

Precision Engineering and Construction, Inc.

AGREEMENT:

This **AGREEMENT** is made this October 15, 2019:

Between the **OWNER:**

Noel Chamberlain
225 Demeter Street
East Palo Alto, CA 94303

And the **ENGINEER:**

Precision Engineering and Construction, Inc. (PEC)
901 Waltermire Street
Belmont, CA 94002

Project Address: 11 Highland Estates, San Mateo (SMCO)

Objective of the Project:

The objective of the project is described in the attached **PROPOSAL**.

Limitation:

No action arising from or related to this Agreement, or the performance thereof, may be commenced by Owner more than one year after the issuance of a building permit or the cessation of work under this Agreement. In no event shall Engineer be liable to Owner for any special, indirect, incidental or consequential damages arising out of or in connection with this Agreement or the services provided hereunder, whether such liability arises from any claim based upon contract, tort (including negligence, strict liability or otherwise) and whether or not Owner has been advised of the possibility of such loss. Engineer's total liability from all causes of action and all theories of liability under this Agreement, including, without limitation, for negligent acts, errors and omissions, shall be limited to and shall not exceed 100% of the aggregate fee(s) paid to Engineer under this Agreement. In no event shall Engineer be liable for damages resulting directly or indirectly from the actions or inactions of governmental agencies or for the accuracy/ inaccuracy of any topographic and/or boundary surveys prepared by third parties and furnished to Engineer by or on behalf of Owner. In no event shall Engineer be liable for damages or liability resulting directly or indirectly from the negligent or willful acts or omissions of Owner or its agents or contractors in complying with the Project SWPPP.

Ownership of Work Product:

All papers, documents, details, drawings and other work (collectively, "Work Product") produced by Engineer pursuant to this Agreement shall remain the sole and exclusive property of the Engineer, provided that, if Owner shall have paid in full all amounts owed to Engineer under this Agreement, Engineer shall permit its final Work Product to be filed with public agencies, as necessary for the project that is the subject of this Agreement, and copies thereof will be readily available to the Owner. In no event may any Work Product be used by Owner other than in connection with this project. Nothing in this Agreement will be deemed to prohibit or limit Engineer's right to perform similar services for any other party during or after the term of this Agreement or to use any of the Work Product therefor.

Disputes:

If any dispute arises out of this Agreement or the services provided hereunder, including, without limitation, collection actions, the prevailing party shall be entitled to recover its reasonable attorneys' and experts' fees and costs. The parties shall first attempt to resolve any dispute by mutual good faith discussion and resolution among themselves, including, without limitation, through the use of a mutually agreed to mediator. If they are unable to reach an amicable resolution of the dispute, then unless any other provision herein applies, the dispute shall be decided by binding arbitration conducted by JAMS (or any successor thereto which maintains a neutral arbitration service). The location of the arbitration shall be San Mateo, California, unless the parties elect to have the matter arbitrated elsewhere in California. The parties may conduct such discovery as is permitted under JAMS's rules. An award rendered by an arbitrator(s) shall be final and judgment upon the

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arbitration award may be entered in any court of competent jurisdiction. Nothing contained in this section shall limit either party's right to seek, through court proceedings, temporary restraining orders, injunctive or other equitable relief in connection with any breach or alleged breach of this Agreement pending resolution by arbitration. In addition, any claim for damages within the jurisdiction of Small Claims Court may be filed in said court in San Mateo County, California, in lieu of mediation and arbitration.

Termination:

Either party may terminate this Agreement upon written notice for any or no reason. In the event of any termination, Engineer will be paid for all services rendered (including reimbursable expenses and termination expenses) to the date of termination. In the event this Agreement provides for the payment of a fixed fee, then Engineer shall equitably allocate the portion of such fixed fee applicable to the services performed prior to the date of termination and Owner shall be responsible to pay for such portion.

Attorney Fees and Costs:

In any dispute resolution process, including arbitration, between the parties, the prevailing party shall be entitled, in addition to any other relief granted, to recover its costs of participation, including reasonable attorneys' and experts' fees and costs.

Site Responsibilities

Owner agrees Engineer will not perform on-site construction review, construction management, supervision of construction, for this project unless specifically provided for in this Agreement. In no event shall Engineer have any responsibility for job site conditions during the course of construction of the project, including safety of persons and property. Owner shall provide site access to Engineer at such times as may be reasonably required by Engineer.

Change in Services.

Either party may request additions, deletions or modifications to the services to be performed by Engineer hereunder, provided that no requested change in the services shall be deemed authorized unless agreed to in writing by both parties hereto.

Warranty

Engineer warrants that it shall perform its services utilizing the standard of care normally exercised by professional engineering firms in performing comparable services under similar conditions. In the event of breach of the foregoing warranty, Engineer agrees, subject to the limitations provided in this Agreement, to promptly re-perform any services that fail to meet this warranty at its sole cost and expense, or, at its election, to refund the fees paid by Owner for the non-conforming services. The foregoing shall be the sole and exclusive remedy of Owner in the event of a breach of such warranty. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES, INCLUDING WITHOUT LIMITATION ANY MATERIALS, WORK PRODUCT, OR DELIVERABLES PROVIDED BY ENGINEER HEREUNDER, ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND.

Force Majeure

Engineer shall have no responsibility for any delay in performance to the extent caused by a force majeure event, including acts of god, war, civil disturbance, governmental action, labor disputes, computer viruses or denial of access to the site or any other event beyond the reasonable control of Engineer.



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Independent Contractor

The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties.

Miscellaneous:

In the event of a failure of payment by Owner, Engineer may, at its option, stop work on the project in whole or in part without liability. In addition Owner agrees to pay, upon demand of Engineer, a late charge of 0.83% per month (i.e. 10% annually) on any unpaid balance, which late charge will be applied to any unpaid balance commencing thirty (30) days after the date of the original billing for such unpaid balance. Owner understands that, in the event of an unpaid balance, Engineer may also file a lien on the property in accordance with applicable law.

This Agreement shall be subject to and be governed by the laws of the State of California. In the event of a dispute between the parties concerning this Agreement, venue shall rest in San Mateo County, California.

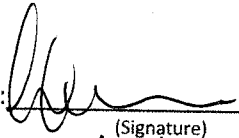
The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

This Agreement constitutes the complete understanding and agreement of the parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to its subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of the parties.

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

This Agreement is binding upon and inures to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

Owner: Noel Chamberlain

By:  _____
(Signature)

Date: 10/15/2019 _____

Engineer: Precision Engineering and Construction, Inc.
Travis Lutz, PE, QSD/QSP
Principal Engineer

By: _____
(Signature)

Date: _____

Precision Engineering and Construction, Inc.

EXHIBIT A – RATE SCHEDULE

Effective January 3, 2017
(Subject to change annually)

OFFICE AND PROFESSIONAL

Principal Engineer	\$175.00
Staff Engineer	\$125.00
Engineering Technician	\$75.00
Technical Draftsperson	\$75.00
Clerical	\$50.00

EXPENSES

Consultant Charges	Expenses x 1.20
Reproduction Fees and Shipping	Expenses x 1.20

Precision Engineering and Construction, Inc.

October 15, 2019

NexGen Builders
Attn: Noel Chamberlain
225 Demeter Street
East Palo Alto, CA 94303

Subject: Civil Engineering Services – Qualified SWPPP Practitioner (QSP) Services
11 Highland Estates, San Mateo (SMCO)
Job # PEC 17-077.10

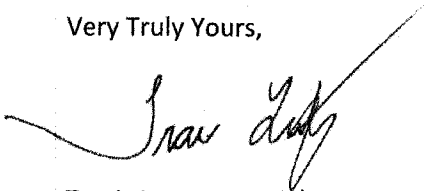
Dear Noel:

As requested, we are pleased to present this **PROPOSAL** and **AGREEMENT** for **Precision Engineering and Construction, Inc.** to provide civil engineering services. We understand the proposed project will be to provide Qualified SWPPP (Stormwater Pollution Prevention Plan) Practitioner services pursuant to the construction drawings.

Thank you for the opportunity to provide this proposal and we look forward to a pleasant working relationship. Section 5536.22 of the Business & Professions Code requires a Written Contract for the Provision of Engineering Services. ***In order to proceed we will need your written authorization on the final agreement.*** This proposal shall become void if not accepted within 30 days by contract. Attached and incorporated is our current Rate Schedule that is subject to change annually.

Feel free to call me at (650)226-8640 with any questions you may have.

Very Truly Yours,



Travis Lutz, PE, QSD/QSP
Principal Engineer

Encl.: Proposal
Agreement
Exhibit A – Rate Schedule
Exhibit B – QSP Responsibility Chart



PROPOSAL:

1. Qualified Storm Water Pollution Prevention Plan (SWPPP) Practitioner (QSP) Services:

Provide Qualified SWPPP Practitioner (QSP) services as outlined below based upon a Risk Level 2 project and the attached QSP Responsibility Chart (**Exhibit B**) for the estimated 18 months of project duration.

- a. Prepare 2019, 2020 and 2021 Quarterly Non-Stormwater Inspections.
- b. Prepare 2019-00 and 2020-21 Annual Reports (2 total) for uploading to the SMARTS website and certification by the project Legally Responsible Person (LRP).
- c. Provide monthly construction site inspections of project BMP's for the estimated 18-month project. Site inspections will also be conducted upon request from the contractor. During each site inspection, photo documentation will be conducted in addition to the BMP inspection sheets. It is estimated that there will be a total of 18 site inspections during the duration of the project. Site inspections will occur during normal construction working hours only. Inspection results will be forwarded to Construction Administration Manager for review and implementation.
- d. Provide training for construction staff (up to 3 hours) to ensure compliance with the project SWPPP. Provide update to the SWPPP to demonstrate training has occurred. Training certificate shall be uploaded to the SMARTS website by the project LRP. Training of contractor personnel is intended to allow the contractor to provide self-inspections in full compliance with the project SWPPP.
- e. Prepare Notice of Termination (NOT) for uploading to the SMARTS website and certification by the project Legally Responsible Person (LRP). A final site visit will be conducted as part of the filing of the NOT which will include photos of final site conditions.

It is understood that the trained project contractor will be;

- Daily monitoring/printing of NOAA website forecast/ precipitation data and email distribution to SWPPP team and QSP,
- Providing project Rain Event Action Plans (REAP's),
- Providing monitoring/testing of turbidity and pH during qualifying rain events,
- Providing written weekly, pre, during and post rain event BMP site inspections,
- Taking routine photos and distributing them to the QSP,
- Updating the SWPPP binder with the inspection results weekly.

Precision Engineering and Construction, Inc.

It is understood that, in order to provide the above proposed services, the trained project contractor will be electronically providing the QSP regularly;

- Any scans of NOAA website forecasts and precipitation monitoring/ rain gauge data for the duration of the project,
- Any scans of completed Rain Event Action Plans (REAP's),
- Any scans of monitoring/testing of turbidity and pH during qualifying rain events,
- Any scans of pre, during and post rain event construction site inspections,
- Electronic copies of any routine photos of BMP's taken during the construction phase.

Professional Fee Summary:

Our fee estimate includes QSD/QSP services and will be billed as follows and excludes expenses as defined in the attached Rate Schedule (**Exhibit A**). All reproduction and delivery costs will be charged in addition to our fee estimate. If additional meetings or site visits are required beyond what is specifically outlined in this proposal, they will be billed on a time and expense basis with prior written approval by the owner.

Invoice/Billing Schedule:

Client shall compensate Precision Engineering and Construction, Inc. as below and at monthly intervals as estimated below:

1. QSP Services:

a.	Prepare Quarterly Non-Stormwater Inspections (6 total at \$200 each)	\$ 1,200
b.	Prepare 2019/20 and 20/21 Annual Reports (2 total at \$900 each)	\$ 1,800
c.	Provide Monthly Site Inspections (18 total at \$250 each)	\$ 4,500
d.	Provide Training to Construction Staff (3 hours included)	\$ 500
e.	Prepare Notice of Termination (NOT)	\$ 1,000
QSP Estimated Fee:		\$ 9,000
QSP Monthly Fee:		\$ 500.00

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Services excluded from this Proposal:

1. Construction Documents of any kind.
2. Construction related inspection services.
3. Answering RFI's / change directives not related to the SWPPP.
4. Provide daily monitoring of NOAA weather and precipitation data and email distribution to SWPPP team (to be handled by the project Contractor).
5. Provide weekly, pre, during and post rain event construction site inspections (to be handled by the project Contractor). Precision Engineering and Construction will provide the site inspections specifically outlined above.
6. Provide Rain Event Action Plan's (REAP's) (to be handled by the project Contractor).
7. Provide any monitoring/testing of turbidity and pH during qualifying rain events.
8. Filing fee(s) with the State Water Resources Control Board associated with the Notice of Intent (NOI).
9. Additional modifications required to the SWPPP due to the contractor exceedance of site effluent standards or prolonged construction that alters the site's calculated Risk Level.
10. Preparation and uploading of Ad Hoc Reports to the State's SMARTS system (required for all qualifying rain events) shall be billed as a fixed fee per occurrence (\$150 per event).



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Exhibit B: Qualified SWPPP Practitioner (QSP) Responsibility Chart

Task:	Owner	Cont.	QSP
Daily monitoring/printing of NOAA website and email distribution			
Regular photos of site conditions and BMP's			
Uploading of data to State SMARTS website			
Site visual inspections (weekly, pre, during and post storm)			
Site visual inspections (monthly)			
Update SWPPP binder (weekly)			
Monitoring/Testing of Turbidity and pH during qualifying rain events			
Prepare Rain Event Action Plan (REAP)			
Prepare Annual Report			
Prepare Notice of Termination (NOT)			
Training of Construction Manager and/or Contractor personnel			

Owner = Legally Responsible Person (LRP)
Cont = Contractor/ Trained SWPPP Manager
QSP = Qualified SWPPP Practitioner