RESOLUTION NO. 2011-135

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA MARIA, CALIFORNIA, APPROVING A NOVATION AGREEMENT CHANGING THE NAME OF THE CONTRACTOR PERFORMING THE "USE OF GAS AT THE SANTA MARIA WASTEWATER TREATMENT PLANT" PROJECT

WHEREAS, on August 31, 2011, the City of Santa Maria entered into an agreement with US Energy Operating Services for the use of gas at the Santa Maria Wastewater Treatment Plant; and

WHEREAS, US Energy Operating Services has partnered with CHP Clean Energy, LLC on this project; and

WHEREAS, CHP Clean Energy, LLC has provided a plan to improve the operation and efficiency of the gas to energy system at the Santa Maria WWTP; and

WHEREAS, US Energy Operating Services wishes to be replaced by CHP Clean Energy, LLC on the agreement;

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Santa Maria, California, as follows:

A Novation Agreement in the form attached hereto as Exhibit "A" is hereby approved, and the Director of Utilities, or his/her designee, is hereby authorized and directed to sign and execute the agreement on the City's behalf.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Santa Maria held this 1st day of November, 2011.

__________________________________________
MAYOR

ATTEST:

CHIEF DEPUTY CITY CLERK

APPROVED AS TO FORM:

BY: CITY ATTORNEY

CONTENTS:

BY: DEPARTMENT HEAD

BY: CITY MANAGER
NOVATION REGARDING FRANCHISE AGREEMENT

This Novation is made and entered into on November 1, 2011, by and between the City of Santa Maria, California, a California Municipal Corporation ("City") on one hand, and US Energy Operating Services (a California Corporation) and CHP Clean Energy, LLC on the other hand, in Santa Maria, California.

WHEREAS, US Energy Operating Services is Contractor in a Agreement with the City for the use of gas at the Santa Maria Wastewater Treatment Plant (Agreement attached and hereby incorporated as Exhibit "A"); and

WHEREAS, US Energy Operating Services has partnered with CHP Clean Energy, LLC on gas to energy projects; and

WHEREAS, the US Energy Operating Services wishes to substitute parties to the Agreement so that CHP Clean Energy, LLC REPLACES US Energy Operating Services as Contractor to that Agreement, with all other terms and conditions remaining the same; and

WHEREAS, CHP Clean Energy, LLC and CHP Clean Energy, LLC are agreeable to the substitution of parties;

NOW, THEREFORE, FOR VALUABLE CONSIDERATION HAD AND RECEIVED, IT IS AGREED:

1. CHP Clean Energy, LLC REPLACES US Energy Operating Services as Contractors to the Franchise Agreement;
2. All other terms and conditions of the Franchise Agreement remain the same;
3. Any lawsuit relating to the Franchise Agreement or Novation shall be brought and heard in California State Court.
4. Each of the persons below represents that s/he has authority to execute this Novation on behalf of his/her entity.

CITY OF SANTA MARIA
By: ________________________________

CHP CLEAN ENERGY, LLC
By: ________________________________ Timothy A. Krochuk, CEO
By: ________________________________ Thomas L. Moore, President

APPROVED AS TO FORM

EXHIBIT A
AGREEMENT

USE OF GAS AT THE SANTA MARIA WASTEWATER TREATMENT PLANT

This agreement is made on 01/31/2004, by and between the City of Santa Maria, a California Municipal Corporation (CITY) and US Energy Operating Services, a Company duly organized under the laws of the State of California (CONTRACTOR).

RECITALS

WHEREAS, the CITY desires to fully utilize available gas at the Santa Maria wastewater treatment plant (WWTP); and

WHEREAS, it is in the best interest of the CITY to perform this operation with resources from private companies; and

WHEREAS, CONTRACTOR has submitted a proposal to convert WWTP gas to electricity and supply heat for the digester process; and

WHEREAS, CONTRACTOR has represented that it has the capability to complete the installation and make the project operational within 180 days of this Agreement and to thereafter operate and maintain the project in a safe, effective and profitable manner for the ten-year term of this Agreement; and

WHEREAS, the CITY is authorized pursuant to Section 4217.10 through 4217.18 of the California Government Code ("Code") to enter into energy conservation contracts pursuant to which the CITY may acquire services to reduce energy use or to make more efficient use of energy and CONTRACTOR has agreed to provide the development of a gas to energy project;

NOW, THEREFORE, IT IS AGREED:

1. Recitals True. The above recitals are true.

2. Contractor's Performance.

   a. Statement of Work. CONTRACTOR shall determine the method, details and means of developing and operating the WWTP gas to energy project. More specifically, CONTRACTOR agrees to perform work or provide services in accordance with the requirements of Exhibit "A," attached and incorporated herein.

   CONTRACTOR may, at CONTRACTOR's own expense, employ such assistants as CONTRACTOR deems necessary to perform the services required of CONTRACTOR by this agreement. CITY may not control, direct or supervise CONTRACTOR's assistants or employees in the performance of
those services.

CONTRACTOR agrees to devote the hours necessary to perform the services set forth in this agreement in an efficient and effective manner. CONTRACTOR may represent, perform services for and be employed by additional individuals or entities, at CONTRACTOR's sole discretion, as long as the performance of these extra-contractual services does not interfere with or present a conflict with City's business.

b. Time for Performance. Upon receipt of this fully executed Agreement and notice to proceed from the CITY, CONTRACTOR shall use its best efforts to perform the work described in Exhibit “A,” with diligence and according to the schedule of work attached to this Agreement (with modifications to the schedule as approved in writing by the CITY).

c. Licenses. CONTRACTOR shall maintain all licenses required by law, including but not limited to a City business license if applicable. These licenses will be maintained in full force throughout the term of this Agreement.

3. City’s Responsibilities. The CITY will provide CONTRACTOR with WWTP gas and other items listed in Exhibit “B,” attached and incorporated herein.

NO WARRANTY, EXPRESS OR IMPLIED, IS MADE BY EITHER CONTRACTOR OR CITY WITH RESPECT TO THE SUFFICIENCY, QUANTITY OR QUALITY OF THE WWTP GAS PRODUCED, OR TO BE PRODUCED, FROM THE SANTA MARIA WWTP, NOR AS TO ITS SUITABILITY FOR ANY INTENDED PURPOSE, INCLUDING (BUT NOT LIMITED TO) THE PRODUCTION OF HEAT OR POWER FOR SALE TO THE CITY, OR THIRD PARTIES, OR FOR ANY OTHER PURPOSE. NEITHER PARTY TO THIS CONTRACT SHALL BE RESPONSIBLE FOR EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF PROFITS ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT.

4. Payment. In consideration for the services provided, CITY will pay the CONTRACTOR an amount according to the terms set out in Exhibit “A.”

5. Term of Agreement. CONTRACTOR states that equipment installation, permitting and setting of the interconnect meter shall take six months or less to complete from Agreement execution date by all the Parties. Contractor’s operation of the gas to energy facility shall commence on the date of the first monthly PG&E reading of the WWTP’s electric meter following the installation of the interconnect meter and continue for a term of up to 120 consecutive months (ten years). It shall terminate when the first of the following occurs: a) this Agreement is terminated per its terms; b) gas is no longer produced at the Santa Maria WWTP in economically viable quantities; c) the Agreement is terminated by
mutual agreement of the parties; d) the CITY chooses to exercise its Purchase Option; or e) the Agreement expires.

6. **Independent Contractor Status: Workers Compensation and Other Benefits.** CITY and CONTRACTOR agree that CONTRACTOR is an independent contractor and agree that CONTRACTOR's employees and agents have no right to workers' compensation and other employee benefits from the CITY. Nothing in this Agreement shall be interpreted to imply an employee-employer relationship, agency, partnership or joint venture between the CITY and CONTRACTOR. CITY AND CONTRACTOR shall include such disclaimers in all agreements and arrangements with third parties relating to the project, including (but not limited to) potential energy users.

7. **Insurance and Indemnification.** CONTRACTOR shall provide insurance and indemnification as provided in Exhibit "C,‖ attached and incorporated herein.

8. **No Assignment.** This Agreement may not be assigned by either party.

9. **Termination.** This Agreement may be terminated under the following circumstances:

   a. Failure to complete the performance required by this Agreement and its Exhibits in a timely manner before March 30, 2005;

   b. Failure to pay the fee in a timely manner; or

   c. Any other material breach of this Agreement.

   Termination shall be accomplished by giving 30 days' prior written notice 90 days after notice was sent to cure. CONTRACTOR and CONTRACTOR's lender shall be notified and provided 90 days to remedy any breach of this Agreement.

10. **Purchase Option.** Prior to termination, if the CITY is not otherwise in default, the CITY may exercise the option to purchase the project equipment during the ten-year term of this Agreement. The installed project equipment has a projected system life of 20 years with proper maintenance and repairs. Such option to purchase is only available to the CITY and it may not transfer or assign said option without the permission of CONTRACTOR.

   a. **Notice of Intent to Exercise Purchase Option.** In the event the CITY opts to exercise the Purchase Option, CITY shall give written Notice of Intent to do so to CONTRACTOR at least 60 days prior to the last day of the year in which the option shall be exercised.

   b. **Exercise Price.** Upon delivery of the Notice of Intent to Exercise Purchase Option pursuant to Section 10-a. of this Agreement, the parties shall enter
into good faith negotiations to determine the Exercise Price. The Exercise Price shall be based on the tables below and adjusted for costs necessary to provide the equipment in good service and operational condition. If the determination is not made within 30 days of the Notice, this Agreement shall continue unchanged.

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c. Sale of Equipment If the CITY gives notice under Section 10.a., it shall pay the Exercise Price to CONTRACTOR, and CONTRACTOR shall convey title to the equipment free and clear of all encumbrances other than encumbrances for taxes not due and encumbrances with respect to the premises, and shall deliver a bill of sale for the equipment, as soon as practicable after the determination of the Exercise Price. Upon compliance with this Section 10.c., the equipment shall be the CITY's property. CONTRACTOR will take such action as the CITY may reasonably request in order to establish or confirm its ownership of the equipment. Upon exercise of the Option to Purchase, this Agreement, including the CITY's duties hereunder, will terminate.


a. Representation and Notices. All communication relating to the day-to-day activities of this Agreement shall be exchanged between a designated representative of the CITY and a representative of CONTRACTOR.

For City:
Dwayne K. Chisam
110 East Cook Street
Santa Maria, CA 93454
Phone: 805-925-0951 x 7270
Fax: 805-928-7240
dchisam@ci.santa-maria.ca.us

For Contractor:
Lou Lagomarsino
8245 E. Bell Rd. Suite 132
Scottsdale, AZ 85260
Phone: 480-419-1080
Fax: 480-419-6909
useslou@quixnet.net

If the designated representative or address of either party changes during the term of this Agreement, a written notice shall be given to the other party prior to the effective date of change.
Any notices required under this agreement shall be in writing, and effective five days after deposit into United States Mail, postage prepaid, addressed to the designated representative, or upon confirmation of receipt of delivery if another notification process is used.

b. **Governing Law and Venue.** California law shall govern this Agreement, its interpretation and all work performed hereunder. Any legal action respecting same shall be brought to Santa Barbara County Superior Court, Santa Maria District.

c. **Entire Agreement.** This Agreement contains the entire understanding and agreement between CONTRACTOR and the CITY. Any prior agreements, promises, negotiations or representations not expressly set forth herein are of no force or effect. This Agreement may be modified or amended only by subsequent written agreement signed by both CONTRACTOR and the CITY.

d. **Titles.** The titles used in this Agreement are for general reference only and are not part of this Agreement.

e. **Due Authority.** Each of the persons signing below represents that he/she has due authority to sign on behalf of the entity that is party to this agreement.

f. **Construction.** The parties agree that each party and counsel have reviewed and negotiated this agreement and that any rule of construction to effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto.
The captions of the sections are for convenience and reference only, and are not intended to be construed to define or limit the provisions to which they relate.

Executed on **August 31**, 2004, at Department of Utilities, City of Santa Maria.

"CITY"

By: Dwayne K. Chisall
Director of Utilities

Approved As To Form:

City Attorney

"CONTRACTOR"

By: Lou Lagomarsino
USEOS President

By: (Second Corporate Signature)
EXHIBIT A

CONSULTANT – SCOPE OF SERVICES TO BE PROVIDED

1. Construction of Project. CONTRACTOR shall at CONTRACTOR’S sole risk and expense:

   a. Complete system design, engineering, permits, fees, utility incentive application paperwork, approvals, project management, installation, startup, checkout, warranty and insurance specifically associated with the work to be performed;

   b. Immediately upon notification to proceed from the CITY, commence and complete planning, design, obtain environmental review and approval for, and obtain permits for (including City of Santa Maria and Santa Barbara County APCD permits and others) provide and install a complete co-generation system including associated equipment pads, methane gas piping, hot water piping and electrical interconnection. Complete and make operational facilities for utilization of gas produced at the Santa Maria WWTP for production of electrical energy, complete and make operational mechanical system installation of the City-supplied equipment in the compressor and boiler rooms as specified in the specifications and plans from Carollo Engineers, Exhibit D hereto. The City-supplied equipment for the upgrade as shown in Exhibit “D,” includes, but is not limited to, a hot water boiler, spiral heat exchangers, hot water pumps and valves, expansion tank and a digester gas booster blower assembly. The CITY shall provide all of the engineering and install all of the electrical and control assemblies required for the digester heating project limited to the inside of the digester building;

   c. Obtain advance CITY approval of all modifications/additions to the existing anaerobic digester gas collection system and the placement of any other facility modifications on CITY property including the installation of City-supplied equipment. CITY review or approval hereunder shall not be deemed to constitute a verification of the safety or efficacy of such work or of its compliance with any governmental requirements, which shall be CONTRACTOR’S sole responsibility under this Agreement;

   d. Provide all necessary labor, materials and equipment, and construct facilities for the utilization of WWTP gas for generation of electricity and provide sufficient heat to meet operational heat requirements at the WWTP including, but not limited to, all existing digester heating requirements. CONTRACTOR shall also provide all necessary labor, materials and equipment to complete and make operational City-supplied equipment as shown in specifications and plans provided by Carollo Engineers included in Exhibit "D" of this agreement;

   e. Submit a monthly progress report to the CITY describing the progress of
construction and a detailed schedule for implementing the facilities;

f. Conduct and warrant that all construction procedures shall occur in a manner that does not interfere with the normal and current operation of the WWTP;

g. Construct all modifications/additions to the existing WWTP and all other facilities placed by CONTRACTOR on CITY property in such a manner that they can be disconnected and removed at the end of the term of this Agreement without interference with, or damage to, the WWTP or other CITY property. CONTRACTOR shall fence in all the equipment owned and operated by the CONTRACTOR.

h. CONTRACTOR shall comply with all laws and regulations governing labor practice, construction and operation of the project. These laws and regulations shall include, but not limited to, prevailing wage laws during the construction of the project.

2. Operation of Project. CONTRACTOR shall, at CONTRACTOR’S sole risk and expense:

a. Operate the energy recovery facility in a prudent and professional manner designed to maximize the production of electricity consistent with safety and in compliance with applicable laws, paying all costs unless expressly stated otherwise in this Agreement;

b. Clean and dispose of all hazardous and non-hazardous waste generated from the construction and operation of the project. All disposal shall be in compliance with all applicable laws;

c. Submit a monthly report of operations describing the status of the WWTP gas recovery system, the volume and quality of gas used at the recovery facility, the electricity produced, and such additional information relating to its performance under this Agreement as City may require to verify revenues and operating data;

d. Comply with all regulatory requirements within its working area, and moreover, keep its working area in a safe and acceptable condition as determined by the CITY and other government agencies. In connection with this requirement, CONTRACTOR understands and acknowledges that gas produced from the Santa Maria WWTP may contain noxious, toxic and hazardous substances in concentrations dangerous to employees and other persons and corrosive to machinery and piping. CITY will notify CONTRACTOR of the presence of such substances, to the extent actually known by a supervising employee of CITY (but CITY shall have no duty to test for same beyond what is required by law with respect to WWTP operation), and CONTRACTOR (at its sole risk and expense) shall take all necessary measures to protect its employees, other persons, and its and other’s equipment from injury or damage.
CONTRACTOR shall provide all warnings required by State, Federal and local law to its employees and other persons who might become exposed to such substances; and

e. Use the gas for generation of electricity for the exclusive use by CITY WWTP and not as a public utility.

3. Payment

a. The CITY agrees to a down payment to the CONTRACTOR in the amount of $100,000.00 plus a charge in exchange for use of the electricity and heat generated from CONTRACTOR'S electrical generation facility using WWTP gas. The down payment fee shall be due at the completion of the CITY'S engineering phase of the project. The CITY shall pay CONTRACTOR $0.087/kwh of electricity produced from the CONTRACTOR'S electrical generation facility (estimated monthly payment = 270 kw x 23 hrs per day x 29 days per month x $0.087/kwh = $15,668 per month [or $188,014 per year]). CITY shall deduct from the monthly payment to the CONTRACTOR any additional charge paid to its current electricity service provider, Pacific Gas and Electric (PG&E), for a standby charge or a departing load charge. CITY shall pay all costs to PG&E for the purchase of any additional electricity needed for the WWTP operation.

b. Payment shall be made to CONTRACTOR within 30 days of receiving an invoice from the CONTRACTOR. The invoice shall be based on monthly electricity usage readings from the interconnect meter multiplied by $0.087/kwh. Payments not made in a timely manner shall accrue interest at the highest rate permitted by law until paid.

c. CONTRACTOR shall remove all CONTRACTOR installed equipment and any other facilities constructed or placed at the Santa Maria WWTP under this Agreement at the end of the Agreement term.

4. Actions Upon Termination of Agreement.

a. Any alteration of the anaerobic digester gas collection system made shall remain on and be surrendered on expiration or termination of the term of this Agreement, except that CITY can elect within 30 days before expiration of the term, or within five days after termination of the term, to require CONTRACTOR to remove any such alterations. If CITY so elects, CONTRACTOR, at its cost, shall restore the anaerobic digester gas collection system to a condition designated by CITY before the last day of the term, or within 30 days after notice of election is given, whichever is later. CONTRACTOR shall remove all other facilities installed on CITY property not later than the expiration of the time within which any provisions of this Agreement CONTRACTOR is required to surrender possession of the premises to CITY. If prior to the expiration of such time CITY gives written notice requiring CONTRACTOR to do so, CONTRACTOR shall
remove all facilities installed on the premises by CONTRACTOR. All facilities not removed within such time shall become, and remain, the property of the CITY. The removal of modifications to the gas system and other facilities installed by CONTRACTOR shall be affected solely at the expense of CONTRACTOR and in a manner satisfactory to CITY and without injury or damage to any other CITY property. CONTRACTOR covenants to repair immediately, at CONTRACTOR’s expense, any injury or damage caused by such removal. CONTRACTOR at CONTRACTOR’s sole risk and expense is also responsible to comply with all regulatory requirements within its working area.

b. CONTRACTOR shall return the property to the City, after termination of the Agreement, in the same condition as when the Agreement was initiated, less reasonable wear and tear.
EXHIBIT B

CITY - SERVICES TO BE PROVIDED

1. **Compliance.** CITY shall construct, operate, repair, and maintain its facilities in compliance with all laws and permits applicable to the facilities in a manner such that the City shall not place CONTRACTOR out of Compliance.

2. **Digester System.** CITY shall, at all times, maintain the anaerobic digester system in good working condition allowing extraction of all biogas generated from its WWTP. CITY agrees to make available to CONTRACTOR all of the gas recovered from the WWTP to the CONTRACTOR produced in the ordinary course of the digester process for CONTRACTOR's use in accordance with this Agreement for the term of this Agreement. Nothing herein shall be deemed to require CITY to construct additional facilities at its expense, to operate the WWTP in an unsafe or unlawful manner, or to incur costs in excess of those that it would have incurred in the absence of this Agreement.

3. In the event that total gas production could not meet the demand of CONTRACTOR's electrical generation facility for electricity production and CONTRACTOR experiences a revenue shortfall, CONTRACTOR's operation duration of this Agreement shall be extended for the amount of time required to make up for the amount of revenue shortfall. For the purpose of calculating Agreement extension, CITY and CONTRACTOR mutually agree to set the monthly base gas flow to be 3.05 million cubic feet and a daily average of 0.10 million cubic feet. If the monthly gas flow falls below the base amount of 3.05 million cubic feet per month, this Agreement shall be extended for the amount of days necessary to compensate for the shortfall. For example, if the gas flows are 2.5 million cubic feet and 2.6 million cubic feet for months 1 and 2, the Agreement shall be extended 10 days ( \[(3.05-2.5)+(3.05-2.6)} / 0.10=10.0 \text{ days}\).

4. **Approvals.** Within a period reasonable under the circumstances, CITY shall provide to CONTRACTOR a response to any and all approvals required under this Agreement and shall not unreasonably withhold any such approval. In the event that the CITY shall refuse to grant any approval, the CITY shall provide, in writing, to CONTRACTOR the reason for the refusal and set forth what changes in plans, designs, or drawings are required in order for the CITY to grant approval. Contractor shall not be responsible for damages due to unreasonable delay in approving plans, designs or drawings.

5. **Odor Control.** CITY shall not be responsible for odors resulting from the Contractor's operations.

6. **Disposal of Condensate.** Without cost to CONTRACTOR, CITY agrees to accept into its condensate collection system, all of CONTRACTOR's condensate in Compliance with all laws and permits, provided that CONTRACTOR shall be
responsible for proper disposal of all hazardous waste generated in the course of its performance under this Agreement.

7. Financing Assistance: CITY acknowledges that CONTRACTOR will need to expend substantial amounts of capital to provide for the generation of electricity. Accordingly, CONTRACTOR anticipates that it will be necessary to secure capital from a lender and to provide the lender with security for the repayment of such capital. To this end, CITY agrees to cooperate with CONTRACTOR by providing documentation reasonably requested by CONTRACTOR or its lender.

8. Subject to this agreement, CITY represents that it has exclusive ownership of the gas produced at the WWTP and through execution of this Agreement hereby awards the use of the gas produced at the WWTP to the CONTRACTOR for the term of this Agreement.

9. CITY agrees that any incentives or other rebates from the California Energy Commission Self-Generation Incentive Program received by CONTRACTOR due to the installation of the gas to energy project at the WWTP belong solely and completely to CONTRACTOR.
EXHIBIT C

INDEMNITY AND INSURANCE REQUIREMENTS

Indemnity: In addition to other all indemnity requirements of the Agreement, CONTRACTOR shall save, hold harmless, and indemnify the City of Santa Maria, its officers, agents, employees, volunteers, and subcontractors from and against all claims, demands, liability, damages, judgments, losses, costs and expenses (including attorney’s fees) in law or equity at any time arising out of or contributed to by the negligent or otherwise wrongful acts, errors, or omissions of CONTRACTOR or its employees, subcontractors or agents in the performance of this Agreement, excluding only such matters to the extent that they arise out of the sole active negligence or willful misconduct of CITY under the terms of these requirements and the Agreement.

Insurance: In addition to naming the CITY as an additional insured or any other form of insurance or bond required under the terms of these requirements and the Agreement, CONTRACTOR shall procure and maintain for the duration of the Agreement the following types and limits of insurance:

Worker’s Compensation Insurance CONTRACTOR shall maintain Workers’ Compensation and Employer’s Liability Insurance of a form and in an amount as required by State law.

Commercial General Liability Insurance CONTRACTOR shall procure and maintain during the life of the Agreement, coverage at least as broad as ISO commercial general liability insurance (form CG 0001) necessary to protect CITY, from all claims and legal cost for bodily injury or personal injury and property damage, including those arising form operations under this agreement in an amount of not less than $1,000,000 per occurrence. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

The policy shall be endorsed to provide that the CITY, its officers, officials, employees, contractors and agents and volunteers are to be covered as insured with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations.

Automobile Liability CONTRACTOR shall carry and maintain coverage at least as broad as ISO automobile liability (form CA 0001) including (owned, non-owned, or hired), in the amount of not less than One Million Dollars ($1,000,000), combined single limits per occurrence.

Evidence of Insurance Work shall not commence under this agreement before CONTRACTOR has delivered to the CITY evidence that said insurance is currently in
force. CONTRACTOR shall furnish the CITY with original endorsements affecting coverage required in this Agreement. CONTRACTOR agrees that the insurance will remain in full force throughout the term of this Agreement.

CONTRACTOR shall include subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. Coverage for subcontractors shall be subject to the requirements stipulated herein.

The insurance requirements stipulated herein shall not be construed as limiting CONTRACTOR’s liability. CONTRACTOR shall not modify or cancel its Commercial General Liability Insurance or Automobile Liability Insurance without thirty (30) days prior written notification to the CITY by certified mail, return receipt requested and prior approval from the CITY. All insurance shall provide that it is primary coverage with respect to CITY, and that CITY’s insurance and self-insured retention shall be deemed secondary only.
**EXHIBIT D**

**INSTALLATION OF CITY SUPPLIED EQUIPMENT**

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Factory start-up of the CITY’S furnished equipment shall be coordinated by the CONTRACTOR and provided and/or paid for by CITY.

CITY may, at its option and expense, have the City Engineer review all engineering related to the CONTRACTOR’S scope of work. This does not constitute an unreasonable delay.

Carollo’s Plans and Specs for Equipment Upgrade In the Digester Control Room
Santa Maria WWTP

Plan E-2

Specs sections:

01330, 01612, 01614, 01782, 11370, 09910, 09960, 11312, 11381, 11404, 15552, 13410, 13411, 13425, 13427, 15050, 15052, 15051, 15052, 1582, 15110, 15112, 15120, 15251, 15252, 15255, 15257, 15954, 15956, 15958, 16010, 16050, 16062, 16075, 16123, 16133, 16134, 16140, 16222, 16412, 16422, 16950.