



May 14, 2026

CONSENT ITEM STAFF REPORT

ITEM 7.C. Review and Authorize Agreement with J.F. Brennan Company, Inc. for Annual Ocean Outfall Inspection

Recommendation:

1. That the Board authorize staff to execute an agreement with the J.F. Brennan Company, Inc. for the Annual Ocean Outfall Inspection

Discussion:

The permits for the District wastewater treatment plant and ocean outfall include, among other requirements, an annual inspection of the ocean outfall. The required inspection involves the use of a diver to video the full length of the outfall line when water clarity and visibility allow for a usable video, and the video is viewed to evaluate the physical integrity of the outfall pipe and to observe signs of distress and deterioration.

On April 27, 2026, J.F. Brennan Company (Brennan) submitted a proposal for the District's annual ocean outfall inspection. The proposal includes the following scope of work:

- Lump sum of a single mobilization/demobilization of a 3-Man dive team and dive support vessel
- Dive team to inspect all exposed portions of the ocean outfall including: sacrificial anodes, ballast, diffusers, joints and unsupported areas
- Inspection Report Deliverable

Brennan has completed recent ocean outfall inspections for the District. In 2022, Brennan provided recommendations for repairing the outfall. Those repairs were planned for but were not completed. Brennan's annual inspection for this year will provide updates about its prior recommendations and any new recommendations for repair of the outfall.

District policy generally requires the District to solicit written proposals from at least three qualified consultants if the cost for professional services falls between Ten Thousand Dollars (\$10,000) and Fifty Thousand Dollars (\$50,000), but "special circumstances" may warrant fewer than three proposals.

Where it is in the best interests of the District under "special circumstances" to limit the number of proposals solicited, the documented basis for the action must be included in

the report to the District Board. Special circumstances exist here because Brennan completed the most recent ocean outfall inspection for the District and made repair recommendations that will be reviewed with the current inspection. It is in the District's best interests for Brennan to complete the inspection and review of its prior repair recommendations.

The fee for the attached proposal is \$14,198. Funding for this service is included in the proposed FY26-27 budget as part of required repair and maintenance activities.

Staff requests the board discuss the item and approve the recommended action.

Attachments:

1. Proposal
2. Draft Professional Services Agreement



J.F. BRENNAN COMPANY, INC.

2026 San Simeon Ocean Outfall Inspection

San Simeon Community Services District

San Simeon, CA

April 27, 2026

Information herein is released solely to San Simeon Community Services District and their designated engineering firm. Release to any third party is not permitted without consent from J.F. Brennan Company, Inc.



April 27, 2026

Suzy Watkins
San Simeon Community Services District
111 Pico Ave, San Simeon, CA 93452

805.927.4778
manager@sansimeoncsd.org

Re: 2026 San Simeon Ocean Outfall Inspection

Suzy Watkins,

J.F. Brennan Company, Inc. (Brennan) is pleased to provide the enclosed proposal for your 2026 San Simeon Ocean Outfall Inspection project. Our team of marine construction professionals is grateful for the opportunity to submit this proposal describing how the work can proceed in the safest, highest quality, and most efficient manner possible.

Brennan's proposal includes the following scopes of work:

- Lump sum of a single mobilization/demobilization of a 4-Man dive team and dive support vessel
- Dive team to inspect all exposed portions of the ocean outfall including:
 - Sacrificial anodes
 - Ballast
 - Diffusers
 - Joints
 - Unsupported areas
- Inspection Report Deliverable

Thank you for the opportunity to submit our proposal for the 2026 San Simeon Ocean Outfall Inspection project. Our team is prepared to answer questions you may have regarding the pricing or proposal. Please do not hesitate to contact us at your earliest convenience.

Sincerely,



Lauren Collins, Senior Project Manager—Underwater Services

J.F. Brennan Company, Inc.
lcollins@jfbrennan.com | 707.389.0678

Cc: Merrill Collins, Regional Dive Manager—Underwater Services

Pricing

J. F. BRENNAN - PRICING SUMMARY			
Description	Unit Price	UOM	Subtotal
Mobilization/Demobilization (per occurrence)	\$ 1,868.00	EA	\$ 1,868.00
San Simeon Ocean Outfall Inspection	\$ 12,330.00	LS	\$ 12,330.00
	Extended Total =		\$ 14,198.00

Clarifications and Exceptions

General

Contractual Terms

- This quote is valid for 90 days.
- Arrival at a contract with mutually agreeable terms and conditions is assumed.
- Permits, licenses, and fees of any kind are excluded.

Schedule

- Proposed work schedule: 1 workday, Monday through Friday, 12 HR shift (port to port from Moro Bay and no holiday work. Brennan can provide weekend and holiday work hours upon request.
- No liquidated damages are included or assumed. Brennan will only be responsible for liquidated damages if assessed by the owner, and mutually agreed that the damages were due to Brennan non-performance.

Payment Terms

- No retainage shall be held greater than owner withholding. All retainage to be released within 30 days of Brennan work scope completion regardless of owner retention
- Invoices to be submitted monthly for payment within 30 days, or per owner prompt pay requirements, whichever is sooner. Pay items such as mobilization shall be paid in relation to Brennan contract value, not total project contract value.

Dive

- Divers are all members of United Brotherhood of Carpenters Union.
- All Brennan divers are certified by the Association of Diving Contractors International, Inc. (ADCII); individual certifications are available upon request.
- We will perform this work in sea conditions conducive to diving work; high surf present safety and efficiency challenges in which we cannot work.
- Brennan reserves the right to determine factors that constitute safe working conditions.
- Overtime rates apply after 8 HR on-site.
- This quote assumes arrival at a contract with mutually agreeable terms and conditions prior to mobilization.
- A platform (and/or suitable land, barge, or boat space) will be provided to support dive operations necessary to perform the work (e.g., trailers, CONEX boxes, dive equipment, etc.).

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2026 (the “Effective Date”), by and between the San Simeon Community Services District, a special district of the State of California (“District”), whose address is 111 Pico Avenue, San Simeon, California 93452, and J.F. Brennan Company, Inc. (“Professional”), whose address is 1805 Railroad Avenue, Winters, CA 95694 (each individually a “Party” and collectively the “Parties”). There are no other parties to this Agreement.

RECITALS

A. District seeks to hire an independent contractor to perform the District’s annual ocean outfall inspection (the “Project”).

B. Professional has submitted a proposal to District to provide the District’s annual ocean outfall inspection. A description of the services Professional proposes to provide (“Services”) is attached hereto as **Exhibit A: Services**. District desires to retain Professional to perform the Services, subject to the terms and conditions set forth in this Agreement.

C. The Parties have outlined the rates and method of payment to Professional for its performance of the Services under this Agreement, which shall be included in the Scope of Services in **Exhibit A**.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, the Parties agree as follows:

AGREEMENT

Section 1. Recitals. The recitals set forth above (“Recitals”) are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Sections 1 through 32 of this Agreement, Section 1 through 32 shall prevail.

Section 2. Term. The term of this Agreement shall be Sixty (60) days and will commence on June 16, 2026, and terminate on August 14, 2026 (“Term”) unless the Term is extended or the Agreement is terminated earlier pursuant to this Agreement.

Section 3. Exhibits. All “Exhibits” referred to below or attached to herein are by this reference incorporated into this Agreement:

<u>Exhibit Designation</u>	<u>Exhibit Title</u>
Exhibit A:	Services

Section 4. Work.

4.1. Services. Subject to the terms and conditions set forth in this Agreement, Professional shall provide District the Services described in **Exhibit A**. If any conflicts exist between the terms of this Agreement and **Exhibit A**, the terms of this Agreement shall control. Any request for Services not included in **Exhibit A** will be considered a request for additional or modified Services (“Modification” or “Modifications”). Professional shall not receive additional compensation for any Modification of the Services unless the Parties agree otherwise in a writing executed by both Parties.

4.2. District Requested Modification of Services. District may, by written order, authorize Modifications to the Services described in **Exhibit A**. If such Modifications cause an increase in the cost or time, or both, required for performance of Professional’s Services, the Parties shall enter into a written amendment to this Agreement to adjust the Services and the rates to be paid to Professional. The Services shall not be revised unless District and Professional mutually agree to a written amendment to this Agreement reflecting such revisions, additional compensation, time for performance, or such other terms or conditions mutually agreed upon by the Parties.

4.3. Professional Requested Modification in Services. Professional shall not be compensated for work outside the Services described in this Agreement, unless, prior to the commencement of the Services:

(a) Professional provides District with written notice that specific work requested by District or required to complete the Project is outside the agreed upon Services. Such notice shall: (i) be supported by substantial evidence that the work is outside the Services; and (ii) set forth the Professional’s proposed course of action for completing the work and a specific request for District to approve the Modification to the Services; and

(b) District agrees that the work requires a Modification;

(c) The Parties execute a written amendment to this Agreement describing any Modification.

Section 5. Compensation. Professional shall invoice District after completion of the Services according to the rates set forth in **Exhibit A**. District’s total compensation to Professional shall not exceed Fourteen Thousand One Hundred Ninety-Eight Dollars (\$14,198.00) (“Maximum Payment”) unless the Parties mutually agree in writing otherwise. Professional hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Professional anticipates and that Professional shall not be entitled to additional compensation unless agreed otherwise by the Parties. District shall make a lump sum payment in the amount invoiced by Professional within thirty (30) calendar days of receiving such invoice. In the event that an

amount of the invoice is in dispute, District shall inform Professional of the amount and basis for the dispute and may withhold the amount which is in dispute until the dispute has been resolved. The payment specified shall be the only payment made to Professional for performance of the Services, including compensation for any Modification. District shall issue payment according to District's customary procedures and practices for issuing payments to independent contractors.

Section 6. Notice to Proceed. Professional shall not commence the performance of the Services until it has been given notice by District ("Notice to Proceed").

Section 7 Time of Performance. Professional will commence performance of the Services within sixty (60) calendar days of the date the Notice to Proceed. The time of performance is a material term of this Agreement relied on by District in entering into this Agreement.

Section 8. Professional's Resources. Professional shall, at its sole cost and expense, furnish all facilities, equipment, materials, information, personnel, and administrative assistance which may be required to perform its obligations under this Agreement.

Section 9. Duties of District. In order to permit Professional to render the services required hereunder, District shall, at its expense and in a timely manner: (a) Provide such information as Professional may reasonably require to undertake or perform the Services; (b) Promptly review any and all documents and materials submitted to District by Professional in order to avoid unreasonable delays in Professional's performance of the Services; and (c) Promptly notify Professional of any fault or defect in the performance of Professional's services hereunder.

Section 10. Time and Personnel Devoted to Services. Professional shall devote such time and personnel to the performance of this Agreement, as is necessary to perform the Services in compliance with this Agreement.

Section 11. Performance by Qualified Personnel; No Subcontracting. Services under this Agreement shall be performed only by competent personnel under the supervision and direct employment of Professional. Professional will conform with District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, shall be supervised by Professional. Professional is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is expressly approved by District in writing. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of the other Party. An agreement made in violation of this provision shall confer no rights on any Party and shall be null and void.

Section 12. Representations of Professional. District relies upon the following representations by Professional in entering into this Agreement:

12.1. Qualifications. Professional represents that it is qualified to perform the Services provided in **Exhibit A** and that it possesses the necessary licenses and permits required to perform the Services or will obtain such licenses or permits prior to the time such licenses or permits are required. Professional shall also ensure that all subcontractors are similarly licensed and qualified. Professional represents and warrants to District that Professional shall, at

Professional's sole cost and expense, keep in effect or obtain at all times during the Term of this Agreement, any licenses, permits, and approvals which are legally required for Professional to practice Professional's profession at the time the Services are rendered.

12.2. Professional Performance. Professional represents that all Services under this Agreement shall be performed in a manner consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances. Professional shall perform its services as expeditiously as is consistent with such professional skill and care and as necessary for the orderly progress of the Project. Professional agrees that, if a Service is not so performed, in addition to all of its obligations under this Agreement and at law, Professional shall re-perform or replace unsatisfactory Service at no additional expense to District.

12.3. No Waiver of Claims. The granting of any payment by District, or the receipt thereof by Professional, or any inspection, review, approval or oral statement by any representative of District, or state certification shall not, in any way, waive, limit, or replace any certification or approval procedures normally required or lessen the liability of Professional to re-perform or replace unsatisfactory Service, including, but not limited to, cases where the unsatisfactory character of such Service may not have been apparent or detected at the time of such payment, inspection, review or approval.

12.4. District's Remedies are Cumulative. Nothing in this Section shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which District or Professional may have under this Agreement or any applicable law. All rights and remedies of District, whether under this Agreement or applicable law, shall be cumulative.

12.5. No Conflict of Interest. Professional represents that no conflict of interest will be created under state or federal law by entering into or in carrying out this Agreement.

Section 13. Conformity with Law and Safety. Professional shall observe and comply with all applicable laws, ordinances, codes, regulations, and permits of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of Services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, the California Building Code, the Americans with Disabilities Act, any copyright, patent, or trademark law, and all other applicable federal, state, municipal and local safety regulations, appropriate trade association safety standards, and appropriate equipment manufacturer instructions. All Services performed by Professional must be in accordance with these laws, ordinances, codes, and regulations, including the administrative policies and guidelines of District pertaining to the work. Professional's failure to comply with any laws, ordinances, codes, or regulations applicable to the performance of the Services hereunder shall constitute a breach of contract. In cases where standards conflict, the standard providing the highest degree of protection shall prevail.

If a death, serious personal injury, or substantial property damage occurs in connection with the performance of this Agreement, Professional shall immediately notify District's Interim

General Manager by telephone. If any accident occurs in connection with this Agreement, Professional shall promptly submit a written report to District, in such form as District may require. This report shall include the following information: (a) Name and address of the injured or deceased person(s); (b) Name and address of Professional's subcontractor, if any; (c) Name and address of Professional's liability insurance carrier; and (d) A detailed description of the accident, including whether any of District's equipment, tools or materials were involved.

If a release of a hazardous material, substance, or waste occurs in connection with the performance of this Agreement, Professional shall immediately notify District's Interim General Manager.

Section 14. Instructions or Directions to Professional. Unless directed otherwise by the District, in no event shall Professional take any instructions or directions from anyone other than the District on any matter pertaining to the Professional's Services to be performed for District under this Agreement.

Section 15. Confidentiality. Professional understands and agrees that, in the performance of Services under this Agreement or in the contemplation thereof, Professional may have access to private or confidential information that may be owned or controlled by District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to District ("Confidential Information").

Professional shall not, either during or after the Term, disclose to any third party any Confidential Information without the prior written consent of District. If District gives Professional written authorization to make any such disclosure, Professional shall do so only within the limits and to the extent of that authorization. Professional may be directed or advised by the District's General Counsel on various matters relating to the performance of the Services on the Project or on other matters pertaining to the Project and, in such event, Professional agrees that it will treat all communications between itself, its employees and its subcontractors as being communications which are within the attorney-client privilege.

Notwithstanding the foregoing, Professional may disclose Confidential Information required to be disclosed under law, provided that, prior to disclosure, Professional shall first give notice to District and make a reasonable effort to obtain a protective order requiring that District's Confidential Information not be disclosed. This exception is limited to the extent disclosure is required under law.

Section 16. Ownership of Work Product. Any and all work, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, designs, specifications, drawings, diagrams, surveys, source codes, professional or technical information or data, photographs, notes, letters, emails or any original works of authorship created by Professional or its subcontractors or subcontractors in connection with Services performed under this Agreement ("Products") shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of District. In the event it is ever determined that any Product created by Professional or its subcontractors, or subcontractors under this Agreement, are not works for hire under U.S. law, Professional hereby assigns all

copyrights to such Products to District. With the prior written approval of District's point of contact for the Project, Professional may retain and use copies of such Products for reference and as documentation of its experience and capabilities.

All Products shall become the property of District irrespective of where located or stored, and Professional agrees to deliver all such documents and information to District, without charge and in whatever form it exists, on the completion of the Professional's Services hereunder. Professional shall have no ownership interest in such Products.

All work product of Professional under this Agreement, including written information which District will cause to be distributed for either internal or public circulation, including both preliminary and final drafts, shall be delivered to District in both printed and electronic form, or as may be specified in **Exhibit A**.

Upon the conclusion of the Term or in the event of Termination of this Agreement, Professional agrees, at its expense and in a timely manner, to return to District all documents, drawings, photographs and other written or graphic material, however produced, that it received from District, its contractors, or agents, in connection with the performance of its Services under this Agreement. All materials shall be returned in the same condition as received.

Section 17. Assignment Prohibited. No Party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempt or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

Section 18. Excusable Delays; Notice to Other Party of Delay. Professional shall not be in breach of this Agreement in the event that performance of Services is temporarily interrupted or discontinued due to a "Force Majeure" event which is defined as: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts and other labor disturbances or other catastrophic events, which are beyond the reasonable control of Professional. Force Majeure does not include: (a) Professional's financial inability to perform; (b) Professional's failure to obtain any necessary permits or licenses from other governmental agencies; or (c) Professional's failure to obtain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Professional.

Section 19. Suspension of Services by District. District reserves the right to suspend Professional's Services under this Agreement when District determines that it is necessary to do so. When possible, District shall give Professional notice of such suspension and Professional shall, upon receipt of said notice, suspend all Services except any Services, the completion of which is authorized by the notice given by District.

Section 20. Termination of Work by District for Its Convenience. District shall have the right to terminate this Agreement at any time for its convenience by giving notice of such termination to Professional ("Termination"). In the event District shall give such notice of termination, Professional shall cease rendering Services upon receipt of said notice given as required in this Agreement. If District terminates this Agreement:

(a) Professional shall deliver copies of all Products prepared by it pursuant to this Agreement.

(b) If District terminates this Agreement for convenience before District issues the Notice to Proceed to Professional or before Professional commences any Services hereunder, whichever last occurs, District shall not be obligated to make any payment to Professional. If District terminates this Agreement after District has issued the Notice to Proceed to Professional and after Professional has commenced performance under this Agreement, District shall pay Professional the reasonable value of the Services rendered by Professional pursuant to this Agreement prior to termination of this Agreement. District shall not in any manner be liable for Professional's actual or projected lost profits had Professional completed the Services. Professional shall furnish to District such financial information that, in the judgment of the District's Interim General Manager, is necessary to determine the reasonable value of the Services rendered by Professional prior to termination.

(c) Except as provided in this Agreement, in no event shall District be liable for costs incurred by or on behalf of Professional after the date of the notice of termination.

(d) Notwithstanding this Section, this Agreement may be terminated by District for cause based on the loss or suspension of any licenses, permits or registrations required for the continued provision of the Services, or Professional's malfeasance. Termination of the Agreement for cause as set forth in this Section shall relieve District from compensating Professional.

Section 21. Assurance of Performance. If, at any time, District believes Professional may not be adequately performing its obligations under this Agreement or may fail to complete the Services as required by this Agreement, District may submit a written request to Professional for written assurances of performance and a plan to correct observed deficiencies in Professional's performance. Failure to provide written assurances subsequent to such written request, constitutes grounds to declare a breach under this Agreement.

Section 22. Cancellation for Breach by Either Party. Should either Party fail to substantially perform its obligations in accordance with the provisions of this Agreement, the other Party shall thereupon have the right to cancel the Agreement by giving written notice and specifying the effective date of such cancellation. If District cancels this Agreement for breach and it is subsequently determined that Professional did not fail to substantially perform its obligations in accordance with this Agreement, then cancellation for breach by District shall be deemed, and treated, as termination for convenience.

Neither Party waives the right to recover damages against the other for breach of this Agreement, including any amount necessary to compensate District for all detriment proximately caused by Professional's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom. District reserves the right to offset such damages against any payments owed to Professional.

District shall not in any manner be liable for Professional's actual or projected lost profits had Professional completed the Services required by this Agreement.

Section 23. Dispute Resolution. In the event of any dispute between the Parties to this Agreement, the Parties agree to first negotiate in good faith toward a resolution with participation by representatives of each party holding sufficient authority to resolve the dispute. If such dispute cannot be resolved within fifteen (15) business days, the dispute shall be submitted to mediation as a condition precedent to initiating formal litigation.

Section 24. Insurance Coverage. During the Term, the Professional shall maintain in full force and effect policies of insurance set forth herein, which shall be placed with insurers with a current A M Best's rating of no less than A VII and will provide District with written proof of said insurance. Professional shall maintain coverage, in which limits can be met by combination of primary and umbrella/excess liability, as follows:

24.1. General Liability. Professional shall carry general liability insurance in the amount of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury, and property damage. If commercial general liability insurance or another form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project, or the general aggregate shall be Two Million Dollars (\$2,000,000.00).

24.2. Workers' Compensation Insurance and Employer's Liability. Professional shall carry workers' compensation insurance as required by the State of California under the Labor Code. Professional shall also carry employer's liability insurance in the amount of One Million Dollars (\$1,000,000.00) per accident, with a One Million Dollar (\$1,000,000.00) policy limit for bodily injury by disease, and a One Million Dollar (\$1,000,000.00) limit for each employee's bodily injury by disease.

24.3. Professional Liability. Professional shall carry errors and omissions liability insurance in the amount of no less than Two Million Dollars (\$2,000,000.00) per claim or greater if appropriate for the Professional's profession.

24.4. Commercial Automobile Liability. Professional shall carry commercial automobile liability insurance in the amount of One Million Dollars (\$1,000,000) or greater per occurrence for owned, leased, hired, and borrowed automobiles.

24.5. Waiver of Subrogation. With the exception of errors and omissions liability insurance, Professional hereby agrees to waive subrogation which any insurer of Professional may acquire from Professional by virtue of the payment of any loss. The commercial general liability policy and workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of District for all work performed by Professional, its agents, employees, independent contractors, and subcontractors. Professional agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

Section 25. Additional Insurance Requirements. Within five (5) days of the commencement of the Term, Professional shall provide District with certificates of insurance for all of the

policies required under this Agreement (“Certificates”), excluding the required workers’ compensation insurance. Such Certificates shall be kept current for the Term of the Agreement and Professional shall be responsible for providing updated copies and notifying District if a policy is cancelled, suspended, reduced, or voided. With the exception of the workers’ compensation and professional liability insurance, all of the insurance policies required in this Agreement shall:

(a) Provide that the policy will not be cancelled, allowed to expire, or materially reduced in coverage without at least thirty (30) days’ prior written notice to District of such cancellation, expiration, or reduction and each policy shall be endorsed to state such, unless such cancellation is for the non-payment of premium wherein a ten (10) day notice shall apply;

(b) Name District, and District’s Agents as additional insureds with respect to liability arising out of Services, work, or operations performed by or on behalf of Professional;

(c) Cover products and completed operations of Professional, premises owned, occupied, or used by the Professional, or automobiles owned, leased, or hired or borrowed by the Professional; contain no special limitations on the scope of protection afforded to District;

(d) Be primary with respect to any insurance or self-insurance programs covering District or District’s Agents and any insurance or self-insurance maintained by District or District’s Agents shall be in excess of Professional’s insurance and shall not contribute to it;

(e) Contain standard separation of insured provisions; and

(f) State that any failure to comply with reporting or other provisions of the policy including breaches of warranties shall not affect the coverage provided to District.

Section 26. Indemnification by Professional. To the fullest extent permitted by law (including, without limitation, California Civil Code sections 2782 and 2782.8), Professional shall defend with legal counsel reasonably acceptable to District, indemnify and hold harmless the District and District’s Agents from and against any and all third-party claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Professional or its subcontractors), expense and liability of every kind, nature and description due to acts or omissions of Professional, or any direct or indirect subcontractor, employee, contractor, representative or agent of Professional, or anyone that Professional controls (collectively “Liabilities”). Such obligations to defend, hold harmless and indemnify District and District’s Agents shall not apply to the extent that such Liabilities are caused in whole by the negligence, sole negligence, active negligence, or willful misconduct of District or District’s Agents, but shall apply to all other Liabilities.

Section 27. Liability. Notwithstanding any other provision of this Agreement, in no event shall District or Professional be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

Section 28. Independent Contractor. At all times during the Term, Professional shall be deemed to be an independent contractor and shall be wholly responsible for the manner in which Professional performs the Services required under this Agreement. Professional shall be liable for its acts and omissions and those of its employees, contractors, subcontractors, representatives, volunteers, and its agents. Nothing contained herein shall be construed as creating an employment, agency, or partnership relationship between District and Professional. District shall have the right to control Professional only insofar as the result of Professional's Services rendered pursuant to this Agreement; however, District shall not have the right to control the means by which Professional accomplishes Services rendered pursuant to this Agreement.

Section 29. Professional Not Agent. Except as District may specify in writing, Professional shall have no authority, express or implied, to act on behalf of District in any case whatsoever as an agent. Professional shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever.

Section 30. Payment of Taxes and Other Expenses. Payment of any taxes, including California sales and use taxes, levied upon this Agreement, the transaction, or the Services or goods delivered pursuant hereto, shall be the obligation of Professional.

Section 31. Notices. Any notice or communication required hereunder between District and Professional must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Notices given by registered or certified mail shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, (b) on the date delivered as shown on a receipt issued by the courier, or (c) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the addresses in this paragraph set forth below:

If to District:

**San Simeon Community Services District
Attn: Manager
111 Pico Avenue
San Simeon, California 93452**

With a courtesy copy to:

**White Brenner LLP
Attn: Nubia I. Goldstein, District General Counsel
1608 T Street
Sacramento, CA 95811**

If to Professional:

J.F. Brennan Company, Inc.
Western Area Office
Attn: Lauren Collins
1805 Railroad Avenue
Winters, CA 95694

Section 32. General Provisions.

A. Modification. No alteration, modification, or termination of this Agreement shall be valid unless made in writing and executed by all Parties.

B. Waiver. No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

C. Assignment. No Party shall assign, transfer, or otherwise dispose of this Agreement in whole or in part to any individual, firm, or corporation without the prior written consent of the other Party. Subject to the forgoing provisions, this Agreement shall be binding upon, and inure to the benefit of, the respective successors and assigns of the Parties.

D. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of California.

E. Venue. Venue for all legal proceedings shall be in the Superior Court of California for the County of San Luis Obispo.

F. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall be deemed a single agreement.

G. Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the execution of this Agreement by any Party, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

H. Audit. District shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Professional's charges to District under this Agreement.

I. Entire Agreement. This Agreement sets forth the entire understanding between the Parties as to the subject matter of this Agreement and merges all prior discussions, negotiations, proposal letters or other promises, whether oral or in writing.

J. Supersedes Prior Agreement. It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, whether written, electronic or oral, between the Parties with respect to the subject matter of this Agreement.

K. Headings Not Controlling. Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

L. Successors and Assigns. All representations, covenants, and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of, any or all of the Parties hereto, shall be binding upon and inure to the benefit of such Party, its successors and assigns.

M. Interpretation. As used herein, any gender includes each other gender, the singular includes the plural and vice versa.

N. Mandatory and Permissive. “Shall” and “will” and “agrees” are mandatory. “May” and “can” are permissive.

O. Attorney’s Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

P. Time is of the Essence. Time is of the essence in this Agreement for each covenant and term of a condition herein.

Q. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into the Agreement have been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

R. Drafting and Ambiguities. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last day and date below written.

DISTRICT:

San Simeon Community Services District, a special district of the State of California

By: _____

Date: _____

Approved as to Form:

Nubia I. Goldstein, District General Counsel

PROFESSIONAL:

J.F. Brennan Company, Inc., a California corporation

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Services