

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
SWAIM BIOLOGICAL INCORPORATED**

THIS AGREEMENT, entered into this _____ day of _____, 2010, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and SWAIM BIOLOGICAL INCORPORATED hereinafter called "Contractor," or "Consultant;”

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing Biological Services associated with Construction Mitigation in connection with the Demolition of Crystal Springs Dam Bridge Project, hereinafter referred to as the “Project” and;

WHEREAS, Contractor is a competent certified biologist and with employees duly qualified to perform such mitigation services in connection with said Project, and the parties hereto desire to enter into an Agreement for said Construction Mitigation Services.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit “A”—Scope of Services

Exhibit “B”—Payments and Rates

Exhibit “C”—Detailed Project Labor and Expenses

Exhibit “D”— Equal Benefits Compliance Ordinance and Declaration Form

Exhibit “E”— Employee Jury Service Compliance Declaration Form

Exhibit “F”— Disadvantaged Business Enterprise Reporting Information

Exhibit “G”— Federal Lobbying Reporting Information

Exhibit “H”— Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended (§ 504 Compliance)

Exhibit “I”— Certification of Contractor and Certification of Local Agency

Exhibit “J”— Contractor’s Declaration Form

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit “B,” Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit “A.”

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed TWO HUNDRED TWENTY ONE THOUSAND AND NO/100 DOLLARS (\$221,000.00) for all specified tasks, which includes a ten percent (10%) contingency. The contingency would be used only to pay for added work resulting from unforeseen conditions during construction affecting the construction duration, which is not anticipated in the construction contract documents.

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from May 25, 2010 through December 31, 2012.

This Agreement may be terminated by the San Mateo County Director of Public Works, or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

The County may immediately terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Confidentiality

All data produced or compiled by Contractor shall be considered confidential unless it can be obtained as public record and shall not be shared with a third party without the prior written consent of the County.

8. Sub-Contractors

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontractors with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall be a material breach of this Agreement and vest the County with the right to immediately terminate this Agreement.

Contractor shall be responsible for employing all sub-Contractors necessary to aid Contractor in the performance of the services of this Agreement; provided, however, that all such subcontractors must be approved in advance, in writing, by the County and that the County shall retain the right to withdraw such consent for reasonable cause during the term of this Agreement.

a.) Nothing contained in this Agreement or otherwise, shall create any contractual relation between the County and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the County for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the County's obligation to make payments to the Contractor.

b.) Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to sub-Contractors.

c.) Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the County.

d.) Any substitution of subcontractors must be approved in writing, by the County, in advance of assigning work to a substitute subcontractor.

e.) The County shall hold retainage from the Contractor and shall make prompt and regular incremental acceptances of portions, as determined by the County, of the contract work, and pay retainage to the Contractor based on these acceptances. The Contractor, shall return all monies withheld in retention from a sub-Contractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the County. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30-days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating Contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE Contractors and subcontractors.

f.) Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

9. Changes in Work

The County may order major changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount of Contractor's services. In the event that such changes are ordered, Contractor shall be entitled to compensation for all work previously directed by County and performed by Contractor prior to receipt of notice of change. Increased compensation for major changes shall be determined in accordance with Exhibit B of the Agreement, but in no event shall the County be liable for payment unless the amount, of such extra compensation, shall first have been agreed to in writing by the County.

In the event that major changes are ordered pursuant to this Section, the schedule for progress and completion of this Agreement and compensation under Exhibit B of this Agreement, shall be adjusted by negotiation between Contractor and County.

10. Documentation

Agreements, where appropriate, shall provide that the Contractor document the results of the work to the satisfaction of the County, and if applicable, the State and Federal Highway Administration (FHWA), and Regulatory Agencies. This may include preparation of Contractor deliverables, progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the agreement objectives.

11. Ownership of Documents

Construction monitoring reports, monthly progress reports, baseline studies, tracings, plans, specifications, and maps prepared, or obtained under the terms of this Agreement shall be delivered to, and become the property, of the County. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under such agreement shall be made available upon request to the County without restriction or limitation on their use.

12. Disadvantaged Business Enterprise (DBE)

The parties recognize that the project for which the Contractor's services are being retained is financed through funds obtained from the California Department of Transportation (Caltrans) and FHWA. Consequently, the DBE requirements of 49 CFR, Part 26 apply to this Agreement. As required by federal law, the State has established a statewide overall DBE goal. This County federal-aid contract is considered to be part of the statewide overall DBE goal. The County is required to report to Caltrans on DBE participation for all Federal-aid contracts each year so that attainment efforts may be evaluated.

a) This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Obtaining DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

b) DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Contractor, subrecipient or sub-Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the recipient deems appropriate.

c) Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

d) A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

e) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

f) If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

g) The Contractor shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work. Exhibit F "Disadvantaged Business Enterprise Reporting Information", instruction and forms shall be utilized for DBE reporting.

h) Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Exhibit F - 17-F Final Report-Utilization of Disadvantaged Business Enterprises (DBE)," CEM-2402F, certified correct by the Contractor or the Contractor's authorized representative and shall be furnished to the County with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)" is submitted to the County.

i) If a DBE subcontractor is de-certified during the life of the Agreement, the de-certified subcontractor shall notify the Contractor in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to the County within 30 days.

j) If materials or supplies are obtained from a DBE manufacturer, Contractor shall utilize the reporting instructions in Exhibit F "Disadvantaged Business Enterprise Reporting Information".

**13. Title 49 Code of Federal Regulations, Part 29 Debarment and Suspensions
Certification**

The Contractor, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, and manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions.

The above certification is part of this Agreement. Signing this Agreement on the signature portion thereof shall also constitute signature of this Certification.

14. Non Lobbying Certification for Federal-Aid Contracts

The Contractor certifies to the best of his or her knowledge and belief that:

a.) No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any federal 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 contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b.) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions in Exhibit "G" – Federal Lobbying Reporting Information.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this Agreement that he/she shall require that the language of this certification be included in all lower-tier subcontracts which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

15. Hold Harmless

Contractor shall indemnify and save harmless County of San Mateo, San Francisco Public Utilities Commission, Pacific Gas and Electric Company, and all of their respective officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County of San Mateo, San Francisco Public Utilities Commission, Pacific Gas and Electric Company, and all of their respective officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County of San Mateo, the San Francisco Public Utilities Commission or Pacific Gas and Electric Company has been found in a court of competent jurisdiction to be solely liable by reason of their own negligence or willful misconduct.

Contractor shall adhere to the following provisions for indemnification and save harmless:

“To the full extent permitted by law, Contractor shall indemnify and save harmless the County of San Mateo, San Francisco Public Utilities Commission, Pacific Gas and Electric Company, and all of their respective officers, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of:

- i. Injuries to or death of any person, including Contractor, its officers, employees and servants, or
- ii. Damage to any property of any kind whatsoever and to whomsoever belonging, or
- iii. Any sanctions, penalties or claims of damages resulting from Contractor's failure to comply with applicable laws, or
- iv. Any other loss or cost resulting from the Contractor's negligent or reckless acts or omissions or willful misconduct in connection with the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damages for which the County has been found in a court of competent jurisdiction to be liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

The obligations set forth in this Section shall continue beyond the term of this Agreement as to any act or omission which occurred during or under this Agreement.”

16. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

(1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.

(2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000
- (b) Motor Vehicle Liability Insurance \$1,000,000
- (c) Professional Liability \$1,000,000

County of San Mateo, San Francisco Public Utilities Commission, Pacific Gas and Electric Company, and all of their respective officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County of San Mateo, San Francisco Public Utilities Commission, Pacific Gas and Electric Company, and all of their respective officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County of San Mateo, San Francisco Public Utilities Commission, Pacific Gas and Electric Company, and all of their respective officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

17. Compliance with laws; payment of Permits/Licenses

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Federal Regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Exhibit "H," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

The Contractor shall comply with all Federal, State and local laws and ordinances applicable to the work. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code Section 1775.

18. Non-Discrimination and Other Requirements

A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.

- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
- i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by

41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

19. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

20. Retention of Records, Right to Monitor and Audit

(a) Contractor shall maintain all required records for three (3) years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

21. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

22. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

23. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United State mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt, for transmittal, charges prepaid, addressed to:

In the case of County, to:

James C. Porter, Director of Public Works
County of San Mateo
555 County Center, 5th Floor
Redwood City, CA 94063-1665
Fax: (650) 361-8220

In the case of Contractor, to:

Karen E. Swaim, President and Herpetologist
Swaim Biological, Inc.
4435 First Street PMB #312
Livermore, CA 94551
Fax: (925) 455-6106

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
Richard S. Gordon, President
Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Contractor, Title

Contractor's Signature

Date: _____

Long Form Agreement/Business Associate v 8/19/08

Exhibit “A” – Scope of Services

In consideration of the payments set forth in Exhibit “B” – Payments and Rates, Contractor shall provide the following services:

Exhibit “B” – Payments and Rates

In consideration of the services provided by Contractor in Exhibit “A” – Scope of Services, County shall pay Contractor based on the following fee schedule:

Exhibit “C” – Detailed Project Labor and Expenses

In consideration of the services provided by Contractor in Exhibit “A” – Scope of Services, County shall pay Contractor based on the following fee schedule:

Exhibit "A"
Scope of Services

In consideration of the payments set forth in Exhibit "B" – Payments and Rates, Contractor shall provide the following services:

Scope of services shall include participation at meetings, generation and verification of support information, documentation and reports, and all tasks necessary for the Construction Mitigation Services for the Demolition of Crystal Springs Dam Bridge as described in the RFP which by reference herein is made a part of this Agreement and as outlined below and in Exhibit B of this Agreement, as well as conformance to all other conditions set forth in this Agreement. Scope shall also include assistance to the County in providing Construction Consulting information for the preparation of applications or revisions to the existing regulatory permits as necessary for project progress.

"Contractor" under this Section, "Exhibit A" shall herein be called "Consultant."

SCOPE OF SERVICES

AREA OF WORK

The construction mitigation of any work associated with this project will occur within SFPUC Crystal Springs Watershed, in and around Tracy Lake, and the North Marsh area of the Lower Crystal Springs Reservoir. In addition, mitigation work will occur at the pond on top of Crystal Springs Dam adjacent to the south abutment of the bridge prior to and during the bridge demolition.

The list of services to be provided, at a minimum, are as follows:

The primary role of the consultant shall include, but not be limited to, assisting the County of San Mateo Department of Public Works in biological and monitoring support services for the demolition phase of the Crystal Springs Dam Bridge project. The Consultant will also be responsible for monitoring and implementing the California Red Legged Frog (CRLF) enhancement plan which requires preparation of annual reports and performing predator control efforts for two years (2010-2011 and 2011-2012) to be submitted to the United States Fish and Wildlife Service (USFWS), the California Department of Fish and Game (CDFG), and the County.

- As part of this task, the Consultant would evaluate and adhere to the guidelines as stated in the USFWS's 2009 Amendment to its 1999 Biological Opinion as well as portions of USFWS's 1999 Biological Opinion which remains unchanged and adhere to the guidelines of the County's MMRP for its Mitigated Negative Declaration (MND) for specific mitigation measures that require the expertise of a Qualified Biological Monitor (QBM).

If requested by the County, the Consultant may potentially provide other optional construction mitigation services for the Project prior to, during, or after the bridge demolition phase. These optional services, if requested by the County, would fall under Part B) Optional Miscellaneous Environmental Services of the RFP.

TASKS SHOULD BE ADEQUATELY ADDRESSED FOR PART A & B (AS LISTED BELOW).

The QBM must possess a bachelor's degree in biology, at a minimum, and be approved by each of the USFWS, CDFG, and the County at least 30 days prior to pre-construction activities. Consultant will be required to adequately demonstrate to the County that its staff or sub-consultants who will be acting as QBMs are approved by the USFWS and CDFG to work on the Project.

Tasks to be accomplished by Consultant or its QBM shall be as follows:

Part A) Mitigation Measures – The following specified mitigation measures are consistent with the Mitigation and Monitoring and Reporting Plan (MMRP) and the USFWS's 2009 Amendment to its 1999 Biological Opinion as well as portions of the USFWS's 1999 Biological Opinion which remains unchanged.

Mitigation Measure Bio-1

A QBM shall create a training curriculum and provide training to all County and Contractor employees (including County inspectors, Contractor's employees and sub-contractors and any sub-consultants) before they may work on the Project site. The training will include information on identification and avoidance measures for special-status species and sensitive habitats (i.e. San Francisco garter snake (SFGS), California red-legged frogs (CRLF), etc. potentially present in the Project impact area. The Project impact area is considered to be the project footprint of the bridge demolition project and surrounding mitigation areas including the dam pool and SFPUC's watershed. All personnel will be required to sign that they have attended the training and agree to abide by the measures.

Mitigation Measure Bio-3

Take avoidance measures for SFGS will be implemented in all areas where bridge demolition work could result in the direct impact of this species. Measures will include pre-construction survey and relocation plans, environmental education programs, and biological monitoring during all construction phases.

The QBM shall ensure measure and plan implementation, oversee exclusion fencing installation (installation to be completed by the bridge demolition contractor) monitor clearing and grubbing at the start of construction, and oversee educational programs. The QBM shall document compliance in a Construction Monitoring Report, submit to the County for review and approval, and submit the report to USFWS and CDFG. In addition, the QBM will maintain a daily log that indicates results of exclusion fence inspections, condition of remaining CRLF in the top of dam pool, if any, condition of protective platform over the top of dam pool, and other categories of environmental compliance per all project environmental permits and requirements. **The QBM will ensure that work is confined to the smallest area possible to safely complete the project and that the limits of the work area are clearly marked.**

Mitigation Measure Bio-4

To avoid and minimize Project effects to CRLF and San Francisco Garter Snakes (SFGS) during the demolition phase, the QBM shall ensure compliance with all measures outlined in the USFWS's 2009 Amendment to its 1999 Biological Opinion as well portions of the USFWS's 1999 Biological Opinion which remain unchanged. The Consultant's QBM will be the on-site biological monitor for the duration of the **anticipated six-month demolition phase** or until the end of the demolition contract. The QBM shall assist in reviewing the plans for the protective platform installation for the pool on the dam. The QBM shall ensure the safety of the inhabitants in the dam pool and all life stages of CRLF from disturbance due to construction while leaving a natural egress and ingress area at the southern end of the dam pool for CRLF to move safely in and out of the pool from the south end until the bridge demolition is occurring directly over the pool.

Mitigation Measure Bio-5

Prior to demolition of the bridge, the County will initiate an enhancement plan of a minimum of approximately 0.25 acre of occupied CRLF breeding pond and SFGS foraging habitat within the immediate Crystal Springs Watershed. This enhancement activity will consist of predator control (bullfrog and non-native turtle) at one of the closest known CRLF breeding locations, Tracy Lake and the contiguous adjacent marsh at the northern end of Lower Crystal Springs Reservoir. These mitigation activities would not result in disturbance (e.g., grading or vegetation removal) of natural environments at Tracy Lake. Depredation of non-native bullfrogs will include, removal of their egg masses, seining (removal through the use of nets) and selective removal of bullfrog larvae, and direct removal of adult and juvenile bullfrogs and removal of turtles through aquatic trapping and gigging (pronged spear to catch frogs). Bullfrogs breed in the upper marsh of Lower Crystal Springs Reservoir, and juvenile and adult bullfrogs occupy Tracy Lake. Bullfrogs will be euthanized and the stomach contents documented. Other introduced non-native predators present at the area include red-eared sliders, painted turtles and soft-shelled turtles shall be removed. The depredation program will continue for two years. The active season of non-native predators is from April-October. The Consultant may keep two or three of each non-native turtle species for use in public education efforts about not releasing non-native species. Other captured non-native turtles will be taken to local turtle rescue centers, including the Bay Area Turtle and Tortoise Rescue Center in Castro Valley. Any that are not accepted by rescue centers will be euthanized.

Initial baseline CRLF surveys, predator control, and monitoring are currently being conducted this winter (2009-2010) by others. The Consultant will not be responsible for putting together the initial baseline survey of the CRLF, however, the Consultant will need to coordinate with the County to obtain the initial baseline survey results. The initial baseline survey will be used as a partial guideline for measuring the effectiveness of the predator control.

Surveys will record location, number and stages of CRLF egg masses in this area for comparison to post predator control efforts. Annual reports are to be

conducted during the winters of 2010-2011 and 2011-2012, which will repeat the baseline effort.

The QBM shall monitor implementation of the enhancement plan, prepare, and submit annual reports on predator control efforts to the County for two years (2011 and 2012) for review and approval. Following approval by the County, the QBM shall submit those reports to the USFWS, and CDFG.

Mitigation Measure Bio-11

A QBM will inspect the construction site each morning prior to the beginning of construction activities. Any western pond turtles that are in the Project impact area will be removed and transported to a suitable release site downstream. The number and size of any captured turtles, as well as the release site, will be reported to CDFG. The QBM shall create a report of captured turtles and their release site. The QBM shall submit this report to CDFG and the County.

Consultant Deliverables:

- Construction Monitoring Report
- Continuation of Baseline CRLF Surveys
- Meeting summaries including project status, key issues and decisions, work to be done, action items and schedules, cost tracking
- Monthly progress reports

Part B) Optional Miscellaneous Environmental Services

- Under this task, Consultant could provide assistance and review of the environmental permits during the demolition phase to clarify and/or validate design documents.
- Consultant may be required to coordinate with regulatory agencies when deviations to the permit requirements are required or requested.
- Consultant may also be asked to provide the County with requested information during any proposed future construction activities as well as any other tasks not mentioned above.
- If requested by the County, the Consultant may potentially provide construction mitigation services for the Project prior to the bridge demolition.
- If required by the regulatory permitting agencies, the County shall direct the QBM to restore the dam pool to its pre-construction condition. The QBM shall replace lost plants and remove sediments to maintain pre-construction levels.
- Optional Miscellaneous Environmental Services shall include other services that may be authorized by the County, as additional services on an as needed basis.

The following specified mitigation measures are consistent with the MMRP and fall under Part B) Optional Miscellaneous Environmental Services:

Mitigation Measure Bio-2

Grasslands supporting host plants for the bay checkerspot butterfly will be fenced for avoidance or surveys will be conducted to determine that the butterfly is not present prior to implementation of construction activities. The QBM shall monitor fenced areas to ensure fence integrity. Grasslands not fenced shall be surveyed by an USFWS-approved biologist within two weeks prior to construction activities. If the checkerspot butterfly is found, mitigation approved by the USFWS and appropriate to the location and circumstances shall be implemented. If required, the County shall direct the QBM to fence the grasslands that support the host plants.

Mitigation Measure Bio-6

A pre-construction survey will be conducted to determine if peregrine falcons are nesting on the Interstate 280 (I-280) Bridge. If no nesting falcons are observed, no further mitigation will be necessary. The QBM shall create a report of findings on the pre-construction surveys and submit the report to the County.

Mitigation Measure Bio-7

If peregrine falcons are found to be nesting on the I-280 Bridge, nest monitoring will be conducted during construction to determine whether the peregrine falcons are affected by the bridge project. If no disturbance to incubation or the feeding of chicks is observed, no additional mitigation for nesting activities will be necessary. The QBM shall create a report of findings of construction monitoring and submit the report to the County.

Mitigation Measure Bio-8

If it is determined during monitoring that Project construction activities are interrupting peregrine falcon egg incubation or the feeding of the chicks, further mitigation measures will be developed by the Consultant in coordination with CDFG. The QBM shall monitor any peregrine falcon behavior for egg incubation interruption. If the QBM observes that egg incubation or chick feeding is interrupted by construction activities, the County shall contact the CDFG for guidance on additional mitigation measures. The QBM shall oversee implementation of the additional measures. The QBM shall create a report of all activities during egg incubation and feeding of chicks and submit the report to the County.

Mitigation Measure Bio-9

If a fledgling peregrine falcon enters the construction area, all construction activity will cease until the bird leaves the area. A QBM may haze or move the bird from the area. The QBM shall monitor fledgling peregrine falcons and stop construction activity if a fledgling peregrine falcon enters the construction area. The QBM shall immediately contact the County and the Contractor for stoppage of construction activity. The QBM shall create a report of all activities involving fledgling falcons and submit the report to the County.

Mitigation Measure Bio-10

If a fledgling peregrine falcon enters the construction area and is injured, construction activities will cease until the bird is removed from the area by a

QBM. The County and Contractor shall be immediately informed of all stoppage of work. Any injured peregrine falcon will be transported to an approved facility, by the QBM, such as that operated by the Santa Cruz Predatory Bird Research Group for care. The QBM shall monitor injured fledgling peregrine falcons, stop construction activity, and transport the bird to the appropriate facility. The QBM shall create a report of all activities involving injured fledgling falcons.

List of Deliverables:

- Construction Monitoring Report
- Continuation of Baseline CRLF Surveys
- Meeting summaries including project status, key issues and decisions, work to be done, action items and schedules, cost tracking
- Monthly progress reports

Tasks that the County will provide:

- 1.) Project management, coordinate this project with various Consultants/ Contractors, departments, and other agencies
- 2.) Submit all applications to permitting agencies
 - a. monitor progress of permit status
 - b. verify that all applicable regulations are adhered
- 3.) Provide final project plans and specifications to Contractor
- 4.) Process progress payments to Contractor upon completion and acceptance of deliverables. County shall make the sole determination on acceptance of the deliverables.
- 5.) Provide project administration
 - a. Report to Board of Supervisors
 - b. Advertise project
 - c. Award Contracts
 - d. Prepare Notice to Proceed
 - e. On-site inspection support
 - f. Check progress payment requests
 - g. Prepare Notice of Completion
- 6.) Coordinate with SFPUC for conflicts.

Exhibit "B"
Payments and Rates

For specified Construction Mitigation Services and Optional Miscellaneous Environmental Services (OMES), performed as identified in this Agreement, the total not to exceed sums due to the Contractor shall be as follows:

A. Payment Segregation

Mitigation Measure Bio 1	\$760.00
Mitigation Measure Bio 3, 4, 11	\$112,025.00
Mitigation Measure Bio 5	\$86,440.00
OMES	
Mitigation Measure Bio 2	\$380.00
Mitigation Measure Bio 6	\$380.00
Mitigation Measure Bio 7	\$0.00
Mitigation Measure Bio 8	\$520.00
Mitigation Measure Bio 9	\$0.00
Mitigation Measure Bio 10	\$380.00
Total	\$200,885.00
Contingency (10%)	\$20,115.00
Not to Exceed TOTAL	\$221,000.00

B. Payment by County of San Mateo

The Contractor, together with the County, shall establish a detailed budget for the services contained herein pursuant to the category breakdown defined in subsections below, and as referenced to the Federal Acquisitions Regulations Contract Cost Principles and Procedures (CFR 48, Federal Acquisitions Regulations System, Ch. 1, Part 31).

County agrees to pay Contractor for services described in this agreement and Exhibit B as Construction Mitigation Services.

The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.

C. Not to Exceed

The Not to Exceed amount for this agreement, shall be **TWO HUNDRED TWENTY ONE THOUSAND and No/100 Dollars (\$221,000.00)** for all specified tasks, which includes a ten percent (10%) contingency (approximately \$20,115). The contingency will be used to pay for any additional work resulting from unforeseen conditions during construction, including delays affecting the construction duration, which is not anticipated in the construction contract documents. The Not to Exceed amount cannot be increased without authorization from the County Board of Supervisors.

It is expressly understood that the amounts so indicated above in, "Payment Segregation," are considered to be the maximum payment (Not To Exceed) to be paid to the Contractor for the various Construction Mitigation Services identified.

Any cost for task services deemed necessary by the County for completion should be authorized in writing prior to proceeding with the specific Task work. Payments for services performed are due and payable upon completion and approval by the County.

D. Payment for Tasks and OMES

For the performance of Construction Mitigation Services (Tasks: Mitigation Measures Bio - 1, 3, 4, 5, and 11; herein referred to as Tasks) and Optional Miscellaneous Environmental Services (OMES) (if required), and as described in this Agreement, Contractor shall be paid in accordance with the following schedule:

County agrees to pay Contractor for Construction Mitigation Services for the Demolition of Crystal Springs Dam Bridge described in Exhibit A and B of this Agreement on a time and materials basis with Not-to-Exceed amounts of **\$199,225.00** for the tasks described above, and **\$1,660.00** for services described under OMES. The payment rate ranges for services provided under this Agreement shall be as set forth on the table below, under Contractor Schedule and Fees.

Payments for services performed are due and payable monthly upon the completion of the tasks as determined, accepted and approved by the Director of Public Works and upon submission of a written statement therefore by Contractor to County together with supporting documentation such as personnel time records and copies of outside service invoices.

Outside Services, Direct Nonsalary Expenses, and Reimbursable Costs - County shall pay an amount equal to the actual invoice cost of outside services and direct nonsalary expenses, including subcontractors, and which are actually utilized for the performance and furnishing of Construction Mitigation Services. Said outside services and direct nonsalary expenses shall be considered to include but not be limited to outside services for reproduction, printing, development of graphics, assembly of deliverables, and delivery services. No additional charges shall be added to the outside service billings.

Transportation - An amount equal to the current authorized County reimbursement rates (\$0.50 as of January 1, 2010) per mile, for each mile driven for the performance of environmental services. The distance utilized for determination of mileage shall be from the Contractor place of business to the location of the site of the meeting/ investigation and return to Contractor place of business.

E. Method of Payment

Payment shall be made by County only for services rendered, acceptance of deliverables, and upon submission in duplicate of monthly progress payment requests. Invoice format shall be determined by the County, and monthly payment will be based on work approved by the County. The Contractor shall provide financial summary of all activities performed during the period for which the payment is being requested and shall clearly indicate original budget, amount of billing, and balance available for each activity (Task). Contractor shall also provide with each monthly progress payment request, statements regarding total work, in percent, completed per phase and an updated time schedule detailing progress and completion of design activities.

Payment for Tasks and OMES shall be made by County in the following manner: Contractor shall furnish a written statement put together with other data or evidence showing monthly services as may reasonably be required by Director of Public Works, or his duly appointed representative. County shall, after determination of progress commensurate with amount due Contractor, pay Contractor the amount found to be due

in the manner provided by law for the allowances of claims against the County within thirty (30) working days upon submission of approved invoice.

It is expressly understood that the amounts so indicated in above in, "Payment Segregation", are considered to be the maximum payment (Not To Exceed) to be paid to the Contractor for the various Tasks identified. If there is an underrun of effort and cost associated with any completed Task, such underruns shall be available to cover possible overruns of effort and cost in another task. Reallocation of Task Not to Exceed Amounts will not be made from uncompleted Tasks. The Contractor shall not receive payment for a subsequent Task until completion of the previous Task to the satisfaction of the County, unless prior written approval has been obtained from the County.

F. Payment Upon Suspension or Abandonment of Project. Termination of Agreement.

If unplanned progress is suspended for more than ninety (90) calendar days, or abandoned in all or in part, Contractor shall be paid for its services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment. In the event that the County abandons part of the Project the County may specifically authorize additional work necessary to properly close out the Project.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

If this agreement is suspended or terminated due to fault of Contractor, County shall be obligated to compensate Contractor only for that portion of Contractor's services that were satisfactorily performed to the satisfaction of the County.

G. Performance of Services If Contractor is not diligent in performing work

In the event Contractor is not diligent in pursuing the designated services as specified, the County may, seven (7) days after written notice to Contractor, perform any such required construction mitigation services or retain a different Contractor to do the same, and the cost associated with having said work completed by a means other than the Contractor will be retained from any sums not yet paid to the Contractor.

H. Contractor Schedule and Fees

Compensation for services provided by Contractor in Exhibit "A" shall be on the basis of labor and expenses as described below.

Labor costs shall be the total number of hours worked on the Project by each employee multiplied by a Salary Cost Factor of 2.853 to cover Direct Salary Costs, General Overhead, and profit. The Salary Cost Factor will not change for the life of this Project.

Direct Salaries are the actual hourly rates paid Contractor's employees for work directly performed on the Project, exclusive of payroll-related taxes, payments, premiums and benefits.

General Overhead Costs are a percentage of Direct Salaries paid to Contractor's employees on all client's projects, necessary to cover those indirect general and administrative costs incurred by the Contractor during the period of performance of services.

The estimated hours per labor category and costs per task for Construction Mitigation Services are shown in the table below.

STANDARD BILLING RATES
Hourly Rates – January 1, 2010 and throughout the construction duration of the Demolition of Crystal Springs Dam Bridge Contract

PRINCIPAL	\$95.00-\$180.00
ASSOCIATE	\$95.00-\$150.00
PROJECT MANAGER	\$75.00-\$100.00
SENIOR BIOLOGIST/ RESEARCH ASSOCIATE	\$75.00-\$100.00
BOTANIST	\$60.00-\$80.00
GIS/GRAPHICS	\$90.00-\$125.00
WILDLIFE BIOLOGIST	\$55.00-\$80.00
FIELD TECHNICIAN	\$35.00-\$55.00

Specific Swaim Biological, Inc., Billing Rates 2010 (and life of CS Bridge Demo Project)

NAME	TITLE	BILLING RATE
Karen Swaim	Principal	\$165.00
Chris Swaim	Principal/GIS Manager	\$95.00
Jeff Mitchell	Project Manager/Senior Biologist	\$95.00
Tammy Lim	Project Manager/Senior Biologist	\$95.00
Milton Yacelga	Research Associate	\$80.00
Scott Simono	Botanist	\$60.00
Jacqueline Azevedo	Wildlife Biologist	\$60.00
David Tannaci	Wildlife Biologist	\$60.00

Crystal Springs Bridge Demolition

Biological Monitoring and Mitigation Services Budget

RFP Task	Task	Personnel	Hours	Rate	Cost
Bio 1	Prepare environmental awareness program	SB	8	\$95.00	\$760.00
Bio 3 & 11	Preconstruction surveys, reloc plan	P	10	\$165.00	\$1,650.00
Bio 3 & 11	Preconstruction surveys, reloc plan	SB	25	\$95.00	\$2,375.00
Bio 4	On-site Biological Monitoring*	B	600	\$60.00	\$36,000.00
Bio 4	On-site Biological Monitoring*	SB	550	\$75.00	\$41,250.00
Bio 4	On-site Biological Monitoring*	SB	150	\$95.00	\$14,250.00
Bio 3, 4 & 11	Management (agency/client/ contractor	P	20	\$165.00	\$3,300.00
Bio 3, 4 & 11	Management (agency, client, contractor)	SB	40	\$95.00	\$3,800.00
Bio 3, 4 & 11	Reporting and monitoring data management	SB	40	\$75.00	\$3,000.00

Total Labor **\$106,385.00**

	Expenses	Unit	Quantity	Rate	Cost
Bio 3, 4 & 11	Travel (150 trips at 80 miles round trip)	mile	12000	\$0.50	\$6,000.00
Bio 3, 4 & 11	Bridge tolls	crossing	100	\$4.00	\$400.00
Bio 3, 4	Exit funnels, fencing (provided upon request)				\$0.00

Total Expenses **\$6,400.00**

Demolition Monitoring Total *(assumes 6 month 5 day work week) **\$112,785.00**

RFP Task	Task	Personnel	Hours	Rate	Cost
Bio 5	Year 1 non-native predator control	B	450	\$60.00	\$27,000.00
Bio 5	Interim CRLF surveys 2010-2011	B	160	\$60.00	\$9,600.00
Bio 5	Year 2 non-native predator control	B	450	\$60.00	\$27,000.00
Bio 5	Final CRLF surveys	B	160	\$60.00	\$9,600.00
Bio 5	Reporting and project management	P	20	\$165.00	\$3,300.00
Bio 5	Reporting and project management	SB	60	\$95.00	\$5,700.00

Total Labor **\$82,200.00**

	Expenses	Unit	Quantity	Rate	Cost
	Travel (100 trips at 80 miles round trip)	mile	8000	\$0.50	\$4,000.00
	Bridge Tolls	crossing	60	\$4.00	\$240.00

Total Expenses **\$4,240.00**

Mitigation Implementation Total **\$86,440.00**

Optional Services

RFP Tasks	Task	Personnel	Hours	Rate	Cost
Bio 2	Checkerspot/host plant survey	B	0	\$60.00	\$00.00
Bio 2	Reporting and documentation	SB	4	\$95.00	\$380.00
Bio 6	Peregrine falcon surveys (overlaps w/PCS)	SB	0	\$95.00	\$0.00
Bio 6	Reporting/Documentation	SB	4	\$95.00	\$380.00
Bio 7	Monitor peregrine nest for disturbance	SB	0	\$95.00	\$0.00
Bio 8	Coordinate with CDFG if peregrines are disturbed	SB	2	\$95.00	\$190.00
Bio 8	Coordinate with CDFG if peregrines are disturbed	P	2	\$165.00	\$330.00
Bio 9	Stop work for injured peregrine (overlaps with monitoring)	SB	0	\$95.00	\$0.00
Bio 10	Transport injured bird to designated facility	SB	4	\$95.00	\$380.00
Total Cost of Optional Services					\$1,660.00

TOTAL PROJECT BUDGET**\$199,225.00****TOTAL PROJECT BUDGET WITH OPTIONAL SERVICES****\$200,885.00**

P=Principal, SB= Senior Biologist/Project Manager, B=Biologist or Botanist

Exhibit "C"
Detailed Project Labor and Expenses

See attached Proposal

EXHIBIT "G"
INSTRUCTIONS FOR COMPLETION OF SF-LLL,
DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity 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 a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influenced the covered Federal action. (b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action:

- a. contract
- b. grant
- c. cooperative agreement
- d. loan
- e. loan guarantee
- f. loan insurance

2. Status of Federal Action:

- a. bid/offer/application
- b. initial award
- c. post-award

3. Report Type:

- a. initial
- b. material change

For Material Changes Only:

year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity

- Prime
- Subawardee
Tier _____, if known

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime

Congressional District, if known

6. Federal Department/Agency:

Congressional District, if known

7. Federal Program Name/Description:

CFDA Number, if applicable _____

8. Federal Action Number, if known:

9. Award Amount, if known:

10. a. Name and Address of Lobby Entity
(If individual, last name, first name, MI)

b. Individuals Performing Services (including
address if different from No. 10a)
(last name, first name, MI)

(attach Confirmation Sheet(s) if necessary)

11. Amount of Payment (check all that apply)

\$ _____ actual planned

13. Type of Payment (check all that apply)

- a. retainer
- b. one-time fee
- c. commission
- d. contingent fee
- e. deferred
- f. other, specify _____

12. Form of Payment (check all that apply):

- a. cash
- b. in-kind; specify: nature _____
value _____

14. Brief description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) if necessary)

15. Continuation Sheet(s) attached: Yes No

16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Authorized for Local Reproduction

Federal Use Only:

Standard Form – LLL

Exhibit "T"

Certification of Contractor

Caltrans Exhibit 10-F – Certification of Contractor, Commissions & Fees

CERTIFICATION OF CONTRACTOR

I HEREBY CERTIFY that I am the _____, and duly authorized representative of the firm of _____, whose address is _____, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this agreement; nor
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-aid Highway funds, and is subject to applicable state and federal laws, both criminal and civil.

(Date)

(Signature)

Certification of Local Agency

Caltrans Exhibit 10-G Certification of Local Agency

CERTIFICATION OF LOCAL AGENCY

I HEREBY CERTIFY that I am the _____ of the
COUNTY OF SAN MATEO PUBLIC WORKS DEPARTMENT that the
consulting firm of SWAIM BIOLOGICAL, INC. _____, or its representative has not been
required (except as herein expressly stated), directly or indirectly, as an express or
implied condition in connection with obtaining or carrying out this Agreement to
(a) employ, retain, agree to employ or retain, any firm or person, or
(b) pay or agree to pay, to any firm, person or organization, any fee,
contribution, donation, or consideration of any kind.

I acknowledge that this Certificate is to be made available to the California Department
of Transportation (Caltrans) in connection with this Agreement involving participation
of federal-aid highway funds, and is subject to applicable state and federal laws, both
criminal and civil.

(Date)

(Signature)