

**8. CONSENT AGENDA**

- i. Approve Professional Services Agreement with Johnson Engineering, Inc., for FY10-11 NPDES – related work in the amount of \$70,061 and authorize the City Manager to execute same (the funds are included in the adopted FY11 budget)

Memorandum

DATE: October 5, 2010

TO: City Council

THROUGH: City Manager Judie Zimomra

FROM: Public Works Director Gates Castle *ADC*

RE: Engineering Services in Conjunction with the City's National Pollutant Discharge Elimination System Permit.

Recommendation: Approve Professional Services Agreement with Johnson Engineering, Inc. for FY 10-11 NPDES – related work in the amount of \$70,061.00, and authorize the City Manager to execute the agreement.

Under the 1987 re-authorization of the Clean Water Act, Congress directed the U.S. Environmental Protection Agency to institute a National Pollutant Discharge Elimination System (NPDES) permitting program for stormwater systems. On July 30, 1997, an NPDES permit was issued to Lee County as lead applicant and Sanibel, along with Cape Coral, Fort Myers, the water management districts and the Florida Department of Transportation as co-applicants. Effective October 1, 2000, the Florida Department of Environmental Protection assumed the permitting responsibility for the NPDES permits in Florida. The current Lee County/Sanibel permit was scheduled to expire in 2010, but has been extended into 2011 while DEP works on the new permit.

On October 3, 2006, the City Council approved Johnson Engineering, Inc to perform the City's NPDES-related work for the next 5 years. The attached Agreement covers the work for the final year of the five-year period. The fees presented in the Agreement are for FY 10-11 work to meet permit conditions and include \$6,500 for engineering, \$56,401 for water quality sampling and testing and \$7,160 in reimbursable expenses, for a total of \$70,061. The fees in subsequent years will be presented to Council for approval on an annual basis.

Staff recommends that the Council authorize the City Manager to execute the Professional Services Agreement (copy attached) with Johnson Engineering for FY 10-11 NPDES-related work for a fee of \$70,061. The FY 10-11 Budget (Fund 101) includes \$30,000 for NPDES-related engineering work and \$60,000 for water quality testing required under the permit.

C: City Attorney Ken Cuyler  
Finance Director Sylvia Edwards

# PROFESSIONAL SERVICES AGREEMENT

JEI Use Only:

Project No. 00020339-011

Project Manager: DKR

**THIS IS AN AGREEMENT** made this \_\_\_\_ day of October 2010, between **CITY OF SANIBEL** ("OWNER") and **JOHNSON ENGINEERING, INC.** ("CONSULTANT").

For **National Pollutant Discharge Elimination System (NPDES) Related Work** (the "Project").

OWNER and CONSULTANT in consideration of their mutual covenants herein agree in respect of the performance or furnishing of professional engineering, surveying, planning, environmental consulting, landscape architecture and/or other related services ("Services") by CONSULTANT with respect to the Project and the payment for those services by OWNER as set forth below.

## SECTION 1 - GENERAL

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### **Notice to Proceed:**

Execution of this Agreement by CONSULTANT and OWNER constitutes OWNER's written authorization to CONSULTANT to proceed on the date first above written with the Services described in Exhibit A, ("Scope of Services") and in the other exhibits listed below. This Agreement will become effective on the date first above written.

### **Standard of Care:**

CONSULTANT shall perform for or furnish to OWNER professional engineering and other related services for the Project to which this Agreement applies as hereinafter provided. CONSULTANT shall serve as OWNER's prime design professional and engineering representative for the Project providing professional engineering consultation and advice with respect thereto. CONSULTANT may employ such Sub-Consultants as CONSULTANT deems necessary to assist in the performance or furnishing of professional engineering and related services hereunder. CONSULTANT shall not be required to employ any Sub-Consultant unacceptable to CONSULTANT.

The standard of care for all professional engineering and related services performed or furnished by CONSULTANT under this Agreement will be the care and skill ordinarily used by members of CONSULTANT's profession practicing under similar conditions at the same time and in the same locality. CONSULTANT makes no warranties, express or implied, under this Agreement or otherwise, in connection with CONSULTANT's services.

### **Definitions:**

Whenever used in this Agreement, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

**Agreement:** Agreement means this Agreement for Professional Services between OWNER and CONSULTANT for the professional services of CONSULTANT including exhibits listed in Section 6 of this Agreement.

**Services:** The services to be performed for or furnished to OWNER by CONSULTANT described in Exhibit A of this Agreement.

**Contractor:** The person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.

**CONSULTANT's Sub-Consultant:** The person or entity having a contract with CONSULTANT to perform or furnish services as CONSULTANT's independent professional associate or consultant engaged directly on the Project.

**Reimbursable Expenses:** The expenses incurred directly in connection with the performance or furnishing of services for the Project for which OWNER shall pay CONSULTANT as indicated in Exhibit B "Compensation".

## **SECTION 2 – PAYMENTS TO CONSULTANT FOR SERVICES AND REIMBURSABLE EXPENSES**

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### **Compensation:**

For CONSULTANT's services. OWNER shall pay CONSULTANT for services performed or furnished on the basis set forth in Exhibit B ("Compensation")

For Sub-Consultant's services. OWNER shall pay CONSULTANT for services performed or furnished by CONSULTANT's Sub-consultants on the basis set forth in Exhibit B.

For Reimbursable Expenses. In addition to payments provided for CONSULTANT and CONSULTANT's Sub-Consultants, OWNER shall pay CONSULTANT for reimbursable expenses incurred by CONSULTANT as set forth in Exhibit B.

### **Invoices:**

Invoices for CONSULTANT's services, Sub-Consultants and Reimbursable Expenses will be prepared in accordance with CONSULTANT's standard invoicing practices and will be submitted to OWNER by CONSULTANT at least monthly. The amount billed for these services will be calculated on the basis set forth in Exhibit B. Invoices will be paid in accordance with the OWNER's Prompt Payment Policy.

### **Other Provisions Concerning Payments:**

Unpaid Invoices. If OWNER fails to make any payment due CONSULTANT for services and expenses in accordance with the OWNER's Prompt Payment Policy, CONSULTANT may, after giving seven day's written notice to OWNER, suspend services under this Agreement until CONSULTANT has been paid in full all amounts due for services, expenses and charges. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

If either the OWNER or CONSULTANT terminates this Agreement, CONSULTANT will be paid for all services performed or furnished in accordance with this Agreement by CONSULTANT through the date of termination on the basis specified in Exhibit B including any costs reasonably incurred by CONSULTANT that are directly attributable to the termination. CONSULTANT will be paid for the charges of CONSULTANT's Sub-Consultants employed to perform or furnish services to the extent such services have been performed or furnished in accordance with this Agreement through the effective date of the termination. CONSULTANT also will be paid for all unpaid Reimbursable Expenses.

Records of CONSULTANT's costs pertinent to CONSULTANT's compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to OWNER at cost on request prior to final payment for CONSULTANT's services.

## **SECTION 3 – REQUIRED ADDITIONAL SERVICES**

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### **Additional Services:**

Should the OWNER request the CONSULTANT to provide and perform services for this project which are not set forth in Exhibit A, the CONSULTANT will provide and perform such Additional Services as may be agreed to in writing by both the OWNER and CONSULTANT. Such Additional Services shall constitute a continuation of the services covered under this Agreement in accordance with the covenants, terms and provisions set forth in this Agreement and any amendment(s) thereto.

Additional Services shall be authorized as a Supplemental Agreement. The CONSULTANT will not provide or perform any additional services until a written Supplemental Agreement shall have been agreed to and executed by both the OWNER and CONSULTANT. Each Supplemental Agreement shall set forth a detailed description of (1) the scope of the additional services requested; and (2) the basis of compensation.

## **SECTION 4 – OWNER'S RESPONSIBILITIES**

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OWNER shall do the following in a timely manner so as not to delay the services of CONSULTANT and shall bear all costs incident thereto:

Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by CONSULTANT under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to CONSULTANT's services for the Project.

Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints.

Assist CONSULTANT by placing at CONSULTANT's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

OWNER shall be responsible for, and CONSULTANT may rely upon, the accuracy and completeness of all reports, data and other information furnished to CONSULTANT by OWNER. CONSULTANT may use such reports, data and information in performing or furnishing services under this Agreement.

Arrange for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform services under this Agreement.

Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by CONSULTANT (including obtaining advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate with respect to such examination) and render in writing decisions pertaining thereto.

Obtain, secure and make application for any and all forms of permits and/or approvals which might be necessary for the design and/or construction of the Project as described herein. Pay directly to government authorities for all permit applications. Notwithstanding any other provision herein to the contrary, it is expressly understood by and between the parties hereto, while the CONSULTANT may, according to the Scope of Services, have duties and/or responsibilities with respect to the assembly of data and/or completion of forms associated with applications for permits and/or approvals, it is expressly understood that the OWNER is solely responsible for the ultimate acquisition of any and all such permits and/or approvals. Notwithstanding any other provision herein to the contrary, the Scope of Services described herein, and/or as otherwise discussed by and between the parties to the Agreement, the following services constitute *Excluded Services*:

Noting, monitoring and/or advising the OWNER of any deadlines, expiration dates, limitations, and/or any/all forms of permits and/or approvals which might reasonably be necessary for the design and/or construction of the OWNER's project.

Provide, as may be required for the Project: Accounting, bond and financial advisory, independent cost estimating and insurance counseling services; and such legal services as OWNER may require or CONSULTANT may reasonably request with regard to legal issues pertaining to the Project.

## **SECTION 5 – GENERAL CONSIDERATIONS**

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The obligation to provide further services under this Agreement may be terminated:

For Cause, by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure, provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided from herein shall extend up to, but in no case more than, sixty days after the date of receipt of the notice.

By CONSULTANT:

Upon seven days' written notice if CONSULTANT believes that CONSULTANT is being requested by OWNER to furnish or perform services contrary to CONSULTANT's responsibilities as a licensed design professional; or upon seven days' written notice if the CONSULTANT's services for design or during the construction of the Project are delayed or suspended for more than ninety days for reasons beyond CONSULTANT's control; or upon assignment of this agreement or transfer of the Project by OWNER to any other entity without the prior written consent of CONSULTANT or upon material changes in the conditions under which this agreement was entered

into, the scope or services or the nature of the project and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes. In the case of termination by CONSULTANT, CONSULTANT shall have no liability to OWNER on account of such termination.

By OWNER:

For convenience upon seven (7) days written notice to CONSULTANT, effective upon the receipt of OWNER's notice by CONSULTANT.

**Reuse of Documents:**

All documents including Drawings and Specifications provided or furnished by CONSULTANT (or CONSULTANT's Sub-Consultants) pursuant to this Agreement are instruments of service in respect of the Project, and CONSULTANT and CONSULTANT's Sub-Consultants, as appropriate, shall retain an ownership and property interest therein (including the right of use, reuse, or modification) whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the occupancy of the Project by OWNER and others provided however, that all compensation due CONSULTANT has been paid in full. Such documents are not intended or represented to be suitable for use, reuse or modification by OWNER or others on extensions of the Project or on any other project. Any use, reuse, or modification without written verification or adaptation by CONSULTANT and CONSULTANT's Sub-Consultants, as appropriate, for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to CONSULTANT, or to CONSULTANT's Sub-Consultants. OWNER shall indemnify and hold harmless CONSULTANT and CONSULTANT's Sub-Consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by OWNER and CONSULTANT.

**Insurance:**

CONSULTANT shall maintain the following minimum insurance types and limits.

|    |                                      |                  |
|----|--------------------------------------|------------------|
| 1. | Worker's Compensation:               | Statutory Limits |
|    | E.L. Each Accident                   | \$ 1,000,000     |
|    | E.L. Disease – Each Employee         | \$ 1,000,000     |
|    | E.L. Disease – Policy Limit          | \$ 1,000,000     |
| 2. | General Liability (Occurrence):      |                  |
|    | Each Occurrence                      | \$ 1,000,000     |
|    | Fire Damage (any one fire)           | \$ 50,000        |
|    | Medical Expense (any one person)     | \$ 5,000         |
|    | Personal & Adv. Injury               | \$ 1,000,000     |
|    | General Aggregate                    | \$ 1,000,000     |
|    | Products Completion                  | \$ 1,000,000     |
| 3. | Excess Umbrella Liability:           |                  |
|    | Each Occurrence:                     | \$ 1,000,000     |
|    | Aggregate:                           | \$ 1,000,000     |
| 4. | Automobile Liability:                |                  |
|    | Combined Single Limit                |                  |
|    | Each Accident                        | \$ 1,000,000     |
| 5. | Professional Liability (Claims-made) | \$ 1,000,000     |

OWNER shall list CONSULTANT and CONSULTANT's Sub-Consultants as additional insureds on any general liability or property insurance policies carried by OWNER which are applicable to the Project. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to list CONSULTANT and CONSULTANT's Sub-Consultants as additional insureds with respect to such liability, property and other insurance purchased and maintained by Contractor, with the exception of professional liability coverage.

At any time OWNER may request that CONSULTANT, at OWNER's sole expense, provide additional insurance coverage, different limits or revised deductibles excess of those specified in this Agreement. If so requested by OWNER, and if commercially available, CONSULTANT shall obtain and shall require CONSULTANT's Sub-Consultants to obtain such additional insurance coverage, different limits or revised deductibles, for such periods of time as requested by OWNER, at OWNER's sole expense, and this Agreement will be supplemented to incorporate these requirements.

**Dispute Resolution:**

OWNER and CONSULTANT agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes") to non-binding mediation by a mediator mutually acceptable to both OWNER and CONSULTANT prior to either of them initiating litigation against the other. The cost of mediation will be shared equally between the OWNER and CONSULTANT.

**Controlling Law:**

This Agreement is to be governed by the laws of the State of Florida. In the event of any litigation between OWNER and CONSULTANT arising out of this Agreement, OWNER and CONSULTANT agree that the same shall be filed in the appropriate Florida state court having jurisdiction of the amount in controversy in the county where CONSULTANT's principal place of business is located.

**Expenses of Litigation:**

In the event litigation in any way related to the Services performed hereunder is initiated by the OWNER against the CONSULTANT and such litigation concludes with the entry of a final judgment favorable to the CONSULTANT, the OWNER shall reimburse the CONSULTANT for all of the CONSULTANT's reasonable attorney's and other expenses related to the litigation. Such expenses shall include, but shall not be limited to, the cost, determined at the CONSULTANT's normal hourly billing rates, of the time devoted to such litigation by the CONSULTANT's employees.

In the event litigation in any way related to the Services performed hereunder is initiated by the CONSULTANT against the OWNER and such litigation concludes with the entry of a final judgment favorable to the OWNER, the CONSULTANT shall reimburse the OWNER for all of the OWNER's reasonable attorney's and other expenses related to the litigation. Such expenses shall include, but shall not be limited to, the cost, determined at the OWNER's normal hourly billing rates, of the time devoted to such litigation by the OWNER's employees.

**Successors and Assigns:**

OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators, assigns and legal representatives of OWNER and CONSULTANT are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect of all covenants, agreements and obligations of this Agreement.

Neither OWNER nor CONSULTANT may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other. Unless expressly provided otherwise in this Agreement:

Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by CONSULTANT to any Contractor, Subcontractor, Supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and CONSULTANT.

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party, unless agreed in writing by OWNER and CONSULTANT. The OWNER agrees that the substance of the provisions of this paragraph shall appear in the Contract Documents.

**Notices:**

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

**Survival:**

All express representations, indemnifications or limitations of liability made in or given in this Agreement will survive the completion of all services of CONSULTANT under this Agreement or the termination of this Agreement for any reason.

**Severability:**

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONSULTANT, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**SECTION 6 – EXHIBITS**

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This Agreement is subject to the provisions of the following Exhibits (if checked) which are attached to and made a part of the Agreement:

- Exhibit A          “Scope of Services”
- Exhibit B          “Compensation”
- Exhibit C          “Construction Observation Services”
- Exhibit D          “Special Provisions”

This Agreement (consisting of pages 1 to 7, inclusive and the Exhibits identified above) constitutes the entire Agreement between OWNER and CONSULTANT and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or cancelled by a duly executed written instrument signed by OWNER and CONSULTANT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

**OWNER:**

**CITY OF SANIBEL**

\_\_\_\_\_  
Signature

By: Judith A. Zimomra  
Name Typed or Printed

TITLE City Manager  
Title

Address for giving notices:  
City of Sanibel Department of Public Works  
800 Dunlop Road  
Sanibel, Florida 33957-4096  
Phone: (239) 472-6397  
Fax: (239) 472-6041

**ATTEST:**

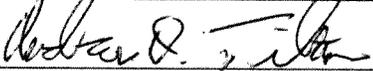
\_\_\_\_\_  
Pamela Smith, City Clerk

**APPROVED AS TO FORM:**

  
Kenneth B. Cuyler, City Attorney

**CONSULTANT:**

**JOHNSON ENGINEERING, INC.**

  
Signature

By: Andrew D. Tilton  
Name Typed or Printed

TITLE Vice President  
Title

Address for giving notices:  
Johnson Engineering, Inc.  
251 West Hickpochee Avenue (SR 80)  
LaBelle, Florida 33935-4757  
Phone: (863) 612-0594  
Fax: (863) 612-0341

**FINANCIAL SUFFIENCY APPROVED:**

\_\_\_\_\_  
Sylvia A. Edwards, Finance Director

## Exhibit A

Exhibit A consisting of TWO (2) pages referred to in the Professional Services Agreement between OWNER and CONSULTANT for professional services dated October \_\_\_\_\_, 2010.

Services not set forth in this Exhibit A, or not listed or described herein, are expressly excluded from the Scope of the Professional Services of the CONSULTANT. The CONSULTANT assumes no responsibility to perform any services not specifically identified and/or otherwise described in this Exhibit A.

Initial:  
OWNER \_\_\_\_\_  
CONSULTANT UBZ

### SCOPE OF SERVICES

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PROFESSIONAL SERVICES OF THE CONSULTANT:

#### **Johnson Engineering Project Number 00020339-011**

##### **Task 1: NPDES Year 7 Annual Report (main body)**

City of Sanibel Public Works (OWNER) will prepare the annual report that will be submitted to the FDEP for Year 7, March 1, 2010 to February 28, 2011. This will be completed in time to place it with the other annual reports being processed by Lee County to go to FDEP. This is generally at the end of August. Preparing the report will consist of gathering information, summarizing, and reporting on the following areas:

- Structural Controls and Stormwater Collection System Operation;
- Areas of New Development or Significant Redevelopment;
- Maintenance of Public Right-of-Ways;
- Flood Control Projects;
- Municipal Waste Treatment, Storage, or Disposal Facilities;
- Pesticides, Herbicides, and Fertilizer Application;
- Illicit Discharges and Improper Disposal;
- Industrial and High Risk Runoff; and
- Construction Site Runoff.

For Year 7 Johnson Engineering (CONSULTANT) will provide the NPDES Annual Report Monitoring information, Section III. Parts A, B, and C. The Time and Materials for this effort will be included in Task 2, Permit Compliance. City of Sanibel will provide CONSULTANT with a copy of the final signed Year 7 Annual Report for its records.

There is the possibility that FDEP will renew the existing Lee County NPDES permit with revised annual reporting criteria and change the annual reporting year period. Johnson Engineering will review this task with Public Works to determine if revisions to this professional services agreement Task 1 are necessary for this situation.

##### **Task 2: Permit Compliance**

CONSULTANT will aid the City of Sanibel to be in compliance with the NPDES Permit by attending monthly coordination meetings, providing Program Guidance, and providing Section III.Part.A., B., and C. as described in the existing Lee County NPDES permit. The Program Guidance will be in the form of interpretation and aide of the NPDES Permit requirements that should be performed during permit year and provide guidance with permit activities. CONSULTANT will also aid the City by responding to FDEP about comments from the previous

year's annual report. This task will also provide assistance to the City for related NPDES work throughout the year.

**Task 3: Water Quality Monitoring (One Year)**

CONSULTANT will implement a City of Sanibel NPDES Monitoring Plan as part of the MS4 Permit FLS000035. CONSULTANT will perform monthly field sampling and testing at each of the (12) twelve monitoring stations for a period of one year, October 2010 through September 2011. Eight (8) monitoring stations are identified in the 2004 FDEP approved monitoring plan plus four (4) additional sites in the vicinity of Blind Pass. Renewal of the Lee County NPDES permit remains under review by FDEP. If the renewal occurs during the October 2010 through September 2011 period, then the CONSULTANT will provide City of Sanibel a summary of any water quality monitoring requirement and the resulting monitoring cost changes. Water quality samples will be analyzed by a certified environmental laboratory and by qualified field personnel. Parameter testing results will be maintained in a Microsoft Excel database. The CONSULTANT, through Benchmark EnviroAnalytical, Inc. will provide the data to STORET, City of Sanibel Public Works, and Natural Resources Departments.

**LAB TESTING PARAMETERS:**

- Turbidity (NTU)
- Salinity (PPT)
- Total Suspend Solids (TSS)
- Total Organic Carbon (TOC)
- Nitrate (NO<sub>2</sub>)
- Nitrate (NO<sub>3</sub>)
- Total Kjeldahl Nitrogen
- Total Ammonia (NH<sub>4</sub>)
- Total Phosphorus
- Ortho – Phosphorus
- Chlorophyll-a

**FIELD MEASUREMENTS:**

- pH
- Temperature
- Specific Conductance
- Dissolved Oxygen
- Oxidation Reduction Potential (ORP)
- Water Depth

## Exhibit B

Exhibit B consisting of TWO (2) pages referred to in the Professional Services Agreement between OWNER and CONSULTANT for professional services dated October \_\_\_\_\_, 2010.

Initial:  
OWNER  
CONSULTANT 

### COMPENSATION

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#### Definitions:

**Lump Sum (LS):** Includes all direct and indirect labor costs, personnel related costs, overhead and administrative costs, which may pertain to the services performed, provided and/or furnished by the CONSULTANT as may be required to complete the services in Exhibit A. The total amount of compensation to be paid the CONSULTANT shall not exceed the amount of the total Lump Sum compensation established and agreed to. The portion of the amount billed for CONSULTANT'S services which is on account of the Lump Sum will be based upon CONSULTANT's estimate of the proportion of the total services actually completed at the time of billing.

**Time and Materials (T&M):** For the actual hours expended by the CONSULTANT's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position on the CONSULTANT's standard billing rate schedule in effect at the time the services are rendered. The current standard billing rate schedule is attached to this Exhibit B as Attachment No. 1. For the services of CONSULTANT's Sub-Consultants engaged to perform or furnish services in Exhibit A, the amount billed to CONSULTANT therefore times a factor of 1.10. The amount payable for Reimbursable Expenses will be the charge actually incurred by or imputed cost allocated by CONSULTANT, therefore times a factor of 1.10.

**Estimated Fees:** CONSULTANT's estimate of the amount that will become payable for Services (including CONSULTANT's Sub-Consultants and reimbursable expenses) is only an estimate for planning purposes, is not binding on the parties and is not the maximum amount payable to CONSULTANT for the services under this Agreement. Notwithstanding the fact that the estimated amount for the services is exceeded, CONSULTANT shall receive compensation for all Services furnished or performed under this Agreement.

If it becomes apparent to CONSULTANT at any time before the Services to be performed or furnished under this Agreement are about eighty percent complete that the total amount of compensation to be paid to CONSULTANT on account of these Services will exceed CONSULTANT's estimate, CONSULTANT shall endeavor to give OWNER written notice thereof. Promptly thereafter OWNER and CONSULTANT shall review the matter of compensation for such Services, and either OWNER shall accede to such compensation exceeding said estimated amounts or OWNER and CONSULTANT shall agree to a reduction in the remaining services to be rendered by CONSULTANT under this Agreement so that total compensation for such Services will not exceed said estimated amount when such services are completed. The CONSULTANT shall be paid for all services rendered if CONSULTANT exceeds the estimated amount before OWNER and CONSULTANT have agreed to an increase in the compensation due to CONSULTANT or a reduction in the remaining services.

For services provided and performed by CONSULTANT for providing and performing the Task(s) set forth and enumerated in Exhibit A entitled "Scope of Services", the OWNER shall compensate the CONSULTANT as follows:

| <b>ITEM</b>   | <b>AMOUNT<br/>(Estimated if<br/>T&amp;M)</b> | <b>FEE TYPE<br/>(LS;T&amp;M;<br/>NTE)</b> |
|---|--|---|
| Task 01 - NPDES Year 5 Annual Report (main body)    | 0.00   | LS  |
| Task 02 - Permit Compliance                         | 6,500.00                                     | T&M                                       |
| Task 03 - Water Quality Monitoring (one year)       | 29,975.00                                    | LS  |
|   |  |   |
|   |  |   |
| <b>TOTAL COMPENSATION FOR CONSULTANT'S SERVICES</b> | <b>\$36,475.00</b>                           | <b>LS; T&amp;M</b>                        |

For services of CONSULTANT's Sub-Consultants engaged to perform or furnish services, the OWNER shall compensate the CONSULTANT as follows:

| <b>SUB-CONSULTANT</b>                                   | <b>AMOUNT<br/>(Estimated if<br/>T&amp;M)</b> | <b>FEE TYPE<br/>(LS;T&amp;M;<br/>NTE)</b> |
|---|--|---|
| Testing Laboratory                                      | 26,426.00                                    | T&M                                       |
|   |  |   |
| <b>TOTAL COMPENSATION FOR SUB-CONSULTANT'S SERVICES</b> | <b>\$26,426.00</b>                           | <b>T&amp;M</b>                            |

For reimbursable expenses of CONSULTANT, the OWNER shall compensate the CONSULTANT as follows:

| <b>REIMBURSABLE EXPENSES</b>   | <b>AMOUNT<br/>(Estimated if<br/>T&amp;M)</b> | <b>FEE TYPE<br/>(LS;T&amp;M;<br/>NTE)</b> |
|--|--|---|
| Courier and express delivery charges, reproduction of plans and reports, photography, field supplies and costs of other materials and/or equipment specifically used for and solely applicable to this project | 1,160.00                                     | T&M                                       |
| Multi Parameter Meter, Disposable Sampling Equipment and Shipping Costs  | 6,000.00                                     | T&M                                       |
|  |  |   |
| <b>TOTAL COMPENSATION FOR REIMBURSABLE EXPENSES</b>  | <b>\$7,160.00</b>                            | <b>T&amp;M</b>                            |

|   |                    |                    |
|---|--------------------|--------------------|
| <b>TOTAL COMPENSATION INCLUDING SUB-CONSULTANTS<br/>&amp; REIMBURSABLE EXPENSES</b> | <b>\$70,061.00</b> | <b>LS; T&amp;M</b> |
|---|--------------------|--------------------|

**ATTACHMENT I TO EXHIBIT B**  
**CONSULTANT'S HOURLY RATE SCHEDULE**  
 Effective March 26, 2010

**PROFESSIONAL SERVICES**

|                               |           |          |   |            |          |
|-------------------------------|-----------|----------|---|------------|----------|
| Principal                     | \$ 190.00 | Per Hour | Principal Ecologist                       | \$ 170.00  | Per Hour |
| Engineer VIII                 | \$ 170.00 | Per Hour | Ecologist IV                              | \$ 150.00  | Per Hour |
| Engineer VII                  | \$ 160.00 | Per Hour | Ecologist III                             | \$ 125.00  | Per Hour |
| Engineer VI                   | \$ 150.00 | Per Hour | Ecologist II                              | \$ 115.00  | Per Hour |
| Engineer V                    | \$ 135.00 | Per Hour | Ecologist I                               | \$ 100.00  | Per Hour |
| Engineer IV                   | \$ 125.00 | Per Hour |   |            |          |
| Engineer Intern III           | \$ 115.00 | Per Hour | Expert Witness                            | \$ 250.00  | Per Hour |
| Engineer Intern II            | \$ 105.00 | Per Hour |   |            |          |
| Engineer Intern I             | \$ 95.00  | Per Hour | Surveyor and Mapper V                     | \$ 170.00  | Per Hour |
|                               |           |          | Surveyor and Mapper IV                    | \$ 150.00  | Per Hour |
| Project Director              | \$ 145.00 | Per Hour | Surveyor and Mapper III                   | \$ 125.00  | Per Hour |
| Designer IV                   | \$ 135.00 | Per Hour | Surveyor and Mapper II                    | \$ 115.00  | Per Hour |
| Designer III                  | \$ 115.00 | Per Hour | Surveyor and Mapper I                     | \$ 100.00  | Per Hour |
| Designer II                   | \$ 90.00  | Per Hour |   |            |          |
| Designer I                    | \$ 80.00  | Per Hour | StarVAC w/Water Truck Four-Man Party      | \$ 330.00  | Per Hour |
|                               |           |          | StarVAC w/Water Truck Three-Man Party     | \$ 280.00  | Per Hour |
| Technician IV                 | \$ 100.00 | Per Hour | StarVAC w/Four-Man Party                  | \$ 290.00  | Per Hour |
| Technician III                | \$ 75.00  | Per Hour | StarVAC w/Three-Man Party                 | \$ 265.00  | Per Hour |
| Technician II                 | \$ 65.00  | Per Hour |   |            |          |
| Technician I                  | \$ 55.00  | Per Hour | Two-Man Field Party                       | \$ 135.00  | Per Hour |
|                               |           |          | Three-Man Field Party                     | \$ 160.00  | Per Hour |
| Hydrogeologist V              | \$ 150.00 | Per Hour | Four-Man Field Party                      | \$ 170.00  | Per Hour |
| Hydrogeologist IV             | \$ 135.00 | Per Hour | Hydrographic Field Party                  | \$ 225.00  | Per Hour |
| Hydrogeologist III            | \$ 125.00 | Per Hour | GPS Mapping Grade: One-Man Party          | \$ 90.00   | Per Hour |
| Hydrogeologist II             | \$ 100.00 | Per Hour | GPS Mapping Grade: Two-Man Party          | \$ 130.00  | Per Hour |
| Hydrogeologist I              | \$ 90.00  | Per Hour | GPS Mapping Grade: Three-Man Party        | \$ 170.00  | Per Hour |
|                               |           |          | GPS Surveying Grade: One or Two-Man Party | \$ 170.00  | Per Hour |
| Environmental Scientist V     | \$ 120.00 | Per Hour | GPS Surveying Grade: Three-Man Party      | \$ 180.00  | Per Hour |
| Environmental Scientist IV    | \$ 100.00 | Per Hour |   |            |          |
| Environmental Scientist III   | \$ 85.00  | Per Hour | Principal GIS Consultant                  | \$ 170.00  | Per Hour |
| Environmental Scientist II    | \$ 65.00  | Per Hour | GIS Consultant IV                         | \$ 170.00  | Per Hour |
| Environmental Scientist I     | \$ 55.00  | Per Hour | GIS Consultant III                        | \$ 135.00  | Per Hour |
|                               |           |          | GIS Consultant II                         | \$ 110.00  | Per Hour |
| Principal Planner II          | \$ 170.00 | Per Hour | GIS Consultant I                          | \$ 90.00   | Per Hour |
| Principal Planner I           | \$ 150.00 | Per Hour | GIS Technician III                        | \$ 80.00   | Per Hour |
| Senior Planner                | \$ 135.00 | Per Hour | GIS Technician II                         | \$ 70.00   | Per Hour |
| Planner IV                    | \$ 125.00 | Per Hour | GIS Technician I                          | \$ 60.00   | Per Hour |
| Planner III                   | \$ 110.00 | Per Hour |   |            |          |
| Planner II                    | \$ 95.00  | Per Hour | <b>CONSTRUCTION OBSERVATION SERVICE</b>   |            |          |
| Planner I                     | \$ 85.00  | Per Hour | Senior Project Engineer                   | \$ 170.00  | Per Hour |
| Planning Technician III       | \$ 80.00  | Per Hour | Construction Observation Services Manager | \$ 150.00  | Per Hour |
| Planning Technician II        | \$ 70.00  | Per Hour | Project Administrator                     | \$ 125.00  | Per Hour |
| Planning Technician I         | \$ 60.00  | Per Hour | Contract Support Specialist               | \$ 110.00  | Per Hour |
|                               |           |          | Senior Construction Observer II           | \$ 100.00  | Per Hour |
| Principal Landscape Architect | \$ 170.00 | Per Hour | Senior Construction Observer I            | \$ 90.00   | Per Hour |
| Managing Landscape Architect  | \$ 140.00 | Per Hour | Construction Observer III                 | \$ 75.00   | Per Hour |
| Senior Landscape Architect    | \$ 130.00 | Per Hour | Construction Observer II                  | \$ 65.00   | Per Hour |
| Landscape Architect           | \$ 120.00 | Per Hour | Construction Observer I                   | \$ 55.00   | Per Hour |
| Senior Landscape Designer     | \$ 105.00 | Per Hour | Resident Compliance Officer (RSO)         | \$ 65.00   | Per Hour |
| Project Landscape Designer    | \$ 85.00  | Per Hour |   |            |          |
| Landscape Designer II         | \$ 78.00  | Per Hour | <b>REIMBURSABLE EXPENSES</b>              |            |          |
| Landscape Designer I          | \$ 72.00  | Per Hour | Materials                                 | Cost + 10% |          |
|                               |           |          | Sub-Consultant Services                   | Cost + 10% |          |