

RESOLUTION NO. 2018- 087

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AWARING A CONSULTANT SERVICES AGREEMENT IN THE AMOUNT NOT TO EXCEED \$475,000 TO ENVIRONMENTAL SCIENCE ASSOCIATES FOR PHASE 1 DESIGN OF THE RIVERSIDE POND RELOCATION PROJECT, APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$273,396 AND DESIGNATING THE CITY MANAGER OR PUBLIC WORKS DIRECTOR AS AGENTS FOR THE CITY AND AUTHORIZING THEM TO EXECUTE AND FILE THE NECESSARY CONTRACT DOCUMENTS WITH FEMA AND CAL OES.

WHEREAS, the Riverside Ponds were constructed in the early 1970s originally as percolation ponds for wastewater treatment and effluent disposal; and

WHEREAS, the ponds were repurposed in the early 2000s as part of the Wastewater Treatment Plant upgrades to tertiary treatment; and

WHEREAS, in 2014 the San Francisco Bay Area Regional Water Quality Control board issued a Cease and Desist Order mandating that the City either line or relocate the Riverside Ponds to eliminate subsurface discharge to the Napa River; and

WHEREAS, in early 2016 the City commissioned a study prepared by Environmental Science Associates and Kennedy/Jenks Consultants for grant application assistance which included an engineering report that discussed construction alternatives, cost/benefit analysis, maintenance and environmental issues; and

WHEREAS, in June 2016, staff submitted an application for a Hazard Mitigation Grant (HMG) for relocation/replacement of the Riverside Ponds with an estimated cost of \$4 million; and

WHEREAS, staff has received notification that our project has been selected for Phase I funding and that grant funds will cover 75% of the total costs incurred, up to the approved amount with a 25% local match; and

WHEREAS, Environmental Science Associates has a strong understanding of the Riverside Ponds Relocation Project and staff requested a design services proposal from them, reviewed the proposal and finds that it meets the need of the City; and

WHEREAS, staff recommends that a contract for design through 50% construction documents in the amount not to exceed \$475,000 be awarded to Environmental Science Associates and the City Manager or Public Works Director be authorized to execute the agreement; and

WHEREAS, the action authorized by this Resolution is exempt from the provisions of the California Environmental Quality Act pursuant to Title 14, the California Code of Regulations, Section 15302(c); and.

WHEREAS, FEMA and Cal OES require certain forms, agreements, assurances and designation of applicant's agent; and

WHEREAS, the HMP grant will provide Federal funding in the amount of \$392,547 for Phase I design activities; and

WHEREAS, the Water Impact Fee unappropriated fund balance has sufficient funds to provide the required local match of \$130,849; and

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Calistoga as follows:

1. Finds the proposal from Environmental Science Associates is acceptable and authorizes the City Manager or Public Works Director to execute a CSA in an amount not to exceed \$475,000 for Phase 1 Design activities.
2. Approves a budget adjustment in the amount of \$273,396 increasing appropriations to the existing CIP, Riverside Ponds Restoration (Fund # 13-5540) for Phase 1 activities and appropriates \$392,547 in Federal grant funds and \$130,849 derived from unappropriated Water Impact Fee fund balances.
3. Designates the City Manager or the Public Works Director as agents for Calistoga and grants approval to execute all necessary agreements with Cal OES and FEMA and to otherwise administer the project.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at a regular meeting held this **4th day of September 2018**, by the following vote:

AYES: Councilmembers Kraus, Barnes and Lopez-Ortega, Mayor Canning
NOES: None
ABSTAIN: None
ABSENT: Vice Mayor Dunsford



CHRIS CANNING, Mayor

ATTEST:


KATHY FLAMSON, City Clerk

**CITY OF CALISTOGA
PROFESSIONAL SERVICES AGREEMENT,
PHASE I - RIVERSIDE POND RELOCATION PROJECT**

AGREEMENT NO. 792

THIS AGREEMENT is entered into as of the 5th day of September 2018 by and between the CITY OF CALISTOGA ("City"), a California municipal corporation, and ENVIRONMENTAL SCIENCE ASSOCIATES, ("Design Professional").

Recitals

WHEREAS, City desires to obtain design services in connection with Phase I of the Riverside Pond Relocation Project (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 as 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 December 1, 2019
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 Four-Hundred and Seventy-Five Thousand Dollars (\$475,000). 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. Design Professional shall submit itemized monthly statements for work performed prior to the 19th of the month. City shall submit request for payment for all undisputed work for processing of payment under the City's next regularly scheduled check run which is typically the 10th of the month. City shall notify Design Professional within 5 days of any request for any payment, or portion thereof that is in dispute.

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 authorization by both parties. Design Professional shall not be required to commence extra or changed work without a written amendment or change order signed by all parties.

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. In the event the City chooses to utilize the Documents for purposes other than as specified in the Scope of Work Design Professional shall not be liable for said use outside of this Agreement.

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 for the duration of the Agreement. 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 and accepted by the City, 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: Scott Stoller, P.E.
Environmental Science Associates
550 Kearny Street, Suite 800
San Francisco, CA 94108

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

ENVIRONMENTAL SCIENCE
ASSOCIATES

By: 
Dylan Feik, City Manager

By: 
Ann Borgonovo, P.E.
Title: Senior Engineer

ATTEST:

By: 
Kathy Flamson, City Clerk

EXHIBIT A

Scope of Work, Schedule, Compensation

Calistoga Riverside Ponds

HMGP #4240-20-27R

Phase I Scope of Work

Project Understanding

The City of Calistoga operates a Wastewater Treatment Plant (WWTP) at the confluence of the Napa River and Simmons Creek in Calistoga, CA. Portions of the WWTP are at risk of flooding and bank erosion from channel migration. The primary objective of this project is to reduce the flooding and erosional risk for wastewater treatment infrastructure located along the banks and at the confluence of Simmons Creek and the Napa River. In particular, the headworks located on the northeast part of the confluence and existing storage ponds located on the northern bank of the Napa River have eroded to the point that warrants implementation of active bank protection measures. A secondary objective of the project is to upgrade select WWTP facilities to reduce Trihalomethane (THM) levels in effluent, monitor THM levels, and automate the discharge of wastewater dependent on instantaneous flowrates in the Napa River. There are several associated work elements that will support the primary purpose of the project, which include:

- Stabilizing channel banks at up to four (4) locations adjacent to treatment plant infrastructure
- Installing grade control structure at confluence of Simmons Creek and Napa River, if deemed prudent
- Abandoning Ponds 1 through 3, including minor regrading
- Raising the berm of Pond 4 to maintain overall storage capacity
- Improving Pond 4 infrastructure including new SCADA system to automate effluent discharge to Napa River
- Constructing new drainage ditch from Pond 1 to Simmons Creek
- Electrical and hydraulic improvements at the headworks
- Revegetating disturbed areas

Scope of Services

A detailed description of our scope of services is provided in the following tasks.

TASK 1. Field Investigations

1.1 Topographic Survey (Doble Thomas)

Our team will conduct a detailed ground-based topographic survey of the project site. The survey will create a base map to support the hydraulic analysis and modeling, design of civil improvements and locate existing vegetation to guide restoration design, and provide a basis for construction quantity take-offs.

Survey Control - Survey Control will be established in CA State Plane Zone 2 (horizontal) and NAVD88 (vertical feet). Survey Control and Benchmarks will be established on site for future use.

Topographic Survey – The topographic survey will be conducted to generate a topographic map of the project area including relevant ground features (trees, fences, exposed pipes, etc.) within the survey footprint. Data from the ground survey will be incorporated with LiDAR and other available survey information to complete the project base map. The topographic survey will cover an approximate area of 1,900 feet by 200 feet that includes:

- Bathymetric survey of Pond 4. LiDAR and other available survey data will be utilized for Ponds 1, 2 and 3.
- Cross sections for Oat Hill Mine Ditch on river side of Pond 4 approximately 360 linear feet (LF) at 50-foot spacing
- Cross sections on Napa River, 900 LF at approximately 50-foot spacing
- Cross sections on Simmons Creek 320 LF at approximately 15-foot spacing and profile of channel thalweg (flowline) from confluence with Napa River to approximately 50-foot upstream of the Bridge on Simmons Creek, and
- Trees larger than 5 inches within survey area (per regulatory requirement).

Deliverable:

A signed and sealed copy of the survey work product as an Adobe PDF and an AutoCAD drawing file.

Assumptions:

We assume that the City will supply all utility information, including pipes and conduits to tie-into for design and that no additional survey of existing infrastructure will be required east of Simmons Creek top of bank.

1.2 Geotechnical Studies (A3Geo)

The purpose of the geotechnical work is to assess the condition of the site's soils and provide recommendations for accomplishing the proposed work. Our geotechnical engineer will sample proposed berm fill materials and in-situ soils, perform geotechnical laboratory tests, evaluate the geotechnical suitability of the soils tested, drill four (4) borings in bank stabilization areas, two (2) borings in fill stockpile, and prepare a report containing geotechnical data, conclusions and recommendations for the design and construction of the Project. Specifically, these elements of this work include:

- Researching the geotechnical, geologic, seismic and historical setting of the site.
- Conducting a geotechnical reconnaissance of the site to evaluate drill rig access and mark proposed boring locations in the field. During the same visit, we will visit City soil stockpiles to obtain samples using a shovel and 5-gallon buckets.
- Obtaining the requisite drilling permit(s), notifying Underground Service Alert (USA) and scheduling a subcontractor to drill the borings.
- Drilling, sampling and logging a total of six (6) borings at/near the locations marked during our reconnaissance.
- Performing geotechnical laboratory tests to evaluate the physical properties of the onsite soils. The types of tests performed will depend upon the subsurface materials encountered, but will most likely consist of grain size distribution, plasticity, moisture content, and density.
- Characterizing subsurface conditions, consulting on bank stabilization alternatives and developing geotechnical recommendations in support of preferred bank stabilization design.

Deliverable:

A geotechnical investigation report for the project that will include: 1) a site plan with boring locations, 2) boring logs with laboratory test results, 3) a summary of site conditions, 4) discussions pertaining to geotechnical feasibility and design considerations, 5) evaluations and conclusions including slope stability analysis for the proposed work, and 6) geotechnical design and construction recommendations including (but not necessarily limited to) site preparation, earthwork/grading, slope stabilization and geotechnical suitability of proposed fill materials.

Assumptions:

- Seismic hazard evaluations (including liquefaction, lateral spreading, and/or seismic slope stability) and/or seismic hazard mitigation recommendations are not required. This analysis can be provided under supplemental scope and fee.
- Only one drilling permit will be required.
- Drilling subcontractor will spend no more than 8 hours onsite.
- Geotechnical conditions will allow the borings to be drilled using truck-mounted auger equipment.
- Drill cuttings will be left onsite near the borehole locations.
- Permission to enter and access the site will be arranged by others.
- Utilities clearances by a private utility locator are not required and A3GEO will not be responsible for any underground utility damage caused during completion of the proposed activities.

1.3 Geotechnical Testing Cultural Resources Support

As detailed in the Project's Federal Emergency Management Agency (FEMA) Record of Environmental Consideration (REC), at least one previously recorded cultural resource has been identified within the Project Area (also the Area of Potential Effects [APE]) and that the resource is eligible for listing in the National Register of Historic Places (National Register). The REC also indicates that FEMA, as the Project's lead federal agency, has made a Finding of No Adverse Effect for the geotechnical testing portion of the Project, for purposes of Section 106 of the National Historic Preservation Act (Section

106), and that the California State Historic Preservation Officer has concurred with this determination. The REC establishes the following Special Conditions required by FEMA for the Project's geotechnical testing. ESA will provide cultural resources services to comply with the Special Conditions required by FEMA for the Project's geotechnical testing.

ESA will provide workforce cultural resources sensitivity training to contractors conducting subsurface investigations to comply with the Special Conditions for the Project's geotechnical testing, as required for FEMA. The workforce training will consist of a short (15-minute) presentation to be delivered to all construction personnel by a qualified archaeologist, defined as one meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology, and Native American tribal representative to cover: applicable laws and penalties pertaining to disturbing cultural resources; prehistoric and historic context of the area and potential types of archaeological material in the area; and procedures to follow if archaeological materials are encountered during Project-related construction activities. ESA assumes that only one training session will be necessary, and that the session can occur at the start of the first day of fieldwork requiring archaeological and Native American monitoring.

As part of this task, ESA will provide a qualified archaeologist and a Native American monitor (tribal monitor) to conduct monitoring and a limited archaeological subsurface survey for the geotechnical testing. The archaeologist and tribal monitor will be on-site during all Project-related ground-disturbing activities associated with the Project geotechnical testing and will monitor such activities for evidence of archaeological material. The archaeologist and tribal monitor will also accompany the moving of the geotechnical testing equipment to bore location 3, and will screen sediment, in 20-centimeter increments, recovered hand-augers at each bore location to a depth of 5 feet. The archaeologist and tribal monitor will dry-screen the sediment through ¼-inch wire mesh, looking for evidence of archaeological material. Any archaeological material identified, through monitoring or screening, will be recorded (i.e., notes, photos, sketches) and its location documented with a sub-meter-accuracy GPS unit; however, no archaeological material will be collected. The location of each bore will also be documented with a sub-meter-accuracy GPS unit. If intact archaeological deposits are identified in undisturbed sediment, the unanticipated discovery protocol from the applicable PA, as well as applicable procedures in California Health and Safety Code (HSC) Section 7050.5 and California Public Resources Code (PRC) Section 5097.98, will be followed, including stopping work in the vicinity of the find.

This task does not include collection or laboratory analysis of any archaeological material, nor does it include evaluation of resource eligibility for listing in the National Register or California Register of Historical Resources (California Register). This scope assumes that this task will require no more than two (2) days of fieldwork, at 10 hours/day, for one (1) archaeologist and one (1) tribal monitor.

Deliverable:

Geotechnical Testing Archaeological Monitoring Letter Report. Within 20 days of completion of the fieldwork portion of this task, ESA will provide the City with a letter report, in electronic format, documenting the results of the construction monitoring and archaeological sampling (screening).

Assumptions:

- City will provide ESA will cultural resources documentation (e.g., reports, agency correspondence) previously conducted for Project geotechnical testing and other relevant projects at or adjacent to the site.
- Workforce sensitivity training will be conducted at the start of the first day of archaeological monitoring.
- No intact archaeological resources, in undisturbed sediment, will be identified during fieldwork.
- No National Register- or California Register-eligibility evaluations for resources are included.
- Archaeological monitoring will require no more than two (2) 10-hour days, for one (1) archaeologist and one (1) tribal monitor.
- No access issues or utilities constraints exist for the APE and City will coordinate access for fieldwork.
- ESA will provide the tribal monitor, likely from the Mishewal Wappo Tribe of the Alexander Valley, as a subcontractor, at a standard labor cost of \$65/hour.
- All deliverables will be in electronic format.

TASK 2. Permitting & Compliance

2.1 Hydrology, Hydraulic Analysis, FEMA Compliance

ESA will perform hydrologic and hydraulic analyses and prepare documentation needed to support a CLOMR submittal to FEMA under the National Floodplain Insurance Program (NFIP).

Hydrology Model

ESA will develop a hydrologic model of the Napa River watershed upstream of the project site using the HEC HMS modeling software and following FEMA standards and guidelines. We will analyze available gage data and select up to three storm events for model calibration and validation. We will use the calibrated HEC HMS model to estimate design flow rates for 10-yr, 25-year, 50-yr, 100-yr, and 500-yr recurrence intervals.

Hydraulic Analysis

ESA will perform hydraulic analyses using the HEC RAS one dimensional hydraulic modeling software and following FEMA standards and guidelines. We will obtain the current FEMA Effective model for the Napa River at the project site and use it to create a Duplicate Effective model. If needed, this model will be updated to reflect current topography and channel geometry to form a Corrected Effective (existing conditions) model. We will run the Corrected Effective model with the updated flow rates developed in HEC HMS. The Corrected Effective model will be modified to reflect project conditions, and the resulting water surface elevations will be compared to existing conditions. A Floodway Analysis will be conducted to show that the project meets NFIP requirements.

CLOMR Submittal

ESA will prepare MT-2 forms and supporting documentation for a CLOMR submittal to FEMA.

Deliverable:

Draft and final CLOMR submittal including MT-2 forms and supporting technical report summarizing hydrologic modeling and hydraulic analysis.

Assumptions:

- ESA will finalize the draft submittal based on one set of consolidated comments.
- The City of Calistoga will submit the CLOMR application and pay submittal fees to FEMA.
- A LOMR submittal will be prepared after project construction (Phase II).

2.2 CEQA Documentation

ESA will prepare an Initial Study/Mitigated Negative Declaration (IS/MND) that is consistent with the CEQA Guidelines and the City of Calistoga (City) requirements. ESA will submit a request for information (RFI) to the City to support development of the project description and the evaluations required for the IS/MND. ESA can supply an Excel spreadsheet to assist the project team with providing this information. This task will include a Kickoff Meeting (via telephone call) between ESA and the City to discuss the project design.

Based on the responses to the RFI, ESA shall prepare a CEQA project description as needed to support the IS/MND. ESA will work with the City to develop a project description that reduces impacts to the extent practicable. ESA shall complete one (1) round of revision of the draft project description, based on one (1) round of comments received from the City prior to incorporation into the Initial Study (IS).

ESA will then complete an IS/MND that is consistent with Section 15063 of the CEQA Guidelines. ESA shall review available data to characterize the existing conditions of the project area and to identify potential impacts for the project site. The IS/MND will also identify a list of potential permits and other approvals needed for project implementation. The CEQA analysis will be supported by the permitting work and technical studies conducted under Task 2.3 *Permit Applications* included in this scope of work.

ESA will submit the Draft IS/MND to the City for one (1) round of review.

ESA shall provide one (1) round of updates based on City comments, and prepare the Screencheck IS/MND and submit to the City for review. ESA will update the Screencheck IS/MND, and prepare a Mitigation Monitoring and Reporting Plan (MMRP).

ESA shall provide fifteen (15) hard copies of the IS/MND for delivery to the State Clearinghouse, plus up to ten (10) additional hard copies for the City for circulation to local agencies and other interested parties. ESA will assist the City with preparation and filing of the public Notice of Intent (NOI) and Notice of Completion (NOC) of the IS/MND. The IS/MND will be circulated for the customary 30-day review period.

Upon completion of the 30-day public review period, ESA shall assist the City in preparing responses to all comments received on the IS/MND. Following certification and project approval, ESA will prepare the Notice of Determination (NOD) and file with the County Clerk.

Deliverables:

- Request for Information (RFI)
- Draft Project Description
- Draft Initial Study
- Screencheck Initial Study, with MMRP and MND
- Public Draft Initial Study with MND
- Notice of Intent
- Notice of Completion
- Draft text containing responses to comments on the Draft IS/MND
- Final Responses to Comments and MMRP
- Notice of Determination

Subtask 2.2.1 – Native American Consultation Support

ESA proposes this task to support project compliance with California Public Resources Code (PRC) Section 21080.3.1, as part of overall project CEQA compliance.

ESA will draft letters for the City to send to each Native American representative provided in the Native American Heritage Commission (NAHC) correspondence to be conducted as part of the Permitting task of this scope. The letters will include a brief project description and map, language inviting the recipients to consult under PRC Section 21080.3.1, and a request that the recipients contact the City with any concerns regarding potential Project impacts to cultural resources. An ESA archaeologist will also assist the City in conducting one (1) on-site visit with interested Native American representatives to review the Project setting and proposed Project elements - this visit is the same as that accounted for in Subtask 2.3.1 of this scope and, therefore, is not included as additional budget for the current task. ESA will maintain documentation of Native American consultation activities, which will be used to produce the tribal cultural resources section of the IS/MND, as scoped in Task 2.2. Any additional Native American correspondence or coordination for compliance with PRC Section 21080.3.1 will be conducted by the City.

Deliverables:

Draft Native American consultation letters for PRC Section 21080.3.1 compliance.

Assumptions:

- FEMA will prepare the Categorical Exclusion (CE) or an Environmental Assessment and Finding of No Significant Impact (FONSI). If additional support is needed, ESA can prepare NEPA related materials under a separate scope and budget.

- The City will pay all filing fees for the CEQA document.
- The City will handle distribution for the notices and the environmental documentation. ESA will advise the City regarding the distribution list for mailing.
- The scope of work does not include: preparation of a standalone biological assessment; protocol level surveys for biological resources; or a conformity determination pursuant to the Federal Clean Air Act.
- Assumes health risk will be conducted qualitatively and a noise survey would not be conducted.
- Project will not change substantially once technical investigations have been initiated. If Project changes require subsequent field work, substantial revisions to analyses, or revised modeling (e.g., for traffic, air quality, or greenhouse gas emissions investigations), additional effort will be required.
- For each review cycle, the City will consolidate comments from City staff and provide a single consolidated set of comments to ESA. The City will address conflicting comments from multiple reviewers or provide guidance to ESA on how to address them.
- All draft deliverables will be submitted electronically (Word and PDF).
- All draft documents will be submitted to the City for a minimum two-week review period, in MS Word and the City edits/comments and ESA responses will be provided using track changes and comment boxes.
- The City will coordinate and secure all Project site access for field work.
- ESA will produce Screen Check of IS/MND based on one (1) one round of comments by the City on the Draft IS/MND
- Twenty (20) hours (including up to ten [10] hours for responses to comments on biological resources) will be sufficient for responding to comments.
- If requested, ESA could attend the Council certification hearing and assist in responding to any questions by the Council or the public under a supplemental scope and fee.
- Work will not be slowed or stopped by others outside ESA's control.
- Native American correspondence or coordination beyond that scoped in Task 2.2.1 will be conducted by the City.

2.3 Permit Applications

2.3.1 Aquatic Resources Delineation

ESA wetland specialists will conduct a preliminary aquatic resources delineation of the project area to determine the location and extent of potential jurisdictional waters of the U.S., including wetlands. ESA will conduct the delineation using the methods specified in the U.S. Army Corps of Engineers (USACE) *1987 Wetland Delineation Manual* and the *2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)*. The wetland delineation area will include any areas where ground disturbance and construction activities would occur and any potential staging and access areas. The delineation will include a map identifying potentially jurisdictional waters within the project boundaries and a report that will describe the environmental setting.

Expected limits of State jurisdictional waters [per Regional Water Quality Control Board (RWQCB) and California Department of Fish and Wildlife (CDFW) guidance], if different from the extent of USACE jurisdictional areas, will also be documented concurrently with the USACE delineation effort for use in

the RWQCB 401 Certification application (Task 2.3.8) and CDFW Streambed Alteration Agreement Notification (Task 2.3.9).

ESA will submit the delineation to the USACE for verification as part of the USACE permit application described in Subtask 2.3.4 below. ESA's wetland specialists will meet with the USACE at the project site for verification of potentially jurisdictional waters of the U.S. and will coordinate with the USACE to produce a verified map indicating the extent and location of potentially jurisdictional waters of the U.S.

Deliverables:

- Draft Aquatic Resources Delineation Report for City Review (electronic copy)
- Final Aquatic Resources Delineation Report for submittal to USACE (electronic copy)
- Revised Final Aquatic Resources Delineation Report following field verification (electronic copy)

2.3.2 Habitat Assessment

ESA biologists will prepare a habitat assessment report to support permit applications and the biological resources section of the CEQA document. ESA will conduct a pre-field database and literature search for special-status species and sensitive natural communities that have been documented within or in the vicinity of the project site. The database and literature search shall include the California Natural Diversity Database (CNDDB), U.S. Fish and Wildlife Service (USFWS) species list, and California Native Plant Society (CNPS) Rare Plant Inventory. ESA biologists will then conduct a reconnaissance-level survey of the project site to document site conditions and identify potential habitat for special-status plant and animal species and sensitive natural communities at the project site. The report will include a description of vegetation communities and wildlife habitats within the project area, description of special-status species and sensitive natural communities that have potential to occur at the project site, and a habitat map.

Deliverables:

- Draft Habitat Assessment for City Review (electronic copy)
- Final Habitat Assessment (electronic copy)

2.3.3 Pre-application Agency Coordination

Once the aquatic resources delineation, habitat assessment, and 30% design drawings have been prepared, ESA permitting specialists will schedule a pre-application meeting with the USACE and encourage attendance by the RWQCB, CDFW, U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS). This meeting will introduce the proposed project to the regulatory agency representatives and solicit their input on the project design and permitting assumptions. This will provide immediate feedback from the agencies and streamline the permitting process. ESA will prepare an interagency meeting request letter that will include a summary of the project description, description of the project site, reason for the project, and other pertinent information. ESA will prepare a brief PowerPoint presentation and meeting agenda in coordination with the City.

This task assumes two (2) one-hour conference calls- one to prepare for the meeting (before) and one to debrief from the meeting (after) along with the Interagency Meeting which will be conducted in person at

the USACE office in San Francisco. This task assumes that three ESA staff will attend the interagency meeting and the conference calls.

Deliverables:

- Draft Interagency Meeting Request for City Review (electronic copy)
- Final Interagency Meeting Request (electronic copy)
- Draft Interagency Meeting PowerPoint presentation (electronic copy)
- Final Interagency Meeting PowerPoint presentation (electronic copy)

2.3.4 U.S. Army Corps of Engineers 404 Permit Application

ESA anticipates that the project may qualify for approval under the Corps Nationwide Permit (NWP) 13 for Bank Stabilization and will prepare the USACE Clean Water Act (CWA) Section 404 permit application and supporting documents. The project will likely exceed the linear foot and volume of fill limits of this NWP and will require a waiver by the USACE's District Engineer. The District Engineer may waive the limits if the discharge will result in no more than minimal adverse environmental effects. If the USACE does not approve the project under a NWP, and an Individual Permit is required, ESA will prepare a separate scope and budget for this application. The permit application will include a detailed permitting project description, a discussion of the project's impacts on jurisdictional wetlands and waters, proposed avoidance, minimization, and mitigation measures, and supporting maps and/or graphics. The permitting project description will be based on the project description presented in the CEQA document prepared for the proposed project and will be refined with project updates and specific details required for permit applications.

The Aquatic Resources Delineation (Task 2.3.1), Cultural Resources Report (Task 2.3.5), USFWS Biological Assessment (Task 2.3.6), and NMFS Biological Assessment (Task 2.3.7) will be submitted with the permit application.

Deliverables:

- Draft USACE Section 404 Permit application for City Review (electronic copy)
- Final USACE Section 404 Permit application (electronic copy for City; electronic and hard copy for submittal to USACE)
- Hard copies of the following for submittal to USACE: Aquatic Resources Delineation Report (Task 2.3.1), Cultural Resources Report (Task 2.3.5), USFWS Biological Assessment (Task 2.3.6), NMFS Biological Assessment (Task 2.3.7)

2.3.5 Section 106 Support

Under this task ESA will support Project compliance with Section 106 of the National Historic Preservation Act (Section 106): development of an Area of Potential Effects (APE) map; archival review of cultural resources records; pedestrian and subsurface archaeological survey of the APE; Native American correspondence; and a cultural resources technical report.

ESA will coordinate with City to create a map that identifies the Project APE. Due to the location and nature of the Project, no indirect visual impacts to architectural resources are anticipated; therefore, ESA anticipates that the APE for direct and indirect effects will be the same.

Following approval of the APE by the City (and FEMA, if requested), ESA will conduct a records search at the Northwest Information Center (NWIC) of the California Historical Resources Information Center (CHRIS) to acquire documentation of previously recorded cultural resources and previous cultural resources studies conducted in and within ½ mile of the APE. The research will include a review of historic topographic maps and aerial photography, and will provide information regarding the potential sensitivity of the APE for cultural resources.

ESA will contact the Native American Heritage Commission (NAHC) to request information on any known sacred sites in the APE and to request a list of Native American representatives who may have an interest in the Project. ESA will draft letters for the City to send to each Native American representative provided in the NAHC response. The letters will include a brief Project description and map, language inviting the recipients to consult under Section 106, and a request that the recipients contact the City with any concerns regarding potential Project impacts to cultural resources. An ESA archaeologist will also assist the City in conducting one on-site visit with interested Native American representatives to review the Project setting and proposed Project elements. ESA will maintain documentation of Native American consultation activities. Any additional Native American correspondence or coordination with Native American representatives will be conducted by the City and FEMA.

ESA will conduct an archaeological pedestrian and subsurface survey of accessible areas of the APE. The survey, both the pedestrian and subsurface portion, will be led by a qualified archaeologist, defined as one meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology, and will also include participation by a tribal monitor. The pedestrian survey will consist of ESA archaeologists walking parallel transects, spaced at no greater than 10 meters, and inspecting the ground surface for evidence of archaeological material. The subsurface survey will consist of ESA archaeologists using hand tools (e.g., shovel, trowel) to excavate cylindrical shovel probes (SP[s]), measuring approximately 30 to 40 centimeters in diameter, and screening excavated sediment through ¼-inch wire mesh. SPs will extend to a maximum 100 centimeters below surface or the maximum estimated depth of ground disturbance at the location. A 4-inch-diameter hand soil auger will be used to excavate sediment from the base of each SP to a maximum 175 centimeters below surface; this sediment will also be screened through ¼-inch wire mesh. Excavation unit locations will be inspected by Underground Service Alert (USA) for underground utilities at least 48 hours in advance of work. Any archaeological material identified will be recorded (i.e., notes, photos, sketches) and its location documented with a sub-meter-accuracy GPS unit; however, no archaeological material will be collected. The location of each excavation unit will also be documented with a sub-meter-accuracy GPS unit. If human remains are encountered during the survey, the applicable procedures in California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98, will be followed. All excavation units will be backfilled upon completion. A maximum of 40 excavation units are proposed as part of the survey. This scope assumes that this task will require no more than four (4) days of fieldwork, at 10 hours/day, for two (2) archaeologists and one (1) tribal monitor.

ESA will prepare a Cultural Resources Survey Report (CRSR) in support of Phase 2 of the Project. The CRSR will document the methods and findings of the CHRIS records search, other archival research, archaeological survey, Native American coordination, and will include site records updates (California Department of Parks and Recreation 523 Forms) for any previously recorded cultural resources identified in the APE. ESA will submit one electronic draft copy of the CRSR to the City for review. ESA will prepare a final version of the CRSR, incorporating one round of comments, and provide one electronic copy of the final version, to the City and FEMA. ESA will provide a copy of the final CRSR, with site record updates, to the NWIC after FEMA approval of the document. This task does not include collection or laboratory analysis of any archaeological material, evaluation of resource eligibility for listing in the National Register of Historic Places or California Register of Historical Resources, or Finding of Effects documentation for the Project. This task assumes that no previously unrecorded cultural resources are in the APE.

Deliverables:

- Draft Cultural Resources Survey Report (electronic copy)
- Final Cultural Resources Survey Report (electronic copy)
- Draft Native American consultation letters

2.3.6 U.S. Fish and Wildlife Service Biological Assessment

Based on preliminary review of the project area, there is potential for the federally endangered California freshwater shrimp to occur in the project area. ESA will prepare a Biological Assessment (BA) for use in conducting Section 7 consultation between the USACE (or FEMA) and the U.S. Fish and Wildlife Service (USFWS) under Section 7(c) of the federal Endangered Species Act (FESA; 16 U.S.C. §1536(c) and 50 CFR §402.12). The BA will use information from the habitat assessment (Task 2.3.2) and will address all federally listed species that may occur on the site, assess the potential for project impacts to these species, and include conservation measures to reduce impacts to these species. The BA will be submitted to the USACE and USFWS for Section 7 consultation as part of the Section 404 permit application.

Deliverables:

- Draft USFWS Biological Assessment for City Review (electronic copy)
- Final USFWS Biological Assessment for City Review (electronic copy)

2.3.7 National Marine Fisheries Biological Assessment

ESA biologists will prepare a NMFS BA to support USACE (or FEMA) consultation with NMFS Section under 7(c) of the Endangered Species Act (16 U.S.C. §1536(c) and 50 CFR §402.12). An ESA fisheries biologist will conduct a reconnaissance-level survey of the site and will include information from the habitat assessment (Task 2.3.2) in the BA. The BA will evaluate project impacts on federally listed central California coast steelhead, which have potential to occur in the project area, and to central California coast steelhead critical habitat which occurs within the project area, and include conservation measures to reduce impacts to this species and its critical habitat. As part of the BA, ESA will also do an

assessment of potentially affected Essential Fish Habitat (EFH) regulated under the Magnuson-Stevens Fishery Conservation and Management Act.

Deliverables:

- Draft NMFS Biological Assessment for City Review (electronic copy)
- Final NMFS Biological Assessment for City Review (electronic copy)

2.3.8 Regional Water Quality Control Board 401 Permit Application

In accordance with CWA Section 401, the RWQCB must take certification action for projects that propose impacts to jurisdictional waters and wetlands subject to a permit issued by the USACE, to ensure the activity complies with state water quality standards. The RWQCB typically also conducts a concurrent review of projects under the Porter-Cologne Water Quality Control Act, which results in the issuance of Waste Discharge Requirements which are incorporated into the 401 Certification. To obtain certification for the proposed project, ESA will prepare the Section 401 Water Quality Certification / Waste Discharge Requirements Application Form and supporting documentation. The permit application will include a detailed permitting project description, a discussion of the project's impacts on jurisdictional wetlands and waters, proposed avoidance, minimization, and mitigation measures, and supporting maps and/or graphics.

Deliverables:

- Draft RWQCB Section 401 Permit application for City Review (electronic copy)
- Final RWQCB Section 401 Permit application (electronic copy for City; electronic and hard copy for submittal to RWQCB)
- Hard copies of the following for submittal to RWQCB: Aquatic Resources Delineation Report (Task 2.3.1), USACE Section 404 Permit application (Task 2.3.4)

2.3.9 California Department of Fish and Wildlife Streambed Alteration Agreement Notification

A Lake and Streambed Alteration Agreement (SAA) pursuant to Section 1602 of the California Fish and Game Code is required for projects that result in temporary or permanent alterations to all perennial, intermittent, and ephemeral rivers, streams, and lakes in the state. ESA will prepare a Section 1602 Notification of Lake and Streambed Alteration for submittal to CDFW. The Section 1602 Notification will describe the proposed project and potential project effects on fish or wildlife resources and will incorporate information from the Habitat Assessment and CEQA document prepared for the proposed project.

Deliverables:

- Draft Notification of Lake and Streambed Alteration for City Review (electronic copy)
- Final Notification of Lake and Streambed Alteration (electronic copy for City; electronic and hard copy for submittal to CDFW). The submittal would also include one hard copy of the Habitat Assessment (Task 2.3.2) for submittal to CDFW

2.3.10 California Department of Fish and Wildlife 2080.1 Consistency Determination Confirmation

The state listed California freshwater shrimp has potential to occur within the project area. California freshwater shrimp is a state-listed species that is also listed under FESA, The California Endangered Species Act (CESA) allows for Consistency Determinations with federal incidental take statements (Section 7 consultation) under Fish and Game Code Section 2080.1. ESA will prepare a request for a consistency determination and submit the request with the FESA incidental take statement or permit to CDFW. This scope assumes that the City will provide a description of the financial assurances for any mitigation to include with the Consistency Determination request.

If an Incidental Take Permit under Section 2081 of CESA is required, ESA can prepare a separate scope and budget for this work at the request of the City. Deliverables:

- Draft CDFW Consistency Determination Request (electronic copy)
- Final CDFW Consistency Determination Request (electronic copy for City; electronic and hard copy for submittal to CDFW)

Assumptions:

- Budget assumes that the project limits will be as shown in the Figure 7: Alternative 2 Project Elements in the Project's Engineering Report and the staging area limits will be as shown in the Calistoga WWTP Figure in the Updated Project Budget Phases and Milestone Schedule Letter dated October 19, 2016. If the project limits change a revised budget may be required.
- The existing water treatment ponds and existing pipeline (where ditch improvements would occur) are not considered jurisdictional by the USACE or RWQCB.
- If the USACE determines that the project does not qualify for approval under a NWP, and an Individual Permit is required, ESA can prepare a separate scope and budget for this effort.
- The City will lead coordination with the State Lands Commission (SLC) and will be responsible for confirming that a State Lands Use Lease Permit is not required.
- If an Incidental Take Permit under Section 2081 of CESA is required, ESA will prepare a separate scope and budget for this work upon request from the City.
- The City will provide ESA with the funding source information for the CDFW Consistency Determination.
- This scope and budget does not include preparation of a Mitigation and Monitoring Plan. ESA will prepare a separate scope and budget to prepare this plan once agency consultation clarifies potential permit conditions upon request from the City.
- ESA staff have access to the entire project area including staging and access areas.
- The City will be responsible for any fees associated with the regulatory permits.
- It is assumed that there will only be one (1) review of the draft reports by City and the City will provide one (1) set of consolidated comments on draft reports.
- This scope does not include any agency coordination or follow-up after application submittal and does not include permit acquisition. It is assumed that agency coordination and follow-up to procure

regulatory approvals will occur under a separate scope and budget as part of Phase 2. ESA will prepare a separate scope and budget for this effort upon request from the City.

- A State Lands Commission Land Use Lease or Land Use Amendment is not required.
- No previously unrecorded cultural resources will be identified during archaeological survey.
- No National Register- or California Register-eligibility evaluations for resources are included.
- One (1) on-site meeting with City, FEMA, and Native American representatives, to last no more than 4 hours.
- Archaeological survey will require no more than 40 excavation units.
- Archaeological survey will require no more than four (4) 10-hour days, for two (2) archaeologists and one (1) tribal monitor.
- No access issues or utilities constraints exist for the APE and City will coordinate access for fieldwork.
- ESA will provide the tribal monitor, likely from the Mishewal Wappo Tribe of the Alexander Valley, as a subcontractor, at a standard labor cost of \$65/hour.

TASK 3. Design Development (ESA, Kennedy/Jenks, Telestar)

The ESA team will progress the preferred alternative (Alternative 2) through draft 50% (Subtask 3.1) and final 50% (Subtask 3.2) design and produce a basis of design report for Phase 1 of this project. The preferred alternative, Alternative 2, described in the City of Calistoga Riverside Ponds and Headworks, River Bank Repair Project Engineering Report, (Kennedy/Jenks Consultants, 2016) and presented in Figure 7. The design development deliverables will contain sufficient detail to support CEQA analysis and compliance, prepare permit applications and serve as the basis for final design under Phase 2 of the project.

The ESA team, which includes Kennedy/Jenks Consultants and Telestar, will develop the following project elements:

Abandon Riverside Ponds 1, 2 and 3

- Remove and salvage aeration blowers and sprayers for reuse in Pond 4
- Abandon riverside Ponds 1, 2, and 3 through minor grading. Consultation with project biologists and project team will guide the habitat design elements to be most beneficial to the project.
- Plant native riparian and upland plants in the abandoned ponds and along the banks of the Napa River at select locations

Riverside Pond 4 Improvements

- Install new 14-inch force main from the 20 MG Pond to the headworks
- Raise Pond 4 berms to increase storage capacity (to approximately 1.8 million gallons) and be above the 100-year water surface elevation.
- Install new HDPE pond lining

- Install new instrumentation and equipment for enhanced treatment including new and/or relocated aerators and baffles
- Install new 18-inch gravity outfall from Pond 4 to existing outfall at Pond 1 and new automated control valve and flow meter
- Install SCADA system and associated control system for pond discharge, coordinated with Napa River flows
- Lay electrical and control conduits
- Install THM sampling station
- Stabilize the bank on the Oat Hill Mine Ditch that runs along the edge of Pond 4

Napa River and Simmons Creek Bank Protection and Drainage Ditch Improvements

- Grading, reconstruction and biotechnical stabilization of banks of Simmons Creek in vicinity of the headworks
- Construct new drainage ditch from Pond 4 to Simmons Creek to segregate stormwater from wastewater effluent
- Stabilize the north bank of the Napa River between Ponds 1 and 2
- Analyze hydrology and hydraulics of Simmons Creek and the Napa River for design purposes (2-yr through 50-yr recurrence interval). Analysis generated from Task 2.1 will be supplemented in this task.

In addition, under this task ESA will evaluate the potential expansion of the Pond 4 footprint for operational flexibility and function as well as the need for grade control on Simmons Creek at the confluence with the Napa River. ESA will provide design submittals at the draft 50% and final 50%-completion levels for review and comment by the City. Each submittal will include drawings, technical specifications outline and cost estimates developed to appropriate levels of completion. In addition, ESA and Kennedy/Jenks will develop a brief memorandum that documents the basis of design for the design elements. Comments received on the draft 50% design deliverables will be incorporated into the final 50% design submittal. Comments on and revisions to the final 50% design deliverable will be picked up and progressed for the 90% design under Phase 2.

For budgeting purposes, we have assumed that design drawings will consist of the following provisional sheet list:

Title	# of Sheets	Lead
Title Sheet, General Notes, Vicinity & Location Maps, Abbreviations, Legend, List of Drawings	2	ESA
Site Plan, including staging area and access routes	2	ESA
Demolition Plan	1	K/J
Grading Plan	3	ESA

Grading Improvement Plan	3	ESA
Utility Plans	9	K/J
Utility Details	6	K/J
Grading Sections	3	ESA
Grading Details	2	ESA
Grading Improvement Details	3	ESA
Revegetation (not included under 50% design)	n/a	ESA
Revegetation Plant List	1	ESA
Electrical Controls	8	K/J
Estimated Total:	43	

The actual list of drawings will be refined as the design develops.

We anticipate and have budgeted for the following activities to complete the scope of work:

- Project management and quality control – our project manager will coordinate and monitor project schedule, budget, and work products with project team members and the City, submit invoices, and conduct internal quality control prior to submittal of deliverables.
- Project meetings – we have budgeted for one (1) on-site kickoff meeting with the City and key team members, up to four (4) 1-hour telephone progress meetings (including preparation) with key team members, two (2) telephone meetings to review comments on the draft 50% and final 50% design submittals.
- Site visits – we have budgeted for two (2) site visits to review site conditions and evaluate preliminary design assumptions and to refine the design based on calculations and field conditions.
- Design development – as outlined in the scope above, including hydrologic and hydraulic modeling, design calculations, and development of a basis of design document to support the design decisions, and production of draft 50% and final 50% design submittals that will include drawings, opinion of probable construction costs, and a list of technical specification sections.

Deliverables:

- Draft 50%-complete Design (plans, outline of technical specifications, construction cost estimate)
- Final 50%-complete Design (plans, outline of technical specifications, construction cost estimate)
- Basis of Design Memorandum

Assumptions:

We assume following elements/services are not needed/not included/will be provided by others:

- Special handling of excavated soils due to chemical concentrations
- Utility locating and utility relocations
- Preparation of Division 0 and 1 documents (Instructions to Bidders, Contract, General Conditions, General Requirements, etc.)
- We will incorporate one (1) set of consolidated comments from the draft 50% design submittal into the final 50% design submittal. City comments on the 50% submittal will be reviewed during Phase 1 and will be incorporated during final design (Phase 2).

Phase 1 Fee

The accompanying fee estimate breaks down our effort by task and staff member based on our 2018 Fee Schedule – Exhibit B. Actual disbursement of the project budget may vary from that proposed based on actual project needs. Staff time has been allocated within each task for quality control and project management.

We propose to bill this project on a time-and-materials basis with a not-to-exceed budget of \$475,000.

Task	Description	Estimated Fee
1	Field Investigations	\$78,810
2	Permitting & Compliance	\$250,190
3	Design Development (50% Design)	\$140,600
--	Expenses	\$5,400
	Total:	\$475,000

Phase 1 Schedule

We understand that this project has a target completion date of December 2019 established by the FEMA HMP grant (#4240-20-27R). This completion date is feasible, assuming that work begins in September 2018. We propose the following schedule located in the attached Table 1 – Project Schedule.

EXHIBIT B

Other Consultants, Specialists or Experts Employed by Design Professional

Doble Thomas – Topographic Survey

A3Geo – Geotechnical Analysis

Kennedy/Jenks – Civil/Mechanical Design Services

Telstar – Electrical/Telemetry Design Services



Exhibit B

Environmental Science Associates & Subsidiaries 2018 Modified Schedule of Fees

I. Personnel Category Rates

Charges will be made at the Category hourly rates set forth below for time spent on project management, consultation or meetings related to the project, field work, report preparation and review, travel time, etc. Time spent on projects in litigation, in depositions and providing expert testimony will be charged at the Category rate times 1.5.

Labor Category	Level I	Level II	Level III
Senior Director	220	235	250
Director	190	210	220
Managing Associate	175	180	190
Senior Associate	150	150	160
Associate	105	125	135
Project Technicians	85	90	95

- (a) The range of rates shown for each staff category reflects ESA staff qualifications, expertise and experience levels. These rate ranges allow our project managers to assemble the best project teams to meet the unique project requirements and client expectations for each opportunity.
- (b) From time to time, ESA retains outside professional and technical labor on a temporary basis to meet peak workload demands. Such contract labor may be charged at regular Employee Category rates.
- (c) ESA reserves the right to revise the Personnel Category Rates annually to reflect changes in its operating costs.

II. ESA Expenses

A. Travel Expenses

1. Transportation
 - a. Company vehicle – IRS mileage reimbursement rate
 - b. Common carrier or car rental – actual multiplied by 1.10
2. Lodging, meals and related travel expenses – direct expenses multiplied by 1.10

B. Communications and Project Support Fee

Non-travel expenses incurred for the duration of the agreement for project support but not itemized below, including document retention, delivery and communications. Project labor charges multiplied by 3%.



C. Printing/Reproduction Rates

Item	Rate/Page	Sample Pricing
Black & White – 8.5 x 11	\$0.10	
Black & White – 11 x 17	\$0.20	
Color – 8.5 x 11	\$0.40	
Color – 11 x 17	\$0.70	
B&W – Plotter (Toner – ECO Quality)	\$0.40/sf	24x36 BW CAD drawing would cost \$2.40 per sheet
B&W – Plotter (Toner – Presentation Quality)	\$1.00/sf	24x36 BW CAD drawing would cost \$6.00 per sheet
Color – Plotter (Inkjet – ECO Quality)	\$2.00/sf	24x36 Color Drawing would cost \$12 per sheet
Color – Plotter (Inkjet – Presentation Quality)	\$4.00/sf	24x36 Color Drawing would cost \$24 per sheet
CD	\$10.00	
Digital Photography	\$20.00 (up to 50 images)	
All Other Items (including bindings and covers)	At cost plus 10%	

D. Equipment Rates

Item	Rate/Day	Rate/Week	Rate/Month
Project Specific Equipment:			
Vehicles – Standard size	\$ 40 ^a	\$ 180	
Vehicles – 4x4 /Truck	85		
Vehicles – ATV	125		
Noise Meter	100		
Hydroacoustic Noise Monitoring Equipment	150		
Electrofischer	300	1,200	
Sample Pump	25		
Field Traps	40		
Digital Hypsometer (Nikon)	20		
Stilling Well / Coring Pipe (3 inch aluminum)	3/ft		
Backpack Sprayer	25		
Beach Seine	50		
Otter Trawl	100		
Wildlife Acoustics Bat Detector	125	400	
Wildlife Trail Camera	30	100	
Fiber Optic Endoscope	125	500	
Spot Light	30		
Spotting Scope	50	200	
Topographic Survey Equipment:			
Auto Level	40		
Total Station	200	600	
DJI Quad Drone	300	1,200	
RTK-GPS	300	1,200	
RTK-GPS Smartnet Subscription	50	200	
Trimble GPS	75	350	900
iPad/Android Tablet + 1m GNSS External Sensor (Trimble R1, Bad Elf)	75	350	900
iPad/Android Tablet only (includes Garmin Glo external sensor)	50	225	600
Laser Level	60		
Garmin GPS or equivalent	25		250



Item	Rate/Day	Rate/Week	Rate/Month
Hydrologic Data Collection, Water Current, Level and Wave Measurement Equipment:			
ISCO 2150 Area Velocity Flow Logger	\$ 25	\$ 100	\$ 350
Logging Rain Gage	10	40	125
Marsh-McBirney Hand-Held Current Meter	50	200	
FloWav Surface Velocity Radar	50	200	
Logging Water Level - Pressure Transducer	10	30	100
Logging Barometric Pressure Logger	5	15	50
Well Probe / Water Level Meter	20	80	
Bottom-Mounted Tripod / Mooring	25	100	400
Handheld Suspended Sediment Sampler	20		250
Water Quality Equipment:			
Logging Turbidimeter/Water Level Recorder	\$ 25	\$ 100	\$ 400
Logging Conductivity/Water Level Recorder	20	60	200
In-Situ Troll 9500 logging water quality multiprobe		200	800
Logging Temperature Probe	3	10	40
Hach Hand-Held Turbidimeter Recording Conductivity Meter w/Datalogger	50	200	
Refractometer	20	80	
YSI Hand-Held Salinity Meter or pH meter	30	120	
Hand-Held Conductivity/Dissolved Oxygen Probe (YSI 85)	40	160	
HOBO Salinity Gauge			125
Water Quality Sonde			800
YSI 650 with 6920 Multi Probe	180	500	1500
ISCO 6712 Portable Sampler w/ISCO 2105 Module	40	250	900
Sedimentation / Geotechnical Equipment:			
Peat Corer	\$ 75	\$ 300	
60lb Helly-Smith Bedload Sampler with Bridge Crane	175	700	
Suspended Sediment Sampler with Bridge Crane	75	300	
Guelph Permeameter	50	200	
Vibra-core	100	400	
Shear Strength Vane	50	200	
Auger (brass core @ \$ 5/each)	20	80	
Boats:			
14' Aluminum Boats with 15 HP Outboard Motor	\$ 100	\$ 400	
Single or Double Person Canoe/Kayak	30	120	
20' Lowe Boat w/115 HP Outboard	300	1,500	
17' Boston Whaler w/ 90 HP Outboard	300	1,500	

^a Actual project charges will be either the IRS mileage reimbursement rate or the daily rate, whichever is higher.

III. Subcontracts

Subcontract services will be invoiced at cost multiplied by 1.10.

IV. Other

The fees above do not include sales tax. Any applicable or potential sales tax will be charged when appropriate.

V. Payment Terms

Unless otherwise agreed in writing, ESA will submit invoices on a monthly basis. Any unpaid balances shall draw interest at one and one half percent (1.5%) per month or the highest rate allowed by law, whichever is lower, commencing thirty (30) days after date of invoice. All invoices not contested in writing within fifteen (15) business days of receipt are deemed accepted by Client as true and accurate and Client thereafter waives any objection to Clients invoices, which are payable in full.

EXHIBIT C

Insurance Requirements to Agreement for Professional Services
Re: Riverside Ponds Phase I 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.

EXHIBIT B

Other Consultants, Specialists or Experts Employed by Design Professional

Doble Thomas – Topographic Survey

A3Geo – Geotechnical Analysis

Kennedy/Jenks – Civil/Mechanical Design Services

Telstar – Electrical/Telemetry Design Services

EXHIBIT C

Insurance Requirements to Agreement for Professional Services
Re: Riverside Ponds Phase I 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.