection with RPR's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by RPR:* To the fullest extent permitted by Laws and Regulations, RPR shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, ~~agents, consultants,~~ and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of RPR or RPR's officers, directors, members, partners, agents, employees, or Consultants. ~~This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and RPR in Exhibit I, "Limitations of Liability."~~
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless RPR and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations. ~~and to the extent (if any) required in Exhibit I, "Limitations of Liability."~~
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless RPR and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, RPR, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and RPR waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. RPR shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to RPR's services or pertinent to RPR's performance under this Agreement. Upon Owner's request, RPR shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and RPR, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *Additional Services*—The services to be performed for or furnished to Owner by RPR in accordance with Part 2 of Exhibit A of this Agreement.
 - 3. *Agreement*—This written contract for professional services between Owner and RPR, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

4. *Application for Payment*—The form acceptable to RPR which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by RPR in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by RPR concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for RPR under this Agreement, including construction

labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of RPR or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the RPR, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with RPR to furnish services with respect to this Project as RPR's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by RPR to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. ***Design Engineer***—~~The individual or entity named as such in this Agreement~~ **individual in responsible charge of the project design, who developed the Construction Contract Documents.**
21. *Field Order*—A written order issued by RPR which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which RPR's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.

24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by RPR under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer ~~RPR as an Additional Service~~ and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to RPR and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by RPR in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative (RPR)* — **The individual or entity named as such in this Agreement.** The authorized representative of ~~Owner Engineer~~ assigned to assist ~~Owner Engineer~~ at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, ~~if any,~~ are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of RPR, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the

purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of RPR or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by RPR, ordering an addition, deletion, or revision in the Work.
38. *Agency*—The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.
39. *American Iron and Steel Requirements*—The USDA’s Rural Utilities Service (RUS) American Iron and Steel (AIS) Requirements that are based on a statute described in Section 746 Division A Title VII of the Consolidated Appropriations Act of 2017 (Agriculture, Rural Development, Food and Drug administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*:

- A. Exhibit A, Resident Project Representative’s Services.
- B. Exhibit B, Owner’s Responsibilities.

- C. Exhibit C, Payments to Resident Project Representative for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit - **DELETED**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability – **DELETED**
- J. Exhibit J, Special Provisions – **DELETED**
- K. Exhibit K, Amendment to Owner-RPR Agreement.
- L. Exhibit L, USDA Certifications

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and RPR and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, RPR and Owner shall designate specific individuals to act as RPR's and Owner's representatives with respect to the services to be performed or furnished by RPR and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *RPR's Certifications*

- A. RPR certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *Federal Requirements*

- A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 (2014) hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.
- B. Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the RPR which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. RPR shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. Restrictions on Lobbying. RPR and each Consultant shall comply with the "Byrd anti-lobbying amendment (31 U.S.C. 1352)" if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, RPR must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. Suspension and Debarment. RPR certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. RPR will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The RPR will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

- E. American Iron and Steel Requirements. As defined in Article 7.01 A.39. The RPR's responsibilities and certification forms that are attached to this engineering agreement are included as guidance for the RPR's compliance with the USDA Rural Development's American Iron and Steel (AIS) Requirements that are applicable to this project.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: South San Luis Obispo Sanitation District

By: 

Print name: Jeremy Ghent

Title: District Administrator

Date Signed: 12-16-2019

RPR: MNS Engineers, Inc.

By: 

Print name: James A. Salvito

Title: President & CEO

Date Signed: 12.10.2019

Address for Owner's receipt of notices:

P.O. Box ~~329~~ 339

Oceano, CA 93475-0339

Designated Representative (Paragraph 8.03.A):

Jeremy Ghent

Title: District Administrator

Phone Number: 805-439-6666

E-Mail Address: jeremy@sslscsd.us

Address for RPR's receipt of notices:

201 N. Calle Cesar Chavez, Suite 300

Santa Barbara, CA 93103

Designated Representative (Paragraph 8.03.A):

Tanveer Rao, PE, CCM

Title: Principal Construction Manager

Phone Number: 909-460-8844

E-Mail Address: trao@mnsengineers.com

Approved as to form:
District Counsel



This is **EXHIBIT A**, consisting of **19** pages, referred to in and part of the **Agreement between Owner and RPR for Professional Services** dated December 10, 2019.

Exhibit A

Resident Project Representative's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

RPR shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 *Study and Report Phase – Not Used. Completed by others.*

A1.02 *Preliminary Design Phase – Not Used. Completed by others.*

A1.03 *Final Design Phase – Not Used. Completed by others.*

A1.04 *Bidding or Negotiating Phase*

A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, RPR shall:

1. ~~Attend pre-bid conference and assist Owner with any construction questions. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.~~
2. ~~Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.~~
3. ~~Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.~~
4. ~~Consult with Owner as to the qualifications of prospective contractors.~~
5. ~~Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.~~

Exhibit A – Resident Project Representative's Services

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6. ~~The RPR shall determine the acceptability and issue a Bid Addendum for approved "or equals" and substitute materials and equipment proposed by bidders. The RPR's review of "or equals" and substitutes shall be in accordance with the Standard General Conditions of the Construction Contract and applicable Agency regulations. The RPR shall ensure that Manufacturer's Certifications are received from bidders to document that American Iron and Steel Requirements are being met for "or equals" or substitute product proposals.~~
 7. ~~Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.~~
 8. ~~If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.~~
 9. ~~Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: Upon award of the Construction Contract, the RPR shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Plans and Specifications.~~
 10. RPR will schedule a kick-off meeting with Owner to establish a line of communication as well as the protocol and procedures to be used throughout the project. The Design Engineer will be invited.
 11. RPR will develop a comprehensive risk matrix to identify potential project risks and provide recommendations on mitigating these risks.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, RPR shall:
 1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of RPR shall be as assigned in **Exhibit D of this agreement and the General Conditions of the Construction Contract**. ~~EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement.~~ If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of RPR in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on RPR, then Owner shall compensate RPR for any related increases in the cost to provide Construction Phase services. RPR shall not be required to furnish or perform services contrary to RPR's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through RPR, which shall have authority to act on behalf of

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Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* ~~Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.~~
3. *Selection of Independent Testing Laboratory:* ~~Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.~~
4. *Pre-Construction Conference:* Participate in, and chair, a pre-construction conference prior to commencement of Work at the Site. The RPR shall record the items of discussion on a form approved by USDA Rural Development. **During the pre-construction conference, RPR will establish a communication matrix and protocol to define who needs to know what and when do they need to know it.**
5. *Electronic Transmittal Protocols:* ~~If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and RPR during the Construction Phase and Post-Construction Phase. RPR will establish a cloud-based construction document system and provide access and training for staff of all parties including Owner, Design Engineer, contractors, and subcontractors.~~
6. *Original Documents:* ~~If requested by Owner to do so, m-~~ Maintain and safeguard during the Construction Phase at least one original ~~printed~~ record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Design Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original ~~printed~~ record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to RPR, including the Progress Schedule, Schedule of Submittals, and Schedule of Values. **Work closely with Contractor to ensure a suitable baseline schedule is developed and approved. Conduct monthly schedule progress reviews and provide Owner with project feedback and a risk log detailing potential risks to the project timeline.**
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in RPR's judgment are necessary to enable Contractor to proceed as described in the General Conditions of the Contract Documents.

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9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
- a. Make visits to the Site at intervals appropriate to the various stages of construction, as RPR deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to RPR in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on RPR's exercise of professional judgment, ~~as assisted by the Resident Project Representative, if any.~~ Based on information obtained during such visits and observations, RPR will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and RPR shall keep Owner informed of the progress of the Work.
 - b. The purpose of ~~RPR's visits to the Site, and~~ representation by the Resident Project Representative, if any, at the Site, will be to enable RPR to better carry out the duties and responsibilities assigned to and undertaken by RPR during the Construction Phase, and, in addition, by the exercise of RPR's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. RPR shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall RPR have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, RPR neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
 - c. The visits described in Article A1.05.A.9.a shall be **"full time equivalent" during the duration of construction as indicated in Appendix 1 to Exhibit A and Appendix 1 to Exhibit C at least monthly** and the RPR shall document all visits to the project with ~~copies~~ **monthly progress reports** furnished to the Owner and Agency.
10. *Defective Work:* Reject Work if, on the basis of RPR's observations, RPR believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.

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11. *Compatibility with Design Concept:* If RPR has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents **and convey to Design Engineer. Maintain collaboration with Design Engineer and Contractor to resolve the RFI as quickly as possible. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.**
13. *Non-reviewable Matters:* If a submitted matter in question concerns the RPR's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then RPR will promptly give written notice to Owner and Contractor that RPR will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, RPR may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* ~~Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. RPR shall meet any Contractor's submittal schedule that RPR has accepted. RPR will provide the cloud-based document system to be used by Contractor to send submittals to Design Engineer and Owner as required. RPR will review all submittals for general compliance with the contract documents in an attempt to minimize the need for resubmittal. All Contractor submittals shall include a Manufacturer's Certification to verify compliance with American Iron and Steel~~

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Requirements, as applicable, for iron and steel products proposed for use in the project construction that are not under a waiver.

18. ~~Substitutes and "Or equal": Evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.~~

19. *Inspections and Tests:*

- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. RPR's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. RPR shall be entitled to rely on the results of such inspections and tests.
- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
- c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- d. **Hold Inspection and Test Planning (ITP) meetings with Contractor, subcontractors, project special inspection team, and, if necessary, the Design Engineer. Ensure Contractor and subcontractors understand the inspection requirements of the contract documents.**
- e. **Perform, or have performed by a subcontractor or testing laboratory, all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Review the findings and reports to ensure the Work conforms to the Construction Documents and notify Contractor and Owner of any deficiencies.**

20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, ~~within 30 days after receipt of the Contractor's supporting data,~~ either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. **Coordinate with the Owner and Design Engineer to respond in a timely manner in accordance with California Public Contract Code Section 9204 and the Project Contract Documents, which generally specifies a response within 45 days after receipt of the Contractor's supporting data.** Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters,

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then RPR will notify the parties that the RPR will not resolve the Change Proposal. (b) Provide information or data to Owner **and/or Design Engineer** regarding engineering or technical matters pertaining to Claims. The RPR shall confirm that a Change Proposal includes a Manufacturer's Certification to verify compliance with the American Iron and Steel Requirements, if applicable, for all proposed iron and steel products to be used in the project construction.

21. *Applications for Payment:* Based on RPR's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that RPR recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute RPR's representation to Owner, based on such observations and review, that, to the best of RPR's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is RPR's responsibility to observe the Work. In the case of unit price Work, RPR's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
- b. By recommending payment, RPR shall not thereby be deemed to have represented that observations made by RPR to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to RPR in this Agreement. Neither RPR's review of Contractor's Work for the purposes of recommending payments nor RPR's recommendation of any payment including final payment will impose on RPR responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on RPR to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract

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Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. **RPR will review and forward the annotated record drawings to the Design Engineer for development of final Record Drawings to be furnished to the Owner and USDA in a CD format.** ~~The RPR shall prepare the final As-Built Record Drawings and furnish a hard copy to the Owner and to USDA in a CD format.~~

23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. ~~Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.~~
24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:
 - a. ~~If needed, the RPR shall act as an agent for the Owner to complete the notification and application required for a new electrical power supply connection from the appropriate power service provider and manage the new service connection process for completion as soon as practicable.~~
 - b. Upon Substantial Completion, the RPR shall provide a copy of the Certificate of Substantial Completion to the Owner and USDA Rural Development.
 - c. Upon acceptance of the work by the RPR, the RPR shall complete Exhibit E – Notice of Acceptability of Work and provide a copy to the Owner and USDA Rural Development.
 - d. The RPR shall review the draft Operation and Maintenance Manual to be provided by the Contractor and **furnish to Owner for finalization by others.** ~~modify as needed and prepare the final Operation & Maintenance Manual for delivery to the Owner.~~
 - e. The RPR shall complete documentation for project compliance with the following items as required for the project:
 - Environmental mitigation measures and/or restoration requirements **shall be coordinated with Owner's environmental consultant.**
 - Certification letter of the work completed to the appropriate regulatory agency.
 - Regulatory permits required to operate the facility.
 - Final Project Budget utilizing Standard Form 271 or similar accepted format.

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- f. Upon acceptance of the work by the Owner, the RPR shall file with the County a Notice of Completion. The RPR shall then complete a review of County records 35 days after filing the Notice of Completion for liens against the Contractor or the Owner that will be reviewed before the final payment is made.
 - g. The RPR shall complete the USDA Rural Development Construction Project Final Checklist items before the final funding payment is made.
 - h. RPR will take pre-construction photos and videos before the contractor mobilizes to document existing conditions.
 - i. RPR will take photos and videos of construction work continuously throughout the project to document construction.
 - j. Prior to construction, the RPR will develop a Project Management Plan (PMP) that defines the project team's administrative responsibilities and assignments including the frequency of task items such as testing and inspection, RFIs, and submittal response times; emergency contacts and action plans; and shutdowns and operational protocol. The PMP will provide each participant—Director staff, contractor, subcontractors, and Design Engineer—with detailed information about the project construction administration and document control process.
 - k. RPR will ensure the contract is being administered and documented per the federal funding requirements including verifying Contractor and subcontractors have complied with the requirements of the California Department Industrial Relations with regard to certified payroll verification and submission. As required by the construction project specifications, certified payroll will be collected and reviewed each week. RPR will also conduct field interviews of Contractor's staff and subcontractors to ensure compliance with prevailing wage rate requirements.
 - l. RPR will monitor Contractor's safety program. Bring any safety concerns to Contractor promptly. Keep Owner informed of any significant safety concerns as well as their resolution.
 - m. RPR will coordinate the creation of a Maintenance Of Plant Operations (MOPO) Plan by relevant stakeholders designed to ensure no construction work impacts plant operations.
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that RPR may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, RPR shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of RPR's knowledge, information, and belief, and based on the extent of the services provided by RPR under this Agreement.
26. *Standards for Certain Construction-Phase Decisions:* RPR will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability

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of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, RPR will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by RPR for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, RPR shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, RPR shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 3. ~~Perform or provide the following other Post-Construction Phase tasks or deliverables:~~
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES [DELETED]

~~A2.01 – Additional Services Requiring Owner's Written Authorization [DELETED]~~

~~A2.02 – Additional Services Not Requiring Owner's Written Authorization [DELETED]~~

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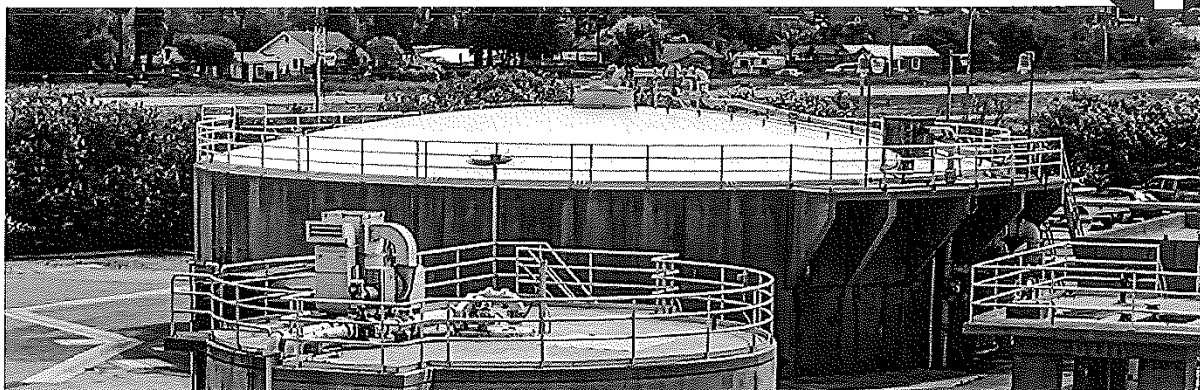
Appendix 1 to Exhibit A RPR's Scope of Work

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Section 4. Revisions to Scope of Work



MNS also regularly performs internal audits of its field operations to ensure the proper implementation of procedures for MNS' QAP. These internal audits focus on inspection procedures, inspection documentation, data quality, the document control system, CPM schedule analysis, quality assurance documentation, and the safety program.

MNS has thoroughly reviewed the CM RFQ; we confirm our team will provide all scope of work tasks as outlined in the RFQ Section II Description of Work, Item C Scope of Work—Task Group 1, Pre-Construction Phase; Task Group 2, Construction Phase; and Task Group 3, Post-Construction Phase. The following work plan details MNS' construction management approach to achieve the District's Key Performance Indicators (KPIs).

Work Plan to Meet Scope Requirements

MNS has reviewed and understands the District's construction management requirements for this important project.

Our management plan ensures MNS always controls and administers this project as an advocate for the District.

Our CM team's relevant experience allows them to provide overall administration of the construction process based on their unique ability to fully understand the construction process, work proactively to identify problems early, and mitigate each risk before it affects the



project performance goals. MNS proactively serves as the project's administrator and provides consistent coordination between all project stakeholders including the District, plant operations staff, Design Engineer, and selected construction contractor and subcontractors.

TASK 1 Pre-Construction Phase



TASK 1.1 Kick-off Meeting

As the first order of work, MNS will schedule a kick-off meeting with the District to establish a line of communication as well as the protocol and procedures to be used throughout the project. The Project Manager and Design Engineer will be invited to discuss the intent of the plans as well as any coordination, operational, permit, or funding concerns.

TASK 1.2 Risk Matrix

MNS considers proactive risk identification and mitigation strategies throughout the life of the project as one of the most important functions of an effective construction management team. Our experience in the construction of these facilities provides us with an understanding of the project construction and the methods to ensure the project milestones are consistently maintained and achieved. We have already developed a preliminary risk matrix based on our similar project experience

and review of the available documents. We will further develop a more comprehensive risk matrix to identify potential project risks and provide recommendations on mitigating these risks.

TASK 1.3 Constructability Review

One key strategy for a successful project is to begin the work with a clear and complete set of bid documents. To develop a good set of bid documents, a third-party should thoroughly vet the documents and then corrections should be made before the bid advertisement.

The highly experienced MNS construction team will perform a Constructability Review (CR) on the 100% construction documents. The MNS team will review the documents to determine if there are any built-in problems, flaws that impede construction, or factors that may cause impacts to any project stakeholder in terms of time, cost, or quality. The focus will be to help ensure the work requirements are clear and the documents are coordinated and assist the contractor in bidding a clearly defined scope of work. MNS will submit a CR Report to be shared with all project stakeholders—including the District, Program Manager, and Design Engineer of Record—to improve the bid documents based on the review by the MNS construction team.

The construction documents for review will include the 100% plans, technical specifications, and the proposed bid schedule. The CR team will also review the Special Provisions, the Invitation to Bid, related geotechnical report and/or permit requirements, and any other project-related technical reports provided by the District.

TASK 1.4 Pre-Bid Meetings/Site Walk

MNS will attend a pre-bid meeting and assist the District with any construction questions. MNS reviewed the 100% Plans and Specifications and identified key issues—including a list of the major risks and a detailed mitigation plan—for the project. Additionally, MNS key staff toured the facility to gain familiarity with the project issues during the construction management solicitation period.

TASK 1.5 Review of the Bidder Pre-Qualification Package

The District will pre-qualify bidders using a specific minimum qualification criteria, which will be developed by the project Design Engineer of Record, Kennedy Jenks. MNS will review the subject document and provide input for adjustments before it is published to initiate the pre-qualification phase.

MNS will assist in reviewing the pre-qualification packages, which will include but not be limited to following factors:

Pass or Fail Factors

- Lawsuits against a public agency

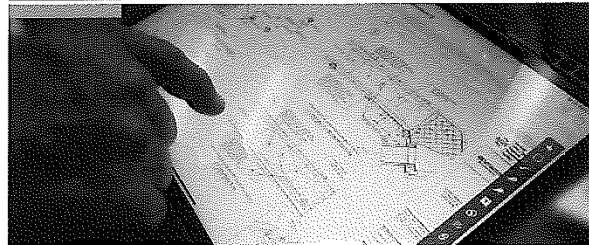
- Bankruptcies in the past five years
- Extreme safety violations in the past five years
- Failure to complete contract obligations in the past five years
- Criminal history of proposed staff indicating high-risk individuals on the team

Other Factors

- Adequate payment/performance bonding capacity
- Adequate insurance coverage limits
- Experience with similar projects in similar contractor capacities
- Client references
- Safety records and acceptable EMR scores in the past three years
- Experience of key staff proposed for the project, including the Project Manager and support staff

MNS will also check with its former clients and colleagues in the industry for each bidder's reputation in executing similar projects to help identify the most qualified and competitive firm from the adequate pool of bidders for this important Wastewater Treatment Plant Redundancy Project.

TASK 1.6 Cloud-Based Document Control



Prior to the commencement of construction, MNS will establish a cloud-based construction collaboration and filing system that saves time and reduces risk. MNS will utilize a proven system such as EADOC or Procore to integrate information from the Design Engineer, CM, and Owner's teams. By automating workflow related to document approval and establishing general cloud-based communication, MNS ensures a consistent and reliable avenue of communication for all project stakeholders.

Our proposed office administrator will be responsible for setting up the document control system and training all staff involved with this system including District staff, the Design Engineer, contractors, and subcontractors.

TASK 1.7 Pre-Construction Conference

A pre-construction conference will be scheduled once the Notice of Award is mailed to the contractor. All appropriate parties will be invited including the selected contractor, District staff, Design Engineer, and

any other involved entities at the District's discretion. At the pre-construction meeting, we will discuss special contract requirements/concerns and establish the protocol to be used throughout the project. MNS will distribute meeting minutes to all parties in attendance. The meeting will highlight the contractor's responsibility for items such as:

- Order of work
- Permit and environmental agreements
- Safety and access
- Progress pay requests
- Labor compliance
- Submittals, RFIs, and Contract Change Orders (CCOs)
- Quality control and materials certification
- Schedule updates and weekly meeting
- Coordination with plant staff and operations

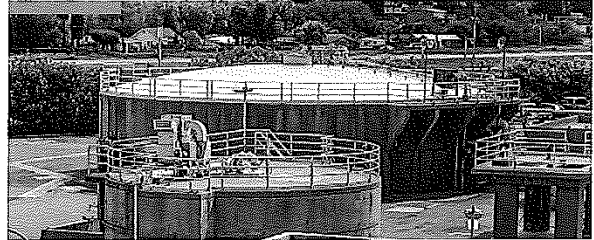
TASK 1.8 Communication Matrix and Protocol

During the pre-construction meeting, we will establish a "who needs to know what and when do they need to know it" communication matrix and protocol. Our cloud-based document control system ensures the document distribution process clearly reflects this communication matrix, defining those items requiring action and providing a resource to store and search for information. This system prioritizes items requiring immediate attention while reducing the burden of excessive emails. The system pre-populates a checklist of predefined recipients based on the type of document forwarded, as determined by the communication matrix, to ensure no one is left out of the loop.

TASK 1.9 Project Management Plan (PMP)

MNS will develop a PMP that defines the project team's administrative responsibilities and assignments including the frequency of task items such as testing and inspection, RFIs, and submittal response times; emergency contacts and action plans; and shutdowns and operational protocol. The PMP will provide each participant—District staff, contractor, subcontractors, and Design Engineer—with detailed information about the project construction administration and document control process.

TASK 2 Construction Phase



TASK 2.1 Construction Administration

As Project Manager, Tanveer Rao, PE, will serve as the District's Representative in charge of project communication and coordination with the CM team, District staff, Design Engineer, and contractor throughout the construction phase.

The day-to-day management and administration will be provided by the On-Site Resident Engineer, Kurt Greeb, PE, with the Office Engineer responsible for project document control. MNS will implement the cloud-based project administration/document control system outlined in Task 1.4 and per the PMP.

TASK 2.2 Meetings/Minutes

MNS will provide coordination services along with meeting minutes for all meetings held during the project. Using our web-based document control system, meeting minutes will be distributed as indicated in the communication matrix protocols no later than the end of the following business day. MNS recommends additional special meetings in addition to the meetings scheduled for weekly and progress discussion and those detailed in the construction specifications. The minutes along with any comments then become part of the official project record.

MNS SPECIAL MEETINGS

MNS strongly encourages our recommended additional special meetings. MNS recognizes some of these additional meetings may be similar to those detailed in the construction specifications. However, while similar in context, these special meetings are detailed herein to highlight their importance for a successful project outcome and the peaceful coexistence of all project stakeholders for the duration of the project.



Fostering clear and concise communication for project expectations, requirements, and processes will mitigate delays, change orders, and claims.

Early Morning Coordination. MNS has learned the three-week-look-ahead schedule process is notoriously incorrect and often does not accurately reflect the work to be accomplished on a given day. In an operating plant, this is dangerous and can lead to unintended consequences for plant operations. To combat this, **MNS requires a short (15-30 minutes) coordination meeting at the start of each workday with the contractor and on-site subcontractors.**

The purpose of the meeting is to review the planned work activities for the day and ensure work activities will not impact ongoing plant operations. The following section provides more detailed information about the planning process for plant shutdowns. The plant operations representative is strongly encouraged to attend these planning meetings. Strict adherence to this protocol greatly reduces the chance of unintended plant issues and eliminates the "I didn't know" problem.

Maintenance of Plant Operations (MOPO). During this meeting (or series of meetings), any anticipated interruptions to plant operations will be planned with the plant operations management, contractor, subcontractors, Design Engineers, and any other project stakeholders who have a vested interest.

Commissioning and Startup. STARTING WITH THE END IN MIND. MNS organizes these meetings to involve all project stakeholders in the planning, commissioning, training, and hand over of plant processes. Generally, these meetings commence within 60 days of the project notice to proceed and continue monthly, to bi-weekly, to weekly, to daily as the work nears completion and startup and commissioning become the project critical path. This series of meetings ensures a smooth startup and commissioning process without any unexpected surprises. The electrical/instrumentation and controls coordination will also be handled during these meetings.

TASK 2.3 Progress Reporting

MNS will prepare and submit a monthly progress report to the District that outlines project progress and includes the following:

- Summary of the work from the prior month and current construction activities.
- Overall contractor's conformance to contract schedule and quality requirements.
- Identification of key problems, action items, and issues—along with recommendations for solutions.
- Summary of progress payments, change orders, disputes, submittals, RFIs, and notices of noncompliance.

- Photographs of representative project activities.
- Key performance indicators of the construction progress.

TASK 2.4 Photographs/Videos

MNS will take pre-construction photos and videos of the plant before the contractor mobilizes. The records and photographs documenting the conditions of the plant and site before starting construction will also be part of the cloud-based project files. Photographs of construction work will be taken continuously throughout the project. Each photograph will have a caption description and be time and date stamped. In addition to documenting progress, photos, and videos—we will document RFI issues and other such items. Photographs are one of the most important elements of a contemporaneous record of the project. These photos/videos will be maintained in the document control system to become part of the project official record.

TASK 2.5 Submittals



Generally, the process of submitting, reviewing, and approving submittals is the most document control intensive portion of the project. Project delays often occur from inefficient document control administration. Our cloud-based document control system will process and document review of the submittals in as few as three clicks; distribute the document as determined in the established communication matrix; and send an email to-do list and reminders of overdue action items each week, if desired, to the action-item holder. This keeps everyone focused on key items requiring attention to keep the project moving forward.

We will review all submittals for general compliance with the contract documents in an attempt to minimize the very difficult and often project-delaying need for resubmittal.

TASK 2.6 Requests for Information/Clarification

The processing and administration of a Request for Information/Clarification (RFI/C) will be similar to the submittal process described previously. However, MNS recognizes that many times—especially in a design-bid-build procurement—the contractor and subconsultants often use the RFI/C as a weapon to delay the project or position for change orders.



MNS maintains consistent collaboration with the contractor teams to provide a proactive review of field or design issues in an attempt to reduce the need for RFIs. In situations requiring input from the Design Engineer, such as in an unknown field condition, MNS will communicate directly with the Design Engineer to determine if verbal direction may be given, which will then be documented with written records. In those cases, where a written RFI must be provided, MNS will, when possible, walk the RFI through the review and response process to provide the contractor direction as quickly as possible.

TASK 2.7 Change Order Administration

Unless requested by the Owner, change orders often become the most contentious element of a project and jeopardizes achieving the project goals and objectives. MNS works proactively to eliminate or reduce project impacts from change orders.

Based upon a thorough understanding of the design and our team's experience with constructing similar facilities, MNS will work proactively with the contractor, Design Engineer, and District to minimize impacts to the project. MNS will provide first-line management of change order administration including entitlement; project mitigation such as possible alternatives and negotiation as the District's advocate; verification of cost (estimating); schedule impact analysis and verification; recommendations to the project Owner on acceptance and impact mitigation; and administration of potential change orders, issue files, and change orders with our cloud-based document control system.

TASK 2.8 Scheduling

The MNS management team is highly experienced in scheduling. We will use scheduling effectively to mitigate project impacts due to an interruption of the contractor's anticipated work progress. Whether due to a change order or some other unforeseen event, careful management of the schedule process reduces overall project impacts.

Our team members understand this process and will provide their decades of expertise in schedule management and delay analysis as an advocate for the District. MNS' experience along the Central Coast and Northern California on projects of this size indicate many bidding contractors will not have sophisticated tools such as P6 or the in-house expertise to properly schedule a complex project. As a component for project success, MNS will work closely with the contractor to ensure a suitable baseline schedule is developed and approved.

MNS will conduct monthly schedule progress reviews to provide the District with project feedback and a risk log detailing potential risks to the project timeline.

MNS will analyze any purported schedule impacts and proactively work to mitigate such challenges. MNS will advocate for the District

as their schedule and delay expert during this process. Based on the CM RFQ and the associated addenda, the MNS team developed a basic Master Schedule for the project as displayed in Appendix A. This detailed schedule will be used as a live tool each week to manage the overall project schedule.

TASK 2.9 Quality Assurance and Special Inspections

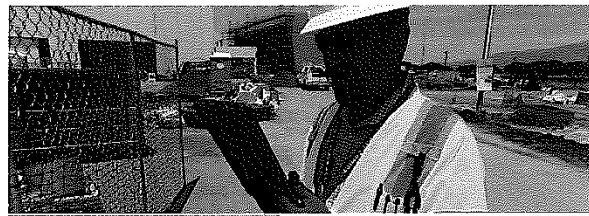
Our QAP begins with a thorough understanding of the project, requirements of the contract documents, and customary methods of construction.

Evolving with Technology

Our construction inspection process continues to evolve with the most current technology available in the marketplace.

The MNS inspection team will use iPads or tablets that integrate directly with our document control system to provide comprehensive inspection services for the project. This combination of cloud-based technologies provides our inspection team with finger-tip reach of the project plans and specifications. By using their iPads or tablets, there is no need to carry printed drawings and specifications to the field.

Using this technology to its fullest allows the inspectors to communicate quickly and efficiently with the Design Engineers to identify issues and receive responses within minutes rather than days. Pictures to accompany RFI issues are uploaded instantly. RFIs are transmitted to the Design Engineers immediately.



The MNS inspection team is currently using this technology for projects at the San Jose-Santa Clara Regional Wastewater Facility, City of San Jose.

Our QAP entails a process based on rigorous attention to detail and clear communication of expectations to the contractor. This process begins with inspection and test planning.



Inspection and Test Planning (ITP) Process.

These meetings will be held with the contractor, subcontractors, project special inspection team, and even the Design Engineer when necessary. The meeting ensures the contractors and subcontractors understand the inspection

requirements of the contract document and any additional project stakeholders. Each specification section is reviewed and "hold for" inspection points are developed and documented in the project records. Inspection and testing formats will be developed along with notification of inspection needs protocols.

MNS Inspectors will provide daily inspection and coordination for the project. Materials testing and special inspections will be provided by Earth Systems. The combination of these two special inspection teams allows MNS to provide a combination of resources and inter-relationships with the District that best serves all of the District's needs.

TASK 2.10 Materials Testing Services



The anticipated presence of groundwater and the need for dewatering during construction moves the foundation and soils portion of the work onto the project risk log.

MNS will work with Earth Systems to provide the District with special attention to this critical element. This effort will be coordinated with the District's specialty Geotechnical consultant, Yeh & Associates, Inc., who will be contracted as a subconsultant to the Design Engineer, Kennedy/Jenks Consultants.

Earth Systems is very familiar with the project and has also provided materials testing, geotechnical, and special inspection services for several previous projects for the District.

As described earlier, this process will provide the contractor's team with the exact testing and inspection requirements for each element of the work. This process mitigates delays resulting from insufficient planning as the contractor's team can organize their work to ensure the proper special inspectors are on the site to complete timely point inspections.

TASK 2.11 Progress Pay Applications

As part of our initial pre-construction activities, MNS will work with the contractor to develop a reasonable schedule of values that accurately represents the cost of the work. Unbalanced schedules of value or schedules that do not accurately reflect the true value of the work to be performed will not be allowed.

Once a schedule of values is approved, MNS will work with the contractor's team on a monthly basis to ascertain the fair value of the work completed since the last period and apply this to the pay

spreadsheet. Once agreed, MNS will promptly prepare a cover sheet for signature by the contractor, MNS, and the District to ensure the disbursement of funds in compliance with the Public Contracting Code. MNS will then provide required documentation for the USDA low-interest loan.

As-Constructed Drawings Maintenance. Prior to recommending payment of any monthly progress payments, MNS will review the status of the maintenance by the contractor of the construction as-built drawings. No payments will be recommended until this work is correct and current with the construction status.

TASK 2.12 Project Funding and Labor Compliance

USDA and Other State and Federal Funding Requirements. The project requires contractor's compliance with state and federal funding requirements, including payment of prevailing wages, utilization of Minority Business Enterprise (MBE) and Disadvantaged Business Enterprise (DBE), and adherence to equal employment opportunity. Because this work will be paid by public funds both minimum state and federal prevailing wage rates must be paid.

As part of the monthly closeout, MNS will ensure the contract is being administered and documented per the federal-funding requirements including verifying the contractor and their subcontractors have complied with the requirements of the California Department of Industrial Relations with regard to certified payroll verification and submission. As required by the construction project specifications, certified payrolls will be collected and reviewed each week. MNS will also conduct field interviews of the contractor's staff and their subcontractors to ensure compliance with prevailing wage rate requirements.

American Iron and Steel (AIS) Requirements. The AIS provision requires federal funding recipients to use iron and steel products produced in the United States for products made primarily from iron or steel that are permanently incorporated into the project. The AIS provision applies to this project. MNS will ensure the contractor submits adequate proof of iron and/or steel materials to fully comply with this requirement.

Our team is very familiar with complying with AIS requirements. Currently, MNS provides Buy American oversight as part of the CM scope of services for the following projects: Owner's Agent/Owner's Engineer Services for Groundwater Reliability Improvement Program and El Estero Wastewater Treatment Plant Secondary Process Improvements.

TASK 2.13 Environmental Compliance

Environmental compliance includes all required environmental control elements such as air, Stormwater Pollution Prevention Plan (SWPPP), dust, and hazardous waste requirements. MNS will monitor the contractor's compliance efforts to help ensure the work is being performed within the permit requirements. We will work with the contractor to anticipate and prevent potential issues such as accidental discharges.

TASK 2.14 Safety

The contractor's submitted Safety Plan, and the Occupational Safety and Health Administration (OSHA) Safety Orders will guide our CM team in monitoring the contractor's safety program. Any safety concerns will be brought to the contractor's attention to be addressed promptly. MNS will keep the District informed of any significant safety concerns as well as their resolution.

TASK 2.15 MOPO During Construction

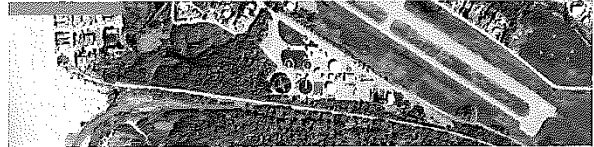
MNS will provide a robust MOPO planning process requiring participation from the contractor's team, plant operations staff, Design Engineer, and any outside project stakeholders such as PG&E. The permit compliance to the plant's NPDES discharge requirements along with the specific requirements of the Coastal Development permit presently issued to the District will be MNS' highest priority in ensuring none of the construction work impacts the plant operations. MNS will provide a Grade V Operator, Ron Kettle, experienced with this specific type of treatment process to work directly with the team to ensure the seamless integration of the existing operations with the plant processes and prevent any unexpected interruptions to the plant operations.

A robust planning process will be required before authorizing any work that interrupts plant operations. Written plans, double redundancy, and an explicit go/no go authority matrix will be established before starting the work. MNS will act as an advocate for the District in this planning process.

TASK 2.16 Plant Commissioning, Startup, and Training

MNS' philosophy of starting with the end in mind is a cornerstone of our management process with regard to plant commissioning and startup. The planning process begins within 60 days of the NTP and continues until the project is substantially complete. This detailed planning process includes plans and testing protocols for each new item of equipment or subsystem. The commissioning process flows through several formal stages of testing and certification for each equipment item, including certification of proper installation, functional testing, performance testing, subsystem testing, system testing, and final performance measurement and testing.

TASK 3 Project Closeout Phase

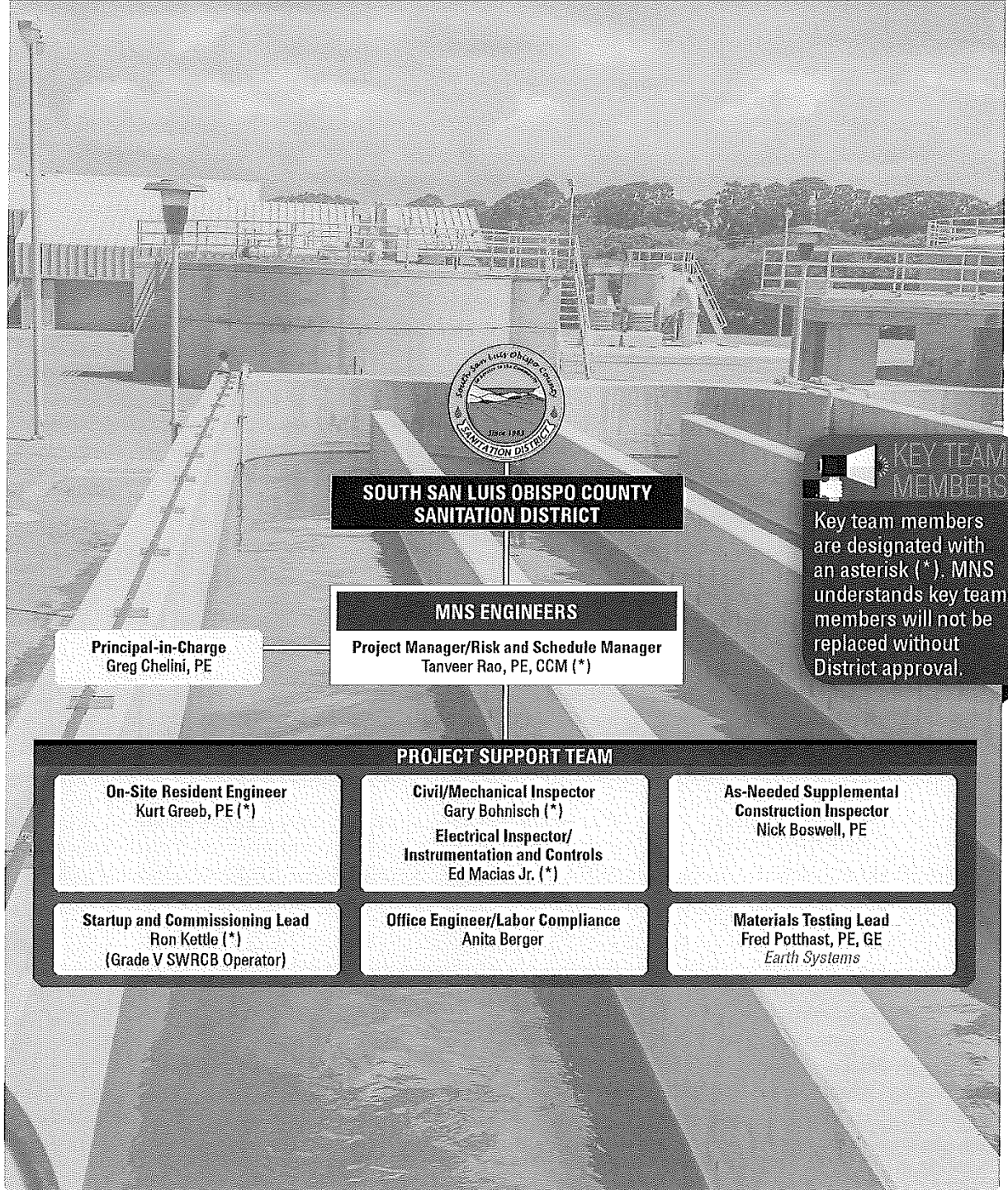


TASK 3.1 Project Closeout

Working throughout the project with the end in mind, MNS' process for project closeout ensures the completion of any remaining punch list work items. The On-Site Resident Engineer and Construction Inspector will coordinate a walk through with the contractor, District, and District's Design Engineer and develop a final punch list of any outstanding items to be corrected. MNS will inspect each item to ensure deficiencies are corrected before conducting a final walk through and recommending acceptance of the work to the District.

All final documentation, including punch lists, warranties, lien releases, and so on are maintained in the document control system. Once completed, MNS will certify to the District the project is complete and recommend final payments and certify the adequacy of the project equipment warranties, which will also be tracked in the project's document control system. MNS will ensure the contractor provides the District with the various USDA/federal and state-required forms to properly closeout the project.

Team Organization Chart



This is EXHIBIT B, consisting of 4 pages, referred to in and part of the Agreement between Owner and RPR for Professional Services dated December 10, 2019.

Exhibit B

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide RPR with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to RPR regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting RPR to use copies already in RPR's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for RPR to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to RPR any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following RPR's assessment of initially-available Project information and data and upon RPR's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable RPR to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.

Exhibit B – Owner's Responsibilities

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3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for RPR to enter upon public and private property as required for RPR to perform services under the Agreement.
- F. Recognizing and acknowledging that RPR's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or RPR reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- ~~G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide RPR with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.~~
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by RPR and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

Exhibit B – Owner's Responsibilities

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- I. Advise RPR of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, RPR to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of RPR.
- K. If more than one prime contract is to be awarded for the Work designed or specified by RPR, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of RPR as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform RPR in writing of any specific requirements of safety or security programs that are applicable to RPR, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by RPR (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- ~~N. Inform RPR regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.~~
- O. Advise RPR as to whether RPR's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to RPR data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that RPR may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- ~~S. Authorize RPR to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.~~

Exhibit B – Owner's Responsibilities

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- T. Perform or provide the following: Owners are responsible for project compliance with the American Iron and Steel Requirements as described in the Letter of Conditions for project funding. Owner's compliance actions include the following:
- a. Signing project change order forms and partial payment request forms that include iron and steel products compliant with applicable American Iron and Steel Requirements.
 - b. Receiving the RPR's Certification Letter at Substantial Completion and retaining for the life of the loan.
 - c. Including American Iron and Steel contract requirements in all Owner's direct procurement contracts and obtaining and providing Manufacturer's Certification Letters for the items procured to the RPR as applicable for compliance with the American Iron and Steel Requirements.

Exhibit B – Owner's Responsibilities

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This is **EXHIBIT C**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and RPR for Professional Services** dated December 10, 2019.

**COMPENSATION PACKET RPR-2:
Resident Project Representative – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment

A. Owner shall pay RPR for Resident Project Representative Basic Services as follows:

1. **Resident Project Representative Services:** For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of RPR's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus Project-related Reimbursable Expenses and RPR's Consultant's charges, if any. The total compensation under this paragraph is estimated to be **\$2,616,043.03** based upon full-time RPR services ~~on an eight-hour workday, Monday through Friday,~~ over a **27 month** construction schedule.

B. Compensation for Reimbursable Expenses:

1. For those Reimbursable Expenses that are ~~not accounted for in the compensation for Basic Services under Paragraph C2.01,~~ and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay RPR at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; ~~providing and maintaining field office facilities including furnishings and utilities;~~ subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to RPR for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by RPR, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of **1.10**.

**Exhibit C – Compensation Packet RPR-2: Resident Project Representative Services—
Standard Hourly Rates Method of Payment.**

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4. ~~The Reimbursable Expenses Schedule will be adjusted annually (as of []) to reflect equitable changes in the compensation payable to RPR. Changes will not be effective unless and until concurred in by the Owner and Agency.~~

C. *Other Provisions Concerning Payment Under this Paragraph C2.04:*

1. Whenever RPR is entitled to compensation for the charges of RPR's Consultants, those charges shall be the amounts billed by RPR's Consultants to RPR times a factor of **1.10**.
2. *Factors:* The external Reimbursable Expenses and RPR's Consultant's factors include RPR's overhead and profit associated with RPR's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
 - a. RPR's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to RPR under the Agreement.
 - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to RPR that the total compensation amount thus estimated will be exceeded, RPR shall give Owner and Agency written notice thereof, allowing Owner to consider its options, including suspension or termination of RPR's services for Owner's convenience. Upon notice Owner and RPR promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate RPR's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by RPR, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend RPR's services during negotiations and RPR exceeds the estimated amount before Owner and RPR have agreed to an increase in the compensation due RPR or a reduction in the remaining services, then RPR shall be paid for all services rendered hereunder.
4. To the extent necessary to verify RPR's charges and upon Owner's timely request, RPR shall make copies of such records available to Owner ~~at cost~~ at no cost.

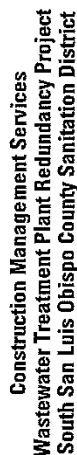
**Exhibit C – Compensation Packet RPR-2: Resident Project Representative Services—
Standard Hourly Rates Method of Payment.**

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Appendix 1 to Exhibit C Fee and Rate Schedule

**Exhibit C – Compensation Packet RPR-2: Resident Project Representative Services—
Standard Hourly Rates Method of Payment.**

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Notes:

1. Used an average of 168 hours per month based upon 8 hour working days with no overtime.
2. Assume Construction Trailer office space for four CM staff and site furnishings/utilities provided by the contractor.
3. Annual escalation of hourly rates applied at 3% starting 2021.

This is EXHIBIT D, consisting of 5 pages, referred to in and part of the Agreement between Owner and RPR for Professional Services dated December 10, 2019.

Exhibit D

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF RESIDENT PROJECT REPRESENTATIVE

D1.01 Resident Project Representative

- A. ~~Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree.~~ RPR is **Owner's Engineer's** representative at the Site, will act as directed by and under the supervision of **Owner Engineer**, and will confer with **Owner Engineer** regarding RPR's actions. Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, RPR shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, RPR shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall RPR ~~(including the RPR)~~ have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The RPR ~~(including RPR)~~ neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with **Owner, Design Engineer** and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. ~~RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.~~
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with **Owner Engineer** concerning acceptability of such schedules.

Exhibit D - Resident Project Representative.

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3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as **Owner's Engineer's** liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist **Owner Engineer** in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to **Design Engineer** regarding such RFIs. Report to **Design Engineer** when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit **Design Engineer's** clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify **Owner or Design Engineer** of availability of Samples for examination.
 - c. Advise **Design Engineer** and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or **Design Engineer**.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to **Design Engineer**. Transmit **Design Engineer's** response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*

Exhibit D - Resident Project Representative.

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- a. Report to **Owner Engineer** whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - b. Inform **Owner or Design Engineer** of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations ~~to Engineer~~ for addressing such Work ; and
 - c. Advise **Owner Engineer** of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.
10. *Inspections, Tests, and System Start-ups:*
- a. Consult with **Owner Engineer** in advance of scheduled inspections, tests, and systems start-ups.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - c. Observe, record, and report to **Owner Engineer** appropriate details relative to the test procedures and systems start-ups.
 - d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
 - e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to **Owner Engineer**.
11. *Records:*
- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, **Design Engineer's** clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
 - b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities,

Exhibit D - Resident Project Representative.

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decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to **Owner Engineer**.

- c. Upon request from Owner ~~to Engineer~~, photograph or video Work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to **Owner Engineer**.

12. *Reports:*

- a. Furnish to **Owner Engineer** periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- ~~b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor. [Deleted]~~
- c. Furnish to **Design Engineer** and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform **Owner Engineer** of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to **Owner Engineer**, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ~~Engineer for review and forwarding to~~ Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in **Owner's or Design Engineer's** visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the

Exhibit D - Resident Project Representative.

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issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

- b. Participate in **Design Engineer's** visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to **Owner Engineer** concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of RPR's authority as set forth in this Agreement.
- 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
- 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
- 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
- 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by **Owner Engineer**.
- 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 8. Authorize Owner to occupy the Project in whole or in part.

Exhibit D - Resident Project Representative.

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This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and RPR for Professional Services** dated December 10, 2019.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

RESIDENT PROJECT REPRESENTATIVE:

NOTICE DATE:

To: _____
 Owner

And To: _____
 Contractor

From: _____
 Resident Project Representative

The Resident Project Representative (RPR) hereby gives notice to the above Owner and Contractor that RPR has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and RPR for Professional Services dated **December 10, 2019**, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the RPR's professional opinion.

Exhibit E – Notice of Acceptability of Work.

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3. This Notice is given as to the best of RPR's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services RPR has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under RPR's Agreement with Owner, and applies only to facts that are within RPR's knowledge or could reasonably have been ascertained by RPR as a result of carrying out the responsibilities specifically assigned to RPR under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

Exhibit E – Notice of Acceptability of Work.

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This is **EXHIBIT G**, consisting of 7 pages, referred to in and part of the **Agreement between Owner and RPR for Professional Services** dated December 10, 2019.

Exhibit G

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

- A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement and other requirements for insurance coverage are as attached in Appendix 1 to Exhibit G – “Insurance Requirements”.

1. ~~By RPR:~~

a. ~~Workers' Compensation:~~ _____ ~~Statutory~~

b. ~~Employer's Liability~~

1) ~~Bodily injury, each accident:~~ _____ \$[]

2) ~~Bodily injury by disease, each employee:~~ _____ \$[]

3) ~~Bodily injury/disease, aggregate:~~ _____ \$[]

c. ~~General Liability~~

1) ~~Each Occurrence (Bodily Injury and Property Damage):~~ \$[]

2) ~~General Aggregate:~~ _____ \$[]

d. ~~Excess or Umbrella Liability~~ _____

1) ~~Per Occurrence:~~ _____ \$[]

2) ~~General Aggregate:~~ _____ \$[]

e. ~~Automobile Liability—Combined Single Limit (Bodily Injury and Property Damage):~~

_____ \$[]

f. ~~Professional Liability~~

1) ~~Each Claim Made~~ _____ \$[]

2) ~~Annual Aggregate~~ _____ \$[]

g. ~~Other (specify):~~ _____ \$[]

2. ~~By Owner:~~

Exhibit G – Insurance.

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a. ~~Workers' Compensation:~~ _____ Statutory

b. ~~Employer's Liability~~

1) ~~Bodily injury, Each Accident~~ _____ \$[]

2) ~~Bodily injury by Disease, Each Employee~~ _____ \$[]

3) ~~Bodily injury/Disease, Aggregate~~ _____ \$[]

c. ~~General Liability~~

1) ~~General Aggregate:~~ _____ \$[]

2) ~~Each Occurrence (Bodily Injury and Property Damage):~~ \$[]

d. ~~Excess Umbrella Liability~~

1) ~~Per Occurrence:~~ _____ \$[]

2) ~~General Aggregate:~~ _____ \$[]

e. ~~Automobile Liability - Combined Single Limit (Bodily Injury and Property Damage):~~

_____ \$[]

f. ~~Other (specify):~~ _____ \$[]

B. ~~Additional Insureds:~~

1. ~~The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:~~

a. []
RPR

b. []
RPR's Consultant

c. []
RPR's Consultant

d. []
{other}

2. ~~During the term of this Agreement the RPR shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.~~

Exhibit G - Insurance.

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3. ~~The Owner shall be listed on RPR's general liability policy as provided in Paragraph 6.05.A.~~

Exhibit G – Insurance.

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Appendix 1 to Exhibit G Insurance Requirements

Exhibit G – Insurance.

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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. If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor.

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), including products and completed operations, property damage, bodily injury and personal & advertising injury.
2. Insurance Services Office Business Auto Coverage Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired (Code 8) and non-owned autos (Code 9).
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 - \$2,000,000 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 (ISO CG 25 03 or 25 04) 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. Workers' Compensation: Statutory limits.
4. Employer's Liability - \$1,000,000 per accident for bodily injury or disease.
5. Errors and Omissions Liability - \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

Atty rev. 2018

C. Self-insured Retentions

Self-insured retentions must be declared to and approved by the District. The District may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention.

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 officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form or an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38 and CG 20 37 forms if later revisions are used).

2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the District, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, 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 or reduced, except with notice stating the title of this contract 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.

4. Consultant hereby grants to District a waiver of any right to subrogation which any insurer of said Consultant may acquire against the District by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

5. If any of the required policies provide claims-made coverage:

- a. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the

Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

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 of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. 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.

G. Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

This is **EXHIBIT H**, consisting of **1** page, referred to in and part of the **Agreement between Owner and RPR for Professional Services** dated **December 10, 2019**.

Exhibit H

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. *Mediation:* Owner and RPR agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by **a mediator or mediation service selected by the owner**. Owner and RPR agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

Exhibit H - Dispute Resolution.

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This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and RPR for Professional Services** dated December 10, 2019.

AMENDMENT TO OWNER-RPR AGREEMENT

Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-RPR Agreement:

Owner:

RPR:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- _____ Additional Services to be performed by RPR
- _____ Modifications to services of RPR
- _____ Modifications to responsibilities of Owner
- _____ Modifications of payment to RPR
- _____ Modifications to time(s) for rendering services
- _____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

Exhibit K – Amendment to Owner-Engineer Agreement.

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The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and RPR hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

RPR:

By: _____
Print
name: _____

Title: _____

Date Signed: _____

By: _____
Print
name: _____

Title: _____

Date Signed: _____

Exhibit K – Amendment to Owner-Engineer Agreement.

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This is **EXHIBIT L**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and RPR for Professional Services** dated December 10, 2019.

Exhibit L
USDA Certifications

Exhibit L – USDA Certifications.

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RUS Certification Page

COMPENSATION FOR ENGINEER'S SERVICES

1. The Engineer's Total Project fees are described below:

Exhibit C

Compensation Packet BC-2; C2.01 A. 4.

a. Study and Report Phase Services	\$ -
b./c. Design Phase Services	\$ -
d. Bidding or Negotiating Phase Services	\$ -
e. Construction Phase Services	\$ -
f. Post-Construction Phase Services	\$ -

Compensation Packet RPR-2; C2.04. A.

1. Resident Project Representative Services	\$ 2,616,043.03
---	-----------------

Total Amount: \$ 2,616,043.03

- a. The Engineer's invoices shall include a breakdown and description of the services provided based on the line items above and the invoices shall only include work that has been completed. The invoiced charges shall be based on Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
- b. A copy of the Engineer's current Standard Rate Schedule is attached. The Standard Rate Schedule includes descriptions of standard hourly rates and the service performed for each rate and a description of the charge rates for reimbursable expenses.
- c. The Engineer's billing shall not exceed the Total Amount shown. Any changes to the Engineering fees must be approved by USDA Rural Development and the Owner. Any approved adjustments to the Engineering fees shall be made by written amendment.

AGENCY CONCURRENCE

As lender or insurer of funds to defray the costs of this Agreement, and without liability for any payments thereunder, USDA Rural Development hereby concurs in the form, content, and execution of this Agreement in accordance with the Letter of Conditions for project funding.

Signature - USDA Rural Development Representative

Date

Print Name and Title

Project Name

AMERICAN IRON AND STEEL REQUIREMENTS

USDA Rural Development

Engineer's Responsibilities

- A. Design the project with the understanding that USDA Rural Development - American Iron and Steel (AIS) requirements are to be implemented.
- B. Provide project cost estimates that reflect AIS compliance.
- C. Certify that the Bidding and Construction Contract Documents comply with AIS requirements by:
 - Including the required AIS language, and
 - Obtaining the required Manufacturer's Certification Letter for iron and steel products that are referred to by name in the documents and not covered by a waiver.
- D. Require that Contractors provide a Manufacturer's Certification for proposed "or-equal" or substitute iron and steel products during bidding, submittal reviews, and for construction change proposals.
- E. Submit waiver requests to USDA Rural Development
- F. Document project AIS compliance by:
 - Maintaining a record of all iron and steel products that are not covered under a waiver,
 - Obtaining a Manufacturer's Certification Letter for each recorded iron and steel product that will be kept in an on-site project file.
 - Maintaining a list of iron and steel products that are under a de minimis waiver.
- G. Provide copies of the Engineer's Certification Letter, the Contractor's Certification Letter and all Manufacturer's Certification Letters with the Engineer's record of iron and steel products used in the project to the Owner and USDA Rural Development at Substantial Completion.

ENGINEER'S CERTIFICATION

American Iron and Steel Requirements

USDA Rural Development

Date:

RE: [Project Name]

[Owner's Name]

[Construction Contract Name]

I hereby certify that to the best of my knowledge and belief all iron and steel products referenced in the Plans, Specifications, and Bidding Documents for this project comply with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference, or are the subject of a waiver approved by the Secretary of Agriculture or designee. This certification is not intended to be a warranty in any way, but rather the designer's professional opinion that to the best of their knowledge the documents comply.

I hereby commit that to the best of my ability all iron and steel products that will be referenced in the Bid Addenda, Executed Contracts, and Change Orders will comply with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference or will be the subject of a waiver approved by the Secretary of Agriculture or designee.

Name of Engineering Firm (PRINT)

By Authorized Representative (SIGNATURE)

Title

(This certification is to be submitted to USDA Rural Development prior to bidding authorization)



United States Department of Agriculture

AD-1048

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions**

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552(a), as amended). This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 C.F.R. §§ 180.300, 180.355, Participants' responsibilities. The regulations were amended and published on August 31, 2005, in 70 Fed. Reg. 51865-51880. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

According to the Paperwork Reduction Act of 1995 an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0027. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal and civil fraud privacy, and other statutes may be applicable to the information provided.

(Read Instructions On Page Two Before Completing Certification)

- A. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
- B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ORGANIZATION NAME

PR/AWARD NUMBER OR PROJECT NAME

NAME(S) AND TITLE(S) OF AUTHORIZED REPRESENTATIVE(S)

SIGNATURE(S)

DATE

The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider, employer and lender.

Instructions for Certification

- (1) By signing and submitting this form, the prospective lower tier participant is providing the certification set out on page 1 in accordance with these instructions.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to the person(s) to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, at 2 C.F.R. Parts 180 and 417. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- (5) The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- (6) The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management (SAM) database.
- (8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (9) Except for transactions authorized under paragraph (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form – LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(Name)

(Date)

(Title)

(08-21-91) PN 171