

**MONTEREY PENINSULA REGIONAL PARK DISTRICT  
BOARD OF DIRECTORS MEETING**

**DATE:** March 14, 2018  
**TO:** Board of Directors  
**FROM:** Caine Camarillo, Supervising Ranger  
**REVIEWED BY:** Rafael Payan, General Manager  
**SUBJECT:** Approval of Contract with Whitson Engineers for Engineering Consulting Services

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**RECOMMENDED ACTION**

Staff respectfully recommends the Board approve the Whitson Engineering Professional Services Agreement (**Attachment 3**) for engineering and consulting services at Palo Corona Regional Park in substantially the form attached.

**FISCAL IMPACT:**

\$40,800

**FUNDING SOURCE:**

Acct. 6266 – Winter Storm Repairs

**FUNDING BALANCE:**

\$497,392.18

**DISCUSSION:**

The complexity and magnitude of the landslide sustained in the backcountry of Palo Corona Regional Park during last winter's storms require site plans and specifications prepared by a licensed engineering firm to implement the repairs. This project is time sensitive as it must be completed within the 18-month timeframe set by FEMA in order to qualify for FEMA reimbursement.

As detailed in the MPRPD Board approved Purchasing Policy, Government Code 2254 requires that selection of professional consultants in the categories of architects, landscape architects, engineers, surveyors, and environmental consulting be made on the basis of demonstrated competence and the professional qualifications necessary for the satisfactory performance of the required services. The technical and professional nature of these services do not fall within the "low bid" competitive bidding process.

To contract a qualified engineering firm, staff initiated, as required by the Board approved Purchasing Policy, a Request for Qualifications (RFQ) process (**Attachment 1**), by contacting local engineering firms and advertising the RFQ on the District's website. A total of three firms responded by the February 28 deadline. All three firms are qualified engineering firms, which resulted in creation of a shortlist of engineering firms determined to be highly qualified in the field of civil and geotechnical engineering, including Whitson Engineering. Staff negotiated a satisfactory price with Whitson, who will provide a

geotechnical investigation and design, structural design, construction documents, bidding and construction management and support (**Attachment 2**). When received, these design documents will be incorporated into a project bid package that will be distributed to licensed engineering contractors locally and statewide.

Staff respectfully recommends that the Board approve the attached Professional Services Agreement (**Attachment 3**) in substantially the form attached.

**ATTACHMENTS:**

1. Request for Qualifications for Civil and/or Geotechnical Engineering Consulting Services
2. Whitson Engineering Proposal
3. Professional Services Agreement with Whitson Engineers



**REQUEST FOR QUALIFICATIONS (RFQ)**  
**Professional Consulting Services for**  
**Civil and/or Geotechnical Engineering**  
**Consulting Services**  
for the  
**MONTEREY PENINSULA REGIONAL PARK DISTRICT, CALIFORNIA**

**Qualifications must be received by:**  
**4:00 p.m., Wednesday, February 28, 2018**

**Attn: Rafael Payan**  
**General Manager**  
**60 Garden Court, Suite 325**  
**Monterey, CA 93940**

Proposals will be evaluated on the following: a) responsiveness to the Request for Proposals, b) Experience of the firm, c) Experience and qualifications of the assigned individuals, and d) Satisfaction of previous clients.

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- Attachment B – District Standard Professional Consultant Services Agreement



**REQUEST FOR QUALIFICATIONS**  
**for**  
**CIVIL AND/OR GEOTECHNICAL ENGINEERING CONSULTING SERVICES**  
**for the**  
**MONTEREY PENINSULA REGIONAL PARK DISTRICT, CALIFORNIA**

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**I. STATEMENT OF PURPOSE**

The Monterey Peninsula Regional Park District (District) is soliciting proposals from qualified Consulting teams to provide Civil and/or Geotechnical Engineering Consulting Services for storm water damaged remote back country road repairs and other future Capital projects including, new and renovated parks and facilities. The District intends to develop a shortlist of Consultants that will be called upon to provide services for any needed project or service within the scope Civil and/or Geotechnical Engineering Consulting for a one-year period and may renew agreements for up to an additional four years (up to five years total).

Proposals shall be submitted by firms or partnering firms that are capable and can demonstrate proven backgrounds in the type of work described in Section III - SCOPE OF SERVICES, of this notice. In addition, all interested firms or partnering firms shall have sufficient, readily available resources in the form of trained technical registrants and personnel, support services, specialized consultants and financial resources to carry out the work without delay or shortcomings.

Each proposer shall submit three (3) sets of the proposal in accordance with Section IX - RFQ SUBMITTAL REQUIREMENTS, of this notice. The proposals shall be submitted in a sealed envelope, delivered by the deadline to the Administrative Office at 60 Garden Court, Suite 325, Monterey, CA, 93940, **no later than 4:00 p.m. on Wednesday, February 28, 2018. Submittals made after this deadline shall be returned to the respective submitting firm, unopened.**

**The envelope shall clearly and legibly be labeled to include the following information:**

**REQUEST FOR QUALIFICATIONS (RFQ)**  
**Professional Consulting Services for**  
**Civil and/or Geotechnical Engineering Consulting Services**  
**for the MONTEREY PENINSULA REGIONAL PARK DISTRICT, CALIFORNIA**

**Your firm's name, address, phone number and contact person's name and title**

**Due Date/Time: 4:00 p.m., Wednesday, February 28, 2018**

**ATTENTION: Rafael Payan, General Manager – MPRPD**

The Monterey Peninsula Regional Park District will contract with the firm or partnering firms that can provide the required services for this specific scope of work. All questions regarding this Request for Qualifications (RFQ) should be directed to Rafael Payan, General Manager, (831) 372-3196 ext. 101, [payan@mprpd.org](mailto:payan@mprpd.org).

## II. Background Information

The Monterey Peninsula Regional Park District, is located within the Monterey Bay Peninsula, along the Central Coast. Our boundaries include 20,000 detached acres of open space and parklands that encompass an area, which includes the City of Marina to the North, and the community of Big Sur to the South. The District serves a diverse population of residents.

The District is over 45-years old and has ecologically diverse native landscapes, including undeveloped coastal dunes and wetlands, rocky shoreline, redwood canyons, Monterey Pine terraces, and mixed hardwood flood plains.

The Monterey Peninsula Regional Park District was formed to preserve and protect as much of this natural beauty as possible for future generations. Funding is received from property taxes and an assessment district approved by voters in 2004.

Design, plans and construction documents are developed by outside consultants hired by the District under professional services agreements. In general, projects are competitively bid and built by general contractors.

## III. Scope of Work

The District is seeking these professional services from qualified firms to provide Civil and/or Geotechnical Engineering Consulting services on multiple projects, with a potential to extend the agreement for up to four additional years. Please note the District may select more than one firm with which to enter into an agreement. Services may include research, design, specifications, engineer's estimates, surveys, analysis, construction administration, and other related engineering services of Capital projects (**Attachment A**); and, other tasks associated with parks and facilities infrastructure analysis, design, specifications, and construction administration, and other tasks as assigned and directed by the General Manager.

Under the general direction of the General Manager, qualified firm(s) shall be responsible for, but not limited to, providing the following tasks:

### Civil and/or Geotechnical Engineering Consulting Services:

- Civil Engineering
- Geotechnical Engineering
- Geotechnical Investigation, Analysis, Hazard Studies and Reports
- Testing, Inspections and other Construction Support Services for parks, facilities, and other facilities/site construction projects
- Surveying
- Design and Specifications
- Construction Administration

## IV. Overview of the On-Call Projects Process

The selected firm(s) will enter into the District's Standard Professional Consultant Services Agreement (**Attachment B**) to perform services on a "Time and Material" basis to be negotiated with the District. The firm's services will be negotiated on a per project basis and have a budget, specific work scope, and timeframe under a Scope of Work. Travel time, mileage, vehicles, meals, etc. will not be allowed and should be incorporated into your hourly rates provided. Consultant may request hourly rates be updated after 18 months, then annually at each calendar year. Rate increases shall not exceed 3%, and shall be based on the San Francisco Bay Area Consumer Price Index CPI for that period of time and this shall be submitted to the General Manager, or their designee, for approval prior to taking effect.

## **V. Conflict of Interest**

Proposer agrees that, for the term of this contract, no member, officer or employee of the Monterey Peninsula Regional Park District, or of a public body within Monterey County or member or delegate to the Congress of the United States, during his/her tenure or for one year thereafter, shall have any direct interest in the contracts or any direct or material benefit arising therefrom.

## **VI. Equal Employment Opportunity**

Proposer shall not, on the grounds of race, color, sex, gender identification, age, religion, national origin, ancestry, physical handicap, medical condition, or marital status either discriminate or permit discrimination against any employee or applicant for employment in any manner prohibited by Federal, State or local laws. In the event of Proposer non-compliance, the Monterey Peninsula Regional Park District may cancel, terminate or suspend the Contract in whole or in part. Proposer may also be declared ineligible for further contracts with the Monterey Peninsula Regional Park District.

Proposer shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, gender identification, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Proposer and its sub-consultants shall post in conspicuous places, available to all employees and applicants for employment, a notice setting forth the following provisions [29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.].

## **VII. Governing Law**

This RFQ summarizes the applicable laws and governance; when in conflict applicable State/Federal guidelines shall apply. The contract and legal relations between the parties hereto shall be governed and construed in accordance with the laws of the State of California.

## **VIII. Qualification Requirements**

### Minimum Required Experience:

- Six years minimum required experience, including but not limited to:
  - Civil Engineering and surveying services by appropriate Registrant(s) in the State of California
  - Geotechnical Engineering
  - Geotechnical Investigation, Hazard Studies and Reports
  - Testing, Inspections and other Construction Support Services for parks, facilities, and other facilities/site construction projects.
- Worked in a similar capacity for a governmental organization on at least three projects with a construction cost greater than \$250,000.

To be considered responsive to this RFQ, your firm MUST be able to provide all services described in this RFQ.

## **IX. RFQ Submittal Requirements**

Please prepare and organize your Statement of Qualification based on the requirements provided below. Any other information you would like to include should be placed in a separated section at the back of your

Statement of Qualification. Please note however that the RFQ submittal is limited to **15 pages maximum** single sided (excluding resumes), and should be submitted on 8 ½ x 11 paper, in 12-point font.

Interested firms are requested to submit three (3) copies, and one electronic copy of their Statement of Qualifications as follows:

1. Enclose a cover letter not to exceed one page, describing the firm's interest and commitment to perform work necessary to provide both Civil and/or Geotechnical Engineering Consulting Services. The person authorized by the firm to negotiate a contract with the District shall sign the cover letter.
2. State the qualifications and experience of the firm/individual(s). Please emphasize the specific qualifications and experience with engagements of similar scope and complexity.
3. Provide at least three references (names and current phone numbers) from recent work (previous five years) similar to the services outlined in this request for qualification. Please include a brief description of the work performed and the role your firm performed.
4. List key staff members, including identification of the Principal-in-Charge and Project Manager/primary point-of-contact.
5. Present proposed compensation rate schedule for services in separate sealed envelope.
6. Provide confirmation of your firm's ability to meet the District's Standard Consulting Agreement and insurance requirements. Exceptions to the Agreement and insurance requirements shall be specifically noted in the Statement of Qualification.
7. Firm may not sub out any services identified in the scope of work.
8. Exceptions to the District's Standard Form Agreement.

Complete proposal packets must be received no later than 4:00 p.m. on Wednesday, February 28, 2018. Proposals should be submitted to:

Monterey Peninsula Regional Park District  
Attn: Rafael Payan  
60 Garden Court, Suite 325  
Monterey, CA, 93940

Proposals should be in an envelope clearly marked RFQ-Civil and/or Geotechnical Engineering Services.

***Proposals submitted after the stated deadline will not be accepted for consideration and shall be returned to the submitting party, unopened.***

**Period of Award**

It is anticipated that the selected Consultants will work under a one-year Consulting Agreement with the District. At the end of the one-year term, the District may renew the Consulting Agreement for up to four additional years. It is acknowledged that some projects initiated within the one-year term may require extension beyond that timeframe to accommodate their successful execution and completion.



If and as applicable, if the District desires to extend the contract, not later than thirty (30) days prior to expiration, the District shall send a notice in writing to the Consultant requesting firm pricing for the next twelve-month period. After the District evaluates the firm pricing proposal from the Consultant, it will determine whether to extend the contract. All awards and extensions are subject to availability of funds. The provisions of the foregoing paragraphs with respect to extensions of the terms of the contract shall be null and void if the contract has been terminated or revoked during the initial term or extension thereof. All decisions to extend the contract are at the option of the District.

### **Standard Consulting Service Agreement**

A sample of the District's Standard Consulting Services Agreement (Agreement), including insurance requirements is provided as **Attachment B**.

If the interested firm desires to take exception to the Agreement and/or insurance requirements, the interested firm shall clearly identify the proposed changes to the Agreement and furnish the reason for these changes, which shall be included in the proposal. The exceptions will be taken into consideration in evaluating the proposals. Otherwise, the interested firm is to state in the proposal that the Agreement and insurance requirements are acceptable.

Consideration for exceptions will not be considered if not included in the submitted proposal.

### **X. SELECTION OF CONSULTANTS**

Proposals will be evaluated and ranked by District staff. District staff will assess the submitting firm's qualifications, experience and strength of the proposer in terms of resources and the ability to perform the work. The proposals receiving the highest ranking may, if required, be invited for an interview. The District may, at its discretion, request that an applicant modify or supplement their submission with additional information.

Proposals may be evaluated based upon, but not limited to, the following criteria:

- ✓ The qualifications and specific experience of the key project team members
- ✓ Quality and completeness of the proposal
- ✓ Experience with engagement of similar scope and complexity
- ✓ Satisfaction of previous clients

### **Selection Process**

The District reserves the right to make the selection based at its sole discretion. A subcommittee selected by District staff will evaluate the proposals provided to this RFQ.

Based on input from this review process a recommendation will be made to the General Manager. The General Manager will make a recommendation to the District Board of Directors for award of contract services.

The District reserves the right to award a contract to the firm(s) that the District feels best meets the requirements of the RFQ. The District reserves the right to reject any and all proposals prior to the execution of the Agreement, with no penalty to the District.

## XII. SELECTION PROCESS DATES

Following is the tentative timetable:

Friday, February 16, 2018	Request for Qualifications Issued
Friday, February 23, 2018	Deadline at 12:00 noon for questions regarding the RFQ. Addenda will be provided by MPRPD in as timely a manner practicable for MPRPD, prior to the submittal deadline. Addenda will be advertised on MPRPD's website.
Wednesday, February 28, 2018	Proposals due no later than 4:00 p.m., at the Monterey Peninsula Regional Park District, Administrative Office, 60 Garden Court, Suite 325, Monterey, CA 93940. <b><u>Late submittals will not be accepted and shall be returned to the submitting party, unopened.</u></b>
March 1 & 2, 2018	Interviews with top-ranking firms, <b><u>if required</u></b>
Wednesday, March 14, 2018	Award of Contract by MPRPD Board of Directors

All costs incurred during the proposal preparation or in any way associated with the applicant's preparation, submission, presentation or oral interview shall be the sole responsibility of the applicant.

Receipt of proposals in response to this RFQ does not obligate the District in any way to engage any firm and the District reserves the right to reject any and all proposals, wholly or in part, at any time, without penalty. The District shall retain the right to abandon the selection process at any time prior to the actual execution of an agreement with a firm, and the District shall bear no financial or other responsibility in the event of such abandonment. The District reserves the right to negotiate all final terms and conditions of any agreements entered into. If the District, in its sole opinion, cannot successfully negotiate an agreement with the candidate firm, the District may terminate negotiations with the candidate engineering firm, without penalty to the District.

All requests, questions or other communications regarding this RFQ shall be made in writing to the District via email or U.S. Mail, and must be received by 12:00 noon, Friday, February 23, 2018. Address all communication to Rafael Payan, General Manager. To ensure written requests are received and answered in a timely manner, email correspondence is preferred.

Rafael Payan, General Manager  
Monterey Peninsula Regional Park District  
60 Garden Court, Suite 325  
Monterey, CA 93940  
(831) 372-3196 ext. 101  
payan@mprpd.org

### Attachments:

*Attachment A – District List of potential upcoming projects for Geotechnical Engineering Consulting Services*

*Attachment B – District Standard Professional Consultant Services Agreement*

# ATTACHMENT A

## District List of potential upcoming projects for Civil and/or Geotechnical Engineering Consulting Services

*(Please note, the District reserves the right to add or delete parks, buildings, facilities as necessary)*

POTENTIAL PROJECTS FOR GEOTECHNICAL ENGINEERING CONSULTING SERVICES
Project Name
Palo Corona Regional Park Storm Water Damaged Road Repairs
Palo Corona Regional Park-Rancho Canada Unit Bridges
Palo Corona Regional Park-Rancho Canada Unit Trails
Palo Corona Regional Park-Rancho Canada Unit Viewing Decks
New Road Construction and Parking Lot Design
Erosion Control
Grading Design and Earthwork
Project Management
Land Surveying & Mapping
Boundary Surveys
Cost Estimating
SWPPP Monitoring
Environmental Impact Studies
Lot Line Adjustments
Feasibility Studies

# ATTACHMENT B

## MONTEREY PENINSULA REGIONAL PARK DISTRICT PROFESSIONAL SERVICE AGREEMENT FOR NON-CONSTRUCTION PROJECT

This PROFESSIONAL SERVICE AGREEMENT (PSA) FOR NON-CONSTRUCTION PROJECT (“AGREEMENT”), is made and effective as of [Insert date], between the Monterey Peninsula Regional Park District, a special district (“DISTRICT”) and [Insert consultant], [a sole proprietorship, partnership, limited liability partnership, corporation] (“CONSULTANT”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

### I. TERM

This AGREEMENT shall commence on [Insert date] and shall remain and continue in effect until tasks described herein are completed, but in no event later than [Insert date] unless sooner terminated pursuant to the provisions of this AGREEMENT.

### II. SERVICES

CONSULTANT shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. CONSULTANT shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A. To the extent that Exhibit A is a proposal from CONSULTANT, such proposal is incorporated only for the description of the scope of services and no other terms and conditions from any such proposal shall apply to this AGREEMENT unless specifically agreed to in writing.

### III. PERFORMANCE

CONSULTANT shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this AGREEMENT.

### IV. DISTRICT MANAGEMENT

DISTRICT’s [Insert title] shall represent DISTRICT in all matters pertaining to the administration of this AGREEMENT, review and approval of all products submitted by CONSULTANT, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to CONSULTANT.

DISTRICT's Manager shall be authorized to act on DISTRICT's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change CONSULTANT's compensation, subject to Section 5 hereof.

**V. PAYMENT**

- A. The DISTRICT agrees to pay CONSULTANT monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed [Insert amount] dollars (\$\_\_.00) for the total term of the AGREEMENT unless additional payment is approved as provided in this AGREEMENT.
- B. CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the DISTRICT Manager. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by DISTRICT Manager and CONSULTANT at the time DISTRICT's written authorization is given to CONSULTANT for the performance of said services. The DISTRICT Manager may approve additional work not to exceed ten percent (10%) of the amount of the AGREEMENT, but in no event shall such sum exceed ten-thousand dollars (\$10,000.00). Any additional work in excess of this amount shall be approved by the Governing Board.
- C. CONSULTANT will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the DISTRICT disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this AGREEMENT shall be made within forty-five (45) days of receipt of an invoice therefore.

**VI. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

- A. The DISTRICT may at any time, for any reason, with or without cause, suspend or terminate this AGREEMENT, or any portion hereof, by serving upon the CONSULTANT at least ten (10) days prior written notice. Upon receipt of said notice, the CONSULTANT shall immediately cease all work under this AGREEMENT, unless the notice provides otherwise. If the DISTRICT suspends or terminates a portion of this AGREEMENT such

suspension or termination shall not make void or invalidate the remainder of this AGREEMENT.

- B. In the event this AGREEMENT is terminated pursuant to this Section, the DISTRICT shall pay to CONSULTANT the actual value of the work performed up to the time of termination, provided that the work performed is of value to the DISTRICT. Upon termination of the AGREEMENT pursuant to this Section, the CONSULTANT will submit an invoice to the DISTRICT pursuant to Section 5.

## **VII. DEFAULT OF CONSULTANT**

- A. The CONSULTANT's failure to comply with the provisions of this AGREEMENT shall constitute a default. In the event that CONSULTANT is in default for cause under the terms of this AGREEMENT, DISTRICT shall have no obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and can terminate this AGREEMENT immediately by written notice to the CONSULTANT. If such failure by the CONSULTANT to make progress in the performance of work hereunder arises out causes beyond the CONSULTANT's control, and without fault or negligence of the CONSULTANT, it shall not be considered a default.
- B. If the DISTRICT Manager or his/her designee determines that the CONSULTANT is in default in the performance of any of the terms or conditions of this AGREEMENT, he/she shall cause to be served upon the CONSULTANT a written notice of the default. The CONSULTANT shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the CONSULTANT fails to cure its default within such period of time or fails to present the DISTRICT with a written plan for the cure of the default, the DISTRICT shall have the right, notwithstanding any other provision of this AGREEMENT, to terminate this AGREEMENT without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this AGREEMENT.

## **VIII. OWNERSHIP OF DOCUMENTS**

- A. CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by DISTRICT that relate to the performance of services under this AGREEMENT. CONSULTANT shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of DISTRICT or its designees at reasonable times to such

books and records; shall give DISTRICT the right to examine and audit said books and records; shall permit DISTRICT to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this AGREEMENT. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

- B. Upon completion of, or in the event of termination or suspension of this AGREEMENT, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this AGREEMENT shall become the sole property of the DISTRICT and may be used, reused, or otherwise disposed of by the DISTRICT without the permission of the CONSULTANT. With respect to computer files, CONSULTANT shall make available to the DISTRICT, at the CONSULTANT's office and upon reasonable written request by the DISTRICT, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. CONSULTANT hereby grants to DISTRICT all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by CONSULTANT in the course of providing the services under this AGREEMENT.

## **IX. INDEMNIFICATION AND DEFENSE**

### **A. Indemnity**

To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless DISTRICT and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or subconsultants (or any DISTRICT or individual that CONSULTANT shall bear the legal liability thereof) in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify and hold harmless DISTRICT shall not extend to the DISTRICT's sole or active negligence.

### **B. Duty to defend**

In the event the DISTRICT, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this AGREEMENT, and upon demand by DISTRICT, CONSULTANT shall defend the DISTRICT at CONSULTANT's cost or at DISTRICT's option, to reimburse DISTRICT for its costs of defense, including reasonable

attorney's fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by CONSULTANT's negligent acts, errors or omissions. Payment by DISTRICT is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and DISTRICT, as to whether liability arises from the sole or active negligence of the DISTRICT or its officers, employees, or agents, CONSULTANT will be obligated to pay for DISTRICT's defense until such time as a final judgment has been entered adjudicating the DISTRICT as solely or actively negligent. CONSULTANT will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

**X. INSURANCE**

CONSULTANT shall maintain prior to the beginning of and for the duration of this AGREEMENT insurance coverage as specified in Exhibit C attached to and part of this AGREEMENT.

**XI. INDEPENDENT CONSULTANT**

- A. CONSULTANT is and shall at all times remain as to the DISTRICT a wholly independent consultant and/or independent contractor. The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither DISTRICT nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the DISTRICT. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against DISTRICT, or bind DISTRICT in any manner.
- B. No employee benefits shall be available to CONSULTANT in connection with the performance of this AGREEMENT. Except for the fees paid to CONSULTANT as provided in the AGREEMENT, DISTRICT shall not pay salaries, wages, or other compensation to CONSULTANT for performing services hereunder for DISTRICT. DISTRICT shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

**XII. LEGAL RESPONSIBILITIES**

The CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this AGREEMENT. The



CONSULTANT shall at all times observe and comply with all such laws and regulations. The DISTRICT, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

**XIII. UNDUE INFLUENCE**

CONSULTANT declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the DISTRICT in connection with the award, terms or implementation of this AGREEMENT, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the DISTRICT has or will receive compensation, directly or indirectly, from CONSULTANT, or from any officer, employee or agent of CONSULTANT, in connection with the award of this AGREEMENT or any work to be conducted as a result of this AGREEMENT. Violation of this Section shall be a material breach of this AGREEMENT entitling the DISTRICT to any and all remedies at law or in equity.

**XIV. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of DISTRICT, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this AGREEMENT.

**XV. RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

- A. All information gained by CONSULTANT in performance of this AGREEMENT shall be considered confidential and shall not be released by CONSULTANT without DISTRICT's prior written authorization. CONSULTANT, its officers, employees, agents, or subconsultants, shall not without written authorization from the DISTRICT Manager or unless requested by the DISTRICT Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this AGREEMENT or relating to any project or property located within the DISTRICT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives DISTRICT notice of such court order or subpoena.
- B. CONSULTANT shall promptly notify DISTRICT should CONSULTANT, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party

regarding this AGREEMENT and the work performed there under or with respect to any project or property located within the DISTRICT, unless the DISTRICT is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless CONSULTANT is prohibited by law from informing the DISTRICT of such Discovery. DISTRICT retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless DISTRICT is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to CONSULTANT in such proceeding, CONSULTANT agrees to cooperate fully with DISTRICT and to provide the opportunity to review any response to discovery requests provided by CONSULTANT. However, DISTRICT's right to review any such response does not imply or mean the right by DISTRICT to control, direct, or rewrite said response.

*Note: The following paragraph is only to be used when the DISTRICT will be taking in a fee or deposit from an applicant and use that fund to retain the CONSULTANT to prepare an EIR, Specific Plan, or some other specific document or where the DISTRICT is funding a similar development-type study.*

- C. CONSULTANT covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having such interest shall be employed by them as an officer, employee, agent, or sub-consultant. CONSULTANT further covenants that CONSULTANT has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the DISTRICT or the study area and further covenants and agrees that CONSULTANT and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the DISTRICT or the study area prior to the completion of the work under this AGREEMENT.

## **XVI. NOTICES**

Any notices which either party may desire to give to the other party under this AGREEMENT must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To DISTRICT: Monterey Peninsula Regional Park District

\_\_\_\_\_  
\_\_\_\_\_

To CONSULTANT:

\_\_\_\_\_  
\_\_\_\_\_

**XVII. ASSIGNMENT**

The CONSULTANT shall not assign the performance of this AGREEMENT, nor any part thereof, nor any monies due hereunder, without prior written consent of the DISTRICT. Because of the personal nature of the services to be rendered pursuant to this AGREEMENT, only CONSULTANT shall perform the services described in this AGREEMENT. [Insert name] may use assistants, under his/her direct supervision, to perform some of the services under this AGREEMENT. CONSULTANT shall provide DISTRICT fourteen (14) days' notice prior to the departure of [Insert name] from CONSULTANT's employ. Should he/she leave CONSULTANT's employ, the DISTRICT shall have the option to immediately terminate this AGREEMENT, within three (3) days of the close of said notice period. Upon termination of this Agreement, CONSULTANT's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the Governing Board and the CONSULTANT. Before retaining or contracting with any CONSULTANT for any services under this AGREEMENT, CONSULTANT shall provide DISTRICT with the identity of the proposed CONSULTANT, a copy of the proposed written contract between CONSULTANT and such sub-consultant which shall include and indemnity provision similar to the one provided herein and identifying DISTRICT as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed sub-consultant carries insurance at least equal to that required by this AGREEMENT or obtain a written waiver from DISTRICT for such insurance.

**XVIII. LICENSES**

At all times during the term of this AGREEMENT, CONSULTANT shall have in full force and effect, all licenses required of it by law for the performance of the services described in this AGREEMENT.

**XIX. GOVERNING LAW**

The DISTRICT and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this AGREEMENT and also govern the interpretation of this Agreement. Any litigation concerning this AGREEMENT shall take place in the municipal, superior, or federal district court with jurisdiction over the DISTRICT.

**XX. ENTIRE AGREEMENT**

This AGREEMENT contains the entire understanding between the parties relating to the obligations of the parties described in this AGREEMENT. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this AGREEMENT or with respect to the terms and conditions of this AGREEMENT, are merged into this AGREEMENT and shall be of no further force or effect. Each party is entering into this AGREEMENT based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**XXI. WORK SCHEDULED/TIME OF COMPLETION**

*Note: This section is optional and should be included only when the project is particularly time-sensitive.*

DISTRICT and CONSULTANT agree that time is of the essence in this AGREEMENT. DISTRICT and CONSULTANT further agree that CONSULTANT's failure to perform on or at the times set forth in this AGREEMENT will damage and injure DISTRICT, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, DISTRICT and CONSULTANT agree that any failure to perform by CONSULTANT at or within the times set forth herein shall result in liquidated damages of [Insert amount] dollars (\$\_\_.00) per day for each and every day such performance is late or delayed. DISTRICT and CONSULTANT agree that such sum is reasonable and fair. Furthermore, DISTRICT and CONSULTANT agree that this AGREEMENT is subject to Government Code Section 53069.85 and that each party hereto is familiar with and understands the obligations of said Section of the Government Code.

**XXII. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL**

CONSULTANT is bound by the contents of DISTRICT's Request for Proposal, Exhibit "D" hereto and incorporated herein by this reference, and the contents of the proposal submitted by the CONSULTANT, Exhibit "E" hereto. In the event of conflict, the requirements of DISTRICT's Request for Proposals and this AGREEMENT shall take precedence over those contained in the CONSULTANT's proposals. The incorporation of the CONSULTANT's proposal shall be for the scope of services to be provided only, and any other terms and conditions included in such proposal shall have no force and effect on this AGREEMENT or the relationship between CONSULTANT and/or DISTRICT, unless expressly agreed to in writing.

**XXIII. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this AGREEMENT on behalf of CONSULTANT warrants and represents that he/she has the authority to execute this AGREEMENT on behalf of the CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CONSULTANT

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

Monterey Peninsula Regional Park District

A Special District

\_\_\_\_\_  
General Manager

APPROVED AS TO FORM:

Attorney-at-Law, Michael J. Whilden

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

Attachments:      Exhibit A      Tasks to Be Performed  
                         Exhibit B      Payment Schedule  
                         Exhibit C      Insurance Requirements  
                         Exhibit D      Request for Proposal  
                         Exhibit E      Consultant's Proposal

**EXHIBIT A**

**TASKS TO BE PERFORMED**

**EXHIBIT B**  
**PAYMENT SCHEDULE**



## EXHIBIT C

### INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of DISTRICT, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this AGREEMENT, policies of insurance of the type and amounts described below and in a form satisfactory to DISTRICT.

*Note: Verify minimum limit for each coverage with Risk Manager.*

**General liability insurance.** CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile liability insurance.** CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this AGREEMENT, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

**Professional liability (errors & omissions) insurance.** CONSULTANT shall maintain professional liability insurance that covers the Services to be performed in connection with this AGREEMENT, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this AGREEMENT and CONSULTANT agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this AGREEMENT.

*Note: May need to delete workers' compensation and employer's liability insurance requirements for certain sole proprietorships, partnerships, or corporations without employees.*

**Workers' compensation insurance.** CONSULTANT shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

CONSULTANT shall submit to DISTRICT, along with the certificate of insurance, a **Waiver of Subrogation endorsement** in favor of DISTRICT, its officers, agents, employees and volunteers.

*Note: If the required limits for general liability, auto and employer's liability are \$1 million or less, the following paragraph may be omitted.*

**Umbrella or excess liability insurance.** [Optional depending on limits required]. CONSULTANT shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

#### **Other provisions or requirements**

**Proof of insurance.** CONSULTANT shall provide certificates of insurance to DISTRICT as evidence of the insurance coverage required herein, **along with a waiver of subrogation endorsement** for workers' compensation. Insurance certificates and endorsements **must be approved by DISTRICT's Risk Manager prior to commencement of performance.** Current certification of insurance shall be kept on file with DISTRICT at all times during the term of this contract. DISTRICT reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of coverage.** CONSULTANT shall procure and maintain for the duration of the contract 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 CONSULTANT, his agents, representatives, employees or subconsultants.

**Primary/noncontributing.** Coverage provided by CONSULTANT shall be primary and any insurance or self-insurance procured or maintained by DISTRICT shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of DISTRICT before the DISTRICT's own insurance or self-insurance shall be called upon to protect it as a named insured.

**DISTRICT's rights of enforcement.** In the event any policy of insurance required under this AGREEMENT does not comply with these specifications or is canceled and not replaced, DISTRICT has the right but not the duty to obtain the insurance it deems

necessary and any premium paid by DISTRICT will be promptly reimbursed by CONSULTANT or DISTRICT will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, DISTRICT may cancel this AGREEMENT.

**Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the DISTRICT's Risk Manager.

**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against DISTRICT, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against DISTRICT, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

**Enforcement of contract provisions (non estoppel).** CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the DISTRICT to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the DISTRICT nor does it waive any rights hereunder.

**Requirements not limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT.

**Notice of cancellation.** Consultant agrees to oblige its insurance agent or broker and insurers to provide to DISTRICT with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

**Additional insured status.** General liability policies shall provide or be endorsed to provide that DISTRICT and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

**Prohibition of undisclosed coverage limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to DISTRICT and approved of in writing.

**Separation of insureds.** A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass through clause.** CONSULTANT agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONSULTANT, provide the same minimum insurance coverage and endorsements required of CONSULTANT. CONSULTANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONSULTANT agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to DISTRICT for review.

**DISTRICT's right to revise specifications.** The DISTRICT reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the DISTRICT and CONSULTANT may renegotiate CONSULTANT's compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by DISTRICT. DISTRICT reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by DISTRICT.

**Timely notice of claims.** CONSULTANT shall give DISTRICT prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT's performance under this AGREEMENT, and that involve or may involve coverage under any of the required liability policies.

**Additional insurance.** CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

**EXHIBIT D**

**REQUEST FOR PROPOSAL**

**EXHIBIT E**

**CONSULTANT'S PROPOSAL**

March 5, 2018

Job No. 3773.01

Caine Camarillo  
Supervising Ranger  
Monterey Peninsula Regional Park District

**Via email: camarillo@mprpd.org**

**Re: Proposal for Civil and Geotechnical Engineering Services  
Palo Corona Ranch, Carmel, CA**

Dear Mr. Camarillo:

Thank you for the opportunity to make this proposal for the subject project. Based on our discussions we are proposing to prepare design and construction documents to stabilize a slide where it has undermined one of the existing Palo Corona ranch roads. At this time we anticipate the slide will be stabilized using a reinforced earth wall (e.g., a Hilfiker® wall).

Per your request, we will subcontract Grice Engineering to perform the geotechnical investigation and design work as well as structural design.

Our proposed scope is as follows:

---

**SCOPE OF SERVICES:**

---

**Geotechnical Investigation and Design**

1. Review existing available data for the area that may influence the design for stabilization of the area.
2. Perform a geotechnical investigation consisting of exploratory borings or digging, sampling, and laboratory testing.
3. Identify and evaluate slope repair alternative(s). Develop rough cost numbers for the alternative(s) to determine the most cost effective approach to the stabilization. Prepare a preliminary budget estimate for the proposed stabilization approach.
4. Develop a geotechnical report outlining the results of the investigation and providing geotechnical design recommendations for the proposed repair method.

**Structural Design**

1. Prepare details and structural calculations for the proposed stabilization method, if required.

**Construction Documents**

1. Layout and prepare in CAD, a base plan incorporating the topographic data prepared under separate contract. The base plan will be used as the background for design documents.
2. Perform a field review with client and with Grice Engineering.
3. Prepare construction documents. Construction documents are anticipated to include:
  - Drawings:

- i. Title Sheet
  - ii. Notes and Details
  - iii. Temporary Water Pollution Control Plan
  - iv. Grading and Drainage Plan
  - v. Wall Plan, Profile, and Details
- Specifications (may be included as plan notes)
- Engineer's Estimate of Probable Construction Cost
4. Revise the construction documents based on client and County Plan Check comments and provide final construction documents for bidding and construction. A total of two submittals are anticipated in our fee. A total of six original signed bond copies of our plans will be provided to the client for each of the plancheck submittals. Submittals will be made to the client.

#### **Bidding and Construction Management and Support**

1. Bidding Support: Provide assistance during bidding as needed to clarify or interpret the plan set and answer questions regarding the construction documents. We have included 4 hours in our budget for the pre-bid meeting and 4 hours for preparation of written responses to Bidder Inquiries.
2. Preconstruction meeting: Attend a pre-construction meeting with client and contractor, either on site or at District offices. Coordinate with District and contractor on suitable staging areas. Provide photographic documentation of the project site prior to construction.
3. Project Submittals: Review submittals, including the preparation of a submittal log, and review of submittals for compliance with the contract documents.
4. Construction Schedule: Review contractors schedule submittal and review weekly schedule and weekly look ahead.
5. Engineering Construction Support: Provide assistance during construction as needed to clarify or interpret the plan set and answer questions regarding the construction documents through the Request for Information (RFI) process.
6. Field Observation: Provide field observations (through the geotechnical engineer) of the contractors operation and activities and monitor compliance with the contract documents.
7. Progress Payments: Review contract payment requests, contract change orders requests and report to client on recommendations of approval, payments and requests. Prepare independent statement of probable construction cost for contract change orders. Negotiate contract change orders with the Contractor. Prepare contract change order document for execution by Contractor and Client.
8. Field Testing: Provide geotechnical (soils) testing and observation services during construction.
9. Field Survey: Provide construction staking as follows:
  - Move-In #1: Rough Grade Staking: One set of rough grade stakes. Stakes will be set every 25' and at changes in geometry.
  - Move-In #2: Wall Stakes / Finish Grade Staking: One set of wall stakes at 25 foot intervals and one set of finish grade stakes at 25' and at changes in geometry.
10. Permit Compliance: Ensure compliance with permit conditions and requirements.
11. Close-out: Prepare all documentation needed for project closeout. Deliver document to District for their use.
12. Acceptance & Final Payment: Make recommendations to District regarding final project approval and acceptance. Make recommendations to District regarding



Contractor's final progress payment request.

13. Warranty Coordination: Assist District during project warrant period if corrective work is required.

**Assumptions**

1. Work will be performed under Monterey County Grading Permit. Permit applications and submittals will be handled by MPRPD.
2. Project will disturb less than 1 acre, and so will not require coverage under the Construction General Permit.
3. Drainage calculations will not be required.
4. MPRPD will provide construction management

**Exclusions:**

The following work is specifically excluded from the Engineer's Scope of Services:

1. Changes in scope of the Engineer's work
2. Land Surveying
3. Applications, permit submittals, permit coordination
4. Utility relocation design
5. Plans for disposal of excess soil material
6. Cash Flow projections for District progress payments to contractor.
7. Special inspections (other than soil testing and observation)
8. Plan revisions to reflect field changes; As-Built plan preparation

Please note that upon your request, we could provide the above services at additional cost.

**Payment & Provisions:**

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Our estimated fee for the services described in the above Scope of Services will be **\$40,800**. Progress billings and Authorized Additional Services will be on a time and materials basis in accordance with the rates shown on the Engineering Cost Estimate (Table 37).

We will begin work upon receipt of a project agreement or purchase order and notice to proceed. If you have any questions or need more information, please contact me at (831)649-5225.

Sincerely,  
**WHITSON ENGINEERS**



Richard Weber PE, LS  
Principal  
RCE 55219  
LS 8002

Palo Corona Ranch

Engineering Cost Estimate

<b>Geotechnical Investigation and Design</b>									
		<b>PE</b>	<b>SCE</b>	<b>CE/LS</b>	<b>AE/AS</b>	<b>ET</b>	<b>FSC1</b>	<b>AD</b>	<b>HOURS</b>
--	Project Management and Admin			2					2
	Subtotal	0	0	2	0	0	0	0	2
	Rate	\$ 220	\$ 180	\$ 160	\$ 140	\$ 110	\$ 175	\$ 70	
	Cost	\$ -	\$ -	\$ 320	\$ -	\$ -	\$ -	\$ -	\$ 320
									<b>Professional Personnel Subtotal</b>
									<b>\$ 320</b>
									<b>Subconsultant (Grice Engineering)</b>
									<b>\$ 3,000</b>
									<b>10% Administrative Fee</b>
									<b>\$ 300</b>
									<b>Subtotal</b>
									<b>\$ 3,620</b>
<b>Structural Design</b>									
		<b>PE</b>	<b>SCE</b>	<b>CE/LS</b>	<b>AE/AS</b>	<b>ET</b>	<b>FSC1</b>	<b>AD</b>	<b>HOURS</b>
--	Project Management and Admin			2					2
	Subtotal	0	0	2	0	0	0	0	2
	Rate	\$ 220	\$ 180	\$ 160	\$ 140	\$ 110	\$ 175	\$ 70	
	Cost	\$ -	\$ -	\$ 320	\$ -	\$ -	\$ -	\$ -	\$ 320
									<b>Professional Personnel Subtotal</b>
									<b>\$ 320</b>
									<b>Subconsultant (Grice Engineering)</b>
									<b>\$ 4,000</b>
									<b>10% Administrative Fee</b>
									<b>\$ 400</b>
									<b>Subtotal</b>
									<b>\$ 4,720</b>
<b>Construction Documents</b>									
		<b>PE</b>	<b>SCE</b>	<b>CE/LS</b>	<b>AE/AS</b>	<b>ET</b>	<b>FSC1</b>	<b>AD</b>	<b>HOURS</b>
1	Layout Base Plan			2					2
2	Field Review with Client		4						4
3	Construction Documents	2	8	40					50
4	Revise Construction Documents			8					8
--	Project Management and Admin	2	4						6
	Subtotal	4	16	50	0	0	0	0	70
	Rate	\$ 220	\$ 180	\$ 160	\$ 140	\$ 110	\$ 175	\$ 70	
	Cost	\$ 880	\$ 2,880	\$ 8,000	\$ -	\$ -	\$ -	\$ -	\$ 11,760
									<b>Professional Personnel Subtotal</b>
									<b>\$ 11,760</b>
									<b>Reimbursible Expenses</b>
									<b>\$ 200</b>
									<b>Subtotal</b>
									<b>\$ 11,960</b>
<b>Bidding and Construction Support</b>									
		<b>PE</b>	<b>SCE</b>	<b>CE/LS</b>	<b>AE/AS</b>	<b>ET</b>	<b>FSC1</b>	<b>AD</b>	<b>HOURS</b>
1	Bid phase assistance		4						4
2	Preconstruction Meeting		4						4
3	Submittal Review		4		4				8
4	Schedule Review		2						2
5	Response to RFIs		8						8
6	Field Observation (Daily)		4	16					20
7	Progress Payments		4						4
8	Soils Testing and Observation			24					24
9	Construction Staking		2	8			12		22
10	Permit Compliance		2						2
11	Project Close Out		4						4
12	Final Acceptance and Payment		2						2
--	Project Management and Admin	6	8						14
	Subtotal	6	48	48	4	0	12	0	118
	Rate	\$ 220	\$ 180	\$ 160	\$ 140	\$ 110	\$ 175	\$ 70	
	Cost	\$ 1,320	\$ 8,640	\$ 7,680	\$ 560	\$ -	\$ 2,100	\$ -	\$ 20,300
									<b>Professional Personnel Subtotal</b>
									<b>\$ 20,300</b>
									<b>Reimbursible Expenses</b>
									<b>\$ 200</b>
									<b>Subtotal</b>
									<b>\$ 20,500</b>
									<b>Total Estimate</b>
									<b>\$ 40,800</b>
<b>Rate Schedule (Table 37)</b>									
<b>PE</b>	Principal Engineer	\$ 220							
<b>SCE</b>	Senior Civil Engineer	\$ 180							
<b>CE</b>	Civil Engineer	\$ 160							
<b>AE</b>	Associate Engineer / Surveyor	\$ 140							
<b>AE2</b>	Assistant Engineer / Surveyor	\$ 120							
<b>SET</b>	Senior Engineer (or Survey) Technician	\$ 115							
<b>ET</b>	Engineering (or Survey) Technician	\$ 110							
<b>EA</b>	Engineering Aide	\$ 65							
<b>LS</b>	Land Surveyor	\$ 160							
<b>FSC1</b>	Field Survey Crew/1M	\$ 175							
<b>FSC2</b>	Field Survey Crew/2M	\$ 270							
<b>FSC3</b>	Field Survey Crew/3M	\$ 380							
<b>AD</b>	Administrative Support	\$ 70							

**MONTEREY PENINSULA REGIONAL PARK DISTRICT  
DESIGN PROFESSIONAL SERVICE AGREEMENT FOR CONSTRUCTION  
PROJECTS**

THIS AGREEMENT, is made and effective March 14, 2018, between Monterey Peninsula Regional Park District, a special district sub-division of the State of California ("DISTRICT") and Whitson and Associates, Inc., a California corporation ("CONSULTANT"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**I. TERM**

This Agreement shall commence on March 15, 2018 and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2018, unless sooner terminated pursuant to the provisions of this Agreement.

**II. SERVICES**

CONSULTANT shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. CONSULTANT shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

**III. PERFORMANCE**

CONSULTANT shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this Agreement.

**IV. DISTRICT MANAGEMENT**

DISTRICT's General Manager shall represent DISTRICT in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by CONSULTANT, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to CONSULTANT. DISTRICT's Manager shall be authorized to act on DISTRICT's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change CONSULTANT's compensation, subject to Section 5 hereof.

**V. PAYMENT**

(a) The DISTRICT agrees to pay CONSULTANT monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit

B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Forty Thousand Eight Hundred dollars (\$40,800.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) CONSULTANT shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the DISTRICT Manager. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by DISTRICT Manager and CONSULTANT at the time DISTRICT's written authorization is given to CONSULTANT for the performance of said services. The DISTRICT Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall such sum exceed four-thousand eighty dollars (\$4,080.00). Any additional work in excess of this amount shall be approved by the Governing Board.

(c) CONSULTANT will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the DISTRICT disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

## **VI. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

(a) The DISTRICT may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the CONSULTANT at least ten (10) days prior written notice. Upon receipt of said notice, the CONSULTANT shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the DISTRICT suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the DISTRICT shall pay to CONSULTANT the actual value of the work performed up to the time of termination, provided that the work performed is of value to the DISTRICT. Upon termination of the Agreement pursuant to this Section, the CONSULTANT will submit an invoice to the DISTRICT pursuant to Section 3.

## **VII. DEFAULT OF CONSULTANT**

(a) The CONSULTANT's failure to comply with the provisions of this Agreement shall constitute a default. In the event that CONSULTANT is in default for cause

under the terms of this Agreement, DISTRICT shall have no obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and can terminate this Agreement immediately by written notice to the CONSULTANT. If such failure by the CONSULTANT to make progress in the performance of work hereunder arises out of causes beyond the CONSULTANT's control, and without fault or negligence of the CONSULTANT, it shall not be considered a default.

(b) If the DISTRICT Manager or his/her delegate determines that the CONSULTANT is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the CONSULTANT a written notice of the default. The CONSULTANT shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the CONSULTANT fails to cure its default within such period of time, the DISTRICT shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

#### **VIII. OWNERSHIP OF DOCUMENTS**

(a) CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by DISTRICT that relate to the performance of services under this Agreement. CONSULTANT shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of DISTRICT or its designees at reasonable times to such books and records; shall give DISTRICT the right to examine and audit said books and records; shall permit DISTRICT to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the DISTRICT and may be used, reused, or otherwise disposed of by the DISTRICT without the permission of the CONSULTANT. With respect to computer files, CONSULTANT shall make available to the DISTRICT, at the CONSULTANT's office and upon reasonable written request by the DISTRICT, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

**IX. INDEMNITY AND DEFENSE**

**(a) Indemnification and Defense for Professional Services**

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless DISTRICT and any and all of its officials, employees and agents (“Indemnified Parties”) from and against any and all claims, losses, liabilities, damages, costs and expenses, including attorney’s fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT’s duty to defend shall consist of reimbursement of defense costs incurred by DISTRICT in direct proportion to the CONSULTANT’s proportionate percentage of fault. CONSULTANT’s percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the CONSULTANT’s percentage of fault, the parties agree to mediation with a third party neutral to determine the CONSULTANT’s proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the DISTRICT.

**(b) For All Other Liabilities**

Notwithstanding the foregoing and without diminishing any rights of DISTRICT under Section 9.A, for any liability, claim, demand, allegation against DISTRICT arising out of, related to, or pertaining to any act or omission of CONSULTANT, but which is not a design professional service, CONSULTANT shall defend, indemnify, and hold harmless DISTRICT, its officials, employees, and agents (“Indemnified Parties”) from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of the DISTRICT, except for the sole or active negligence of, or willful misconduct of the DISTRICT.

**X. INSURANCE**

CONSULTANT shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit D attached to and part of this Agreement.

## **XI. INDEPENDENT CONSULTANT**

(a) CONSULTANT is and shall at all times remain as to the DISTRICT a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither DISTRICT nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this Agreement. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the DISTRICT. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against DISTRICT, or bind DISTRICT in any manner.

(b) No employee benefits shall be available to CONSULTANT in connection with the performance of this Agreement. Except for the fees paid to CONSULTANT as provided in the Agreement, DISTRICT shall not pay salaries, wages, or other compensation to CONSULTANT for performing services hereunder for DISTRICT. DISTRICT shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

## **XII. LEGAL RESPONSIBILITIES**

The CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The CONSULTANT shall at all times observe and comply with all such laws and regulations. The DISTRICT, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

## **XIII. UNDUE INFLUENCE**

CONSULTANT declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the DISTRICT in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the DISTRICT will receive compensation, directly or indirectly, from CONSULTANT, or from any officer, employee or agent of CONSULTANT, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

**XIV. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of DISTRICT, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

**XV. RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

(a) All information gained by CONSULTANT in performance of this Agreement shall be considered confidential and shall not be released by CONSULTANT without DISTRICT's prior written authorization. CONSULTANT, its officers, employees, agents, or subconsultants, shall not without written authorization from the DISTRICT Manager or unless requested by the DISTRICT Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the DISTRICT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives DISTRICT notice of such court order or subpoena.

(b) CONSULTANT shall promptly notify DISTRICT should CONSULTANT, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the DISTRICT. DISTRICT retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding. CONSULTANT agrees to cooperate fully with DISTRICT and to provide the opportunity to review any response to discovery requests provided by CONSULTANT. However, DISTRICT's right to review any such response does not imply or mean the right by DISTRICT to control, direct, or rewrite said response.

**XVI. NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:



To DISTRICT: Monterey Peninsula Regional Park District  
60 Garden Court, Suite 325  
Monterey, CA 93940  
Attention: General Manager

To CONSULTANT: Whitson Engineers  
6 Harris Court  
Monterey, CA 93940

## **XVII. ASSIGNMENT**

The CONSULTANT shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the DISTRICT. Because of the personal nature of the services to be rendered pursuant to this Agreement, only CONSULTANT shall perform the services described in this Agreement.

CONSULTANT may use assistants, under its direct supervision, to perform some of the services under this Agreement. CONSULTANT shall provide DISTRICT fourteen (14) days' notice prior to the departure of anyone assigned to this agreement from CONSULTANT's employ. Should he/she leave CONSULTANT's employ, the DISTRICT shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, CONSULTANT's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the Governing Board and the CONSULTANT.

## **XVIII. LICENSES**

At all times during the term of this Agreement, CONSULTANT shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

## **XIX. GOVERNING LAW**

The DISTRICT and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the DISTRICT.

**XX. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**XXI. WORK SCHEDULED/TIME OF COMPLETION**

DISTRICT and CONSULTANT agree that time is of the essence in this Agreement. DISTRICT and CONSULTANT further agree that CONSULTANT's failure to perform on or at the times set forth in this Agreement will damage and injure DISTRICT, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, DISTRICT and CONSULTANT agree that any failure to perform by CONSULTANT at or within the times set forth herein shall result in liquidated damages of zero dollars (\$0.00) per day for each and every day such performance is late. DISTRICT and CONSULTANT agree that such sum is reasonable and fair. Furthermore, DISTRICT and CONSULTANT agree that this Agreement is subject to Government Code Section 53069.85 and that each party hereto is familiar with and understands the obligations of said Section of the Government Code.

**XXII. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL**

CONSULTANT is bound by the contents of DISTRICT's Request for Proposal, Exhibit "C" hereto and incorporated herein by this reference, and the contents of the proposal submitted by the CONSULTANT, Exhibit "D" hereto. In the event of conflict, the requirements of DISTRICT's Request for Proposals and this Agreement shall take precedence over those contained in the CONSULTANT's proposals.

**XXIII. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of CONSULTANT warrants and represents that he/she has the authority to execute this Agreement on behalf of the CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CONSULTANT

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

Monterey Peninsula Regional Park District  
A special district sub-division of the State of California

\_\_\_\_\_  
General Manager, Rafael Payan

APPROVED AS TO FORM:  
District Attorney

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

**EXHIBIT A**

**TASKS TO BE PERFORMED**

See Consultant Proposal

DRAFT

**EXHIBIT B**  
**PAYMENT SCHEDULE**

DRAFT

**EXHIBIT C**  
**LOCATION SCHEDULE**

DRAFT

## EXHIBIT D

### INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of DISTRICT, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to DISTRICT.

**General liability insurance.** CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile liability insurance.** CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the CONSULTANT arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

**Professional liability (errors & omissions) insurance.** CONSULTANT shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and CONSULTANT agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

**Workers' compensation insurance.** CONSULTANT shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

CONSULTANT shall submit to DISTRICT, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of DISTRICT, its officers, agents, employees and volunteers.

**Umbrella or excess liability insurance.** [Optional depending on limits required]. CONSULTANT shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies;
- Policies shall “follow form” to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

### **Other provisions or requirements**

**Proof of insurance.** CONSULTANT shall provide certificates of insurance to DISTRICT as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers’ compensation. Insurance certificates and endorsements must be approved by DISTRICT’s Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with DISTRICT at all times during the term of this contract. DISTRICT reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of coverage.** CONSULTANT shall procure and maintain for the duration of the contract 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 CONSULTANT, his agents, representatives, employees or subconsultants.

**Primary/noncontributing.** Coverage provided by CONSULTANT shall be primary and any insurance or self-insurance procured or maintained by DISTRICT shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of DISTRICT before the DISTRICT’s own insurance or self-insurance shall be called upon to protect it as a named insured.

**DISTRICT’s rights of enforcement.** In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, DISTRICT has the right but not the duty to obtain the insurance it deems necessary and any premium paid by DISTRICT will be promptly reimbursed by CONSULTANT or DISTRICT will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, DISTRICT may cancel this Agreement.

**Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders’ Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best’s Key Rating Guide, unless otherwise approved by the DISTRICT’s Risk Manager.



**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against DISTRICT, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against DISTRICT, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

**Enforcement of contract provisions (non estoppel).** CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the DISTRICT to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the DISTRICT nor does it waive any rights hereunder.

**Requirements not limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the CONSULTANT maintains higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to coverage for the higher limits maintained by the CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT.

**Notice of cancellation.** CONSULTANT agrees to oblige its insurance agent or broker and insurers to provide to DISTRICT with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

**Additional insured status.** General liability policies shall provide or be endorsed to provide that DISTRICT and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

**Prohibition of undisclosed coverage limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to DISTRICT and approved of in writing.

**Separation of insureds.** A severability of interests provision must apply for all additional insureds ensuring that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass through clause.** CONSULTANT agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONSULTANT, provide the same minimum insurance coverage and endorsements required of CONSULTANT. CONSULTANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONSULTANT agrees that upon request, all agreements with CONSULTANTS, subcontractors, and others engaged in the project will be submitted to DISTRICT for review.

**DISTRICT's right to revise specifications.** The DISTRICT reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the DISTRICT and CONSULTANT may renegotiate CONSULTANT's compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by DISTRICT. DISTRICT reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by DISTRICT.

**Timely notice of claims.** CONSULTANT shall give DISTRICT prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT's performance under this AGREEMENT, and that involve or may involve coverage under any of the required liability policies.

**Additional insurance.** CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.