



## MEMORANDUM

**TO:** CITY COUNCIL

**FROM:** GEOFF ENGLISH, DIRECTOR OF PUBLIC WORKS *GE*

**BY:** SHANE TAYLOR, UTILITIES MANAGER

**SUBJECT:** CONSIDERATION OF PROPOSED AGREEMENT FOR CROSS-  
CONNECTION INSPECTION SERVICES

**DATE:** OCTOBER 27, 2015

### RECOMMENDATION:

It is recommended the City Council approve the agreement for cross-connection inspection services with the County of San Luis Obispo.

### IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

The funds are budgeted annually to support this agreement in an amount not to exceed \$10,000 for FY 2015/16 and again in FY 2016/17 from the Water Fund. Staff spends approximately 50 person hours a year administering the agreement and all associated obligations.

### BACKGROUND:

A component of the City's Water Supply Permit from the State is to maintain an on-going cross-connection program. Cross-connections are existing connections between drinking water systems and other sources of water that are not approved as safe and potable for human consumption. There are currently 600 backflow devices in the City to protect our water distribution system from a possible cross-connection. This agreement for cross-connection services provides the City all the required services to maintain our cross-connection program per Chapter 13.16 of the City's Municipal Code.

### ANALYSIS OF ISSUES:

In order to be in compliance with our Water Supply Permit, Title 17 Code of Regulations and Chapter 13.16 of the City's Municipal Code, an on-going cross-connection program needs to be in place. Since 1971, the City has had a cross-connection ordinance. Currently the County of San Luis Obispo Division of Environmental Services provides the City with qualified staff who are trained, experienced and certified to perform all aspects of the cross-connection inspection program. In fact, every incorporated city and community services district in San Luis Obispo County contracts with County Environmental Services to perform cross-connection inspection services. Contracting

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with the County is the most cost effective and efficient method of administering our cross-connection program.

**ALTERNATIVES:**

The following alternatives are provided for Council consideration:

- Approve the Cross-Connection Agreement;
- Do not approve the Cross-Connection Agreement; or
- Provide direction to staff.

**ADVANTAGES:**

Approval of the agreement will authorize the County to continue providing this valuable service up to year 2025, and keep the City in compliance.

**DISADVANTAGES:**

No disadvantages are foreseen.

**ENVIRONMENTAL REVIEW:**

No environmental review is required for this item.

**PUBLIC NOTIFICATION AND COMMENTS:**

The Agenda was posted in front of City Hall on Thursday, October 22, 2015. The Agenda and staff report were posted on the City's website on Friday, October 23, 2015.

**Attachments:**

1. Agreement for Cross-Connection Inspection Services

**AGREEMENT FOR CROSS-CONNECTION INSPECTION SERVICES**

This Agreement for Cross-Connection Inspection Services ("Agreement") is made and entered into by and between the County of San Luis Obispo, a public entity in the State of California, ("County") and the City of Arroyo Grande, a California incorporated city ("Contractor") (collectively, "Parties").

**WITNESSETH:**

**WHEREAS**, Contractor, within its jurisdictional boundaries or area of responsibility, is in need of special services; to wit, cross-connection inspection services; and

**WHEREAS**, County has qualified staff who are trained, experienced, expert and competent to provide cross-connection inspection services for the appropriate fees and pursuant to the terms and conditions hereinafter set forth.

**NOW THEREFORE**, in consideration of the covenants, conditions, agreements and stipulations set forth herein, the Parties hereby mutually agree as follows:

1. **Services.** The Parties agree to perform the services described in Exhibit A, attached hereto and incorporated herein by this reference.
2. **Compensation.** The Parties agree to the compensation described in Exhibit B, attached hereto and incorporated herein by this reference.
3. **Duration.** The Parties agree to the duration described in Exhibit C, attached hereto and incorporated herein by this reference.
4. **General Conditions.** The Parties agree to the general conditions described in Exhibit D, attached hereto and incorporated herein by this reference.
5. **Special Conditions.** The Parties agree to the special conditions described in Exhibit E (if any), attached hereto and incorporated herein by this reference. To the extent that there are conflicts between the general conditions in Exhibit D and the special conditions in Exhibit E, the terms and conditions of the special conditions in Exhibit E shall be controlling.
6. **Notices.** Notices required under this Agreement shall be provided to:

COUNTY OF SAN LUIS OBISPO  
Richard J. Lichtenfels, R.E.H.S., M.P. H.  
Supervising Environmental Health Specialist  
2156 Sierra Way  
San Luis Obispo, CA 93406

CITY OF ARROYO GRANDE  
Dianne Thompson  
City Manager  
300 E. Branch Street  
Arroyo Grande, CA 93420

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date set forth below.

**CITY OF ARROYO GRANDE:**

\_\_\_\_\_  
Jim Hill, Mayor

**ATTEST:**

\_\_\_\_\_  
Kelly Wetmore, City Clerk

**APPROVED AS TO FORM AND LEGAL EFFECT:**

\_\_\_\_\_  
Heather K. Whitham, City Attorney

**COUNTY OF SAN LUIS OBISPO:**

By: \_\_\_\_\_  
Jeff Hamm, Health Agency Director

\_\_\_\_\_  
Date

**APPROVED AS TO FORM AND LEGAL EFFECT:**

Rita L. Neal  
County Counsel

By:  \_\_\_\_\_  
Deputy County Counsel

Sept. 11, 2015  
Date

# **AGREEMENT FOR CROSS-CONNECTION INSPECTION SERVICES**

## **EXHIBIT A**

### **SCOPE OF SERVICES**

1. **Contractor Obligations.** The Contractor shall perform the following duties:
  - A. Contractor will prepare, adopt and furnish all appropriate ordinances, resolutions or policies.
  - B. Contractor may include in any will-serve letters to water users a contractual obligation to comply with ordinances, resolutions and policies pertaining to cross-connections. Notice shall be given in a will-serve letter that violations of the cross-connection ordinances, resolutions or policies may result in a later termination of water service to the extent allowed by law.
  - C. Contractor may pursue appropriate enforcement, including, but not limited to, contract remedies.
  
2. **County Obligations.** The County, acting through the Public Health Department, Environmental Health Division, shall perform the following duties within the Contractor's areas of responsibility:
  - A. County will conduct a survey by performing a thorough inspection of all water uses for cross-connections. County will prioritize surveys of special hazard facilities. If corrections are necessary or if other need arises, County will conduct additional surveys as needed to confirm compliance, follow-up on corrections or identify newly created cross-connections.
  - B. County will prepare and maintain written survey reports, water user notices, correction notices and follow-up reports.
    - 1) **Water User Notices.**
      - a. County will provide a written survey report to a water user listing cross-connections found on the user's premises. County will notify the water user of corrective action required, if any, and the required compliance date.
      - b. County will follow-up with the water user to confirm that corrective action was performed in a timely manner and compliance has been achieved or if non-compliance continues. County will inform the water user of further corrective action and required compliance dates as needed. County will re-inspect as needed until compliance is accomplished.

- 2) Contractor Notices. County will provide a copy of the survey report and letter to the water user to the Contractor. County will provide a copy of the follow-up letters(s) to the user confirming compliance or notifying the water user of further corrective action and compliance dates.

C. County will perform the following enforcement measures.

- 1) To the extent the County would normally prosecute San Luis Obispo County Code violations, County may prosecute violations of any County ordinances related to cross-connections.
- 2) County will also cite any State laws, non-County ordinances, Contractor resolutions or policies in a correction letter to a water user.
- 3) Contractor may pursue enforcement as appropriate. In the event of litigation in any tribunal with the power to issue subpoenas, and provided a subpoena is issued for a County employee with the appropriate fees tendered as per Government Code, section 68096.1, County employees, if still in County service, shall appear and testify as a witness regarding cross-connections. County employees may be interviewed or deposed to prepare for litigation.

D. Backflow Prevention Devices.

- 1) County will determine the necessity of backflow prevention devices at the water service connection for the protection of the water main where internal protection does not solve the total cross-connection problem.
- 2) County will maintain a list of known backflow devices and the known location of the devices in service in the Contractor's service area.
- 3) County will provide a diagram for the proper installation of approved backflow prevention devices. If a manufacturer's installation instructions, diagrams or both are available, providing the manufacturer's material shall satisfy this obligation.

E. County will perform plan checks of water usage when requested by the water purveyor/district when necessary to supplement Building Department plan reviews.

F. Testing. Testing of backflow devices is required as per California Code of Regulation, Title 17, as hereafter amended. At present, testing is required annually.

- 1) County will notify the water user when testing is due.
- 2) County will supply a list of qualified backflow prevention device testers.
- 3) County will follow-up on delinquent reporting of test results.

- 4) County will update records when testing reports are received.
  - 5) County will evaluate testing results for inadequacies.
- G. **Technical Consultations.** County will provide technical consultation with Contractor. At present, the County normally coordinates cross-connection control program elements with other water purveyors, districts and users. To the extent this service continues in the future, County will continue to coordinate cross-connections with other jurisdictions or responsible purveyors or water users and will share information that is not restricted due to confidentiality. Contractor will also provide reciprocal technical consultants and non-confidential information to County.



## AGREEMENT FOR CROSS-CONNECTION INSPECTION SERVICES

### EXHIBIT B

#### COMPENSATION

1. **Time and Costs.** This is a time and costs Agreement. The cross-connection inspection services shall be charged hourly. Additional costs shall include, but not be limited to, "out-of-pocket" costs.
  - A. **Hourly Rate.** The hourly rate shall include compensation for the County's inspector staff, departmental overhead, and clerical support and office supplies. The hourly rate as of July 1, 2015 is \$102.00 per hour.
    - 1) The San Luis Obispo County Board of Supervisors establishes, amends and modifies the hourly rates at least annually and at other times as necessary. The rate establishment and amendments are "events of independent significance" and are subject to public review and are part of the public record. These rates are specific, identifiable and enforceable.
    - 2) There is a public notice of the Board's proposed action and action to amend the rates through the process of the Board's regularly scheduled meetings. Therefore, the rates will change by the public, unilateral action of the Board of Supervisors without further agreement or action by Contractor.
    - 3) The duly adopted current rates and subsequent amendments to the rates shall be binding in this Agreement without additional written amendments to this Agreement. Upon the effective date of the rate change, all services provided on or after that date shall be charged at the new rates.
  - B. **Costs.** Additional costs shall be itemized. Additional costs shall include, but not be limited to, out-of-pocket expenses.
  - C. **Administrative Costs.** Administrative costs are charges to water purveyors based on the number of their service connections, which compensates the County of San Luis Obispo for time that benefits the Cross Connection Program but cannot be attributed to an individual water purveyor.
2. **Billing.** County shall submit an itemized statement to Contractor on or before the 15<sup>th</sup> day of every other month for all services rendered during the previous two calendar months. Contractor shall remit to the County of San Luis Obispo all uncontested amounts listed on the itemized statement not later than thirty (30) days after it is received by the Contractor.

## **AGREEMENT FOR CROSS-CONNECTION INSPECTION SERVICES**

### **EXHIBIT C**

#### **DURATION**

1. Effective Date. The effective date of this Agreement shall be July 1, 2015.
2. Service Date. Services shall commence on or after the Effective Date and shall end upon the Duration Date.
3. Duration Date. This Agreement shall terminate on June 30, 2025. This Agreement may be terminated prior to the Duration Date in accordance with the termination provisions in Exhibit D of this Agreement.
4. Termination. The San Luis Obispo County Board of Supervisors specifically delegates to the Director of the San Luis Obispo County Health Agency the authority to terminate this Agreement in accordance with the provisions in Exhibit D without further need for action, approval or ratification by the Board of Supervisors.

# AGREEMENT FOR CROSS-CONNECTION INSPECTION SERVICES

## EXHIBIT D

### GENERAL CONDITIONS

1. **Termination for Convenience.** Either Party may terminate this Agreement at any time by giving the other Party thirty (30) days written notice of termination. Termination for convenience shall have no effect upon the rights and obligations of the Parties arising out of any services provided prior to the effective date of such termination. County shall be paid for all work satisfactorily completed prior to the effective date of termination.
2. **Termination for Cause.** If any of the following occur, either Party shall have the right to terminate this Agreement effective immediately upon giving written notice to the other Party. Rights or obligations of either Party for services satisfactorily performed prior to the termination shall not be affected.
  - A. Either Party fails to perform its duties in a timely and professional manner.
  - B. Funds intended for use for compensation in this Agreement become unavailable for use for the purposes of this Agreement.
3. **Status of the Parties' Officers / Employees / Agents.** Neither Party's officers, employees, agents, partners, other contractors or subcontractors shall be deemed to be employees of the other Party at any time. Nothing in this Agreement shall be construed as creating a civil service employer-employee relationship or a joint venture relationship. No officer, employee, agent, partner, other contractor or subcontractor of the other Party shall be eligible for membership in or any benefits from any County group plan for hospital, surgical, or medical insurance, or for membership in any County group plan for hospital, surgical, or medical insurance, or for membership in any County retirement program, paid vacation, paid sick leave, other leave, with or without pay, collective bargaining rights, grievance procedures, appeals to the Civil Service Commission or any other benefits which inures to or accrues to a County civil service employee. County employees shall not have those rights in Contractor's benefits and programs. The only performance and rights due to the other Party are those specifically stated in this Agreement.
4. **Warranty of Professional Service.** Each Party warrants that professional staff is necessary to perform this Agreement and that staff members will at all times be properly trained, certified and licensed under the laws and regulations of the State of California to provide the special services herein described. If for any reason staff members are required to provide professional services and all reasonably available staff are not qualified, this Agreement is automatically canceled effective the same date.

5. **Authority.** Any individual executing this Agreement on behalf of Contractor represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the Contractor, and that this Agreement is binding upon Contractor in accordance with its terms.
6. **No Assignment of Agreement.** Neither Party may delegate its rights or obligations under this Agreement and shall not assign or otherwise transfer its rights or obligations or any interest herein without the express prior written consent of the other Party. Any attempted assignment, transfer, delegation, hypothecation or subletting without the other Party's prior written consent shall be null and void.
7. **Applicable Law and Venue.** This Agreement has been executed and delivered in the State of California and covers services to be performed in California. The Parties agree that issues of validity, interpretation and enforcement shall be governed and determined by the laws of the State of California. All of the Parties' rights and obligations created hereunder shall be performed in the County of San Luis Obispo, State of California and such County shall be the venue for any action or proceeding arising out of this Agreement.
8. **Severability.** The invalidity of any provision of this Agreement shall not affect the validity or enforcement of any other provision of this Agreement.
9. **Entire Agreement and Modifications.** This Agreement supersedes all previous Agreements on the same subject and constitutes the entire understanding of the Parties hereto. No changes, amendments or alterations shall be effective or binding unless in writing and signed in advance of the effective date by both Parties.

**AGREEMENT FOR CROSS-CONNECTION INSPECTION SERVICES**

**EXHIBIT E**

**SPECIAL CONDITIONS**

The records required by this Agreement shall be retained for a minimum period of:

- A. Three (3) years in accordance with California Code of Regulations, Title 17, Section 7605(f), and as hereafter amended.
- B. All surveys noticed and all correspondence with a water user, County or Contractor shall be maintained for a minimum of five (5) years after compliance has been certified by the County or the longest statutory period cited above, whichever is longer. After five (5) years, the records may continue to be maintained in hardcopy, microfiche or electronic form, if needed, at the sole option of the County.

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