

**COUNTY OF SANTA BARBARA
COMMUNITY DEVELOPMENT BLOCK GRANT**

SUBRECIPIENT AGREEMENT

THIS AGREEMENT is made and entered into on June 25, 2008, by and between the County of Santa Barbara (“County”) and Casmalia Community Services District (“District”) with reference to the following facts:

A. County has entered into a Cooperation Agreement for Community Development Block Grant Funds for Three Federal Fiscal Years (2007–2009) (“Cooperation Agreement”) with the Cities of Lompoc, Buellton, Carpinteria and Solvang to administer and carry out the County’s Community Development Block Grant (CDBG) Program as part of an Urban County Consortium under the Housing and Community Development Act of 1974, as amended (“the Act”); and

B. County has the authority to undertake the installation of public improvements or facilities as specifically authorized in the HUD Common Rule at 24 Code of Federal Regulations (CFR) Section 570.201(c); and

C. County has adopted the 2007-2010 Consolidated Plan and a 2007 Budget for CDBG Programs for FY 2007-2008 (“the Program”); and

D. District desires to participate in the Program for the purposes of obtaining funding for the following activities: development and distribution of a water distribution system improvements including construction of a new tank, construction of the improvements (the “Project”).

NOW, THEREFORE, for good and valuable consideration, County and District agree as follows:

1. AGREEMENT ADMINISTRATION. The Director of County Housing and Community Development Department (HCD Director) is fully authorized to act for County in the administration of this Agreement consistent with its provisions. The HCD Director may delegate, in writing, any of his/her duties under this Agreement.

2. SCOPE OF WORK AND PHASES. District agrees to perform, or have performed on its behalf all tasks set forth under the heading “Phase I” in the scope of work attached hereto and incorporated by this reference as Exhibit A (“Scope of Work”).

A. As set forth in more detail in the Scope of Work, Phase I Tasks are those activities necessary for the preparation and distribution of a request for proposals (“RFP”) for management oversight and preparation of a bid package (“Bid Package”) for water distribution upgrades necessary to meet all regulatory requirements and to provide safe drinking water to

customers of the District (“System Upgrades”). In the event that the District receives responses to the Bid Package that satisfy District requirements and the Phase II Conditions Precedent as set forth in Paragraph 3 below, then District shall notify County of its intention to proceed to Phase II of the Scope of Work.

- B. As set forth in more detail in the Scope of Work, Phase II Tasks are those activities necessary for the actual management and construction of the System Upgrades as further set forth in the Scope of Work.

3. Phase I Conditions Precedent. County shall have no obligation to fund Phase I Tasks until the following conditions have been satisfied:

- A. The District has developed and County has reviewed and provided comments on a work plan for the retention of a consultant to undertake Phase I Tasks at the direction of the District Board of Directors (“Consultant”), and
- B. The County has reviewed and provided comments on the proposed contract for the Consultant.
- C. This District is in compliance with the insurance and indemnification requirements set forth in Exhibit “C” attached hereto and incorporated by this reference.

4. Phase II Conditions Precedent. County shall have no obligation to fund Phase II Tasks until the following conditions have been satisfied:

- A. The County has reviewed and provided comments on the response to the Bid Package received from the entity that the District proposes to hire for Phase II Tasks.
- B. The amount of the proposed contract for Phase II Tasks is equal to or less than the amount that the District has available for Phase II Tasks including funding being received pursuant to this Agreement.
- C. The District has completed all required environmental analysis for the Project including satisfaction of all applicable requirements under the California Environmental Quality Act and the National Environmental Policy Act.
- E. The District is in compliance with the insurance and indemnification requirements set forth in Exhibit “C” attached hereto and incorporated by this reference.

5. FUNDING LIMITATIONS. Funds under this Agreement shall only be used for the purposes described in the operating budget (“Budget”) attached hereto as Exhibit B for those tasks specifically described in the Scope of Work.

6 GEOTECHNICAL PREDEVELOPMENT WORK. Notwithstanding Section 5 above, the Parties anticipate that it may be necessary to perform geotechnical work during the development of the Bid Package. If the District determines, and the County concurs in writing, that a geotechnical study is necessary, then up to a total of Seventy Five Thousand Dollars (\$75,000) of Phase II Funds can be moved from Phase II activities to pay for such geotechnical work upon the mutual agreement of District and County.

7. TIME OF PERFORMANCE. District’s performance of Phase I Tasks shall commence on or after June 25, 2008, and shall be completed not later than March 31, 2009. In the event District elects to proceed to Phase II and the Phase II Conditions Precedent have been satisfied, the Task II Tasks shall commence on or after October 1, 2008, and shall be completed not later than August 31, 2009.

8. SOURCES AND AVAILABILITY OF FUNDS. It is understood by the parties hereto that the funds being used for the purposes of this Agreement are funds furnished to County through HUD pursuant to the provisions of the CDBG Program. In full recognition of the funding source and notwithstanding any other provision of this Agreement, the maximum amount of CDBG funds that may be provided pursuant to this Agreement shall not exceed the greater of (i) Four Hundred Thousand Dollars (\$400,000). In addition funds under this Agreement shall only be provided by County as reimbursement to District for expenses actually and validly incurred by District for the Project.

9. COMPENSATION.

A. REIMBURSEMENT AFTER PERFORMANCE. Subject to Paragraphs 4, 5 and 8 above, and 11.I. below, County shall reimburse District an amount not to exceed Fifty Thousand Dollars (\$50,000) for Phase I Tasks and Three Hundred and Fifty Thousand Dollars (\$350,000) for Phase II Tasks, which together constitutes full and complete reimbursement for the performance of this Agreement.

B. USE OF FUNDS. All funds approved under this Agreement shall be used solely for costs approved in the Budget. Funds shall not be used as a cash advance, as security to guarantee payments for any non-program obligations, or as loans for non-program activities. District shall not incur any expenditure for travel outside County’s jurisdictional boundary. District certifies and agrees that it will not use any funds provided through this Agreement for entertainment or for gifts. County shall not pay for any services provided by District which are funded by other sources.

C. METHOD OF PAYMENT. The funds to be paid under this Agreement shall be disbursed to District only after its full and satisfactory performance of the budgeted item for which payment is sought and after receipt and approval by County of a detailed invoice in a form

approved by the HCD Director. Funds shall be disbursed to District with 60 days of receipt by County of an invoice consistent with the terms of this Agreement.

D. **CHANGES IN COMPENSATION.** County reserves the right to reduce compensation when County's fiscal monitoring indicates District's rate of expenditure will result in unspent funds at the end of the program year. Change in the grant allocation will be made after consultation with District. Such changes shall be made by written amendment.

E. **FINAL PAYMENT.** County reserves the right to withhold ten percent (10%) of the total amount to be paid pursuant to this Agreement on a completed project until completion is certified by the HCD Director after which County shall pay the withheld ten percent (10%) to District in accordance with this Agreement.

10. ASSURANCES. District hereby assures and certifies it has complied with the Act, applicable regulations, policies, guidelines, and requirements, and that it will comply with all applicable federal, state, and local laws, regulations, 24 CFR Part 85, and OMB Circular A-87 as these relate to acceptance and use of federal funds for this federally assisted program. District gives assurance and certifies it will comply with provisions of 41 CFR 60-4.1 and 24 Code of Federal Regulations 135.20, each of which are incorporated herein by this reference. District further assures and certifies it will comply with any future amendments or changes to these required assurances and that during the terms of this Agreement will maintain current copies of these assurances at the address specified in Paragraph 32 of this Agreement.

11. PERFORMANCE STANDARDS.

A. **COMPLIANCE.** District agrees to comply with specific project implementation and expenditure standards as adopted by the Board of Supervisors.

B. **PROCEDURES.** District agrees to utilize County forms and procedures and bill for expenditures not more often than once each calendar month.

C. **ACCOUNTING.** District shall establish and maintain on a current basis an adequate accrual accounting system in accordance with generally accepted accounting principles and standards. The District agrees to comply with 24 CFR 84.21-28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

D. **AUDIT AND INSPECTIONS.** District shall make available at any time during normal business hours, to authorized County, HUD, and the Comptroller General of the United States personnel or any of their authorized representatives for inspection, its performance, financial, and all other records pertaining to performance of this Agreement, and allow County personnel or authorized representatives to inspect and monitor its facilities and program operations, including the interview of District staff and program participants as required by the County. District agrees to submit all necessary data to complete the Consolidated Annual Performance and Evaluation Report (CAPER) in order to monitor program accountability and progress in accordance with HUD

requirements at the time and in the format designated by the HCD Director. Any deficiencies noted in audit reports must be fully cleared by District within thirty (30) days after receipt by District. Failure of District to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. District hereby agrees to have an annual agency audit conducted in accordance with current County policy concerning subrecipient audits and OMB Circular A-133.

E. PERFORMANCE MONITORING. County will monitor the performance of the District against goals and performance standards as stated in Exhibits "A." and "B". Substandard performance as determined by County will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by District within a reasonable period of time after being notified by County, contract suspension or termination procedures may be initiated.

F. PROGRESS REPORTS. District shall submit regular Progress Reports to County in the form, content, and frequency as required by County.

F. REVENUE DISCLOSURE. District shall make available to County's or HUD's representatives for inspection and audit, upon request at any time during the duration of this Agreement and during a period of five (5) years thereafter, all of its books and records relating to the operation of each project or business activity which is funded in whole or in part with federal or state grant monies, whether or not such grants are received through County. Failure of District to comply with the requirements of this Subsection constitutes a material breach and grounds upon which County may cancel, terminate, or suspend this Agreement.

G. JOINT FUNDING. For programs in which there are sources of funds in addition to CDBG funds, District shall provide proof of such funding. All restrictions and/or requirements provided for in this Agreement relative to accounting, budgeting, and reporting apply to the total program regardless of funding source. District shall keep separate financial records for each of its programs and services.

H. FINANCIAL PHASE OUT PERIOD. District agrees to complete all necessary financial phase out procedures required by the HCD Director not later than ninety (90) calendar days after the expiration date of the Agreement ("the financial phase out period"). County is not liable to reimburse any expenses or costs associated with this Agreement that are submitted after the financial phase out period. Thereafter, those funds, if any, not paid to District under this Agreement will be immediately reprogrammed by County into other eligible activities in County. The HCD Director may request a final financial audit for activities performed under this Agreement at the expiration of the financial phase out period.

12. DISTRICT PROPERTY.

A. NONEXPENDABLE PROPERTY.

1. Nonexpendable property means leased or purchased tangible personal property having a useful life of more than one (1) year and an acquisition cost of Three Hundred Dollars (\$300.00) or more per unit. Nonexpendable property includes, but is not limited to, office equipment, real property, any interest in, or encumbrance of such real property, and funds derived from the sale or disposition of nonexpendable property. District shall obtain at least three (3) documented bids prior to purchasing nonexpendable property and agrees to purchase from the lowest responsible bidder. Purchase of property costing One Thousand Dollars (\$1,000.00) or more per unit requires prior written approval of the HCD Director.

2. Utilization of funds derived from the sale or disposition of nonexpendable property requires prior approval of County and shall otherwise comply with all applicable laws and regulations. If this Agreement is terminated, then County reserves the right to direct the final disposition of all nonexpendable property acquired under this Agreement, in addition to all funds derived from its sale or disposition.

3. District agrees all nonexpendable property shall be properly identified, inventoried, and charged at its actual price, after deduction of all cash discounts, rebates, and allowances received by District. This inventory shall be made available to the HCD Director upon request.

B. EXPENDABLE PROPERTY. Expendable property is all tangible personal property other than nonexpendable property. The purchase or disposition of expendable property valued at One Thousand Dollars (\$1,000.00) or more per unit requires the prior written approval of the HCD Director.

C. PURCHASING DEADLINES. District agrees to purchase all administrative equipment approved in this Agreement prior to the last three (3) months of its term. All purchased administrative equipment shall be in the possession of District prior to the last two (2) months of this Agreement. After County approves administrative equipment necessary for performance, District may purchase such equipment through County's Purchasing Department or from private vendors, provided requirements are met as specified by County. District may purchase from an District-related agency/organization only if funding source procurement requirements are met, prior authorization is obtained in writing from County, and no private gain accrues to District or to any of its employees or officers.

13. ASSIGNMENT. This Agreement is not assignable, in whole or in part, by District without the prior written consent of County. Any attempt by District to assign any performance of the terms of this Agreement is null and void and constitutes a material breach of this Agreement.

14. OUTSIDE EMPLOYMENT. In its written personnel policies, District shall prohibit any outside employment of its employees that:

- A. Interferes with the efficient performance of the employee's duties in the program supported by this Agreement; or
- B. Involves a conflict of interest or an appearance of conflict with the employee's duties in the program supported by this Agreement; or
- C. Occurs during the employee's regular or assigned working hours in the program supported by this Agreement, unless, during the entire day on which such employment occurs, the employee is on vacation, compensatory leave, or leave without pay.

District agrees to establish effective procedures to enforce these provisions and provide specific procedures regarding outside employment of its full-time personnel whose duties are not readily confined to a standard workday or workweek. Such personnel include but are not limited to executive directors, neighborhood workers, and other employees whose responsibilities require them to be available for duty during evenings or on weekends.

15. INDEPENDENT CONTRACTOR. In the performance of this Agreement, each party will be acting in an independent capacity and not as agent, employee, partner, joint venture, or associate of the other. The employees or agents of one party shall not be deemed or construed to be the agents or employees of the other party for any purpose whatsoever. County shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as District is an independent contractor.

16. WORKER'S COMPENSATION. District shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

17. COMPLIANCE WITH LAWS. The parties agree to be bound by applicable federal, state, and local laws, ordinances, regulations, and directives. This Agreement is subject to and incorporates the terms of the Act; of 24 CFR Part 570; of 24 CFR Part 85; of OMB Circular A-87; and of the Rehabilitation Act of 1973 (Public Law 93-112). This Agreement is subject to and incorporates the Copeland Anti-Kickback Act of 1968 (Public Law 90-577), which provides that "whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever, induces any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under his/her contract of employment, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

18. NON-DISCRIMINATION. No person shall, on the grounds of race, sex, creed, disability, color, religion, or national origin, be excluded from participation in, refused the benefits of, or otherwise subjected to discrimination in any activities, programs or employment supported by this Agreement. District agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607,

as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

19. CIVIL RIGHTS COMPLIANCE. District agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act (HCDA) of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107, and 12086.

20. Section 504. District agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. County shall provide District with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

21. RELIGIOUS AND POLITICAL ACTIVITIES. District agrees funds under this Agreement will be used exclusively for performance of the services under this Agreement, and that no funds made available under this Agreement shall be used to promote any religious or political activity. District further agrees it will not perform or permit to be performed any religious or political activities in connection with the performance of this Agreement.

If District is, or may be deemed to be, a religious or denominational institution or organization, or an organization operated, controlled, or supervised by a religious or denominational institution or organization, then District hereby agrees in connection with performance of this Agreement, District:

- A. Will not discriminate against any employee or applicant for employment on the basis of religion, nor limit employment or give preference in employment to any person on the basis of religion;
- B. Will not discriminate against any person applying for the Services on the basis of religion, nor limit such services or give preference to any person on the basis of religion;
- C. Will not provide religious instruction or counseling, conduct religious worship or services, engage in religious proselytizing, or exert religious influence of any kind in the provision of the Services; provided, however, that an District that is a faith-based organization (FBO) may use space in their facilities to provide CDBG-funded services, without removing religious art, icons, scriptures, or other religious symbols provided that the FBO does not use direct CDBG funds to support any inherently religious activities, including but not limited to worship, religious instruction, and prostelytization.
- D. Agrees the funds received under this Agreement shall not be used to construct, rehabilitate, or restore any facility owned by the District wherein the Services are provided, except that minor repairs may be made if such repairs are directly related to

services, and, in dollar amounts, constitute only a minor portion of the CDBG expenditures for the Services.

22. NEPOTISM. District shall not hire or permit the hiring of any person to fill a position funded through this Agreement, if a member of that person's immediate family is employed in an administrative capacity by City's or County's CDBG Program or by the Community Development Programs Office administering the CDBG Program. For the purposes of this Agreement, "immediate family" means spouse, child, mother, father, brother, sister, uncle, step-parent, and stepchild. "Administrative capacity" means having selection, hiring, supervisory, or management responsibilities, including serving on District's governing body.

23. LOBBYING. No federally appropriated funds have been or will be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or an employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal Agreement, the making of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal Agreement, grant, loan, or cooperative agreement. If any funds other than federally appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal Agreement, grant, loan, or Cooperative Agreement, then County shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

23. HATCH ACT. District agrees no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

25. CONFLICT OF INTEREST. District, its agents, employees, and volunteers shall comply with all applicable federal, state, and local laws and regulations governing conflict of interest. To this end, District will make available to its agents, employees, and volunteers copies of all applicable federal, state, and local laws and regulations governing conflict of interest. District shall furnish to County, prior to performance of its project(s) under this Agreement, a written list of all current or proposed sub-grantees/subcontractors, vendors, and personal service providers, including subsidiaries of District, who will receive Ten Thousand Dollars (\$10,000.00) or more during the term of this Agreement. The list shall include the names, addresses, telephone numbers, identification of principal(s), and a description of services to be provided. During the term of this Agreement, District shall notify the County in writing of any change in the list of sub-grantees/subcontractors, vendors, personal services providers, or subsidiaries of District within fifteen (15) days after any change.

District agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. District shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of District shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer or elected or appointed official of County, District, County or any designated public agency.

26. AFFIRMATIVE ACTION. District shall make every effort to ensure that all projects funded wholly or in part by CDBG funds shall provide equal employment and career advancement opportunities for minorities and women. In addition, District shall make every effort to employ residents within the jurisdictional boundaries of County and shall keep a record of the positions that have been created directly by, or as a result of, its Program(s).

A. District agrees it will incorporate, or cause to be incorporated, into any Agreement for construction work or modification thereof, as defined in Executive Order 11246, which is paid for in whole or in part with funds obtained from County, the following equal opportunity clause:

“During the performance of this Agreement, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County of Santa Barbara setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.

(3) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(4) The Contractor will cause the foregoing provisions to be inserted in all subcontracts for work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.”

B. District is responsible for complying with the provisions of 24 CFR, Part 135, “Employment Opportunities for Business and Lower Income Persons in Connection with Assisted Project.” District will also ensure that the provisions of 24 CFR, Part 135, are included in any subcontracts. District agrees to affirmatively advertise material bids and to solicit participation from small, minority-owned, and female-owned businesses to the maximum extent possible. As used in this contract, the terms “small business” means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and “minority and women’s business enterprise” means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian Americans, and American Indians. District may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

C. District will refrain from entering into any contract modification subject to Executive Order 11246 of September 24, 1965, as amended, with any contractor debarred from or ineligible for government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Secretary of Housing and Urban Development or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

27. INDEMNIFICATION. District agrees to abide by the indemnification requirements set forth in Exhibit “C” attached hereto and incorporated by this reference.

28. AUDIT EXCEPTIONS BY STATE AND FEDERAL AGENCIES. District agrees that in the event its Program hereunder is subject to audit exceptions by appropriate state and federal audit agencies, it shall be responsible for complying with such exceptions and paying for the full amount of County’s liability to the funding agency resulting from such audit exception.

29. INSURANCE. Without limiting District’s indemnification of County, District shall provide and maintain at its own expense during the term of this Agreement a program of insurance satisfactory to County covering its operations hereunder. The details of such insurance shall be specifically cited at Exhibit “C” for each project covered by this Agreement. District’s satisfaction of the terms of this Paragraph is a condition precedent to commencement of services under this Agreement and to reimbursement of District by County. If the District

subcontracts any professional services the District shall require the subcontractor to provided insurance specifically cited at Exhibit “D” for each project covered by this Agreement.

30. TERMINATION OF AGREEMENT FOR CAUSE.

If County determines that District has incurred obligations or made expenditures for purposes which are not permitted or are prohibited under the terms and provisions of this agreement, or if County determines District has failed to fulfill its obligations under this agreement in a timely and professional manner, or if District is in violation of any of the terms or provisions of this agreement, or if County is given notice by HUD of termination of HUD’s Grant Agreement with County, or if District should be adjudged to be bankrupt, or if District makes a general assignment for the benefits of District creditors, or if a receiver should be appointed in the event of District insolvency, then County shall have the right to terminate this Agreement effective immediately upon giving written notice thereof to District. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to effective date of such termination. Subject to the availability of CDBG funds, the District shall be paid for all work satisfactorily completed under the terms of this agreement prior to the effective date of such termination. If County’s termination of the District for cause is defective for any reason, including but not limited to County’s reliance on erroneous facts concerning District’s performance, or any defect in the notice thereof, then County’s maximum liability shall not exceed the amount payable to District under Paragraph 5 or 6 of this Agreement.

A. This Agreement may be terminated at any time by either party upon giving thirty-days’ (30-days’) written notice to the other party. The HCD Director shall give such notice of termination on behalf of County. County may immediately terminate this Agreement upon the termination, suspension, discontinuation, or substantial reduction in CDBG funding for the Services or if for any reason the timely completion of the work under this Agreement is rendered improbable, infeasible, or impossible. In such event, District shall be compensated for all services actually rendered and all necessarily incurred costs performed in good faith in accordance with the terms of this Agreement.

B. When the HCD Director has reasonable grounds to question District’s fiscal accountability, financial soundness, or compliance with this Agreement, he/she may suspend this Agreement for up to sixty (60) days upon three-days’ (3-days’) notice to District of his/her intention so to do, pending an audit or other resolution of such questions. In no event, however, shall any revision made by County affect expenditures and legally binding commitments made by District before it receives notice of such revision, provided that such amounts have been committed in good faith, are otherwise allowable, and are consistent with HUD cash withdrawal guidelines.

C. Upon termination of this Agreement, County reserves the right to determine the final disposition of any program income as described in 24 CFR 570.504 and 24 CFR Part 85.25. Final disposition may include the County taking possession of any such program income.

31. REVERSION OF ASSETS. Pursuant to 24 C.F.R. Section 570.503 (b)(7), upon termination or expiration of this Agreement, District shall transfer to County any CDBG funds on hand at the time of termination or expiration and any accounts receivable attributable to the use of CDBG funds. Any real property acquired or improved with CDBG funds in excess of \$25,000 must be used to meet one or more of the national objectives in 24 C.F.R. §570.208 until five (5) years after the expiration of this Agreement or, disposed of in such a manner that results in the County being reimbursed in the amount of the current fair market value of the property less any portion attributable to non-CDBG funds involved in the acquisition of, or improvements to, the real property. During that five year time period, any records or assets under the District's control that were acquired or improved, in whole or in part, with CDBG funds will be returned to the County within thirty (30) days after the termination or expiration date of this Agreement.

32. NOTICES AND REPORTS. All notices, reports, and statements shall be in writing and served in person or by first class U.S. Postal Service, postage prepaid, at the following addresses:

To District:

Board Chairperson
Casmalia Community Services District
P.O. Box 207
Casmalia, California 93429
Attn: Robin Gorley or Chairperson

To County:

HCD Director
County of Santa Barbara
105 E. Anapamu Street, Suite 105
Santa Barbara, California 93101
Attn: Housing Finance Division Manager

33. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between County and District for the Services and use of funds available under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between County and District with respect to this Agreement.

34. LABOR STANDARDS COMPLIANCE. District shall be responsible to conduct procurement activities in compliance with federal regulations and for the payment of prevailing wages under the Davis-Bacon Act for all work undertaken under this Agreement. District shall require that HUD Form 4010 attached as Exhibit E is complied with and be included as an attachment to all contracts for construction work done pursuant to this Agreement.

35. WAIVER. Any waiver by County of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by County to take action on any breach or default of District or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to District to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by County to any act or omission by District shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for District's written consent to future waivers.

36. OTHER AGREEMENTS. District represents that it has not entered into any agreements that are inconsistent with the terms of this Agreement. District shall not enter into any agreements that are inconsistent with the terms of this Agreement without an express waiver by County in writing.

37. AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this Agreement must be in writing, and shall be made only if executed by both County and District.

38. SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF County has caused this Agreement to be executed and the County seal affixed, and attested by the County Clerk, and District has subscribed the same through its authorized officer.

APPROVED AS TO FORM:

California:

County of Santa Barbara,
a political subdivision of the State of

DANIEL J. WALLACE
COUNTY COUNSEL

By: _____
Salud Carbajal
Chairman, Board of Supervisors

By: _____
Deputy County Counsel

District:

By _____

Title: _____

APPROVED AS TO FORM:

BOB GEIS
AUDITOR CONTROLLER

By: _____
Mark Paul Senior Financial Analyst

Expenditure Accounting Information
Fund: _____ Dept: _____
Line Item: _____ Program: _____

EXHIBIT A
Scope of Work

PHASE I TASKS

1. Recruit a consultant to design a water distribution upgrades necessary to meet all regulatory requirements and to provide safe drinking water to customers of the District to prepare and distribute a bid package (“Bid Package”).

2. Complete all required environmental analysis and review for the Project including satisfaction of all applicable requirements under the California Environmental Quality Act and the National Environmental Policy Act.

3. Prepare a request for proposals for construction oversight (“RFP”).

3. Submit the draft RFP and draft Bid Package to County for its comments.

4. Distribute the RFP.

5. Distribute the Bid Package.

6. Evaluate responses the Bid Package and select a contractor.

PHASE II TASKS

1. Evaluate responses to the Bid Package and select a contractor.

1. Construct the Water System Upgrades.

EXHIBIT B

**Casmalia Water Distribution System Improvements
Budget**

Phase I

<u>Activity</u>	<u>Allowance</u>
Geotechnical Site Work and Preparation of Work Specification Write-Up	\$ 35,000
Preparation and Distribution of Bid Package for Installation of Water Distribution Upgrades in Compliance with Federal Labor Standards and Preparation and Distribution of a Request for Proposals (“RFP”) for Installation Management Oversight	<u>15,000</u>
TOTAL Allowance Not to Exceed	\$ 50,000

Phase II

<u>Activity</u>	<u>Allowance</u>
Installation of Water Distribution Upgrades Including Water Tank	\$255,000
Installation of Soil Strengthening Requirements	75,000
Management Oversight of Installation Activities	<u>20,000</u>
TOTAL Allowance Not to Exceed	\$350,000
TOTAL Budget Allowance Not to Exceed	\$400,000

EXHIBIT C

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS for contracts NOT requiring professional liability insurance

INDEMNIFICATION

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.

INSURANCE

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 coverages are 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 [above] 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 if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."

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.

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 Program Administrator 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.

EXHIBIT D

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

INDEMNIFICATION

Indemnification pertaining to other than Design 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 Design Professional Services:

CONTRACTOR shall defend, indemnify, and hold COUNTY, its officers, employees, and agents harmless from and against any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct 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.

INSURANCE

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 coverages are 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.

2. **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.
3. **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 [above] 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 if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."

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 Program Administrator 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.