

CITY OF CALISTOGA
DESIGN PROFESSIONAL SERVICES AGREEMENT
RE: FEIGE WATER TANK REPLACEMENT PROJECT

THIS AGREEMENT is entered into as of the 2nd day of February, 2016 by and between the CITY OF CALISTOGA ("City"), a California municipal corporation, and KENNEDY/JENKS CONSULTANTS, ("Design Professional").

Recitals

WHEREAS, City desires to obtain design services in connection with the Feige Water Tank Replacement Project; and

WHEREAS, Design Professional hereby warrants to the City that Design Professional is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Design Professional pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Design Professional shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A."

2. Time of Performance. The services of Design Professional are to commence within 10 days of receiving the City's Notice to Proceed and be completed not later than May 25, 2016.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Design Professional, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "A." However, in no event shall the amount City pays Design Professional exceed Fifty Seven Thousand One Hundred Thirty-nine Dollars (\$57,139). Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Billing for said services shall be made once at the conclusion of the work and submittal of the records and any appropriate report. City shall review Design Professional's billing statement and pay Design Professional for services rendered within 45 days of receipt of a complete billing statement that meets all requirements of this Agreement.

C. Changes in Compensation. Design Professional will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 3(A) without prior written amendment to this Agreement.

D. Taxes. Design Professional shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Design Professional.

E. No Overtime or Premium Pay. Design Professional shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Design Professional shall not receive a premium or enhanced pay for work performed on a recognized holiday. Design Professional shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Design Professional agrees to testify at City's request if litigation is brought against City in connection with Design Professional's report. Unless the action is brought by Design Professional or is based upon Design Professional's negligence, City will compensate Design Professional for the preparation and the testimony at Design Professional's standard hourly rates, if requested by City and not part of the litigation brought by City against Design Professional.

4. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Design Professional. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Failure of the Design Professional to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

5. Duties of City. City shall provide all information requested by Design Professional that is reasonably necessary to performing the Scope of Work. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement.

6. Ownership of Documents.

A. The plans, specifications, estimates, programs, reports, models, and other material prepared by or on behalf of Design Professional under this Agreement including all drafts and working documents, and including electronic and paper forms (collectively the "Documents"), shall be and remain the property of the City, whether the Services are completed or not. Design Professional shall deliver all Documents to City, upon request at (1) the completion of the Services, (2) the date of termination of this Agreement for any reason, or (3) any time requested by City, upon five (5) days prior written notice.

B. The Documents may be used by City and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes City may deem advisable without further employment of or payment of any compensation to Design Professional.

C. Design Professional retains the copyright in and to the intellectual property depicted in the Documents subject to Design Professional's limitations and City's rights and licenses set forth in this Agreement. City's ownership interest in the Documents includes the following single, exclusive license from Design Professional: Design Professional, for itself, its employees, heirs, successors and assigns, hereby grants (and if any subsequent grant is necessary, agrees to grant) to City an irrevocable, perpetual, royalty-free, fully paid, sole and exclusive license and right to use and exercise any and all of the copyrights or other intellectual property rights that Design Professional may author or create, alone or jointly with others, in or with respect to the Documents, including without limitation all analysis, reports, designs and graphic representations. City's license shall include the right to sublicense, shall be for all purposes with respect to each right of copyright, and shall be without restriction.

D. Design Professional shall include in all subcontracts and agreements with respect to the Services that Design Professional negotiates, language which is consistent with this Section 6.

E. All reports, information, data, and exhibits prepared or assembled by Design Professional in connection with the performance of its Services pursuant to this Agreement are confidential until released by the City to the public, and the Design Professional shall not make any of these documents or information available to any individual or organization not employed by the Design Professional or the City without the written consent of the City before any such release.

7. Employment of Other Design Professionals, Specialists or Experts.

A. Design Professional will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the City. Any consultants, specialists or experts approved by City are listed in Exhibit "B."

B. Design Professional represents that it has, or will secure at its own expense, all personnel required in performing the Services. All of the Services required hereunder will be performed by the Design Professional or under Design Professional's supervision, and all personnel engaged in the work shall be qualified to perform such services.

C. Design Professional shall make every reasonable effort to maintain stability and continuity of Design Professional's Key Personnel assigned to perform the Services. Key Personnel for this contract are listed in Exhibit "A".

D. Design Professional shall provide City with a minimum twenty (20) days prior written notice of any changes in Design Professional's Key Personnel, provided that Design Professional receives such notice, and shall not replace any Key Personnel with anyone to whom the City has a reasonable objection.

E. Design Professional plans to retain the subconsultants listed in Exhibit “B”, who will provide services as indicated in Exhibit “A”.

F. Design Professional will not utilize subconsultants other than those listed in Exhibit “B” without advance written notice to the City. Design Professional will not utilize a subconsultant to whom the City has a reasonable objection. Subconsultants providing professional services will provide professional liability insurance as required in Exhibit “C” unless the City waives this requirement, in writing.

8. Conflict of Interest.

A. Design Professional understands that its professional responsibility is solely to City. Design Professional warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Design Professional shall not knowingly, and shall take reasonable steps to ensure that it does not, employ a person having such an interest in the performance of this Agreement. If Design Professional discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Design Professional shall promptly disclose the relationship to the City and take such action as the City may direct to remedy the conflict.

B. Design Professional (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Design Professional's Services hereunder. Design Professional further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

C. Design Professional is not a designated employee within the meaning of the Political Reform Act because Design Professional:

(1) Will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official other than normal contract monitoring; and

(2) Possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel (FPPC Reg. 18700(a)(2)).

9. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects its personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

10. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Design Professional or otherwise in the event of any default or breach of the City, or for any amount which may become

due to Design Professional or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

11. Indemnity.

A. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Design Professional shall defend (with legal counsel reasonably acceptable to the City) indemnify and hold harmless City and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Design Professional or its sub-Design Professionals), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, court costs, attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional, any sub-Design Professional, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

B. Neither termination of this Agreement nor completion of the Services shall release Design Professional from its obligations under this Section 11, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.

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

D. Design Professional's compliance with the insurance requirements does not relieve Design Professional from the obligations described in this Section 11, which shall apply whether or not such insurance policies are applicable to a claim or damages.

12. Design Professional Not an Agent of City. Design Professional, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

13. Independent Contractor. It is understood that Design Professional, in the performance of the work and services agreed to be performed by Design Professional, shall act as and be an independent contractor as defined in Labor Code 3353 and not an agent or

employee of City; and as an independent contractor, Design Professional shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Design Professional hereby expressly waives any claim it may have to any such rights.

14. Compliance with Laws.

A. General. Design Professional shall (and shall cause its agents and subcontractors), at its sole cost and expense, comply with all applicable federal, state and local laws, codes, ordinances and regulations now in force or which may hereafter be in force. Any corrections to Design Professional's reports or other Documents (as defined in Section 6) that become necessary as a result of Design Professional's failure to comply with these requirements shall be made at the Design Professional's expense.

B. Updates. Should Design Professional become aware that the requirements referenced in subparagraph A above change after the date of a report or other Document is prepared, Design Professional shall be responsible for notifying City of such change in requirements. Design Professional will bring the Documents into conformance with the newly issued requirements at the written direction of City. Design Professional's costs for providing services pursuant to this paragraph shall be submitted to City as Additional Services.

C. Licenses and Permits. Design Professional represents that it has the skills, expertise, licenses and permits necessary to perform the Services. Design Professional shall perform all such Services in the manner and according to the standards observed by a competent practitioner of the same profession in which Design Professional is engaged. All products of whatsoever nature which Design Professional delivers to City pursuant to this Agreement shall conform to the standards of quality normally observed by a person practicing in Design Professional's profession. Permits and/or licenses shall be obtained and maintained by Design Professional without additional compensation throughout the term of this Agreement.

D. Documents Stamped. Design Professional shall have documents created as part of the Services to be performed under this Agreement stamped by registered professionals for the disciplines covered by Design Professional's Documents when required by prevailing law, usual and customary professional practice, or by any governmental agency having jurisdiction over matters related to the Services. Design Professional will stamp other documents as noted in the Scope of Work. The City will not be charged an additional fee to have such documents stamped.

E. Workers' Compensation. Design Professional certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Design Professional certifies that it will comply with such provisions before commencing performance of this Agreement.

F. Prevailing Wage. Design Professional and Design Professional's sub-consultants, shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article

2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

G. Injury and Illness Prevention Program. Design Professional certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

H. City Not Responsible. The City is not responsible or liable for Design Professional's failure to comply with any and all of said requirements.

15. Nonexclusive Agreement. Design Professional understands that this is not an exclusive Agreement and that City shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Design Professional as the City desires.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Design Professional in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

17. Insurance. Design Professional shall provide insurance in accordance with the requirements of Exhibit "C".

18. Assignment Prohibited. Design Professional shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of City and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

19. Termination.

A. If Design Professional at any time refuses or neglects to prosecute its Services in a timely fashion or in accordance with the schedule, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without City's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any respect to properly and diligently prosecute its Services, or otherwise fails to perform fully any and all of the agreements herein contained, Design Professional shall be in default.

B. If Design Professional fails to cure the default within seven (7) days after written notice thereof, City may, at its sole option, take possession of any Documents or other materials (in paper and electronic form) prepared or used by Design Professional and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Design Professional under this Agreement; and/or (2) terminate Design Professional's right to proceed with this Agreement.

C. In the event City elects to terminate, City shall have the right to immediate possession of all Documents and work in progress prepared by Design Professional, whether

located at Design Professional's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefor. In case of such default termination, Design Professional shall not be entitled to receive any further payment under this Agreement until the Services are completely finished.

D. In addition to the foregoing right to terminate for default, City reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Design Professional. In the event of termination without cause, Design Professional shall be entitled to payment in an amount not to exceed the Not-To-Exceed Amount which shall be calculated as follows: (1) Payment for Services then satisfactorily completed and accepted by City, plus (2) Payment for Additional Services satisfactorily completed and accepted by City, plus (3) Reimbursable Expenses actually incurred by Design Professional, as approved by City. The amount of any payment made to Design Professional prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2) and (3) above. Design Professional shall not be entitled to any claim or lien against City for any additional compensation or damages in the event of such termination and payment. In addition, the City's right to withhold funds under Section 19.C. shall be applicable in the event of a termination for convenience.

E. If this Agreement is terminated by City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section 20 and Design Professional shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as he/she deems necessary due to unfavorable conditions or to the failure on the part of the Design Professional to perform any provision of this Agreement. Design Professional will be paid for satisfactory Services performed through the date of temporary suspension. In the event that Design Professional's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Design Professional's reasonable control, Design Professional's compensation shall be subject to renegotiation.

21. Entire Agreement and Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between City and Design Professional and supersedes any previous agreements, whether verbal or written, concerning the same subject matter. This Agreement may only be amended or extended from time to time by written agreement of the parties hereto.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the

court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth hereinbelow. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City Manager
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

If to Design Professional: Don Barraza
Kennedy/Jenks Consultants
303 Second Street, Ste. 300 South
San Francisco, CA 94107

26. Design Professional's Books and Records.

A. Design Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Design Professional.

B. Design Professional shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Design Professional's address indicated for receipt of notices in this Agreement.

D. City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in the City Manager's office. Access to such records and documents shall be granted to any party authorized by Design Professional, Design Professional's representatives, or Design Professional's successor-in-interest.

E. Pursuant to California Government Code Section 10527, the parties to this Agreement shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under the Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

27. Equal Employment Opportunity. Design Professional is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Design Professional will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Design Professional will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Design Professional further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

28. Unauthorized Aliens. Design Professional hereby promises and agrees to comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. § 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Design Professional so employ such unauthorized aliens for performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Design Professional hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

29. Section Headings. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

30. City Not Obligated to Third Parties. City shall not be obligated or liable for payment hereunder to any party other than the Design Professional.

31. Remedies Not Exclusive. No remedy herein conferred upon or reserved to City is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

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

33. No Waiver Of Default. No delay or omission of City to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to City shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of City.

34. Successors And Assigns. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

35. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit A: Scope of Work; Schedule, Compensation
- B. Exhibit B: Other Consultants, Specialists or Experts Employed by Design Professional
- C. Exhibit C: Insurance Requirements to Design Professional Services Agreement

36. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

37. News Releases/Interviews. All Design Professional and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

38. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Sonoma, California.

39. Authority. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Design Professional hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Design Professional is obligated, which breach would have a material effect hereon.

IN WITNESS WHEREOF, the City and Design Professional have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

KENNEDY/JENKS CONSULTANTS

By: _____
Michael Kim, Interim City Manager

By: _____
Don Barraza
Title: Principal

APPROVED AS TO FORM:

By: _____
Michelle Kenyon, City Attorney

ATTEST:

By: _____
Kathy Flamson, City Clerk

EXHIBIT A

Scope of Work, Schedule, Compensation

Kennedy/Jenks Consultants

Engineers & Scientists

303 Second Street, Suite 300 South
San Francisco, California 94107
415-243-2150
FAX: 415-896-0999

26 January 2016

Mr. Derek Rayner
Senior Civil Engineer
Public Works Department
City of Calistoga
414 Washington Street
Calistoga, CA 94515

Subject: Proposal for Professional Services for
Feige Canyon Water Storage Tank Retrofit/Replacement Project
HMGP #4193-398-6R
FIPS Code #055-90000
K/J Proposal No. B160014

Dear Derek:

Kennedy/Jenks Consultants (Kennedy/Jenks) is pleased to submit this proposal for providing professional services for the Feige Canyon Water Storage Tank Retrofit/Replacement Project, which will be funded jointly between the City of Calistoga (City), the Cal OES Hazard Mitigation Grants Program Unit, and Federal Emergency Management Agency (FEMA). An understanding and background of the project, scope of work divided into Phases 1 and 2, assumptions, summary of tasks to be performed by the City, project team, basis of compensation, schedule and terms and conditions are included below.

While this proposal includes a Scope of Work for all specialty consultant led activities it is understood that only Phase 1 funding and costs have been approved. This proposal is structured so that the City can authorize only those tasks for which it has received Pre-Award Costs and Phase 1 funding from Cal OES and FEMA.

Understanding and Background

The City of Calistoga water system receives water from two sources: the Kimball Reservoir via the Kimball Water Treatment Plant and the State Water Project via the City of Napa. Drinking water supplies for the City's main pressure zone is stored in a single existing distribution reservoir, 1.0-MG Feige, a new 1.5-MG Mt. Washington buried prestressed concrete reservoir, and a small clearwell at the Kimball Water Treatment Plant. The City of Calistoga has identified

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a need to increase the quantity of reliable water storage within the distribution system in order to satisfy State of California Department of Public Health (CDPH) requirements.

The 1.0-MG Feige Reservoir is a significant component of satisfying the CDPH water storage requirements and because the reservoir was constructed in 1966, the City has several questions regarding the condition of the reservoir and its ability to withstand the strong ground shaking associated with an earthquake. The City has applied to the State of California Office of Emergency Services (Cal OES) and the U.S. Department of Homeland Security FEMA for funding for the repair and retrofit of the Feige Canyon Water Storage Tank and has received approval of the Pre-Award Costs and Phase 1 Funding.

Scope of Work

(Kennedy/Jenks) has the capacity to provide a wide range of engineering services that may be necessary to complete the project as outlined below. In order to address the project goals and objectives, Kennedy/Jenks has prepared the following detailed Scope of Work with tasks necessary to achieve the required project objectives. It is understood that only those items in the Phase 1 scope of work will be initially authorized and that subsequent scope of work items will only be performed once written authorization is received from the City. The Phase 1 scope of work to be performed initially by Kennedy/Jenks includes:

- Task 1.1: Topographic Survey
- Task 1.2: Perform Hazardous Material Survey
- Task 1.3: Develop Design Criteria
- Task 1.6: Assist with Environmental Protection
- Task 1.7.1: Prepare 35% Construction Documents
- Task 1.8: Prepare Estimate of Probable Construction Cost
- Task 1.9: Phase 1 Project Management and Quality Control

Phase 1 – Design (OES Cost Estimate – Item A)

Task 1.1: Topographic Survey (OES Phase 1 Task)

Kennedy/Jenks will subcontract with Sandis Engineering, Inc. to collect survey and property line data as necessary for developing the design. Plans will be in AutoCAD format.

Task 1.2: Perform Hazardous Material Survey (OES Phase 1 Task)

Kennedy/Jenks will have its subconsultant, Envirosurvey Inc., perform a hazardous material survey to include limited asbestos, lead, and PCBs bulk sampling of the materials for the welded steel tank. The sampling will be performed in accordance with Federal, State, and local regulations for conducting asbestos and lead surveys to meet Cal/OSHA, USEPA/NESHAPS, and Bay Area Air Quality Management District (BAAQMD) requirements. Envirosurvey will perform on-site sampling and samples handling by CDPH /Cal-OSHA certified consultant. A

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final report with recommendations by CAC/CDPH certified personnel will include summary results, assessment and photo documentation. Kennedy/Jenks will provide the results of the hazardous material survey to the City for coordination of the hazardous materials removal and disposal within the construction contract.

Task 1.3: Develop Design Criteria (OES Phase 1 Task)

Kennedy/Jenks will develop the design criteria for the replacement welded steel tank. This will include defining the operational capacity, bottom capacity level, and top capacity level for the tank. The applicable building codes, AWWA Standards and guidance documents, OSHA standards, and other codes and standards governing the design of the tanks will be documented. The tank configuration will be defined, including appurtenances, corrosion protection requirements, and coating systems.

Task 1.6: Assist with Environmental Protection (OES Phase 1 Task)

It is understood that in accordance with 44 CFR 10.8(d)(2)(iii), the Phase 1 is categorically excluded from the need to prepare either an environmental assessment or environmental impact statement. Phase 1 will not involve ground disturbing activity without FEMA approval, and there is no commitment of resources other than personnel and associated funding. Kennedy/Jenks will assist the City with project description and coordination activities related to CEQA processes. Kennedy/Jenks will incorporate environmental mitigation measures into the contract documents.

Task 1.7: Prepare Construction Documents (OES Phase 1 Task)

Kennedy/Jenks will prepare drawings, technical specifications and structural calculations for the new replacement welded steel tank. Design of the tank will be in accordance with AWWA D100-11, OSHA Standards and the 2013 California Building Code (CBC). The design requirements for loads on the tank will be documented. Kennedy/Jenks will provide the appropriate seismic design criteria for fabrication of the tank. Kennedy/Jenks will design the reinforced concrete ringwall foundation, capable of supporting the roof and shell of the tank in order to mitigate settlement and seismic design forces on the tank. This task includes engineering services for the preliminary design and specification of the tank including appurtenances such as shell manholes, pipe connections, ladders and safety devices, roof openings including water quality testing ports, vents, and devices for indicating water level. New drawings and technical specifications will be prepared for the demolition and disposal of the existing tank. Kennedy/Jenks will prepare up to 15 drawings and 24 technical specifications sections. A list of the estimated drawings and technical specifications is included at the end of this proposal.

Task 1.7.1: Prepare 35% Construction Documents (OES Phase 1 Task)

Kennedy/Jenks will prepare 35% design plans, specifications, and construction cost and schedule submittals for City staff review. Allow 2-week city review.

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Task 1.8: Prepare Estimate of Probable Construction Cost (OES Phase 1 Task)

Kennedy/Jenks will prepare an engineer's estimate of the probable construction cost for the new tank. The estimate will include furnishing approximate quantities of construction materials.

Task 1.9: Phase 1 Project Management and Quality Control (OES Phase 1 Task)

Kennedy/Jenks will supervise and coordinate design activities for Phase 1, including subconsultants, submitting invoices and tracking project schedule and costs. This task includes coordinating with City staff and providing input into the development of the project schedule, development of the project team, channels of communication, development of drawing and drafting standards, specification format, establishment and coordination of site visits and meetings. This task includes providing quality control and deliverable review.

Phase 2 – Construction Management/Inspection (OES Cost Estimate – Item E)

Task 2.1: Geologic and Geotechnical Report

Kennedy/Jenks will subcontract with GEI Consultants to conduct a geotechnical investigation of the site in accordance with the 2013 California Building Code sufficient to design and construct the reservoir. As a minimum the geotechnical investigation will include a detailed boring log complete with blow count records, record of any undisturbed samples, laboratory analysis of physical and chemical characteristics of samples, estimate of total and differential settlement, water level in boring holes, location and elevation of borings on the site, description of soils encountered, written recommendation for the type of foundation, information on allowable bearing values, information on unit weight of soil and the ratio between vertical and horizontal pressures for the confined soil, information required for the pseudo dynamic design of the structure, and information on the corrosivity of the soils. The report will also document any adverse site soils conditions.

Task 2.1.1: Protective Coating System Design (previously Task 1.4)

Kennedy/Jenks will specify coating systems used to protect the interior and exterior of the steel water storage tank. Coating systems will be evaluated and selected based on cost, coating life, protection effectiveness, ease of application, and ease of adding coats to the system in the future. We typically specify three coats of a high solids epoxy protective coating system for the interior of tanks and one coat of a high solids epoxy followed by an aliphatic polyurethane coating for the exterior surfaces of steel water tanks. This work would be incorporated into the protective coatings technical specification for the welded steel tank construction.

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Task 2.1.2: Cathodic Protection System Design (previously Task 1.5)

Kennedy/Jenks will have corrosion control experts review external and internal sources of corrosion for the new tank to adequately design cathodic protection systems to maximum the life of the new welded steel tank. An investigation will be conducted of the corrosive effects of the different environmental factors which may affect the tank including the water in contact with the tank interior, the soil in contact with concrete or AC subgrade beneath the floor plates of the tank, the regional atmosphere for the exterior of the tank, and the air space in the interior of the tank above the water level. Cathodic protection systems will be designed for the interior wetted surfaces of the tank.

Task 1.7.2: Prepare 90% Construction Documents

Kennedy/Jenks will prepare 90% design plans, specifications, and construction cost and schedule submittals for City staff review. Allow 2-week city review.

Task 1.7.3: Prepare 100% Construction Documents

Kennedy/Jenks will prepare 100% design plans and specifications for bidding purposes, including final construction cost estimate and construction schedule.

Task 2.2: Attend Preconstruction Conference

Kennedy/Jenks will attend one preconstruction meeting/conference with the awarded Contractor and City construction personnel to review construction project organization, roles and responsibilities associated with construction administration, construction related correspondence, observations and inspections, contract change orders, monthly progress estimates and payments, material testing, disinfection & VOC testing, project closeout, and record documents.

Task 2.3: Review Shop Drawing Submittals

Kennedy/Jenks will review shop drawings received from the City for conformance with the Contract Documents. This task includes review of Contract submittals and resubmittals. Submittals lacking in clarity or completeness will be returned to the Contractor with appropriate comments. Kennedy/Jenks will prepare a shop drawing review letter for each contractor submittal with the recommended action noted and review comments for submittals not in conformance with the Contract Documents. The required processing of submittals will be in accordance with the City's construction administration protocols. For budgeting purposes, this proposal assumes that 20 submittals will be submitted for review.

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Task 2.4: Respond to Contractor Request for Information

Kennedy/Jenks will review Contractor submitted Requests for Information (RFIs). The required processing of RFIs will be in accordance with the City's construction administration protocols. RFIs received from the City will be responded to in writing. RFIs will be directed to specific design team members who can most effectively develop timely responses to the contractor. Kennedy/Jenks will assist the City in providing interpretations, responses to requests for information and clarifications of the Contract Documents. For budgeting purposes, this proposal assumes that 20 RFI's will require review.

Task 2.5: Review of Inspection Reports

Kennedy/Jenks will review reports from the testing and inspection agencies, including initiating appropriate action in response to those reports, if required.

Task 2.5.1: Soils Testing and Inspection

Kennedy/Jenks will retain the services of specialty subconsultant to provide observation of the subgrade and earthwork operations for the subgrade material beneath the tanks ringwall foundation and bottom plates. This task includes observation of the subgrade to verify that the materials are suitable for construction of the ringwall foundation. This task includes observation of the backfilling within ringwall foundations.

Task 2.5.2: Concrete Testing and Inspection

Kennedy/Jenks will retain the services of a specialty subconsultant to provide preparation, transportation, and testing of compressive strength test cylinders for the ringwall foundation.

Task 2.5.3: Welding Testing and Inspection

The Contractor is responsible to check the quality of the welding. The Contractor is responsible for submitting an erection plan, electrode manufacturer's data, welded joint details and inspection personnel, welder performance qualification test records, written welding procedures, welding non-destructive examination records, and a shop and field inspection report. If the Contractor designs and fabricates a tank in accordance with AWWA D100 Section 14, he is responsible for obtaining a certified welding inspector (CWI) in accordance with AWS QC1. Kennedy/Jenks will retain the services of a specialty subcontractor to monitor the Contractor's quality control program and provide independent inspection and quality control of the tank erection and welding, including but not limited to, the following items:

- Observation of the fit-up quality and levelness of the tank base and documentation of variation in seams, gaps or plates not aligned in accordance with the tolerances.
- Evaluation of weld quality based on visual inspection of welds using the sectional segment method, air carbon arc gouging and radiography.

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- Monitoring of the Contractor's weld quality control program.
- Participate in the selection of radiograph locations, watch for documentation of radiographs, and review the radiographs.
- Examination of the Contractor's welders and weld records.
- Review of the Contractor's shop and field inspection reports.

Task 2.5.4: Coatings (Painting) Testing and Inspection

The Contractor is responsible for providing continuity and pinhole checking, and if required adhesion testing of the protective coating systems. Kennedy/Jenks will retain the services of a specialty subcontractor to provide independent inspection and quality control of the protective coatings applications, including but not limited to the following items:

- Establish a testing plan for the number of locations to be tested according to the total plate surface area.
- Observe irregularities in the surfaces of the tanks and removal of erection scars.
- Observe surface preparation.
- Observe steel cleanliness and areas requiring blast cleaning for smooth blending into adjacent areas with undisturbed shop primer.
- Observe coating systems mixing of components, application, drying and curing.
- Observe ventilation equipment and procedures during all phases of the coating systems.
- Monitor of the ambient conditions.
- Observe the Contractor's use of inspection instruments and if necessary, obtain and utilize inspection instruments for inspection of coatings, including but not limited to:
 - Equipment for measuring air temperature and humidity
 - Steel temperature thermometer
 - Wet-film thickness gauge
 - Calibrated dry-film thickness gauge
 - Surface profile measuring device
 - Wet-sponge holiday detector

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Task 2.6: Structural and Site Observations

This task includes observation of the placement of forms and reinforcing steel and placement of concrete for the ringwall foundations. This task includes checking mechanical and electrical items including but not limited to ladders and platforms; electrical wiring in conformance with applicable codes; conduits and fixtures. The Contractor is responsible for providing the services of either a California Registered Corrosion Engineer or a NACE International certified Cathodic Protection Specialist in Design and Maintenance for design of the cathodic protection system and testing. This task includes observation of the installation and testing of the cathodic protection systems. This task includes checking cathodic protection items including but not limited to electrical wiring, in conformance with applicable codes; conduits; cathodic protection anodes and handhole covers; witnessing of potential profile for cathodic protection anodes.

Task 2.7: Final Completion and Annual Inspections

Kennedy/Jenks will participate in an inspection and provide a written report with an opinion on whether the work is substantially complete and assist the City in preparing a list of items to be completed. Kennedy/Jenks will participate in the final inspection to determine if the completed work is in conformance with the Contract Documents for final payment. Kennedy/Jenks will provide written notice to City that the work is in conformance with the Contract Documents or inform the City of any deficiencies or issues needing resolution. Kennedy/Jenks will participate in the annual inspection of the interior protective coatings for the welded steel tank and provide a written report with a list of items to be repaired.

Task 2.8: Prepare Record Documents

Based on red-lined markups and construction records that have been maintained on site by the Contractor and the City's Representative during the project, and any additional information provided by the City, Kennedy/Jenks will prepare record drawings upon completion of the project. When complete and reviewed by the City, Kennedy/Jenks will plot these record drawings on 4-mil Mylar and transfer files in Adobe Acrobat to a compact disk. The Mylar originals, the compact disk, and two full-sized black line prints will be submitted to the City.

Task 2.9: Phase 2 Project Management

Kennedy/Jenks will supervise and coordinate design activities for Phase 2, including subconsultants, submitting invoices and tracking project schedule and costs. This task includes coordinating with City staff and providing input into the development of the project schedule, development of the project team, channels of communication, development of drawing and drafting standards, specification format, establishment and coordination of site visits and meetings. This task includes providing quality control and deliverable review.

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Assumptions

The following assumptions were developed when preparing the Scope of Work for the project.

1. Kennedy/Jenks and its subconsultants will not perform any title searches associated with topographic survey work. Private property is out of project site and will not be included in topographic survey. The City will coordinate and provide all access to the property. Title information will be provided by the City. No utility as-builts or utility locating services will be provided.
2. Kennedy/Jenks will not prepare any CEQA documents or any environmental documentation other than written descriptions of the project or incorporation of mitigation measures identified by others into the project specifications.
3. Kennedy/Jenks will not prepare any revisions to the Benefit to Cost Analysis associated with any project overruns.
4. Access to the site for drilling equipment is difficult under dry ground conditions, and may be precluded by wet ground conditions during or following rains. This may delay completion of the proposed field exploration.
5. Water for drilling will be available from a City hydrant on Oak View Circle and a water meter will be provided by the City.
6. Encroachment permit fees, if needed, will be waived by the City.
7. This scope of work does not address the potential presence of hazardous material at the site.
8. This scope of work does not include any landscaping or traffic control services.

Tasks Performed by City

The following tasks will be performed by the City:

1. The City will take the lead in all communications and correspondence with Cal OES and FEMA. The City will be responsible for following the Phase 1 scope of work activities:
 - a. Pre Award Cost
 - b. Calistoga Budget
 - c. Perform Hazardous Material Survey (City to provide assistance with draining and access to the interior of the existing tank for sample collection)
 - d. Assistance with Environmental Protection

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2. The City will comply with Cal OES and FEMA monitoring and reporting program performance requirements including preparing and submitting quarterly progress reports.
3. Provide a Project Manager/Project Engineer who is responsible for overall project management and will provide coordination between the City and Kennedy/Jenks.
4. Provide City staff member(s) to provide timely response to any questions and to be available for any meetings requested by the Kennedy/Jenks.
5. Provide all readily available background documentation to Kennedy/Jenks for review.
6. Assist with staff and equipment at the site in order to access the tank.

Project Team

Our project team has a balanced mix of technical expertise, local knowledge, and leadership forged from direct experience planning and designing similar steel tanks. The team is organized to mirror your delivery needs. Our general approach is to provide a primary point of contact to leverage the right resources and depth of experience to successfully complete each task in an efficient manner. Don Barraza, P.E. will proactively manage the overall project, team, and will be the primary day-to-day point of contact. Don will execute the contract, oversee and direct the project, and track specific project milestones and objectives to ensure assignments stay on task, and the budget and schedule are met. Additional project team members and their roles are summarized below:

Kerwin Allen, P.E. – Quality Assurance/Quality Control
Zachary Harris, P.E. – Mechanical Engineering
Tony Wakim, P.E. – Electrical/I&C/SCADA
Dillon Morra, P.E. – Civil Engineering
Robert Ryder, P.E. – Cathodic Protection
Sachi Itagaki, P.E. - SWPPP

Basis of Compensation

We propose that compensation for our services be on a time and expense reimbursement basis in accordance with our January 1, 2016 standard Schedule of Charges, enclosed. Payments shall be made monthly based on invoices, which describe services and list actual costs and expenses. Based on our estimate of services for our proposed tasks, we propose a fee budget of \$220,479 for design, construction management and inspection services for the new tank, which will not be exceeded without authorization. It is understood that the initial authorization will not exceed \$57,139 in accordance with the FEMA and Cal OES Phase 1 Scope of Work authorized activities. A summary of the proposed budget by task is provided below. The budget may be increased if necessary to provide additional services requested by the City. It is understood that Phase 1 underrun funds may be applied to the construction funding unless de-obligated. It is understood that upon completion of the Phase 1, an updated line-item cost

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estimate, indicating federal and matching funds, is required if the proposed total project cost is increased more than 10% or if the project scope of work is modified. If the estimated project cost increases more than 10%, a revised benefit-cost analysis may be required this may result in a project that is not cost-effective, requiring project withdrawal and de-obligation of any remaining funds.

Phase and Task	Estimated Fee Budget
Phase 1: Design = OES Cost Estimate Item A	
1.1 Topographic Survey *	\$12,030
1.2 Hazardous Material Survey *	\$3,780
1.3 Develop Design Criteria *	\$7,457
1.6 Assistance with Environmental Protection *	\$3,832
1.7 Preparation of Construction Documents *	
1.7.1 Prepare 35% Submittal Construction Documents *	\$12,879
1.8 Prepare Estimate of Probable Construction Cost *	\$2,802
1.9 Phase 1 Project Management *	\$14,359
Phase 1 Subtotal	\$57,139
Phase 2: Construction Management and Inspection = OES Cost Estimate Item E	
2.1 Geologic and Geotechnical Report	\$23,030
2.1.1 Protective Coating System Design (previously Task 1.4)	\$2,142
2.1.2 Cathodic Protection System Design (previously Task 1.5)	\$2,142
2.1.3 Prepare 90% Submittal Construction Documents (previously Task 1.7.2)	\$25,758
2.1.4 Prepare 100% Submittal Construction Documents (previously Task 1.7.3)	\$4,293
2.2 Attend Preconstruction Conference	\$2,060
2.3 Review Shop Drawing Submittals	\$8,508
2.4 Respond to Request for Information	\$8,508
2.5 Review of Inspection Reports	\$1,916
2.5.1 Soils Testing and Inspection	\$9,280
2.5.2 Concrete Testing and Inspection	\$6,530
2.5.3 Welding Testing and Inspection	\$6,530
2.5.4 Coatings (Painting) Testing and Inspection	\$45,030
2.6 Structural and Site Observations	\$1,916
2.7 Final Completion and Annual Inspections	\$1,916
2.8 Prepare Record Documents	\$4,511
2.9 Phase 2 Project Management	\$9,270
Phase 2 Subtotal	\$163,340
PHASES 1 AND 2 TOTAL	\$220,479

* FEMA and Cal OES Phase 1 scope of work authorized activities total \$57,139.

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Schedule

It is understood that the City has been awarded an approximate six-month time frame to complete the Phase 1 scope of work with June 10, 2016, or sooner, as the Phase 1 activity completion date. Kennedy/Jenks proposes to complete the Phase 1 scope of work described above within four months contingent on receipt of authorization from the City by 1 February 2016. It is understood that federal funds may be de-obligated for work that is not completed by the completion date, and for which no time extension is approved.

Terms and Conditions

This proposal is based on current projections of staff availability and costs and, therefore, is valid for 90 days following the date of this letter. To assure a clear understanding of all matters related to our mutual responsibilities, the attached Standard Conditions dated January 1, 2007 are made a part of our agreement. We have found these terms to be appropriate for use with agreements for the provision of engineering and scientific services, and accordingly, should any conflict exist between the attached terms and the form of any purchase order or confirmation issued, the terms of this proposal and the attached Standard Conditions shall prevail in the absence of our express written agreement. If this proposal meets with your approval, please sign where noted at the end of the document and return a copy to our office to serve as our authorization.

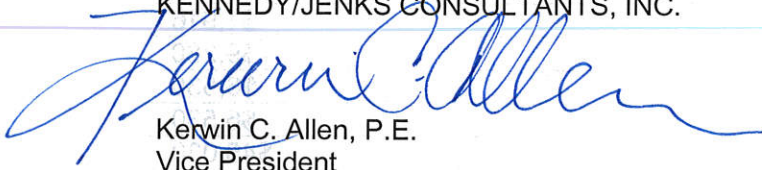
If you have any questions regarding our proposal, please contact Don Barraza at (415) 243-2483 or Kerwin Allen at (415) 243-2457.

Very truly yours,


AUTHORIZATION:

KENNEDY/JENKS CONSULTANTS, INC.

CITY OF CALISTOGA


Kerwin C. Allen, P.E.
Vice President

By: _____
(Signature)


Donald L. Barraza, P.E.
Principal Engineer
Structural Department Head

(Print Name)

Title: _____

Date: _____

Enclosure (2): Schedule of Charges dated January 1, 2016
Standard Conditions dated January 1, 2007

Mr. Derek Rayner

**City of Calistoga
1.0-MG Feige Canyon Reservoir
AWWA D100-11 Welded Steel Water Storage Tank
List of Drawings**

Sheet	Drawing	Drawing Title
1	G1	Title Sheet, Sheet Index, Vicinity Map, Location Map, Legend and Abbreviations
2	C1	Site Layout, Piping, Grading and Paving Plan
3	D1	Steel Water Tank – Demolition Plan
4	S1	Welded Steel Tank – Orientation Plan
5	S2	Welded Steel Tank – Typical Section
6	S3	Welded Steel Tank – Pipe Connection Details
7	S4	Welded Steel Tank – Shell and Flush Cleanout Manway Details
8	S5	Welded Steel Tank – Exterior and Interior Access Ladder Sections and Details
9	S6	Welded Steel Tank – Roof Access Platform, Hatch and Vent Details
10	S7	Welded Steel Tank – Ringwall Foundation and Miscellaneous Details
11	CP1	Cathodic Protection – Plan, Section, Schematic and Details
12	CP2	Cathodic Protection – Details
13	E1	Electrical Abbreviations, Symbols, Details and Fixture Schedule
14	E2	Electrical Site Plan
15	E3	Typical Tank Roof Electrical Plan, Details and Schedule

Mr. Derek Rayner

**City of Calistoga
1.0-MG Feige Canyon Reservoir
AWWA D100-11 Welded Steel Water Storage Tank
List of Technical Specifications**

DIVISION 1: GENERAL REQUIREMENTS

01010 Summary of the Work and Contract Considerations
01040 Coordination and Project Requirements
01140 Environmental Protection
01300 Submittals
01311 CPM Construction Schedule
01500 Construction Facilities and Temporary Controls
01650 Facility Startup
01700 Contract Closeout

DIVISION 2: SITEWORK

02050 Demolition
02065 Controlled Low Strength Material
02080 Precast Concrete Section Manholes and Utility Vaults
02200 Site Preparation
02301 Earthwork
02510 Water System Piping and Accessories
02700 Paving and Surfacing

DIVISION 3: CONCRETE

03200 Reinforcing Steel and Anchor Bolts
03300 Cast-in-Place Concrete
03350 Concrete Finishes

DIVISION 9: FINISHES

09960 Protective Coatings

DIVISION 11: EQUIPMENT

11001 General Equipment and Mechanical Requirements
11003 Disinfection and VOC Testing

DIVISION 13: SPECIAL CONSTRUCTION

13110 Cathodic Protection Systems
13211 Welded Steel Reservoir

DIVISION 16: ELECTRICAL

16010 General Electrical Requirements

Client/Address:

Contract/Proposal Date:

Schedule of Charges

January 1, 2016

PERSONNEL COMPENSATION

Classification	Hourly Rate
CAD-Technician	\$120
Designer-Senior Technician	\$155
Engineer-Scientist-Specialist 1	\$130
Engineer-Scientist-Specialist 2	\$150
Engineer-Scientist-Specialist 3	\$165
Engineer-Scientist-Specialist 4	\$180
Engineer-Scientist-Specialist 5	\$195
Engineer-Scientist-Specialist 6	\$220
Engineer-Scientist-Specialist 7	\$245
Engineer-Scientist-Specialist 8	\$260
Engineer-Scientist-Specialist 9	\$280
Project Administrator	\$115
Administrative Assistant	\$95
Aide.....	\$75

In addition to the above Hourly Rates, a four percent Communications Surcharge will be added to Personnel Compensation for normal and incidental copies, communications and postage.

Direct Expenses

Reimbursement for direct expenses, as listed below, incurred in connection with the work, will be at cost plus ten percent for items such as:

- a. Maps, photographs, 3rd party reproductions, 3rd party printing, equipment rental, and special supplies related to the work.
- b. Consultants, soils engineers, surveyors, contractors, and other outside services.
- c. Rented vehicles, local public transportation and taxis, travel and subsistence.
- d. Project specific telecommunications and delivery charges.
- e. Special fees, insurance, permits, and licenses applicable to the work.
- f. Outside computer processing, computation, and proprietary programs purchased for the work.

Reimbursement for vehicles used in connection with the work will be at the federally approved mileage rates or at a negotiated monthly rate.

Reimbursement for use of computerized drafting systems (CAD), geographical information systems (GIS), and other specialized software and hardware will be at the rate of \$12 per hour.

Rates for professional staff for legal proceedings or as expert witnesses will be at rates one and one-half times the Hourly Rates specified above.

Excise and gross receipts taxes, if any, will be added as a direct expense.

The foregoing Schedule of Charges is incorporated into the agreement for the services provided, effective January 1, 2016 through December 31, 2016. After December 31, 2016, invoices will reflect the Schedule of Charges currently in effect.

Client:

Contract/Proposal Date:

Standard Conditions

January 1, 2007

CLIENT and KENNEDY/JENKS CONSULTANTS, INC. ("CONSULTANT") agree that the following provisions shall be a part of their agreement.

1. **TERMS OF PAYMENT.** CLIENT will be invoiced at the end of the first billing period following commencement of work and at the end of each billing period thereafter. Payment in full of an invoice must be received by CONSULTANT within thirty (30) days of the date of such invoice.
2. **EFFECT OF INVOICE.** The work performed shall be deemed approved and accepted by CLIENT as and when invoiced unless CLIENT objects within fifteen (15) days of invoice date by written notice specifically stating the details in which CLIENT believes such work is incomplete or defective, and the invoice amount(s) in dispute. CLIENT shall pay undisputed amounts as provided for in the preceding paragraph.
3. **INTEREST; SUSPENSION OF WORK.** Failure of CLIENT to make full payment of an invoice so that it is received by CONSULTANT within said thirty (30) days of the date thereof subjects the amount overdue to a delinquent account charge of one percent (1%) of the invoice amount per month, compounded monthly, but not to exceed the maximum rate permitted by law. Failure of CLIENT to submit full payment of an invoice within thirty (30) days of the date thereof subjects this agreement and the work herein contemplated to suspension or termination at CONSULTANT's discretion.
4. **ADVANCE PAYMENT: WITHHOLDING OF WORK PRODUCT.** CONSULTANT reserves the right to require payment in advance for work it estimates will be done during a given billing period. CONSULTANT, without any liability to CLIENT, reserves the right to withhold any services and work products herein contemplated pending payment of CLIENT's outstanding indebtedness or advance payment as required by CONSULTANT. Where work is performed on a reimbursable basis, budget may be increased by amendment to complete the scope of work. CONSULTANT is not obligated to provide services in excess of the authorized budget.
5. **STANDARD OF CARE.** CONSULTANT's services performed under this agreement will be performed in a manner consistent with the care and skill ordinarily exercised by members of the profession practicing under similar conditions at the same time and in the same or similar locality. When the findings and recommendations of CONSULTANT are based on information supplied by CLIENT and others, such findings and recommendations are correct to the best of CONSULTANT's knowledge and belief. No warranty, express or implied, is made or intended by this agreement, or by the foregoing statement of the applicable standard of care, or by providing consulting services or by furnishing oral or written reports of findings made. No entity other than CLIENT or CONSULTANT shall be construed as a beneficiary to this Agreement.
6. **INSURANCE COVERAGE.** CONSULTANT is protected by Worker's Compensation insurance as required by applicable state laws and will maintain employer's liability coverage. During the performance of this agreement CONSULTANT will maintain professional liability insurance with a limit of \$1 million on a claims made, annual aggregate basis, and commercial general liability and automobile liability insurance each with a limit of not less than \$1 million on an occurrence basis.
7. **ALLOCATION OF RISK.** CLIENT and CONSULTANT have discussed the risks associated with this project and the extent to which those risks should be shared by CLIENT and by CONSULTANT, and have agreed: (a) To the fullest extent permitted by law, CLIENT agrees to limit the liability of CONSULTANT, its officers, employees, and subconsultants to CLIENT, all landowners, contractors, subcontractors, lenders, suppliers, manufacturers, third parties, and their employees such that the total aggregate liability, including all attorneys fees and costs shall not exceed \$50,000.00 or the total fees paid for CONSULTANT's services on this project, whichever is greater. (b) All damages such as loss of use, profits, anticipated profits, and the like losses are consequential damages for which CONSULTANT is not liable. (c) CLIENT shall give written notice to CONSULTANT of any claim of negligent act, error or omission within one (1) year after the completion of the work performed by CONSULTANT. Failure to give notice herein required shall constitute a waiver of said claim by CLIENT.
8. **SERVICES DURING CONSTRUCTION.** Any construction inspection or testing provided by CONSULTANT is for the purpose of determining compliance by contractors with the functional provisions of project documents only. CLIENT agrees that CONSULTANT will have no inspection responsibilities at the jobsite except to the extent specifically provided for in the agreed upon scope of work. CONSULTANT shall not be held in any way to guarantee any contractor's work, nor to assume responsibility for means, methods or appliances used by any contractor nor to assume responsibility for a contractor's compliance with laws and regulations or for contractor's errors, omissions, or defective work. CLIENT agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for jobsite conditions during the course of construction of the project, including safety of all persons and property and that this responsibility shall be continuous and not be limited to normal working hours. CLIENT agrees to require in all construction contracts for the project, provisions that CLIENT and CONSULTANT shall be defended and indemnified by the contractor and its subcontractors and named additional insureds on contractor's and subcontractor's insurance. Any statements of estimated construction costs furnished by CONSULTANT are based on professional opinions and judgment, and CONSULTANT will not be responsible for fluctuations in construction costs.
9. **SERVICES BY CLIENT.** CLIENT will provide access to site of work, obtain all permits, provide all legal services in connection with the project, and provide environmental impact reports and energy assessments unless specifically included in the scope of work. CLIENT shall pay the costs of checking and inspection fees, zoning application fees, soils engineering fees, testing fees, surveying fees, and all other fees, permits, bond premiums, and all other charges not specifically covered by the scope of work. CLIENT shall designate to CONSULTANT the location of all subsurface utility lines and other subsurface man-made objects (in this agreement collectively called "buried utilities") within the boundaries of the jobsite. CONSULTANT will conduct at CLIENT's expense such additional research as in CONSULTANT's professional opinion is appropriate to attempt to verify the location of buried utilities at the jobsite, but CLIENT shall remain responsible for the accurate designation of their location and, shall indemnify, defend, and hold CONSULTANT harmless from any claims or loss arising from the failure to accurately locate buried utilities.
10. **COMPLIANCE WITH LAWS.** CLIENT and CONSULTANT shall each use reasonable care in its efforts to comply with laws, codes, ordinances and regulations in force at the time of the performance by each under this agreement, insofar as such laws are applicable to a party's performance. Unless otherwise provided for in the scope of work of this agreement or by law, the responsibility for making any disclosures or reports to any third party, for notifying all governmental authorities of the discovery of hazardous materials on the jobsite, and for taking corrective, remedial, or mitigative action shall be solely that of CLIENT. It is CONSULTANT's belief that the work is not subject to California Prevailing Wage Law, unless expressly identified as such within the scope of work. Should it be alleged or determined that some or all of the work is subject to California's Prevailing Wage Law, then CLIENT shall reimburse CONSULTANT for the additional costs associated with CONSULTANT complying with those laws.

11. **USE OF DOCUMENTS.** Drawings, reports, writings and other original documents (documents) furnished by CONSULTANT are for the exclusive use of CLIENT and CONSULTANT retains all intellectual property rights including copyrights. Documents are furnished to CLIENT upon CLIENT's specific agreement that it assumes all liability resulting from the further distribution of such documents, or any portion of them, and that CLIENT will indemnify CONSULTANT and hold it harmless against any claims associated with the unauthorized use of such documents. In no event will CLIENT or any person acting on its behalf edit, abridge, or modify any document prepared by CONSULTANT without CONSULTANT's express written consent.
12. **ELECTRONIC OR MAGNETIC DATA.** Documents provided by CONSULTANT in electronic or magnetic formats are provided under the following conditions unless detailed otherwise in the scope of work or by a written amendment. Documents are provided in CONSULTANT's standard software formats. CLIENT recognizes that electronic or magnetic data and its transmission can be easily damaged, may not be compatible with CLIENT'S software formats and systems, may develop inaccuracies during conversion or use, and may contain viruses or other destructive programs, and that software and hardware operating systems may become obsolete. As a condition of delivery of electronic or magnetic data, CLIENT agrees to defend indemnify and hold CONSULTANT, its subconsultants, agents and employees harmless from and against all claims, loss, damages, expense and liability arising from or connected with its use, reuse, misuse, modification or misinterpretation. In no event shall CONSULTANT be liable for any loss of use, profit or any other damage.
13. **TERMINATION.** This agreement may be terminated by either party by written notice should the other party fail substantially to perform its obligations under this agreement and continue such default after the expiration of a seven (7) day notice period. Either party may terminate this agreement without necessity of cause upon the expiration of a thirty (30) day notice period. If this agreement is terminated by CLIENT in the absence of default by CONSULTANT, CONSULTANT shall be paid for services performed and costs incurred by it prior to its receipt of notice of termination from CLIENT, including reimbursement for direct expenses due, plus an additional amount, not to exceed ten percent (10%) of charges incurred to the termination notice date, to cover services to orderly close the work and prepare project files and documentation, plus any additional direct expenses incurred by CONSULTANT including but not limited to cancellation fees or charges. CONSULTANT will use reasonable efforts to minimize such additional charges.
14. **PRECEDENCE OF CONDITIONS.** Should any conflict exist between the terms herein and the terms of any purchase order or confirmation issued by CLIENT, the terms of these Standard Conditions shall prevail in the absence of CONSULTANT's express written agreement to the contrary.
15. **ASSIGNMENT: SUBCONTRACTING.** Neither CLIENT nor CONSULTANT shall assign any of its rights including a right to sue, or delegate its duties under this agreement without the written consent of the other.
16. **FORCE MAJEURE.** Any delay or default in the performance of any obligation of CONSULTANT under this agreement resulting from any cause(s) beyond CONSULTANT's reasonable control shall not be deemed a breach of this agreement. The occurrence of any such event shall suspend the obligations of CONSULTANT as long as performance is delayed or prevented thereby, and the fees due hereunder shall be equitably adjusted.
17. **MERGER: WAIVER: SURVIVAL.** This agreement constitutes the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations and/or agreements, written or oral. One or more waiver of any term, condition or other provision of this agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision. Any provision hereof which is legally deemed void or unenforceable shall not void this entire agreement and all other provisions shall survive and be enforceable.
18. **APPLICABLE LAW.** This agreement shall be interpreted and enforced according to the laws of the State of California. In the case of invalidity or unenforceability of any provision or portion thereof, the provision shall be rewritten and enforced to the maximum extent permitted by law to accomplish as near as possible the intent of the original provision. Nothing herein shall be construed to provide for indemnification against damages arising from a party's gross negligence or willful misconduct.

EXHIBIT B

Other Consultants, Specialists or Experts Employed by Design Professional

Sandis Engineering – Topographic Survey

EXHIBIT C

Insurance Requirements to Agreement for Professional Services
Re: Feige Water Tank Replacement Project

Design Professional shall, at all times it is performing services under this Agreement, provide and maintain insurance in the following types and with limits in conformance with the requirements set forth below. Design Professional will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Design Professional agrees to amend, supplement or endorse the existing coverage to do so. Design Professional acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Design Professional in excess of the limits and coverage required in this agreement and that is applicable to a given loss will be available to City.

1. Commercial General Liability Insurance, occurrence form, using Insurance Services Office ("ISO") "Commercial General Liability" policy form CG 00 01 or an approved equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review, but in no event shall be less than \$2,000,000 each occurrence;

2. Business Auto Coverage on ISO Business Automobile Coverage form CA 00 01 including symbol 1 (Any Auto) or an approved equivalent. Limits are subject to review, but in no event shall be less than \$1,000,000 each occurrence. If Design Professional or its employees will use personal autos in any way in connection with performance of the Services, Design Professional shall provide evidence of personal auto liability coverage for each such person.

3. Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employers liability insurance, with minimum limits of \$1 million per occurrence.

4. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by insured first. There shall be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Design Professional, subconsultants or others involved in performance of the Services. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$2,000,000 per occurrence.

5. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or

omissions of the Design Professional and "Covered Professional Services" as designated in the policy must include the type of work performed under this Agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate.

6. Insurance procured pursuant to these requirements shall be written by insurers that are authorized to transact the relevant type of insurance business in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

7. General conditions pertaining to provision of insurance coverage by Design Professional. Design Professional and City agree to the following with respect to insurance provided by Design Professional:

A. Design Professional agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992, or an equivalent. Design Professional also agrees to require all contractors, and subcontractors to do likewise

B. No liability insurance coverage provided to comply with this Agreement, except the Business Auto Coverage policy, shall prohibit Design Professional, or Design Professional's employees, or agents, from waiving the right of subrogation prior to a loss. Design Professional agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

C. All insurance coverage and limits provided by Design Professional and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

D. 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 City and approved of in writing.

E. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

F. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises, and City shall be responsible for the cost of any additional insurance required. Design Professional shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

G. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Design Professional's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not

delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City may terminate this agreement in accordance with Section 19 of the Agreement.

H. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Design Professional agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

I. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Design Professional or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self insurance available to City.

J. Design Professional agrees to ensure that subconsultants, and any other party involved with the Services who is brought onto or involved in the Services by Design Professional, provide the same minimum insurance coverage required of Design Professional; provided, however that only subconsultants performing professional services will be required to provide professional liability insurance. Design Professional 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. Design Professional agrees that upon request, all agreements with subcontractors and others engaged in the Services will be submitted to City for review.

K. Design Professional agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, architect, consultant or other entity or person in any way involved in the performance of work on the Services contemplated by this agreement to self-insure its obligations to City. If Design Professional's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Design Professional, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

L. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Design Professional ninety (90) days advance written notice of such change. If such change results in additional cost to the Design Professional, and the City requires Design Professional to obtain the additional coverage, the City will pay Design Professional the additional cost of the insurance.

M. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

N. Design Professional acknowledges and agrees that any actual or alleged failure on the part of City to inform Design Professional of non-compliance with any insurance

requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

O. Design Professional will endeavor to renew the required coverages for a minimum of three years following completion of the Services or termination of this agreement and, if Design Professional is unable to do so, Design Professional will notify City at least thirty days prior to the cancellation or expiration of the policy or policies.

P. Design Professional shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Design Professional's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

Q. The provisions of any workers' compensation or similar act will not limit the obligations of Design Professional under this agreement. Design Professional expressly agrees that any statutory immunity defenses under such laws do not apply with respect to City, its employees, officials and agents.

R. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. 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 limiting or all-inclusive.

S. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

T. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

U. Design Professional agrees to be responsible for ensuring that no contract entered into by Design Professional in connection with the Services authorizes, or purports to authorize, any third party to charge City an amount in excess of the fee set forth in the agreement on account of insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

V. Design Professional agrees to provide immediate notice to City of any claim or loss against Design Professional arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.