



**Staff Report**

For City Council Meeting - 11/3/2021

***Subject - New Business - Public Works Reserve Funds Request***

**Synopsis:** Public Works Director, Mark McFadden, is requesting water reserve funds up to \$55,000 to do the work needed to update the City's Water Management and Conservation Plan by March of 2022. Additionally, the City seeks to prepare its first Water System Seismic Risk and Mitigation Plan. Staff received two proposals for this project. Civil West submitted a proposal for \$51,210, including grant assistance. Kennedy Jenks' proposal stated \$74,951, including grant assistance. City staff is also applying for two Business Oregon Infrastructure grants seeking to help fund project costs. If the City is awarded the two grants, the project's cost will be reduced by \$40,000.

***Council Options:***

- 1) Approve the request for funds up to \$55,000;
- 2) Deny the request.

**Recommendation:** Staff recommends funding these required projects up to \$55,000 by awarding the project to Civil West Engineering Services.

***Recommended Motion***

Move to allow up to \$55,000 allocation in water reserves to fund the Water Management/Conservation Plan project and the Water System Seismic Risk and Mitigation Plan project awarding both projects to Civil West Engineering Services Inc.

**Legal Analysis:** N/A

**Financial Analysis:** The City currently has \$1,350,054.84 in the water reserve fund.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be the name "Chad", written in a cursive style.

Chad



South Coast Office  
486 E Street  
Coos Bay, OR 97420

Willamette Valley Office  
200 Ferry Street SW  
Albany, OR 97321

Rogue Valley Office  
830 O'Hare Parkway, Suite 102  
Medford, OR 97504

North Coast Office  
609 SW Hubert Street  
Newport, OR 97365

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## **ENGINEERING SCOPE OF SERVICES**

Date: June 1, 2021

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To: Chad Sweet, City Administrator, City of Gearhart (City)

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From: Keven Shreeve, PE, Principal, Civil West Engineering Services, Inc. (CWE)

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RE: **Water Management and Conservation Plan and Seismic Risk Assessment and Mitigation Plan (Plan)**

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The purpose of this Scope of Services is to describe the approach and costs proposed by Civil West Engineering to complete a Water Management and Conservation Plan and Seismic Risk Assessment and Mitigation Plan for the City of Gearhart.

### **Goal for the Project and Project Funding**

The goal of this project is to provide the City with a set of exceptional planning documents. The documents will be reviewed and approved by the City before considered complete. Where appropriate, the documents will be approved by the affected state agencies who oversee the planning topics. This includes the Health Division (Drinking Water Program) for the Seismic Risk Assessment and Mitigation Plan and Oregon Water Resources Department (OWRD) for the Water Management and Conservation Plan.

CWE has successful familiarity acquiring grant funding for both plans through Business Oregon. We are confident we can obtain for the City up to \$40,000 for the completion of the two plans from two sources:

- Water/Wastewater Program: \$20,000 for the Conservation Management portion. The Water/Wastewater Program does not have a deadline, so the sooner an application is submitted, the sooner money can be available.
- Safe Drinking Water Sustainable Infrastructure Planning Program (SIPP): \$20,000 for the seismic analysis. The deadline to apply for SIPP is September 15 and December 15. We will want to coordinate the two parts so September may be too soon.

### **Part A: Scope of Work**

1. **TASK 1 – Project Management:** We will provide the necessary project management and administrative services to conduct an orderly and well-managed project and to ensure quality and timeliness of deliverables. We will coordinate with the City regularly as necessary. Civil West will arrange and attend meetings as necessary for collaboration and information sharing and to discuss problematic study obstacles that may arise. A kick-off meeting will be used to convey initial project information and to clarify schedules and lines of communication.

2. **TASK 2 – Water Management and Conservation Plan (WMCP)** – Under this task, we will work to develop a WMCP that will meet the requirements of the Oregon Water Resources Department. This effort will be carefully coordinated with the existing water master planning document as there are many parallel or common planning elements required between the two studies. The existing water master plan will be quoted and referenced as necessary to keep documents consistent and to reduce cost. The WMCP will include the four major components required by OWRD: water system description, water conservation plan, water curtailment plan, and a long-range water supply plan. We may team with GSI Water Solutions, Inc. to help review water rights and provide input on the overall WMCP. *CWE will also work with the City to prepare the Business Oregon Water/Wastewater funding application.*
  
3. **TASK 3 – Seismic Risk Assessment and Mitigation Plan (SRAMP):** Every community water system with more than 300 connections who submits a water system master plan is required to conduct “a seismic risk assessment and mitigation plan for water systems fully or partially located in areas identified as VII to X, inclusive, for moderate to very heavy damage potential using the Map of Earthquake and Tsunami Damage Potential for a Simulated Magnitude 9 Cascadia Earthquake, Open File Report 0-13-06, Plate 7 published by the State of Oregon, Department of Geology and Mineral Industries.” CWE will prepare a Seismic Risk Assessment and Mitigation Plan. We will prepare one (1) SRAMP planning document in accordance with OAR 333-061-0060(5)(J), submit to and address any comments presented by OHA, and provide the City with an approved SRAMP. *CWE will also work with the City to prepare the Business Oregon SIPP funding application.*
  - a) **3.1** – The seismic risk assessment will identify critical water facilities capable of supplying key community needs, including fire suppression, health and emergency response, and community drinking water supply points.
  - b) **3.2** – The seismic risk assessment will identify and evaluate the likelihood and consequences of seismic failures for each critical water facility.
  - c) **3.3** – The mitigation plan will encompass a 50-year planning horizon and include recommendations to minimize water loss from each critical facility, capital improvements, or recommendations for further study or analysis.
  
4. **TASK 4 – Reimbursables:** Mileage, per diem, housing, copies, etc. as incurred.

**Part B: Work Not Included**

The following is information that will be provided by the City or not included in this scope of work (as noted).

1. Water System Master Plan. The City will provide CWE a copy of the existing Plan.
2. Public Involvement. If public outreach and involvement is desired or deemed necessary, Civil West will be available to attend and present at such public meeting(s).
3. Development of a GIS infrastructure map
4. Chemical testing to characterize source or treated water
5. Topographic or boundary surveys
6. Regulatory review or permitting fees
7. Review and or assessment (SRAMP) of any other facility besides water facilities such as fire and police department building(s), public works building(s) and City Hall building.
8. Review of any water facilities outside of the City water system.
9. Structural or Geotechnical Engineering services/evaluations.
10. Anything not specifically mentioned in the scope of services



**Part C: Project Fee Proposal (Lump Sum)**


We propose the above work be performed for a lump sum amount of \$51,210. The following is a breakdown of how the cost was derived:

Task No.	Task Description	Proposed Total Fee
1	Project Management & Administration	\$1,530.00
2	Water Management and Conservation Plan (WMCP)	\$25,888.00
3	Seismic Risk Assessment and Mitigation Plan (SRAMP)	\$22,792.00
4	Reimbursables	\$1,000.00
<b>Total Proposed Project Budget</b>		<b>\$51,210.00</b>
	WMCP Grant Award	-\$20,000.00
	SRAMP Grant Award	-\$20,000.00
	<i>Net Dollars from the City</i>	<i>\$11,210.00</i>

CWE will invoice the City on a monthly basis based on the percentage of completion. If additional support is required beyond these allowances, we will communicate with the City on an amendment to the agreement. Any additional work will be billed on a time and materials basis pursuant to the 2021 Rate Schedule attached hereto. If this proposed approach is acceptable, please sign below and return a copy to our office for our records.

We are grateful for this opportunity to provide these services to the City. Please let me know if you have any questions or if you wish to see any alterations to our proposed approach.

Sincerely,  
**Civil West Engineering Services, Inc.**

  
Keven T. Shreeve, PE  
North Coast Regional Manager

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Authorized Representative Signature Accepting Scope of Services

Date



<b>Civil West Engineering Services, Inc. - 2021 Class B Rate Schedule</b>	
STAFF/ITEM	BILLING RATE
<b>ENGINEERING</b>	
Principal Engineer	\$165
Regional Manager	\$160
Senior Project Manager	\$155
Senior Project Engineer	\$145
Project Manager	\$150
Project Engineer	\$134
Staff Engineer	\$114
Engineering Technician	\$84
Inspector 1	\$155
Inspector 2	\$134
Inspector 3	\$114
Engineering Intern	\$50
Clerical	\$52
<b>Surveying</b>	
Senior Surveyor (PLS)	\$150
Senior Survey Technician	\$120
Survey Technician	\$103
1-person Survey Crew	\$160
2-person Survey Crew	\$188
3-person Survey Crew	\$225
<b>REIMBURSABLES</b>	
Mileage - or current IRS Rate	\$0.575
Lodging, meals as required for travel	Cost
Reproduction, Printing, Etc.	Cost plus 10%
Subconsultants	Cost plus 10%



11 October 2021

Chad Sweet  
City Administrator  
City of Gearhart  
698 Pacific Way  
PO Box 2510  
Gearhart, Oregon 97138

Subject: Proposal for Professional Engineering Services  
City of Gearhart Water System Seismic Risk and Mitigation Plan  
KJ Proposal No.: 21023

Dear Mr. Sweet:

Kennedy/Jenks Consultants (KJ) is pleased to present this proposal to prepare a Water System Seismic Risk and Mitigation Plan for the City of Gearhart (City). The City operates a water system including wells, a water treatment plant, distribution and transmission piping, and a storage reservoir. These assets are interconnected and are required under OAR 333-061-0060 to have a Seismic Risk and Mitigation Plan in place with the next Water Master Plan publication. The City of Gearhart has requested this scope of work to identify the likelihood and consequences of seismic failures of each facility identified as critical to return to service following a magnitude 9 Cascadia Subduction Zone seismic event (CSZ9), as well as steps toward mitigation of the identified risk. We have included an optional Phase 4 in this proposal related to developing application requirements for a FEMA Hazard Mitigation Grant.

KJ is teamed with Shannon & Wilson (S&W) to provide the City a full service team with capabilities necessary to complete the scope of work. KJ and S&W worked together to design and oversee construction of the City's water treatment plant and reservoir. Our team's experience, history of work for the City, and technical capabilities will provide the City with the best value for the Plan.

This letter/proposal includes 3 attachments:

Attachment 1 – Shannon & Wilson Scope of Work

Attachment 2 – Kennedy Jenks Consultants Schedule of Charges

Attachment 3 – Terms and Conditions

## **Scope of Work**

### **Phase 1 – Kickoff Meeting and Site Visit**

KJ staff will prepare an agenda and meet with the City to review the project goals and available information related to the Water System Seismic Resiliency Plan (Plan). The meeting can be held

virtually or in person, depending on current COVID practices of the City and KJ. The site visit will be in-person and can be conducted primarily outside.

During the kickoff meeting we will discuss the data requirements to prepare the Plan. As a follow-up to the kickoff meeting, KJ will prepare a data request for the City to provide documentation in support of preparation of the Plan.

After the kickoff meeting KJ will tour the City's water facilities with a City representative to view their current condition, take photographs, collect GIS coordinates of major assets, and provide general setting information to the rest of the team.

## **Phase 2 – Prepare Seismic Risk and Mitigation Plan**

### **Task 2.1 – Seismic Risk Assessment (S&W)**

The KJ team will prepare a seismic risk assessment using desktop methods to generate site geology maps and prepare an assessment of seismic risk. As part of this effort, we will:

- Prepare liquefaction calculations based on previously completed geotechnical borings within the City's service area
- Prepare site geology maps including DOGAMI seismic hazards, faults, relative liquefaction hazards, landslide risks, and statutory Tsunami Inundation Zone

No new field investigations are proposed, only existing geotechnical boring data and other data available from public sources will be used to develop the magnitude of risk. Shannon & Wilson's Scope of Work is included as Attachment 1.

### **Task 2.2 – Prepare Seismic Risk Assessment and Hazard Mitigation Plan**

KJ will prepare a Seismic Risk Assessment and Hazard Mitigation Plan meeting the requirements of OAR 333-016-0060. The major elements are:

- A summary of the City's facilities as they are located in areas subject to moderate to very heavy damage potential using the Map of Earthquake and Tsunami Damage Potential for Simulated CSZ9 Earthquake
- A summary of critical water system facilities that supply key community needs, including fire suppression, health and emergency response, and community drinking water supply points.
- An evaluation of the likelihood and consequences of failure for each critical facility
- An assessment of how quickly and completely critical facilities would be returned to service following a Cascadia 9 event
- Recommendations to mitigate risk of major failure during and following the design CSZ event

For the purpose of this proposal, we have assumed the critical facilities are:

- Water Supply Wells

- Water Treatment Plant, including clearwell
- Booster Pumps
- Reservoir (1.0 MG) and transmission line
- Distribution system piping
- Raw water piping (wells to Water Treatment Plant)
- Solids settling basin and drainfield
- Wastewater STEP system and drainfield

Distribution system piping will not be evaluated on an individual segment basis but will be evaluated on a material-of-construction basis.

The Plan will include an assessment of vulnerabilities of the critical assets based on a qualitative scale (low, medium, high), and note key points of likely failure. Based on the assessment of vulnerabilities KJ will prepare recommendations for mitigation of failure points for the critical assets. The general approach for mitigation methods will be to restore service of the individual critical elements of the water system shortly after the CSZ9 event on an emergency basis. In some cases, these assets would be preserved; however, they may not be fully connected in a complete water system. The mitigation recommendations would then be incorporated into a Capital Improvement Plan prepared under a separate scope of work (for a Water Master Plan Update). Detailed cost estimates will not be proposed; however, planning level “order-of-magnitude” ranges will be provided with recommendations. A more detailed analysis of mitigation methods and detailed cost estimates would be prepared as part of a water System Master Plan prepared under a separate scope of work.

We will submit a draft Plan for the City’s review and comment. After the City has an opportunity to review the Plan, we will have a teleconference to discuss comments and concerns. After the review meeting, we will incorporate the City’s comments and finalize the Plan. Deliverables will be a Draft and Final Seismic Risk and Mitigation Plan in electronic (PDF) format.

### **Phase 3 – Project Management**

Project management includes project setup, work plan, team management, quality assurance, invoicing, and client communications. Deliverables will be monthly invoices.

### **Phase 4 – FEMA Grant Application Assistance (Optional)**

The Building Infrastructure and Communities (BRIC) Grant Program administered by the Federal Emergency Management Agency (FEMA) and Oregon Office of Emergency Management (OEM) can provide up to \$1 million per applicant (including up to \$500,000 in planning funds) to plan and implement mitigation strategies for natural disaster events. Applications for the fiscal year 2021 grants are accepted from 30 September 2021 through 28 January 2022 (with similar open periods for subsequent years). Funds must be expended within 36 months of receiving the grant award. The BRIC program renews annually, and the City can apply as a sub-applicant through OEM during the open period any year.

This task includes investigating the City’s eligibility to apply for a BRIC grant to support planning and construction of hazard mitigation improvements for the City’s water system. We will prepare a project



summary for a pre-application meeting with OEM (FEMA's State Hazard Mitigation Officer) and discuss the program's requirements. KJ will prepare a memorandum summarizing the eligibility criteria as they apply to the recommended improvements, application requirements, application schedule, and next steps when the grant is awarded. Additional effort beyond the scope of work in this task will be required for the application. The memorandum produced as part of this task will summarize the additional scope of work. If requires additional support to prepare the application, KJ can provide that support under an amended scope of work and fee.

### **Assumptions**

All deliverables will be submitted in electronic (PDF) format delivered by email.

In addition to the water system records we currently have we have assumed that the City will provide other reports, geotechnical boring logs, historical water use and loss data for use in the risk analysis. We assume these records can be provided in electronic form. Numerical data, such as meter readings, will be provided in excel spreadsheet or comma-separated variable (csv) format.

No geotechnical field investigation will be conducted for this effort. Existing boring logs for the appropriate area will be used to develop liquefaction calculations and estimates of seismic displacement.

We have assumed that coordination meetings will not be required for this work. The work will be coordinated as-needed with the City through teleconference calls.

### **Schedule**

The proposed scope and fee were prepared assuming the following schedule to complete the work and a notice-to-proceed date of 5 November 2021:

<b>Task</b>	<b>Days from Notice to Proceed</b>
Notice to proceed	1
Kickoff Meeting	10
Site Visit	12
Prepare Draft Seismic Risk and Mitigation Plan	90
City Reviews Plan	120
Draft Plan Review Meeting	125
Prepare Final Seismic Risk and Mitigation Plan	160

This is a preliminary schedule, the actual project schedule may vary based on City response times to request for information and reviews, actual meeting dates, and availability of information.

### Project Budget

We propose to complete the services described in the scope of work described above for an estimated fee shown in the table below. The actual fee will be based on monthly invoices.

<b>Description</b>	<b>Estimated Fee</b>
Seismic Risk and Mitigation Plan	\$ 69,980
Optional FEMA Grant Application Assistance	\$ 4,971

A rate schedule is included as Attachment 2.

### TERMS & CONDITIONS

This proposal is based on current projections of staff availability and costs and, therefore, is valid for 30 days following the date of this letter. We propose to complete the work under the terms and conditions included as Attachment 3. If this proposal is acceptable, please sign where noted below and return one copy to serve as our authorization to proceed.

Kennedy/Jenks appreciates the opportunity to continue working with the City of Gearhart. If you have any questions about our proposal please contact Milt Larsen at (253) 835-6401.

Very truly yours,

KENNEDY/JENKS CONSULTANTS, INC.



Milt Larsen, PE  
Project Manager



Mark Cullington  
Vice President

### AUTHORIZATION:

CITY OF GEARHART

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

\_\_\_\_\_  
(Print Name)

TITLE: \_\_\_\_\_

Date: \_\_\_\_\_

Enclosures

## ATTACHMENT 1 - SHANNON & WILSON SCOPE OF WORK

### Scope

The purpose of Shannon & Wilson's task is to prepare and provide GIS maps, including mapped site geology and mapped DOGAMI seismic hazards, and liquefaction calculations based on borings within the City of Gearhart's service area and then document the findings in a brief report. The backbone water transmission and treatment facilities selected and digitized into GIS format by others will be shown on the maps. Our specific scope of work includes the evaluating the following:

- Mapping site geology
- Mapping landslides included in DOGAMI's landslide inventory (if any) along the proposed pipeline alignments or at the treatment plant sites.
- Mapping United States Geology Survey (USGS) Class A or Class B faults that cross pipeline alignments or are located within a 5 mile radius of treatment plant locations.
- Mapping relative earthquake liquefaction hazards based on DOGAMI maps (high, medium, or low hazard).
- Mapping relative landslide risks based on DOGAMI maps (very high, high, moderate, or low hazard).
- Mapping of statutory Tsunami Inundation Zone.
- Evaluating the liquefaction potential and estimated liquefaction induced settlement at backbone facilities where geotechnical borings are available. Shannon & Wilson has existing explorations at the Fire Station, Water Treatment Plant, and the Terminal Reservoir. Liquefaction analysis can be performed at other locations if additional boring records are provided by the City.
- Performing a geologic site reconnaissance of key facilities within the City of Gearhart's backbone infrastructure.
- Preparing a brief memo or letter report presenting the geologic maps and a brief discussion summarizing our findings, including a discussion on potential seismic mitigation options in areas where permanent ground displacements may prevent the City from achieving its resiliency goals. The discussions will be limited by the uncertainties and assumptions made during the development of the geologic maps and DOGAMI hazard layers and the available existing information.

### Assumptions

No explorations will be performed during this initial geotechnical phase of work and assumptions made about site development (which could impact cost estimating) will be limited to the information and uncertainties associated with readily available published geologic maps developed by others and information from existing borings.

More detailed explorations or analyses performed during predesign or final design phases could result in new information. This may impact the geotechnical assumptions made based solely on the geologic and hazard maps developed by others.

**Schedule and Fee**

Our work can be done on a time and materials basis in accordance with the 2021 Standard Rates previously provided for a maximum fee of \$9,805 and mutually agreed upon terms and conditions. A detailed breakdown of our fee is shown in Table 1, Estimated Cost of Services Breakdown. We are prepared to begin upon notice to proceed. Our report can be available an estimated 4 weeks after notice to proceed.

**ATTACHMENT 2 - KENNEDY JENKS SCHEDULE OF CHARGES**



**Client/Address:** City of Gearhart  
698 Pacific Way  
PO Box 2510  
Gearhart, Oregon 97138

**Contract/Proposal Date:** 10 October 2021

**Custom Schedule of Charges**

**Date:** October 2021

**PERSONNEL COMPENSATION**

<b>Classification</b>	<b>Hourly Rate</b>
Engineer-Scientist-Specialist 1.....	\$115
Engineer-Scientist-Specialist 2.....	\$125
Engineer-Scientist-Specialist 3.....	\$140
Engineer-Scientist-Specialist 4.....	\$155
Engineer-Scientist-Specialist 5.....	\$180
Engineer-Scientist-Specialist 6.....	\$200
Engineer-Scientist-Specialist 7.....	\$225
Engineer-Scientist-Specialist 8.....	\$250
Engineer-Scientist-Specialist 9.....	\$250
CAD-Technician .....	\$100
Senior CAD-Technician .....	\$115
CAD-Designer .....	\$120
Senior CAD-Designer .....	\$125
Project Administrator .....	\$130
Administrative Assistant.....	\$120
Aide.....	\$100

In addition to the above Hourly Rates, an Associated Project Cost charge of \$5.00 per hour will be added to Personnel Compensation for costs supporting projects including telecommunications, software, information technology, internal photocopying, shipping, and other support activity costs related to the support of projects

**Direct Expenses**

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

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

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

Overtime for non-exempt employees will be billed at one and a half times the Hourly Rates specified above.

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

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

The foregoing Schedule of Charges is incorporated into the agreement for the services provided, effective 10 October 2021 through 30 September 2022. After 30 September 2022, invoices will reflect the Schedule of Charges currently in effect.

**Client:** City of Gearhart

**Contract/Proposal Date:** 8 October 2021

## Standard Conditions

January 1, 2017

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

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

## Standard Conditions (Page 2)

January 1, 2017

and that CLIENT will indemnify CONSULTANT and hold it harmless against any claims associated with the unauthorized use of such documents. In no event will CLIENT or any person acting on its behalf edit, abridge, or modify any document prepared by CONSULTANT without CONSULTANT's express written consent.

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