

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (Agreement) is made effective as of _____, 2024 (Effective Date), by and between EKI Environment & Water, Inc., a California corporation (Consultant), and the City of Lompoc, a municipal corporation (City) for environmental and water resource engineering services. Consultant and City are referred to herein individually as a “party” and collectively as the “parties.”

RECITALS

WHEREAS, City is in need of consultant services related to increased stormwater runoff control and infiltration for groundwater recharge as described in Exhibit A (Consultant Services); and

WHEREAS, Consultant engages in the business of providing such Consultant Services; and

WHEREAS, City seeks the services of Consultant to provide such Consultant Services; and

WHEREAS, City and Consultant desire to enter into this Agreement with a completion date for Consultant Services no later than December 31, 2026.

WHEREAS, City and Consultant desire to enter into this Agreement for Consultant Services for a Total Compensation Amount not to exceed Three Hundred Fifteen Thousand, Dollars (\$315,000.00).

WHEREAS, Consultant and City desire to enter into this Agreement to memorialize their agreements regarding the Consultant Services to be provided to City.

NOW, THEREFORE, in consideration of the mutual representations, warranties, and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Consultant and City agree as follows:

ARTICLE 1 ENGAGEMENT

1.1. Engagement: City hereby engages Consultant to provide the Consultant Services described in Exhibit A, and Consultant hereby accepts such engagement, all on the terms and conditions set forth herein. Consultant will determine the method, detail, and means of performing the services detailed below.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1. Representations and Warranties of Consultant: Consultant hereby represents and warrants to City, at all times during the term of this Agreement, that Consultant is a corporation duly organized, validly existing, and in good standing under the laws of the State of California.

2.2. Representations and Warranties of City: City hereby represents and warrants to Consultant, at all times during the term of this Agreement, that City is organized and established pursuant to the laws and ordinances of the State of California.

ARTICLE 3 CONSULTANT STATUS AND QUALIFICATIONS

3.1. Independent Consultant: Consultant's services are being provided to the City as that of an independent contractor. Consultant represents and warrants that the personnel used to provide services to the City pursuant to this Agreement are classified by Consultant as employees. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System ("CalPERS") to be classified as other than an independent contractor for the City, then Consultant shall indemnify, defend, and hold harmless the City for the payment of any and all assessed fines, penalties, judgments, employee and/or employer contributions, and any other damages and costs assessed to the City as a consequence of, or in any way attributable to, the assertion that Consultant or any staff Consultant used to provide services under this Agreement are employees of the City. Consultant represents and warrants that the personnel used to provide services to the City pursuant to this Agreement are classified by Consultant as employees and that Consultant issues or will issue a W-2 to such personnel.

3.2. Payment of Income Taxes: Consultant is responsible for paying when due all income taxes, including estimated taxes, incurred as a result of the compensation paid by City to Consultant for services satisfactorily rendered under this Agreement. On request, Consultant will provide City with proof of timely payment. Consultant agrees to indemnify, defend and hold harmless City for any and all claims, costs, losses, fees, penalties, interest, or damages, including court costs and reasonable attorney's fees, resulting from Consultant's failure to comply with this provision.

3.3. Use of Employees or Subcontractors: Consultant may, at Consultant's own expense, use any employees or subcontractors as Consultant deems necessary to satisfactorily perform the services required of Consultant by this Agreement. City may not control, direct, or supervise Consultant's employees or subcontractors in the performance of those services.

3.4. Qualifications: Consultant represents it is qualified and has the skills necessary to perform the services under this Agreement consistent with the professional skill and care ordinarily provided by consultants providing similar services and practicing in the same or similar locality under the same or similar circumstances ("Standard of Care").

3.5. No Benefit Contributions: City shall have no obligation under this Agreement to compensate or pay applicable taxes for or provide employee benefits of any kind to any person employed or retained by Consultant.

ARTICLE 4 GENERAL RESPONSIBILITIES OF CONSULTANT

4.1. Minimum Amount of Service: Consultant agrees to devote as much time and attention to the performance of the Consultant Services under this Agreement as may be, in Consultant's sole discretion, required to accomplish the tasks described herein to accomplish the results by the allotted time for which the Consultant is responsible under this Agreement.

4.2. Consultant Scope of Services: Consultant agrees to provide the Consultant Services described in Exhibit A, attached hereto and incorporated herein by reference, including those additional services requested by City and accepted in writing by Consultant during the term of this Agreement.

4.3. Nondiscrimination: There shall be no discrimination against any person employed or retained by Consultant pursuant to this Agreement in any manner forbidden by law.

4.4. Non-Exclusive Relationship: Consultant may represent, perform services for, and contract with as many additional clients, persons, or companies as Consultant, in Consultant's sole discretion, sees fit.

4.5. Time and Place of Performing Work: Consultant may perform the services under this Agreement at any suitable time and location Consultant chooses, notwithstanding time is of the essence in performing and completing the agreed upon services.

4.6. Materials and Equipment: Consultant will supply all materials and equipment required to perform the services under this Agreement at no cost to the City, excluding equipment and materials already contracted for pursuant to this Agreement. Any additional, unanticipated costs must be approved by City by contract amendment or separate contract, given reasonable notice.

4.7. Professional Skill: It is further understood and agreed by and between the parties hereto that Consultant is skilled in the professional calling necessary to perform the work agreed to be done by it under this Agreement, and City, not being skilled in such matters, relies upon Consultant to perform the work in a skillful manner in accordance with the Standard of Care. Consultant further agrees to thus perform its work, and that the acceptance of its work by City shall not operate as a release of Consultant from said Agreement.

4.8. Insurance: Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry adequate insurance including a commercial general liability policy and an Errors and Omissions policy, both in the amount of not less than \$1,000,000 per claim and \$2,000,000 annual aggregate. Consultant shall also, at Consultant's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry automobile liability insurance with liability limits of not less than \$500,000 for the injury or death of a person or persons and property damage in any accident. City, its elective officials, officers and employees shall be named as an additional insured on the commercial general liability and automobile liability policies. Each type of insurance mentioned herein shall be written by a financially responsible company or companies authorized to do business in the State of California. Consultant shall provide City with certificates of insurance on forms acceptable to the City of all policies written and each shall contain an endorsement that they are not subject to cancellation without 30 days written notice being given to City by the insurance company or companies writing such insurance.

4.9. Workers' Compensation: Consultant agrees to provide workers' compensation insurance for Consultant and Consultant's employees and agents and agrees to defend, hold harmless and indemnify City for any and all claims arising out of any injury, disability, or death of any of Consultant's employees, subcontractors, or agents.

4.10. Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Consultant without the prior written consent of City, which consent shall not be unreasonably withheld.

4.11. Business Tax Receipt: Consultant shall maintain a valid Business Tax Receipt with the City of Lompoc during the term of the Agreement.

4.12. Ownership of Documents: All reports and documents prepared by Consultant under this Agreement are, upon full payment of all monies owed Consultant, the property of City and shall be turned over to the City upon completion of this Agreement. Consultant shall not release any data, information, and/or materials resulting from the project without prior written consent from City. The City shall reserve its right to access all reports, recordings, documents, and other similar materials arising from or related to the contracted project at any point upon reasonable request.

4.13. Personnel: City shall have final approval of Consultant staff assigned to work under this Agreement. Consultant shall identify in writing the staff assigned to work under this Agreement and shall give City no less than ten days' written notice prior to any change in the staff assigned to work under this Agreement.

ARTICLE 5 COMPENSATION OF CONSULTANT

5.1. Compensation for Consultant Services: Consultant shall provide all Consultant Services in accordance with the terms, and at the compensation amounts and schedule of remittance, set forth in Exhibit B, which is incorporated by this reference as though set forth in full; provided, that the parties understand and agree the fee schedule is not an estimate but is the complete costs for which Consultant shall provide the Consultant Services. Total compensation under this Agreement shall not exceed Three Hundred Fifteen Thousand Dollars (\$315,000.00).

5.2. Payment will be in accordance with City's standard accounts payable process. Term no longer than 45 days after presentation of a valid monthly invoice for disbursement of the payment. Payment to be made by accounts payable check processed and available as part of the weekly disbursement cycle, available each Friday for pickup or mailed delivery.

5.3. Consultant shall provide itemized billing to the Accounts Payable Division identifying the project by City Project Number (if applicable) and listing the completed task, and listing the City Purchase Order Number (if applicable) on each invoice, as follows:

Electronically (preferred) to:

ap@ci.lompoc.ca.us

City of Lompoc
Attn: Accounts Payable
100 Civic Center Plaza
Lompoc CA 93436

5.4. The provisions of Article 9 of this Agreement will govern any dispute associated with compensation.

ARTICLE 6 OBLIGATIONS OF CITY

6.1. Cooperation of City: City agrees to comply with all reasonable requests of Consultant and provide access to all documents reasonably necessary to the performance of Consultant's duties under this Agreement. To the extent determined in the best public interest, in the sole discretion of City's City Council, City shall be responsible for initially insuring, and continuing to review, local and state laws in City's jurisdiction to assure adequate legal authority for Consultant to engage in the Services described herein on behalf of City.

6.2. Conflict of Interest: No officer, employee, director or agent of City shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested; nor shall any such person have any interest, direct or indirect, in this Agreement or the provisions thereof.

6.3. Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by City without the prior written consent of Consultant, which consent shall not be unreasonably withheld.

ARTICLE 7 TERMINATION OF AGREEMENT

7.1. Termination: Unless earlier terminated as set forth below, this Agreement shall be effective as of the date first set out above and shall remain in full force and effect after execution of this Agreement by City and Consultant until December 31, 2026. Consultant shall satisfactorily complete Consultant Services pursuant to this Agreement within that term, unless the term is modified as permitted for modifications of this Agreement.

7.2. Termination on Notice: Notwithstanding any other provision of this Agreement, City may terminate this Agreement at any time by giving ten-days' written notice to Consultant.

7.3. Termination on Occurrence of Stated Events: This Agreement will terminate automatically on the occurrence of any of the following events:

- (a) Bankruptcy or insolvency of either party.
- (b) The assignment of this Agreement by either party without the consent of the other party; the parties agree that neither party will unreasonably withhold consent to such an assignment.
- (c) Consultant has not begun performance of work by March 1, 2025.

7.4. Termination for Default: If either party defaults in the performance of this Agreement or materially breaches any of its provisions, then the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination will take effect immediately on receipt of notice by the breaching party or five days after mailing of notice, whichever occurs first. For the purposes of this paragraph, material breach of this Agreement includes, but is not limited to, the following:

- (a) Consultant's failure to satisfactorily complete the Consultant Services;

- (b) City's material breach of any representation, warranty or agreement contained in this Agreement;
- (c) Consultant's material breach of any representation, warranty or agreement contained in this Agreement.

ARTICLE 8 INDEMNIFICATION

8.1. Indemnification: To the extent permitted by applicable law, Consultant will indemnify, defend and hold harmless City and each of its officers, employees and agents from and against any and all losses, damages, liabilities, claims, death, injuries or costs, including court costs and reasonable attorney's fees, (collectively, "Damages") resulting from the willful misconduct or any negligent act or omission of Consultant or any of its officers, employees, agents or subcontractors related to this Agreement; provided, that the obligation to indemnify and hold harmless is only to the extent Consultant or any of its officers, employees, agents or subcontractors caused the Damages.

8.2 Liability Waiver/Immunities: To the extent permitted by applicable law, Consultant waives any right to bring lawsuit against City, and each of its officers, employees and agents, for any and all losses, damages, liabilities, claims, death, injuries or costs, including court costs and reasonable attorney's fees; unless such cause of action arises out of City's negligence, recklessness or willful misconduct.

ARTICLE 9 GENERAL PROVISIONS

9.1. Governing Law: This Agreement shall be governed in all respects by the laws of the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction that would cause the application of the laws of any jurisdiction other than the State of California). Venue for any matter related to this Agreement shall be the Superior Court of the County of Santa Barbara.

9.2. Attorney Fees: In the event of any litigation to enforce, or construe the terms of this Agreement, the prevailing party herein shall be entitled to recover reasonable attorney's fees and costs.

9.3. Section Headings: The section headings appearing herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

9.4. Interpretation: The terms and conditions of this Agreement shall be construed pursuant to their plain and ordinary meaning and shall not be interpreted against the maker by virtue of that party having drafted this Agreement.

9.5. Inconsistency: In the event any provision of this Agreement and the documents incorporated herein by reference are deemed to be in conflict, the provision in this Agreement shall prevail.

9.6. Entire Agreement: This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and

contemporaneous agreements, representations, and understanding of the Parties. No amendment or modification of the amendment shall be valid unless evidenced in writing and executed by the parties thereto.

9.7. Successors and Assigns: Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto. No party may assign any of its rights or obligations hereunder without the express written consent of the other party hereto, which consent may not be unreasonably withheld; provided, however, any party may assign any and all of its rights and interests hereunder to one or more of its affiliates and designate one or more of its affiliates to perform its obligations hereunder; provided, however, that such party remains liable for full and total performance of its obligations hereunder.

9.8. Notices: Any notices authorized to be given hereunder shall be in writing and deemed given, if delivered personally or by overnight courier, on the date of delivery, if a Business Day, or if not a business day, on the first Business Day following delivery, or if mailed, three days after mailing by registered or certified mail, return receipt requested, and in each case, addressed, as follows:

If to the Consultant to:

John Fio, Principal Hydrogeologist
EKI Environment & Water, Inc.
Corporate Office
2001 Junipero Serra Blvd., Suite 300
Daly City, CA 94014

If to City to:

City of Lompoc
Attn: City Manager
100 Civic Center Plaza
Lompoc CA 93436

And a copy to:

Aleshire & Wynder, LLP
Attn: Jeff M. Malawy
3701 Wilshire Blvd., Suite 725
Los Angeles, CA 90010

Or, if delivered by telecopy, on a Business Day before 4:00 p.m. local time of addressee, on transmission confirmed electronically, or if at any other time or day on the first Business Day succeeding transmission confirmed electronically, to the facsimile numbers provided above, or to such other address or telecopy number as any party shall specify to the other, pursuant to the foregoing notice provisions. When used in this Agreement, the term "Business Day" shall mean a day other than a Saturday, Sunday, Federal Holiday, or other day City's city hall is closed to the public.

9.9. Counterparts: This Agreement may be signed in several counterparts.

9.10. Expenses: Each party shall bear its own expenses incurred with respect to the preparation of this Agreement and the consummation of the transactions contemplated hereby.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

CITY OF LOMPOC, a municipal corporation

EKI ENVIRONMENT & WATER, INC., a California corporation:

By: _____
Dean Albro, City Manager

By: _____
Michelle K. King
Its President

Attest:

By: _____
Stacey Haddon, City Clerk

By: _____
John T. DeWitt
Its Secretary

Approved as to form:

By: _____
Jeff Malawy, City Attorney

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer.

EXHIBIT A

CONSULTANT SERVICES

In the event of any conflicts between the provisions in Exhibit A and the other terms of the Agreement, the other terms of this Agreement shall govern.

INTRODUCTION

The Sustainable Groundwater Management Act (“SGMA”) delineated groundwater basins and subbasins in California and charged local agencies with managing groundwater for long-term sustainability. The Santa Ynez River Valley Groundwater Basin (“Basin”) comprises three groundwater sustainability agencies (“GSAs”) representing three management areas: the Western Management Area (“WMA”), Central Management Area (“CMA”), and Eastern Management Area (“EMA”). Through a coordination agreement, the three GSAs are cooperatively implementing their Groundwater Sustainability Plans (“GSPs”) to manage groundwater in the Basin. Increased stormwater runoff control and infiltration for groundwater recharge is a management action identified in all three of the GSPs.

In the Basin, the likely approach for infiltration and recharge will utilize either infiltration basins or dry wells, depending on the depth to groundwater and subsurface geologic conditions.

Infiltration basins consist of an earthen basin constructed in naturally pervious soils with a flat bottom and an inlet structure to dissipate energy of incoming flow, and an emergency spillway to control excess flows. Infiltration basins retain stormwater and allow it to percolate into the underlying soils. Infiltration basins can increase groundwater recharge and help remove pollutants from stormwater.

Dry wells are a relatively straightforward design, and a system commonly used in stormwater management. Stormwater drywells have a variety of designs and may be referred to by other names including stormwater drainage wells and bored wells.

The Santa Barbara County-Wide Integrated Stormwater Resource Plan (revised March 1, 2021) identified priority projects and provided conceptual plans for three (3) projects located in the Basin. One (1) is a high priority project located in the EMA (Hans Christian Andersen Park Infiltration Basin), one (1) is a medium priority project located in the WMA (County of Santa Barbara Vandenberg Village Infiltration Basin), and one (1) low priority project located in the CMA (Buellton Agricultural Runoff Infiltration Basin). Collectively, these three (3) projects provide control and infiltration of almost 100 acre-feet per year (AFY) of stormwater and dry weather runoff. As part of compliance activities related to their Small Municipal Stormwater Permit, the City of Lompoc has identified a potential project to capture and infiltrate stormwater runoff generated within the City most likely utilizing one (1) or more infiltration basins (City of Lompoc River Front Infiltration Basin). The general locations of these four (4) projects are shown in Figure 1, and when implemented can provide benefits to water quality, water supply, food management, environment, and the community. For example, the more than 100 AFY of combined recharge from these projects represents a significant contribution toward GSA efforts to increase groundwater recharge and maintain a sustainable water supply in the Basin.

SCOPE OF WORK

This study includes five (5) tasks designed to systematically provide outreach and engagement, characterize and confirm physical conditions at conceptual project sites, and select one (1) to three (3) of the projects to develop 30% design plans.

- **Task 1:** Project Management.
- **Task 2:** Outreach and Communications.
- **Task 3:** Inspection and Geotechnical Confirmation of Promising Projects.
- **Task 4:** 30% Project Design.
- **Task 5:** Project Summary Report.

The planned sites for focus in this study may be modified during implementation if outreach and engagement efforts or site confirmation data collected reveal unexpected conditions that constrain project feasibility. Under these conditions, alternative sites may be selected for confirmation and design activities.

3 Task 1: Project Management (\$15,000)

Task 1 includes overall project management activities, including project budgets, schedule, staff assignments, contractor coordination and management, records management, and contract compliance. Tasks include accounting of expenditures of allocated funds, preparation of progress reports, invoices, and associated documentation, and as-needed communications with Santa Barbara County Grant Manager and Community Environmental Council.

4 Task 2: Community Outreach and Engagement (\$50,000)

Task 2 will develop a brief Technical Memorandum that guides Stakeholder Communication and Engagement (SCE) during site investigation, selection, and design. The SCE TM will consider input from Santa Barbara County, Community Environmental Council, the three (3) Stakeholder Outreach and Engagement Plans of the GSAs from their GSPs, and the GSAs Community Advisory Groups. A key aspect of this plan is to identify the groups and community members to engage, the input needed from them, and a strategic plan for meetings and events to solicit their input relevant to the promising projects.

5 Task 3: Inspection and Geotechnical Confirmation (\$130,000)

Task 3 of the water percolation feasibility study includes conducting soil and percolation studies and exploratory subsurface geophysical surveys at potential sites to confirm site suitability. For budgeting purposes, it is assumed that confirmation studies will be conducted at up to 3 sites, with the goal, if feasible, of exploring one (1) site in each GSA.

5.1 Percolation Studies

Percolation tests will be conducted at each potential site to quantify site specific percolation rates for sizing the infiltration basin. Percolation tests indicate how quickly water moves through soil and are

used to evaluate the ability of the soil to absorb and percolate the water. Percolation tests generally involve digging at least three evenly spaced holes as deep as the proposed project, filling the holes with water until the soil becomes saturated, and measuring the percolation rate the day after the saturation process. The calculated field percolation rate will be utilized to confirm or refute site suitability and provide information for project design.²

5.2 Geophysical survey and soil core sampling

Spatial variations in subsurface soil conditions and their potential influence on the deep percolation of infiltration will be assessed with a detailed interpretation of subsurface conditions using geophysical survey results. A surface geophysical survey utilizing the Electrical Resistivity Profiling (ERP) or similar method and data post-processing to generate insight into the thickness, extent, and continuity of potential fine-grained layers at depth that can impede infiltration and reduce project effectiveness. This information is critical to making the decision on whether infiltration basins or dry wells are the most effective approach to directing the water for storage in the aquifer and design the project accordingly.

6 Task 4 : Preliminary Project Design (\$100,000)

Prepare preliminary design of selected projects for the local agencies or GSAs to permit and build the projects more efficiently. Task 4 includes a field topographic survey of one (1) to two (3) project sites and preparation of 30% design plan layout sheets with a preliminary grading plan and a schematic of an assumed gravity diversion structure. A geotechnical report is not included in this task but is likely needed to assess earthwork requirements as required for subsequent detailed design submittals (60%/90%/100%).

7 Task 5 : Project Summary Report (\$20,000)

A Technical Memorandum will be prepared to summarize project findings, provide the design plan layout sheets, and report and archive the data collected.

Schedule

Work will begin upon authorization. Task 1 Project Management spans over the entire project timeline and Tasks 2 through 5 have an expected duration of three to 21-months long.

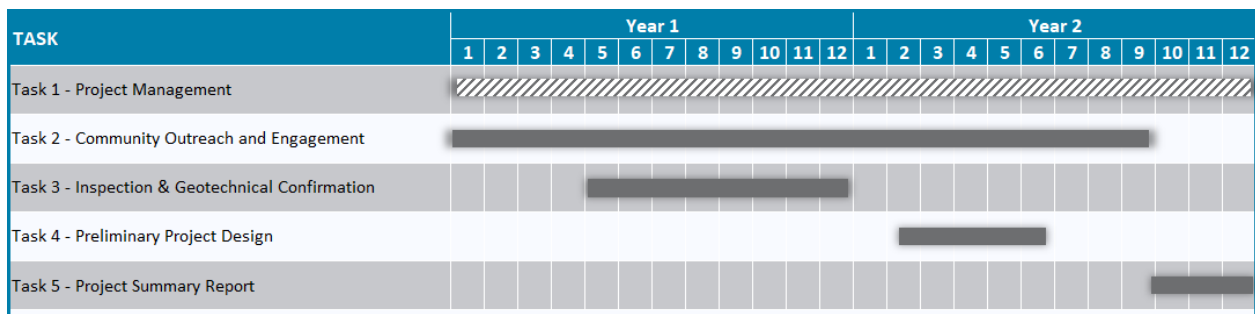


EXHIBIT B

COMPENSATION FOR CONSULTANT SERVICES

In the event of any conflicts between the provisions in Exhibit B and the other terms of the Agreement, the other terms of this Agreement shall govern.

Costs

The table below summarizes the expected budget for each task.

TASK	DESCRIPTION	COST
1	Project Management	\$15,000
2	Outreach, and Engagement	\$50,000
3	Inspection and Geotechnical Confirmation	\$130,000
4	Preliminary Project Design(s)	\$100,000
5	Project Summary Report	\$20,000
	TOTAL	\$315,000