

## AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

**THIS AGREEMENT** (hereafter Agreement) is made by and between the Laguna County Sanitation District, a dependent special district of the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and PENFIELD & SMITH having its principal place of business at 210 East Enos Drive, Suite A, Santa Maria CA 93454 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **DESIGNATED REPRESENTATIVE.** Martin Wilder at phone number (805) 739-8755 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Brianna Daniels at phone number (805) 925-2345 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To COUNTY:                    Martin Wilder, Utilities Manager  
   Laguna County Sanitation District  
   620 West Foster Road  
   Santa Maria, CA 93455

To CONTRACTOR:        Thomas Rowe, Principal Engineer and Branch Manager  
   Penfield & Smith  
   210 East Enos Drive, Suite A  
   Santa Maria, CA 93454

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. **SCOPE OF SERVICES.** CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. **TERM.** CONTRACTOR shall commence performance upon execution and end performance upon completion, but no later than June 30, 2010 unless otherwise directed by COUNTY or unless earlier terminated.

5. **COMPENSATION OF CONTRACTOR.** CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 **NOTICES.** above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. **INDEPENDENT CONTRACTOR.** CONTRACTOR shall perform all of its services under this Agreement as an independent contractor and not as an employee of COUNTY. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee,

including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure.

7. **STANDARD OF PERFORMANCE.** CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

8. **TAXES.** COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

9. **CONFLICT OF INTEREST.** CONTRACTOR covenants that CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR.

10. **RESPONSIBILITIES OF COUNTY.** COUNTY shall provide all information reasonably necessary by CONTRACTOR in performing the services provided herein.

11. **OWNERSHIP OF DOCUMENTS.** COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any materials under this section except after prior written approval of COUNTY.

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of COUNTY. COUNTY shall have the unrestricted authority to publish, disclose, distribute, and other use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

12. **RECORDS, AUDIT, AND REVIEW.** CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice.

13. **INDEMNIFICATION AND INSURANCE.** CONTRACTOR shall agree to defend, indemnify and save harmless the COUNTY and to procure and maintain insurance in accordance with the provisions of EXHIBIT C attached hereto and incorporated herein by reference.

14. **NONDISCRIMINATION.** COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to

this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

15. **NONEXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

16. **ASSIGNMENT.** CONTRACTOR shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of COUNTY 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.

17. **TERMINATION.**

A. **By COUNTY.** COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience or because of the failure of CONTRACTOR to fulfill the obligations herein. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services effected (unless the notice directs otherwise), and deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process.

1. For Convenience. COUNTY may terminate this Agreement upon thirty (30) days written notice. Following notice of such termination, CONTRACTOR shall promptly cease work and notify COUNTY as to the status of its performance.

Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for service performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY shall be final. The foregoing is cumulative and shall not effect any right or remedy which COUNTY may have in law or equity.

2. For Cause. Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate this Agreement by written notice, which shall be effective upon receipt by CONTRACTOR.

B. **By CONTRACTOR.** Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in EXHIBIT B, CONTRACTOR may, at CONTRACTOR's option terminate this agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.

18. **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.

19. **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 never been contained herein.

20. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to COUNTY 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.

21. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

22. **NO WAIVER OF DEFAULT.** No delay or omission of COUNTY 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 or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

23. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

24. **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.

25. **COMPLIANCE WITH LAW.** CONTRACTOR shall, at his sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY be a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

26. **CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

27. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

28. **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, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any

other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

29. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

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Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Penfield & Smith**.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by COUNTY.

COUNTY OF SANTA BARBARA

By: \_\_\_\_\_  
Chair, Board of Supervisors

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

ATTEST:  
MICHAEL F. BROWN  
CLERK OF THE BOARD

CONTRACTOR  
PENFIELD & SMITH  
HADY IZADPANA, PRESIDENT

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

By: \_\_\_\_\_  
Tax ID Number: 89-2088979

APPROVED AS TO FORM:  
DENNIS A. MARSHALL  
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:  
ROBERT W GEIS, CPA  
AUDITOR-CONTROLLER

By: \_\_\_\_\_  
Deputy County Counsel

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

APPROVED AS TO FORM:  
RAY AROMATORIO,  
RISK PROGRAM ADMINISTRATOR

By: \_\_\_\_\_  
Risk Program Administrator

**EXHIBIT A**  
**STATEMENT OF WORK**

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*santa barbara county*  
**Public Works Department**

**MSA FUNDING  
MEMO**

*people in motion*

**FAXED**  
9/4/07

Date of Request: 8/27/07

Step One

Requested By: Marty Wilder Division: A (S) T W (circle one) Extension: 8799

Project: Reclaimed Water Distribution Transmission Main Phase II

Services Needed?: \_\_\_\_\_ Number of Working Day?: 20-days/4 week

Description of work: Design, prep of plans & specs and estimate for the proposed reclaimed water transmission main

Are you requesting Surveying Services (SGC.10)? Yes (No) (circle one)

If Yes obtain clearance from County Surveyor before proceeding. Date: \_\_\_\_\_

County Surveyor: \_\_\_\_\_ Use CS Staff or Use MSA Firm (circle one)

Michael B. Emmons

Fund	Dept.	Account	Program	Org.	Activity	Project Number	Amount
2870	054	7460	6000		ENGR	RWDIS2	\$ 99,800.-

**Preliminary Approvals:**

Date

Prep Time Spent

8-27-07 Staff Contact: Martin Wilder \_\_\_\_\_

" Supervisor: Martin Wilder \_\_\_\_\_

8/27/07 Accounting: Colleen J. Jarama \_\_\_\_\_

9/4/07 MSA Coordinator: Dina Hara \_\_\_\_\_

Master Services Agreement No. BC98- CNO 6988 SGC- \_\_\_\_\_ (01 to 13)

Addenda No. \_\_\_\_\_ Addenda to date: \_\_\_\_\_ (see log or Robert)

Consultant: Penfield & Smith Contact: Thomas Rowe

Telephone: 925-2345 Fax: 925-1539

**Contract Summary**

MSAs Contract Limit \_\_\_\_\_ (100,000 or 150,000)

Addenda dollars to date \_\_\_\_\_ (fillin)

This Request \_\_\_\_\_ (fillin)

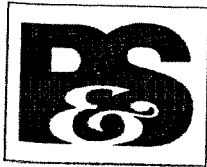
Balance Available \_\_\_\_\_ (fillin)

Attachments:  This Addendum  Exhibit A : Scope  \_\_\_\_\_  \_\_\_\_\_

Step Two

6/24/08





# Penfield & Smith

210 East Enos Drive, Ste A  
Santa Maria, CA 93454

tel 805-925-2345  
fax 805-925-1539

www.penfieldsmith.com

Santa Barbara  
Camarillo  
Santa Maria  
Lancaster

Civil Engineering

Land Surveying

Land Use Planning

Construction  
Management & Inspection

Traffic & Transportation  
Engineering

Transportation Planning

August 21, 2007

W.O. 17854.01

Marty Wilder, P.E.  
Laguna Sanitation District  
620 West Foster Road  
Santa Maria, CA 93455

**Subject: Reclaimed Water Distribution Transmission Main Phase II**

Dear Mr. Wilder:

Thank you for the opportunity to submit a proposal for the design of the Reclaimed Water Distribution Transmission Main Phase II Project.

## UNDERSTANDING OF PROJECT REQUIREMENTS

The Laguna County Sanitation District operates a wastewater reclamation plant serving the community of Orcutt and portions of unincorporated area of southern Santa Maria. The plant is located at the end of Dutard Road, west of Black Road. The district serves approximately 11,700 connections; and currently collects, treats, and disposes of 2.4 million gallons of wastewater per day. Wastewater is generated primarily from domestic sources with minor contributions from commercial establishments. The district maintains one pump station and 215 miles of collection system. All of the water is reclaimed and used for irrigation purposes.

The plant is rated for 3.7 mgd and is regulated by the Regional Water Quality Control Board in San Luis Obispo under Waste Discharge Requirements and Master Reclamation Permit Order 01-042. Effluent is treated to disinfected tertiary levels and includes screening, primary clarification, biofiltration, secondary clarification, membrane filtration (including reverse osmosis for a portion of the flow), and ultraviolet (UV) irradiation. Reverse osmosis concentrate is disposed into a Class 1 non-hazardous injection well. Permeate is irrigated on district land and off-site locations. This reclaimed water is used for spray irrigation on edible food crops. Anticipated end users include strawberry and broccoli growers, golf courses, and cattle ranchers, as well as potential industrial uses for the treated water.

The reclaimed water treatment system at the WWTP was constructed and began operating in April of 2003. Phase I of the pipeline distribution system has been completed and runs from the WWTP to the Airport. The proposed Phase II pipeline distribution system would run approximately 9050 feet from the Phase I pipeline to the Rancho Maria Golf Course entrance. It is anticipated that a Phase III project will come later which would retrofit the existing golf course irrigation system, or could be completed by a development currently under consideration.

The construction of the project will be funded by developer fees, a State Revolving Fund (SRF) Loan, a SWRCB grant, or a combination of these.

### SCOPE OF WORK

This project includes the design, preparation of plans & specifications and estimate for the proposed reclaimed water transmission main. The general elements of this project include:

1. A transmission pipeline that will run approximately 9050 feet from the existing reclaimed water distribution main at the intersection of Dutard and Black Roads to the entrance of the Rancho Maria Golf Course. See attached photo exhibit.
2. Caltrans permitting for the portion of the transmission main on Highway 1.
3. Valving at the existing "T" in Black Road will be coordinated for future SCADA remote operation to be considered within the Phase III project.

The following scope is anticipated:

1. Plans: We anticipate that this project will consist of approximately 20 plan sheets including:
  - a. Plan and profile sheets (30 scale) for the transmission main between Dutard Road and Rancho Maria Golf course – 10 sheets
  - b. Cover sheet with Vicinity map, legend, and general notes
  - c. Caltrans permit sheet set – 3 additional sheets
  - d. Directional drilling (trenchless approach) for creek crossing
  - e. Detail sheets – 5
  - f. It is anticipated that submittal packages will occur at 30, 60, 90, and 100% completion design phases. Three sets of appropriate plans and specifications will be included within each submittal package.
2. Survey: Compilation of right-of-way along the 9050 feet of pipeline alignment using record drawings; establish control using State Plane Coordinates; and survey the proposed alignment of the new reclaimed water main, including features on private property within 10 feet of the right-of-way.
3. Utility research within the public right of way.
4. Specifications and Estimate: Penfield & Smith will prepare technical special specifications in the plans and accordance with the "Greenbook" and District standards for reclaimed water main construction. It is assumed the District will prepare the administrative and legal special provisions and advertise the project for bid.
5. District Coordination: The design will be coordinated closely with the District Manager and District operational personnel.
6. Advertisement and Award Support: We proposed several hours to assist in responding to contractor questions during advertisement and preparation for award.
7. Preparation of a SWPPP to comply with Regional Water Quality Control Board requirements.

We will do our best to coordinate this work with other contract work we are performing for the District to economize and conserve costs.



### **SERVICES NOT INCLUDED**

The following services and all other services not specifically listed herein are excluded:

1. Reimbursable expenses; such as photocopies, FAX transmissions, postage, shipping/delivery, mileage, prints, and maps/documents.
2. Governmental and public agency fees, cost of bonds, and taxes.
3. Title Company reports, services, and fees. Title reports for right-of-way compilation shall be purchased by the District.
4. Geotechnical investigation, analysis, reports, or services.
5. Environmental Document, including initial environmental study.
6. Services by consultants other than P&S.
7. Services beyond Advertising and award, unless construction phase services are negotiated separately.
8. Reproduction for project bidding.

### **CLIENT TO PROVIDE**

Client, or co-consultant at Client's direction, shall provide the following items to Penfield & Smith:

1. Existing record drawings of the Phase I reclaimed water distribution main connection point.
2. Access to, and direction for, instrumentation interface locations for the system operation.
3. Geotechnical studies for trench alignment to include recommendations on existing in-situ material for backfill purposes.

### **PROPOSED FEE AND METHOD OF PAYMENT**

Our proposed services will be performed on a fixed fee basis and shall be billed monthly as a percentage complete of our services. Materials (Reimbursable Expenses) are not included in the fixed fee. "Materials" include all reimbursable expenses; such as photocopies, FAX transmissions, postage, shipping/delivery, mileage, plots, prints, maps/documents, and outside consultant fees.

Payment is due on receipt of statements (net 30 days). Unpaid account balances are subject to a finance charge which will be the lesser of one and one-half percent (1 ½ %) per month or a monthly charge not to exceed the maximum legal rate. This fee shall be applied to any unpaid balance commencing thirty days after the original billing. If an account is unpaid and would be subject to a finance charge, we may consider this constructive notice to suspend work.



Based on our understanding of your requirements, and our experience with similar projects, the lump sum fee required for our services will be broken down as follows:

General Project design (P&S):	\$ 68,400
Survey	\$ 16,200
SWPPP	\$ 4,500
Caltrans Permitting:	\$ 6,700
<b>Project Total</b>	<b>\$ 95,800</b>

Additional services or items not included in the above Scope of Work shall be performed on a time and materials basis and shall be billed monthly at the rates then currently in effect or shall be negotiated on a fixed fee basis. Charges for "time" include professional, technical and clerical support services provided by Penfield & Smith.

We estimate that Time and Materials charges for the services that we will be providing on this project will be as follows:

Reimbursable Expenses:	\$2,400
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We have estimated the cost of our services based on our understanding at this time of the scope and complexity of the work. However, please note that our services will be performed on a time and materials basis, and it is possible that our actual charges could exceed the amount we have estimated. During the performance of our services, the need for additional or expanded services may be determined. We will make every reasonable effort to keep you informed of our progress and costs incurred.

#### **ADDITIONAL SERVICES**

Services performed outside the scope of this agreement require written approval prior to performance of the work. Design changes by Owner/Client or designee after the start of design shall be considered additional services. Any work requested by Owner/Client that is outside the scope of this agreement will be identified by Penfield & Smith as such, and a fixed fee or not-to-exceed amount will be agreed upon prior to the start of the additional work. Compensation for additional services shall be in accordance with Exhibit "A", Penfield & Smith's Billing Rate Schedule currently in effect.

#### **TIME OF PERFORMANCE**

Based on our current workload, we estimate that the project can commence within 4 weeks, and it is anticipated that a 30% submittal package would follow in approximately 6 weeks. ✓

It is anticipated that the 60% submittal package would be submitted in approximately 4 weeks following receipt of district comments.

It is anticipated that the 90% submittal package would be submitted in approximately 4 weeks following receipt of district comments.

It is anticipated that the 100% submittal package would be submitted in approximately 2 weeks following receipt of district comments.

Final permitting approval and review time by Caltrans is unknown at this time, and could cause potential design delays.



**INDEMNIFICATION ADVISORY**

In recent years, we have seen a movement towards clients requesting us to perform services under their company's form of Agreement. Please be advised that if you would like us to work under your company's form of Agreement, we will look closely at the required indemnification language in any such document. Specifically, we will not accept indemnification language that requires us to accept liability for other than our negligent acts of error or omission to the extent that we are responsible for such liabilities. This proposal is based on this understanding.

**AUTHORIZATION**

Should you require additional information or wish to discuss this proposal further, please give me a call. My direct line is 925-2345, extension 117. Our current fee schedule is attached.

Thank you for considering Penfield & Smith for this project.

Very truly yours,

PENFIELD & SMITH



Thomas O. Rowe, P.E.  
Principal Engineer

w:\work\17000-17999\17854\accounting\proposal\17854-01propv2.doc





**EXHIBIT "A"**  
**PENFIELD & SMITH**  
**BILLING RATES EFFECTIVE JANUARY 1, 2007**

<u>CLASSIFICATION</u>	<u>RATE PER HOUR</u>	<u>PREVAILING WAGE RATE PER HOUR</u>
<b><u>Engineering and Surveying</u></b>		
Technician .....	\$65.00	
Associate Technician .....	\$75.00	
Senior Technician .....	\$86.00	
Designer .....	\$97.00	
Senior Designer .....	\$114.00	
Junior Engineer/Surveyor .....	\$78.00	
Assistant Engineer/Surveyor .....	\$97.00	
Associate Engineer/Surveyor .....	\$114.00	
Senior I Engineer/Surveyor .....	\$130.00	
Senior II Engineer/Surveyor .....	\$146.00	
Principal Engineer/Surveyor .....	\$167.00	
One-man Survey Party with GPS or Robotic Total Station .....	\$155.00	\$170.00
Two-man Survey Party .....	\$180.00	\$215.00
Three-man Survey Party .....	\$240.00	\$265.00
<b><u>Construction</u></b>		
Construction Technician .....	\$80.00	
Assistant Construction Manager .....	\$98.00	
Associate Construction Manager .....	\$115.00	
Senior I Construction Manager .....	\$130.00	
Senior II Construction Manager .....	\$146.00	
Principal Construction Manager .....	\$167.00	
Construction Inspector .....	\$78.00	\$102.00
Senior Construction Inspector .....	\$92.00	\$107.00
Chief Inspector/Owner's Representative .....	\$102.00	\$112.00
<b><u>Planning</u></b>		
Planning Technician .....	\$65.00	
Junior Planner .....	\$79.00	
Assistant Planner .....	\$92.00	
Associate Planner .....	\$108.00	
Senior I Planner .....	\$123.00	
Senior II Planner .....	\$135.00	
Principal Planner .....	\$150.00	
<b><u>General</u></b>		
Technical Support .....	\$57.00	
Special Consultant .....	\$190.00	
(Principal with specialized skills in engineering or planning.)		
Expert Witness/Deposition Rate = 2 times regular rate		
Out-of-Town Survey Crew Travel = 0.5 times regular rate		
Outside Consultant .....		Cost plus 15%
Outside Reimbursable Consultant .....		Cost plus 15%
In-house Reimbursable Expenses available upon request.		

\*Adjustments to rates are normally made on January 1st, however, the right is reserved to make adjustments at any time.





# Penfield & Smith

111 East Victoria Street • Santa Barbara, CA 93101  
tel 805-963-9532 • fax 805-966-9801

## Exhibit B - Sample Invoice Fixed Fee

### Invoice

John Doe  
ABC Inc.  
1234 Anyplace Ave.  
Anytown, CA 93101

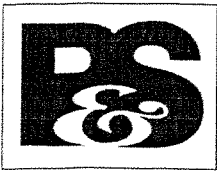
Invoice # 70272  
February 9, 2007

Project #: 18000.01                      Project Description  
Client ID: ABC  
Contract: 1234A  
Professional Services for the Period: 1/1/07 - 1/28/07

#### Professional Services

Contract Amount	\$ 100,000.00
Percent Complete	50%
Fee Earned	50,000.00
Prior Fee Billings	25,000.00
Current Fee Total	25,000.00
Current Invoice Amount	<u>\$ 25,000.00</u>
Past Due Amount	\$ 25,000.00
Total Amount Due	<u>\$ 50,000.00</u>





# Penfield & Smith

210 E. Enos Drive, Suite A  
Santa Maria, CA 93454

tel 805-925-2345  
fax 805-925-1539

www.penfieldsmith.com

Santa Barbara  
Camarillo  
Santa Maria  
Lancaster

Civil Engineering

Land Surveying

Land Use Planning

Construction  
Management & Inspection

Traffic & Transportation  
Engineering

Transportation Planning

Structural Engineering

W.O. 17854.02

April 28, 2009

Marty Wilder, P.E.  
Laguna County Sanitation District  
620 West Foster Road  
Santa Maria, CA 93455

**Subject: Recycled Water Distribution Transmission Main Phase II  
Golf Course Irrigation Retrofit Analysis**

Dear Mr. Wilder:

Thank you for the opportunity to continue to support the Phase II Recycled Water Distribution Project.

### **Understanding of Project Requirements**

The plans for the Phase II Recycled Water Distribution Main are nearly complete. These plans currently show a tee at the Rancho Maria Golf Course (Golf Course), originally intended for connection by the developer. With the uncertainty of development at the Golf Course, the District would like to proceed with the analysis and plan preparation to allow for recycled water supply to the Golf Course.

An agronomy study was prepared by CH2M Hill, dated March 2, 2009. Recommendations were presented in this study, identifying potential blending ratios and any impacts to the Golf Course landscape. Subsequent meetings with Golf Course maintenance staff indicate that a simple blending at the ponds may not be feasible, due to the potential connection of potable water at the drinking fountains and restroom facilities.

### **Scope of Work**

Penfield & Smith (P&S) proposes to study the existing irrigation system and determine the best solution for the District to deliver recycled water to the Golf Course. Factors to be analyzed include the following:

#### ***Analysis of the Existing Water Supply:***

- Existing piping configuration;
- Existing controls;
- Existing pond capacity and pumping equipment; and
- Existing potable water supply, storage, and delivery.

### ***Identification of Potential Recycled Water Pipeline Routing***

- Separate tees and greens from fairways;
- Additional storage and/or control needs;
- Additional pumping capacity needs; and
- Isolation and separation from domestic water supply.

Penfield & Smith will present a thorough analysis, along with infrastructure alternatives, in an effort to maximize the delivery of recycled water to the Golf Course and maintain the objectives and requirements of the agronomy study completed by CH2M Hill.

It is anticipated that the District will present the preferred alternative to the Golf Course and that modifications may be required. These modifications will create the basis for the preparation of construction drawings, specifications, and estimates for this portion of the work. Due to the small volume of the existing ponds, controls and storage will be an integral part of the final design for the infrastructure on the Golf Course.

Because of the unknown nature of the final design, a separate proposal will be provided upon completion of the Golf Course Irrigation Retrofit Analysis for the preparation of final construction documents.

### **Services Not Included**

The following services and all other services not specifically listed herein are excluded:

1. Reimbursable expenses; such as photocopies, FAX transmissions, postage, shipping/delivery, mileage, prints, and maps/documents.
2. Governmental and public agency fees, cost of bonds, and taxes.
3. Title Company reports, services, and fees. Title reports for right-of-way compilation shall be purchased by the District.
4. Geotechnical investigation, analysis, reports, or services.
5. Environmental Document, including initial environmental study.
6. Services by consultants other than P&S.
7. Water Quality Analysis.
8. Services not expressly listed in the Scope of Work.

### **Proposed Fee and Method of Payment**

Our proposed services will be performed on a fixed fee basis and shall be billed monthly as a percentage complete of our services. Materials (Reimbursable Expenses) are not included in the fixed fee. "Materials" include all reimbursable expenses; such as photocopies, FAX transmissions, postage, shipping/delivery, mileage, plots, prints, maps/documents, and outside consultant fees.

Payment is due upon receipt of statements (net 30 days). Unpaid account balances are subject to a finance charge which will be the lesser of one and one-half percent (1 ½ %) per month or a monthly charge not to exceed the maximum legal rate. This fee shall be applied to any unpaid



balance commencing thirty days after the original billing. If an account is unpaid and would be subject to a finance charge, we may consider this constructive notice to suspend work. Based on our understanding of your requirements, and our experience with similar projects, the lump sum fee required for our services will be **\$26,000**.

### **Additional Services**

Additional services or items not included in the above Scope of Work shall be performed on a time and materials basis and shall be billed monthly at the rates then currently in effect or shall be negotiated on a fixed fee basis. Charges for "time" include professional, technical, and clerical support services provided by Penfield & Smith.

Services performed outside the scope of this agreement require written approval prior to performance of the work. Design changes by Owner/Client or designee after the start of design shall be considered additional services. Any work requested by Owner/Client that is outside the scope of this agreement will be identified by Penfield & Smith as such, and a fixed fee or not-to-exceed amount will be agreed upon prior to the start of the additional work. Compensation for additional services shall be in accordance with Exhibit "A", Penfield & Smith's Billing Rate Schedule currently in effect.

### **TIME OF PERFORMANCE**

Based on our current workload, we estimate that the project can commence within 4 weeks, and it is anticipated that draft report will be available within 8 weeks.

### **INDEMNIFICATION ADVISORY**

In recent years, we have seen a movement towards clients requesting us to perform services under their company's form of Agreement. Please be advised that if you would like us to work under your company's form of Agreement, we will look closely at the required indemnification language in any such document. Specifically, we will not accept indemnification language that requires us to accept liability for other than our negligent acts of error or omission to the extent that we are responsible for such liabilities. This proposal is based on this understanding.

### **AUTHORIZATION**

Should you require additional information or wish to discuss this proposal further, please give me a call. My direct line is 925-2345, extension 111. Our current fee schedule is attached.

Thank you for considering Penfield & Smith for this project.

Very truly yours,

PENFIELD & SMITH



Brianna M. Daniels, P.E.  
Senior Engineer



## EXHIBIT B

### PAYMENT ARRANGEMENTS Periodic Compensation

- A. For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed \$121,800.00.
- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY.
- C. Monthly, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of presentation.
- D. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

## EXHIBIT C

### STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS for contracts REQUIRING professional liability insurance

#### INDEMNIFICATION

##### Indemnification pertaining to other than Professional Services:

CONTRACTOR shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the COUNTY.

CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

##### Indemnification pertaining to Professional Services:

CONTRACTOR shall indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of the negligent performance or attempted performance of the provisions hereof; including any willful or negligent act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him to the fullest extent allowable by law.

CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverage is to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as

defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.

2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTORS shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

*"Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."*

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

3. Professional Liability Insurance. Professional liability insurance shall include coverage for the activities of CONTRACTOR's professional staff with a combined single limit of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Said policy or policies shall provide that COUNTY shall be given thirty (30) days written notice prior to cancellation, expiration of the policy, or reduction in coverage. If the policy providing professional liability coverage is a on 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three (3) years (ten years [10] for Construction Defect Claims) following completion of the performance or attempted performance of the provisions of this agreement.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of

damages resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

In the event the CONTRACTOR is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

Contract Summary Form: Contract Number : \_\_\_\_\_

Complete data below, print, obtain signature of authorized departmental representative, and submit this form (and attachments) to the Clerk of the Board (>\$100,000). If less than (<\$100,000) submit a Purchasing Requisition to the Purchasing Division of General Services. See "online purchasing manual" under General Services, Purchasing, Policies and Procedures. Form not applicable to revenue contracts.

- D1. Fiscal Year ..... : FY 2009-2010
- D2. Budget Unit Number (plus -Ship/-Bill codes in paren's) : 054-00-00-6000-0
- D3. Requisition Number..... : 2009-062
- D4. Department Name..... : Public Works
- D5. Contact Person..... : Martin Wilder
- D6. Phone..... : x8755

- K1. Contract Type (check one):  Professional Service  Capital Project/Construction
- K2. Brief Summary of Contract Description/Purpose : Design services for recycled water districbution
- K3. Original Contract Amount..... : \$121,800
- K4. Contract Begin Date .....
- K5. Original Contract End Date..... : June 30, 2010
- K6. Amendment History (leave blank if no prior amendments):  

<u>Seq#</u>	<u>EffectiveDate</u>	<u>ThisAmndt</u>	<u>AmtCum</u>	<u>AmndtTo</u>	<u>DateNew</u>	<u>TotalAmt</u>	<u>NewEnd</u>	<u>Date</u>	<u>Purpose (2-4 words)</u>
			\$	\$		\$			
- K7. Department Project Number..... : RWDIST

- B1. Is this a Board Contract? (Yes/No) ..... : Yes
- B2. Number of Workers Displaced (if any) .....
- B3. Number of Competitive Bids (if any) .....
- B4. Lowest Bid Amount (if bid)..... : \$
- B5. If Board waived bids, show Agenda Date.....
- B6. ... and Agenda Item Number..... : #
- B7. Boilerplate Contract Text Unaffected? (Yes / or cite ¶¶) : Yes

- F1. Encumbrance Transaction Code..... : 1701
- F2. Current Year Encumbrance Amount..... : \$121,800
- F3. Fund Number .....
- F4. Department Number..... : 054
- F5. Division Number (if applicable).....
- F6. Account Number..... : 8200
- F7. Cost Center number (if applicable) .....
- F8. Payment Terms .....

- V1. Vendor Numbers (A=uditor; P=urchasing) ..... : 624480
- V2. Payee/Contractor Name..... : Penfield & Smith
- V3. Mailing Address..... : 210 East Enos Drive, Suite A
- V4. City State (two-letter) Zip (include +4 if known) : Santa Maria CA 93454
- V5. Telephone Number .....
- V6. Contractor's Federal Tax ID Number .....
- V7. Contact Person .....
- V8. Workers Comp Insurance Expiration Date .....
- V9. Liability Insurance Expiration Date[s] (G=enl; P=rofl): 9/01/2009
- V10. Professional License Number..... : #



V11. Verified by *(name of County staff)* .....: Martin Wilder

V12. Company Type *(Check one)*:  Individual  Sole Proprietorship  Partnership  Corporation

**I certify:** information complete and accurate; designated funds available; required concurrences evidenced on signature page.

Date : Authorized Signature .....

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