

AGREEMENT FOR CONSULTANT SERVICES

This AGREEMENT FOR CONSULTANT SERVICES (“Agreement”) is made and effective as of May 12, 2022, between **KEVIN MERK ASSOCIATES, LLC** (“Consultant”), and the **CAMBRIA COMMUNITY SERVICES DISTRICT**, a political subdivision of the State of California (“District”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on April 14, 2022 and shall remain and continue in effect until all consulting services described in the Proposal have been performed, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

Consultant shall perform the tasks described and comply with all terms and provisions set forth in the Environmental Services Proposal dated March 30, 2022 (“Proposal”), attached hereto as Exhibit “A,” and incorporated herein by this reference.

3. PERFORMANCE

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

4. AGREEMENT ADMINISTRATION

District’s General Manager shall represent District in all matters pertaining to the administration of this Agreement. Consultant’s Principal Biologist, Kevin Merk, shall represent Consultant in all matters pertaining to the administration of this Agreement.

5. PAYMENT

The District agrees to pay the Consultant in accordance with the payment rates and terms set forth in Exhibit A, in monthly progress payments based on time spent on each task.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The District may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise.

If the District suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the District shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the District. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the District pursuant to Section 5.

7. **TERMINATION ON OCCURRENCE OF STATED EVENTS**

This Agreement shall terminate automatically on the occurrence of any of the following events:

- (a) The completion of the work specified in Exhibit A.
- (b) Bankruptcy or insolvency of any party;
- (c) Sale of Consultant's business; or
- (d) Assignment of this Agreement by Consultant without the consent of District.

8. **DEFAULT OF CONSULTANT**

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, District shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

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

9. **LAWS TO BE OBSERVED.** Consultant shall:

(a) Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incidental to the due and lawful prosecution of the services to be performed by Consultant under this Agreement;

(b) Keep itself fully informed of all existing and proposed federal, state and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this Agreement, any materials used in Consultant's performance under this Agreement, or the conduct of the services under this Agreement;

(c) At all times observe and comply with, and cause all of its employees to observe and comply with all of said laws, ordinances, regulations, orders, and decrees mentioned above;

(d) Immediately report to the District's General Manager in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this Agreement; and

(e) The District, and its officers, agents and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

10. **OWNERSHIP OF DOCUMENTS**

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

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

11. **INDEMNIFICATION**

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by

law, Consultant shall indemnify, protect, defend and hold harmless District and any and all of its officials, employees and agents (“Indemnified Parties”) from and against any and all losses, liabilities, damages, costs and expenses, including attorney’s fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subcontractors (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless District, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of District to monitor compliance with these requirements imposes no additional obligations on District and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend District as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this agreement or this section.

12. **INSURANCE**

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit “B,” attached hereto and incorporated herein as though set forth in full.

13. **INDEPENDENT CONSULTANT**

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

employees, or agents of the District. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against District, or bind District in any manner.

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

14. **UNDUE INFLUENCE**

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

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

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

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

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

(b) Consultant shall promptly notify District should Consultant, its officers, employees, agents, or subContractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party

regarding this Agreement and the work performed thereunder or with respect to any project or property located within the District. District retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with District and to provide the opportunity to review any response to discovery requests provided by Consultant. However, District's right to review any such response does not imply or mean the right by District to control, direct, or rewrite said response.

17. **NOTICES**

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

To District: Attn: General Manager
Cambria Community Services District
PO Box 65
Cambria, CA 93428

Copy to: Timothy J. Carmel
Carmel & Naccasha, LLP
694 Santa Rosa Street
San Luis Obispo, CA 93401

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

18. **ASSIGNMENT**

The Consultant shall not assign the performance of this Agreement, nor any part thereof, without the prior written consent of the District.

19. **GOVERNING LAW**

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

20. **ENTIRE AGREEMENT**

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

21. **TIME**

District and Consultant agree that time is of the essence in this Agreement.

22. **CONTENTS OF PROPOSAL**

Consultant is bound by the contents of the Proposal submitted by the Consultant, Exhibit "A," attached hereto and previously incorporated herein. Should the terms of the Proposal conflict with this Agreement, the terms of this Agreement shall prevail.

23. **CONSTRUCTION**

The parties agree that each has had an opportunity to have their counsel review this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto. The captions of the sections are for convenience and reference only, and are not intended to be construed to define or limit the provisions to which they relate.

24. **AMENDMENTS**

Amendments to this Agreement shall be in writing and shall be made only with the mutual written consent of all of the parties to this Agreement.

[Signatures on following page.]

25. **AUTHORITY TO EXECUTE THIS AGREEMENT**

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

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

**CAMBRIA COMMUNITY SERVICES
DISTRICT**

KEVIN MERK ASSOCIATES, LLC

John F. Weigold, IV, General Manager

By: _____
Kevin B. Merk, Principal Biologist

ATTEST:

Leah Reedall, Board Secretary

Approved As To Form:

Timothy J. Carmel, District Counsel

EXHIBIT A
CONSULTANT'S PROPOSAL



Kevin Merk Associates, LLC | P.O. Box 318, San Luis Obispo, CA 93406 | 805-748-5837

Amended 5/5/22

March 30, 2022

Mr. Ray Dienzo
District Engineer
Cambria Community Services District
5500 Heath Lane
Cambria, CA 93428

Subject: Environmental Services Proposal for the Water Reclamation Facility Project, Cambria, San Luis Obispo County, California

Dear Mr. Dienzo:

Kevin Merk Associates, LLC (KMA) is pleased to submit this scope of work and cost estimate to provide environmental services in support of the Cambria Community Services District's Water Reclamation Facility (WRF) project. Our assistance will include preparation of permit application packages for Clean Water Act Sections 404 and 401, and California Fish and Game Code Section 1602. We would also support the CCSD team for the subject project with project description refinement and the regulatory agency consultation process.

Prior to initiating the permitting process, we would conduct an update to the Delineation of Waters of the United States and State of California to identify any changes to the previously mapped wetlands and drainage features within the project area. We would also work with the engineering and design team to make sure construction within San Simeon Creek avoids and minimizes impacts to jurisdictional areas and the project description has sufficient detail to support the permitting process. As part of the permitting effort, we would prepare the required technical documents such as the Habitat Mitigation and Monitoring Plan (HMMP) and Biological Assessments (BA's) required to gain regulatory agency approvals of the project, as well as provide additional support to expedite their review and ultimate issuance of permits. A more detailed description of our work program is outlined below.

SCOPE OF WORK

Task 1 – Update Delineation of Waters of the U.S. and state of California. KMA will conduct field work to update the wetland delineation on the study area (Michael Baker International, 2016) to confirm the identified locations of potential jurisdictional areas subject to the regulatory authority of the U.S. Army Corps of Engineers (Corps) under Section 404 of the Clean Water Act are consistent with their findings. Mapped waters of the State subject to Regional Water Quality Control Board (RWQCB), California Department of Fish and Wildlife (CDFW), and California Coastal Commission requirements will also be evaluated in the field and updated as needed.

Waters of the U.S. and State of California will be identified in accordance with the methods described in the Corps' *Wetland Delineation Manual* (Environmental Laboratory, 1987) and *Arid West Regional Supplement* (2008). We will produce an updated delineation map and report that tiers off the 2016 document and provides the methods and results of the supplemental investigation. Data

sheets and site photographs will be included as appropriate. The findings will be used as the basis for the impact analysis that will be provided to each agency as part of the permit application packages.

Task 2 - Clean Water Act Section 404 Nationwide Permit Application. This task involves the preparation of a Corps Section 404 Nationwide Permit (NWP) application for impacts to onsite waters of the U.S. This scope assumes the project will qualify for an NWP since impacts to waters of the U.S. are expected to be less than 0.5 acre and no more than 300 linear feet of stream channel would be affected, which is the threshold of the Corps' Nationwide Permitting process. KMA will prepare the application and necessary supporting documents and graphics, and will utilize construction plans to be prepared by the CCSD team for the final impact assessment. Additional time is included under separate tasks below to work with the project team to provide technical design assistance to finalize the project description as well as prepare other necessary documents to meet regulatory agency requirements. We will provide you a completed application package for review prior to submittal to the Corps. Once the application package has been reviewed, you will then need to sign the application form and provide the necessary application fee.

As detailed below, a Habitat Mitigation and Monitoring Plan and two separate Biological Assessments will also be required as part of the permitting process. We will also help facilitate permit issuance by working with the Corps to answer questions and provide supplemental project information during their review of project materials and consultation with other federal agencies. Upon receipt of the Corps 404 permit, we will review the document on your behalf to identify any problematic or unexpected mitigation requirements about which we may wish to negotiate prior to acceptance. In addition, the project will need to comply with Section 106 of the National Historic Preservation Act of 1966, and assume a project-specific cultural resources report will be provided by the CCSD that will be adequate for the Corps' Section 106 consultation requirements with the State Historic Preservation Office.

Task 2.1 – Compensatory Habitat Mitigation and Monitoring Plan - As a component of the regulatory agencies permitting requirements, impacts to jurisdictional areas must be mitigated to ensure a no net loss of waters of the U.S. and state of California, and CDFW jurisdictional areas. The California Coastal Commission will also likely review this document as part of their Coastal Development Permit issuance. The regulatory agencies require an HMMP as a component of the permit applications that follows all current regulatory guidance to support permit application submittals. We will work with the project team to design the mitigation area(s) onsite, but additional area may be required at an offsite location depending on the final impact calculations. We will also make sure this document is consistent with any California Environmental Quality Act (CEQA) requirements associated with the project.

Task 2.2 – Biological Assessments – Projects acquiring federal permits such as a Clean Water Act Section 404 permit from the Corps are required to analyze actions that “may affect” a federally listed species or protected resources such as critical habitat before a federal agency (in this case the Corps) can issue a permit. This analysis is documented in a Biological Assessment that is provided to the Corps for them to initiate consultation with the appropriate federal agencies pursuant to Section 7 of the Endangered Species Act. Two Biological Assessments will be required for this project since the Corps is anticipated to consult with two federal agencies including the U.S. Fish and Wildlife Service (USFWS) for the California red-legged frog and tidewater goby, and National Marine Fisheries Service for steelhead trout. The BA's will be prepared consistent with guidelines contained in 50 CFR Section 402.12(f), and will include the detailed project description provided by the CCSD, and an assessment of the project to affect federally protected resources. Results of past

investigations on the site and in the region will aid in a cumulative effects analysis to support permit issuance. The expected outcome of the Section 7 consultation process will be the issuance of a Biological Opinion from USFWS and a Biological Opinion from NMFS allowing the project to proceed with specific avoidance and minimization measures, and incidental take limits of the protected resources during construction.

An early consultation phase with the regulatory agencies will be important to help streamline their review process, and we assume email correspondence, phone calls and onsite meetings may be needed. In addition, a pre-application meeting is now required by the RWQCB, and several rounds of review and potentially additional analysis may be required depending on regulatory agency guidance through the Corps' Section 7 consultation process.

Task 3 – Clean Water Act Section 401 Water Quality Certification Application. This task involves preparation of a Clean Water Act Section 401 Permit (Water Quality Certification) application. Any project that may result in fill or physical changes to Waters of the U.S. and State of California is required to be reviewed and approved by the RWQCB. As stated above, the RWQCB requires a pre-application meeting, and we will schedule and attend the meeting assuming it will be held in their San Luis Obispo office. For drafting the application package, we will utilize final construction documents and prepare any additional supporting graphics. Once the application package is complete, we will provide it to the team for review and comment. Once we have finalized the application for submittal to the RWQCB, you will need to sign it and provide the appropriate fee. We will calculate the anticipated RWQCB fee, and assume that you will pay the application fee directly to the RWQCB upon application submittal.

We will coordinate with the RWQCB to track progress of the permit approval. Similar to the Corps permitting process detailed above, supplemental information may be requested during their review of the project materials. The 401 Water Quality Certification cannot be finalized until the Corps issues the 404 permit. Please note that the RWQCB is a state agency and will need proof that the CEQA process has been completed with an approved and adopted Final Environmental Impact Report and all necessary CEQA requirements such as a Notice of Determination completed prior to permit issuance. Upon receipt of the 401 permit, we will review the document on your behalf to identify any problematic or unexpected mitigation requirements about which you may wish to negotiate with the agency.

Task 4 – California Department of Fish and Wildlife Streambed Alteration Agreement. Impacts to San Simeon Creek and its associated riparian corridor to construct the project will require the issuance of a Streambed Alteration Agreement (SAA) pursuant to California Fish and Game Code section 1600 et seq. Alterations to a creek's bed, banks or associated vegetation fall under the jurisdiction of the CDFW. Therefore, an agreement is needed for any riparian habitat alteration or modification to the creek's channel. The CDFW has moved to an online portal for their SAA review. We will complete the online application and upload all supporting documentation, and you will have time to review the submitted information prior to finalizing and submitting payment. Once you have reviewed the application materials, you will then need to pay the application fee directly to CDFW upon final submittal.

We will track the progress of application approval, and answer questions and provide supplemental information to CDFW as needed. We will utilize the HMMP and other technical documents prepared for the project and submit them as attachments to the SAA application. The CDFW, since they are a state agency, will also require proof that the CEQA process has been completed and the

environmental filing fee has been paid prior to permit issuance. Upon receipt of the draft SAA, we will review the document on your behalf to identify any problematic or unexpected mitigation requirements about which you may wish to negotiate with the CDFW prior to acceptance.

Task 5 – Technical Support to Project Team. We will provide as-needed technical support to the project team to finalize construction plans and the project description as they pertain to the work that may impact jurisdictional areas. Our involvement would be on a time and materials basis to ensure construction documents are consistent with the biological analysis to support the permitting efforts. For developing this cost estimate, we have assumed upwards of five meetings would be held in Cambria and additional remote meetings (i.e., Zoom, email and phone calls) would occur during the course of the work program.

COST ESTIMATE

We propose to complete the above scope of work on a time and materials reimbursement basis against an estimated budget of \$85,860. Please refer to the attached cost estimate for further detail. Expenses for vehicle reimbursement, field equipment and report/application package production costs are also included. Additional tasks not included above would be completed following written authorization on a time and materials basis consistent with our standard fee schedule and contract terms.

Thank you for the opportunity to provide environmental consulting services for this project. If you have any questions regarding this proposal, please call me directly.

Sincerely,

KEVIN MERK ASSOCIATES, LLC



Kevin B. Merk
Principal Biologist

*Attachments Cost Estimate Spreadsheet
 Standard Fee Schedule*

Cambria Community Services District's Water Reclamation Facility Project
Budgetary Cost Estimate for Environmental Services:

Task	Cost	Hours	Principal Biologist	Senior Biologist	GIS Specialist	Admin
			\$150/hr	\$125/hr	\$105/hr	\$65/hr
Task 1 - Update Wetland Delineation	\$11,745	89	40	32	16	1
Task 2 - Clean Water Act Section 404 Nationwide Permit	\$11,545	89	32	40	16	1
2.1 - Compensatory Habitat Mitigation and Monitoring Plan	\$12,335	95	32	48	14	1
2.2 - Biological Assessments - 1 for USFWS and 1 for NMFS	\$19,845	153	44	92	16	1
Task 3 - Clean Water Act Section 401 Water Quality Certification	\$10,035	75	32	38	4	1
Task 4 - CDFW Streambed Alteration Agreement	\$9,185	69	28	36	4	1
Task 5 - Technical Support to Project Team	\$8,670	62	48	8	2	4
Expenses (Vehicle, Field Equipment, Report/Permit App Production)	\$2,500					
Total Budget Estimate	\$85,860	632	256	294	72	10



Kevin Merk Associates, LLC

CCSD Water Reclamation Facility Project Environmental Permitting Schedule Estimate

Task	April	May	June	July	August	September	October	November	December	January	February	March
1 - Update Wetland Delineation												
2 - Clean Water Act Section 404 Nationwide Permit												
2.1 - Compensatory Habitat Mitigation and Monitoring Plan												
2.2 - Biological Assessments - 1 for USFWS and 1 for NMFS												
3 - Clean Water Act Section 401 Water Quality Cert.												
4 - CDFW Streambed Alteration Agreement												
5 - Technical Support to Project Team												





KEVIN MERK ASSOCIATES, LLC

Standard Fee Schedule for Environmental Services

The following sets forth the billing rates for our personnel.

<u>Professional and Technical Personnel</u>	<u>Rate</u>
Principal	\$ 150/hour
Senior Associate	\$ 125/hour
Biologist	\$ 115/hour
Graphics, GIS Technician	\$ 105/hour
Word Processor/Administrative Assistant	\$ 65/hour

Expert witness services consisting of depositions and in-court testimony will be charged at a rate of \$300/hour.

<u>Representative Equipment</u>	<u>Unit Rate</u>
Sound Level Meter	\$100/day
Hypsometer	\$ 50/day
Wind Meter	\$ 25/day
Temperature-pH-Conductivity Meter	\$ 25/day
GPS (sub-meter precision)	\$150/day
Infrared/Wildlife Camera	\$ 50/day

Photocopying and Printing

Photocopies will be charged at a rate of \$0.15/copy for single-sided copies and \$0.25 for double-sided copies. Colored copies will be charged at a rate of \$1.50/copy for single-sided and \$2.50/copy for double-sided or 11x17" copies.

Reimbursable Expenses

Expenses associated with completing a project are termed Reimbursable Expenses. These expenses do not include the hourly billing rates described above. Reimbursable expenses include, but are not limited to the following.

1. Direct costs associated with the execution of a project are billed at cost plus 15% to cover General and Administrative services. Direct costs include, but are not limited to, subcontractor services, authorized travel expenses, permit charges and filing fees, printing and graphic charges, performance bonds, sample handling and shipment, equipment rental other than covered by the above charges, etc.
2. Vehicle use in company-owned two wheel drive vehicles will be billed at a day rate of \$85/day and \$125/day for 4x4 vehicles plus \$0.85/mile over 50 miles per day. Rental vehicles will be billed at cost plus 15%. For transportation in employee owned automobiles, a rate of \$0.85/mile will be charged.

EXHIBIT B

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Work, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant 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 District in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to District.

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy from CG 00 01 or the 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 less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designated to protect against acts, errors or omissions of the Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend the insured. The policy retroactive date shall be on or before the effective date of this agreement.

Insurance procured pursuant to these requirements shall be written by insurer that are admitted carriers in the state California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and District agree to the following with respect to insurance provided by Consultant:

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

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against District regardless of the applicability of any insurance proceeds, and to require all Consultants and subcontractors to do likewise.

3. All insurance coverage and limits provided by Consultant 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 District or its operations limits the application of such insurance coverage.

4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to District and approved of in writing.

5. 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 Consultant or subcontractor.

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

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to District 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, District has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by District shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at District option.

8. Certificate(s) are to reflect that the insurer will provide 30 days notice to District of any cancellation of coverage. Consultant 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.

9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant 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 District.

10. Consultant agrees to ensure that subcontractors, and any other party involved with the project that is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to District for review.

11. Consultant 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 Consultant, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to District. If Consultant’s existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the District. At the time the District shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

12. The District reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the District will negotiate additional compensation proportional to the increase benefit to District.

13. 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.

14. Consultant acknowledges and agrees that any actual or alleged failure on the part of District to inform Consultant of non-compliance with any insurance requirements in no way imposes any additional obligations on District nor does it waive any rights hereunder in this or any other regard.

15. Consultant will renew the required coverage annually as long as District, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or

terminated for any reason. Termination of this obligation is not effective until District executes a written statement to that effect.

16. Consultant 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 Consultant'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 District within five days of the expiration of the coverages.

17. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to District, its employees, officials and agents.

18. 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.

19. 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.

20. 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.

21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge District or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to District. It is not the intent of District to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against District for payment of premiums or other amounts with respect thereto.

22. Consultant agrees to provide immediate notice to District of any claim or loss against Consultant arising out of the work performed under this agreement. District 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 District.