

AMENDMENT TO CONTRACT

3

The County of San Benito ("COUNTY") and First Carbon Solutions
("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

1. Existing Contract.

a. Initial Contract.

COUNTY and CONTRACTOR acknowledge that the parties entered into a contract, dated March 8, 2016.

b. Prior Amendments. (Check one.)

☐ The initial contract previously has not been amended.

☒ The initial contract previously has been amended. The date(s) of prior amendments are as follows: August 9, 2016 and February 21, 2017

c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit 1 and made a part of this amended contract.

2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

a. Term of the Contract. (Check one.)

☒ The term of the original contract is not modified.

☐ The term of the original contract (Exhibit 1) is extended from the current expiration date of _____, to a new expiration date of _____.

b. Scope of Services. (Check one.)

☐ The services specified in the original contract (Exhibit 1) are not modified.

☒ The services specified in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☒ The services specified in the original contract are modified only as specified below:

Modified or New Scope of Services:

(Insert modified or new services.)

Task 1 (Technical Studies) of Phase 4 (Initial Study/Mitigated Negative Declaration) set forth in Attachment A (Scope of Services) to the original contract, as previously amended (Exhibit 1) is modified to add additional services as specified below. Except as expressly modified in this amendment, all other Tasks and Subtasks specified in Attachment A to the original contract, as previously amended (Exhibit 1) shall remain in full force and effect.

Task 1 (Technical Studies) of Phase 4 (Initial Study/Mitigated Negative Declaration) is hereby modified to add Subtask 1D to read as follows. The remainder of Task 1 shall remain in full force and effect:

Subtask 1.D: Fault Investigation Peer Review: In response to Leighton and Associates' peer review of the Applicant's earlier geo-technical studies, the Applicant's geotechnical subconsultant, Geo-Logic Associates has prepared a fault investigation report, consisting of written text documenting the investigation complete with conclusions, boring logs from continuous core borings, photo documentation and cross section(s) and estimates of the age of the materials encountered. Leighton and Associates will conduct additional peer review of the Applicants' updated report and provide a memorandum with conclusions and recommendations as applicable. The memorandum will be submitted to the County for review within two (2) weeks of receipt of notice to proceed with this subtask. Once approved by the County, the fault investigation report and memorandum will be used to prepare the geology, soils and seismicity section of the Initial Study for the project.

- ☐ The services specified in the original contract are deleted in their entirety and replaced with the following services:

New Scope of Services:

(Insert new services.)

c. Payment Terms. (Check one.)

- ☐ The payment terms in the original contract (Exhibit 1) are not modified.
☒ The payment terms in the original contract (Exhibit 1) are modified as specified below: (Check one.)
☒ The payment terms are modified only as specified below:

Modified or New Payment Terms:

(Insert modified or new payment terms.)

Paragraph B-3 of Attachment B (Payment Terms) to the original contract (Exhibit 1) is amended to add \$8,945.00 to the contract budget to increase the overall budget to \$113,245.00, as follows:

Original Contract:	\$51,400.00
Amendment #1:	\$52,800.00
Amendment #2:	\$ 8,945.00
Amendment #3:	<u>\$ 3,500.00</u>
	\$116,745.00

Accordingly, Paragraph B-3 of Attachment B to the original contract (Exhibit 1) is hereby revised to read as follows:

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (check one)

- ☐ a total lump sum payment of \$ _____, or
☒ a total sum not to exceed \$ 116,745,

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

Attachment B-1 to Attachment B (Payment Terms) to the original contract, as previously amended (Exhibit 1) is hereby amended to modify the following budget line items for the following tasks and subtasks:

Subtask 1.D of Phase 4: Peer Review Revised Geotechnical Report and Incorporate Results of Updated Applicant Studies into CEQA Documents	\$3,500.00
Total Fee (3rd Amendment)	\$3,500.00

All other provisions of the table set forth in Attachment B-1 and all other provisions in Attachment B to the original contract, as previously amended (Exhibit 1) shall remain in full force and effect.

- ☐ The payment terms are deleted in their entirety and replaced with the following payment terms:

New Payment Terms:

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (Check one.)

- ☐ One month in arrears.
☐ Upon the complete performance of the services specified in the original agreement (Exhibit 1) and this amendment.
☐ The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of the original contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (Check one.)

☐ a total lump sum payment of \$ _____, or

☐ a total sum not to exceed \$ _____,

for services rendered pursuant to the terms and conditions of the original contract (Exhibit 1) and this amendment, and pursuant to any special compensation terms specified in paragraph B-4.

B-4. SPECIAL COMPENSATION TERMS: (Check one.)

☐ There are no additional terms of compensation.

☐ The following specific terms of compensation shall apply:
(Specify)

d. Other Terms. (Check one.)

☒ There are no other terms of the original contract that are modified.

☐ Other terms of the original contract are modified only as specified below:

Other Modified or New Terms:

(Insert other modified or new terms.)

3. Other Terms.

All other terms and conditions of the original contract (Exhibit 1) which are not changed by this amendment shall remain the same.

CONTRACTOR

Mary Bean
Name/Title: Mary Bean, Vice-President

3/17/17
Date

COUNTY

San Benito County Board of Supervisors

Jaime De La Cruz, Chair

Date

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office

Shirley L. Murphy
Shirley L. Murphy, Deputy County Counsel

March 17, 2017
Date

EXHIBIT 1
TO AMENDMENT # 3

ORIGINAL
CONTRACT

(Please attach the initial contract and any prior amendments, from the most recent to the initial contract, in reverse chronological order.)

AMENDMENT TO CONTRACT

2

The County of San Benito ("COUNTY") and First Carbon Solutions ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

1. Existing Contract.

a. Initial Contract.

COUNTY and CONTRACTOR acknowledge that the parties entered into a contract, dated March 8, 2016.

b. Prior Amendments. (Check one.)

☐ The initial contract previously has not been amended.

☒ The initial contract previously has been amended. The date(s) of prior amendments are as follows: August 9, 2016

c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit 1 and made a part of this amended contract.

2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

a. Term of the Contract. (Check one.)

☒ The term of the original contract is not modified.

☐ The term of the original contract (Exhibit 1) is extended from the current expiration date of _____, to a new expiration date of _____.

b. Scope of Services. (Check one.)

☐ The services specified in the original contract (Exhibit 1) are not modified.

☒ The services specified in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☒ The services specified in the original contract are modified only as specified below:

Modified or New Scope of Services:

(Insert modified or new services.)

Task 2.A and Subtasks 4.1 and 4.2 set forth in Attachment A (Scope of Services) to the original contract, as previously amended (Exhibit 1) are modified to add additional services as specified below. Except as expressly modified in this amendment, all other Tasks and Subtasks specified in Attachment A to the original contract, as previously amended (Exhibit 1) shall remain in full force and effect.

Task 2.A (Technical Study - Peer Review of Technical Studies) of Phase 2 (Technical Studies) is hereby modified to add the following paragraph at the end of Task 2.A. The remainder of Task 2.A shall remain in full force and effect:

Incorporate Results of Updated Applicant Studies into CEQA Document: Based on the peer review memos supplied by the Contractor, the Applicant will update its technical reports and resubmit them to County staff, who shall provide them to Contractor for additional peer review. Contractor shall conduct additional peer review of the updated studies and incorporate the results into the CEQA document, as appropriate.

Subtask 4.1 (Meeting Attendance) of Task 4 (Meeting and Management) of Phase 4 (Initial Study/Mitigated Negative Declaration) is hereby modified to add the following paragraph at the end of Subtask 4.1. The remainder of Subtask 4.1 shall remain in full force and effect:

Additional Meetings/Conference Calls: Contractor and Subcontractor staff will participate in conference calls with County staff and/or the Applicant team to discuss details of additional work to be done on technical studies to inform the CEQA analysis as well as the results of that additional work. This assumes up to four (4) additional 60-minute conference calls. Additionally, this includes time for Subcontractor staff to attend two (2) conference calls not anticipated in Subcontractors' original scopes of work.

Subtask 4.2 (Project Management) of Task 4 (Meeting and Management) of Phase 4 (Initial Study/Mitigated Negative Declaration) is hereby modified to add the following paragraph at the end of Subtask 4.2. The remainder of Subtask 4.2 shall remain in full force and effect:

Additional Project Management and Coordination: Contractor will coordinate by email and phone with County staff and the Subcontractor team to set up conference calls, prepare for meetings, and address any follow up actions resulting from the calls, such as drafting memoranda or answering questions by email or phone.

- ☐ The services specified in the original contract are deleted in their entirety and replaced with the following services:

New Scope of Services:

(Insert new services.)

c. Payment Terms. (Check one.)

- ☐ The payment terms in the original contract (Exhibit 1) are not modified.
☒ The payment terms in the original contract (Exhibit 1) are modified as specified below: (Check one.)
☒ The payment terms are modified only as specified below:

Modified or New Payment Terms:

(Insert modified or new payment terms.)

Paragraph B-3 of Attachment B (Payment Terms) to the original contract (Exhibit 1) is amended to add \$8,945.00 to the contract budget to increase the overall budget to \$113,245.00, as follows:

Original Contract:	\$51,400.00
Amendment #1:	\$52,800.00
Amendment #2:	<u>\$ 8,945.00</u>
	\$113,245.00

Accordingly, Paragraph B-3 of Attachment B to the original contract (Exhibit 1) is hereby revised to read as follows:

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (check one)

- ☐ a total lump sum payment of \$ _____, or
☒ a total sum not to exceed \$ 113,245

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

Attachment B-1 to Attachment B (Payment Terms) to the original contract, as previously amended (Exhibit 1) is hereby amended to modify the following budget line items for the following tasks and subtasks:

Task 2.A of Phase 2: Incorporate Results of Updated Applicant Studies into CEQA Documents	\$2,400.00
Subtask 4.1 of Task 4 of Phase 4: Additional Meeting/Conference Calls	\$3,680.00
Subtask 4.2 of Task 4 of Phase 4: Additional Project Management and Coordination	\$2,865.00
Total Fee (2nd Amendment)	\$8,945.00

All other provisions of the table set forth in Attachment B-1 and all other provisions in Attachment B to the original contract, as previously amended (Exhibit 1) shall remain in full force and effect.

- ☐ The payment terms are deleted in their entirety and replaced with the following payment terms:

New Payment Terms:

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (Check one.)

- ☐ One month in arrears.
☐ Upon the complete performance of the services specified in the original agreement (Exhibit 1) and this amendment.
☐ The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of the original contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (Check one.)

☐ a total lump sum payment of \$_____, or
☐ a total sum not to exceed \$_____,
for services rendered pursuant to the terms and conditions of the original
contract (Exhibit 1) and this amendment, and pursuant to any special
compensation terms specified in paragraph B-4.

B-4. SPECIAL COMPENSATION TERMS: (Check one.)

☐ There are no additional terms of compensation.
☐ The following specific terms of compensation shall apply:
(Specify)

d. Other Terms. (Check one.)

☒ There are no other terms of the original contract that are modified.
☐ Other terms of the original contract are modified only as specified below:

Other Modified or New Terms:
(Insert other modified or new terms.)

3. Other Terms.

All other terms and conditions of the original contract (Exhibit 1) which are not changed by this
amendment shall remain the same.

CONTRACTOR

Mary Bean
Name/Title: Mary Bean, Vice-President

1.18.17
Date

COUNTY

San Benito County Board of Supervisors

Jaime De La Cruz
Jaime De La Cruz, Chair

2/21/17
Date

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office

Shirley L. Murphy
Shirley L. Murphy, Deputy County Counsel

Feb. 1, 2017
Date

EXHIBIT 1
TO AMENDMENT # 2

ORIGINAL
CONTRACT

(Please attach the initial contract and any prior amendments, from the most recent to the initial contract, in reverse chronological order.)

AMENDMENT TO CONTRACT

1

The County of San Benito ("COUNTY") and First Carbon Solutions.
("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

1. Existing Contract.

a. Initial Contract.

COUNTY and CONTRACTOR acknowledge that the parties entered into a contract, dated March 8, 2016.

b. Prior Amendments. (Check one.)

☒ The initial contract previously has not been amended.

☐ The initial contract previously has been amended. The date(s) of prior amendments are as follows: _____

c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit 1 and made a part of this amended contract.

2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

a. Term of the Contract. (Check one.)

☒ The term of the original contract is not modified.

☐ The term of the original contract (Exhibit 1) is extended from the current expiration date of _____, to a new expiration date of _____.

b. Scope of Services. (Check one.)

- ☐ The services specified in the original contract (Exhibit 1) are not modified.
- ☒ The services specified in the original contract (Exhibit 1) are modified as specified below: (Check one.)
- ☒ The services specified in the original contract are modified only as specified below:

Modified or New Scope of Services:

Attachment A to the original contract (Exhibit 1) is modified to add the following services under a new heading, "Phase 4 – Initial Study/Mitigated Negative Declaration", immediately following "Task 3.4, Project Management", on page 6 of Attachment A, to read as follows:

Phase 4 – Initial Study/Mitigated Negative Declaration

This Phase will cover the completion of technical peer reviews described in Phase 2 of Attachment A to this contract, as well as preparation of an Initial Study/Mitigated Negative Declaration.

Task 1: Technical Studies

Subtask 1.A: Peer Review of Technical Studies

CONTRACTOR, and the technical sub-consultants listed below, will peer review the technical studies prepared by the applicant's consultants to identify any specific data gaps or further recommendations. This information will be summarized for the County in a technical memo. All peer reviews will be limited to reviewing the adequacy of the information and conclusions contained in the studies; no new analysis is proposed.

The applicant-submitted studies include an air quality report; biological constraints analysis; archeological, paleontological and historic resources reports; two geotechnical reports; noise letter report; Phase II hazardous materials report; transportation impact study; and sanitary sewer study.

CONTRACTOR has identified the following firms as responsible for peer reviewing the various technical studies:

- CONTRACTOR: Air Quality, Biological Resources, Cultural Resources, and Noise Reports
- Leighton and Associates, Inc.: Geotechnical Reports and Phase II Environmental Site Assessment
- Fehr & Peers: Traffic Study
- Balance Hydrologics, Inc.: Water Letter
- CIVILTEC Engineering, Inc.: Sewer Study

If the initial peer review determines that any of the technical studies prepared by the applicant's consultants are not adequate for use in preparing the CEQA document, CONTRACTOR will recommend to the County that this scope of work be further amended to include preparation of new technical document(s).

Subtask 1.B: Technical Study – Land Evaluation and Site Assessment Model

The California Department of Conservation, Farmland Mapping and Monitoring Program maps the project site as containing "Prime Farmland," which is considered "Important Farmland" for CEQA purposes. CONTRACTOR will obtain GIS data for Important Farmland, soils, and protected lands in the project vicinity and prepare maps identifying land classifications, soil classifications, and the zone of influence. Maps will be provided in color and identify the acreage of each relevant unit in the legend. Using GIS mapping, CONTRACTOR will identify the scoring for the project site as it relates to various Land Evaluation and Site Assessment (LESA) Modeling categories, including project acreage, soil quality, water availability, and proximity of protected agricultural lands. CONTRACTOR will sum the relevant scores in accordance with LESA Model methodology and determine whether the proposed conversion of agricultural land to non-agricultural use constitutes a significant impact.

Subtask 1.C: Greenhouse Gas Emissions Analysis

The applicant-commissioned air quality report was limited to criteria pollutants; it did not address greenhouse gas emissions. Accordingly, CONTRACTOR will provide a greenhouse gas assessment to support the environmental checklist. The proposed project would entail construction and operation activities that would emit greenhouse gas emissions. CONTRACTOR will follow guidance presented by Monterey Bay Unified Air Pollution Control District (APCD) in its CEQA Air Quality Guidelines.

CONTRACTOR will use the most current version of the California Emissions Estimator Model (CalEEMod) at the time the analysis is prepared to quantify greenhouse gas emissions. CONTRACTOR will use the APCD's CEQA Guidelines as the basis for assessing greenhouse gas emissions impacts, including the document's recommendations for analytical approaches, thresholds, and—if necessary—mitigation measures. Emissions modeling methodology and assumptions, as well as model output, will be provided in an appendix to the environmental checklist.

CONTRACTOR will evaluate the project's greenhouse gas impacts, including consistency with applicable strategies intended to reduce such emissions.

Task 2: Administrative Draft Initial Study/Mitigated Negative Declaration

CONTRACTOR will prepare an Administrative Draft IS/MND for County staff review that will evaluate the proposed project's impacts. The IS/MND format will include separate sections for discussion of each CEQA Guidelines Appendix G Environmental Checklist impact category, and it will be adequately supported by exhibits (including color GIS mapping, as appropriate). The IS/MND will evaluate project impacts against each question on the Appendix G Environmental Checklist and determine whether a potentially significant impact occurs that requires mitigation or if impacts would be less than significant and would not require mitigation. If potentially significant impacts are identified, CONTRACTOR will draft mitigation measures that would reduce the impact to a level of less than significant.

The following issues will be evaluated in the IS/MND:

- Aesthetics, Light, and Glare
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology, Soils, and Seismicity
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use
- Noise
- Population and Housing
- Public Services
- Recreation
- Transportation
- Utility Systems

Deliverables

- One (1) electronic version (via email) of the Administrative Draft IS/MND to the County

Task 3: Draft Initial Study/Mitigated Negative Declaration

Upon receipt of one consolidated set of County staff comments on the Administrative Draft IS/MND, CONTRACTOR will revise the document and prepare the Draft IS/MND for public release. CONTRACTOR will provide copies of the Draft IS/MND and the Notice of Completion to the State Clearinghouse to formally begin the 30-day public review process. (Alternately, if the County determines that only a 20-day local public review period is appropriate, CONTRACTOR will forego sending copies to the State Clearinghouse). CONTRACTOR will provide the County with hard copies and CDs of the Draft IS/MND

Deliverables

- 15 hard copies of the Draft IS/MND (appendices on CD), 15 CDs of the Draft IS/MND and appendices, and one (1) electronic version (via email) of the Draft IS/MND to the County

- 15 Executive Summary hard copies of the Draft IS/MND, 15 CDs of the Draft IS/MND and appendices, and the Notice of Completion to the State Clearinghouse (if the 30-day review period is pursued)

Task 4: Meeting and Management

Subtask 4.1: Meeting Attendance

CONTRACTOR will meet by phone with County staff during the preparation of the IS/MND to discuss and resolve issues, develop strategies, and confirm next steps. This proposal and its associated budget cover attendance by CONTRACTOR's Project Manager at two (2) public meetings. A not-to-exceed budget has been established to cover meeting attendance. If County staff requests additional meeting attendance by CONTRACTOR staff, or if the amount of time involved in these meetings exceeds the initial budget allocation, CONTRACTOR will notify County staff of the additional costs and obtain authorization for the extra meeting time.

Subtask 4.2: Project Management

In addition to the research, analysis, communications, and report writing tasks described above, CONTRACTOR will perform a variety of project management duties to ensure that the IS/MND meets the County's standards of quality, and that it is delivered on time and within budget. These duties will include team supervision and coordination, oral and written communications with the applicant and County staff, project accounting, and quality assurance review by CONTRACTOR'S Project Director and Technical Editor of all deliverable products. These services also will include ongoing support to County staff, such as providing input to staff reports, regular schedule updates, and discussions of technical issues. This task assumes 20 hours of staff time.

Attachment A of the original contract (Exhibit 1) is modified to amend the provisions under the heading, "Tasks Outside of Scope of Work" on page 6 of Attachment A, to read as follows:

Written Responses to Comments

The CEQA Guidelines do not require lead agencies to prepare written responses to comments received on IS/MNDs. As such, CONTRACTOR'S scope of work does not include time or budget for preparing written responses to comments received by the County concerning the IS/MND. Should the County request that CONTRACTOR prepare written responses to comments, a separate scope and fee will be prepared.

Newspaper Noticing/Local Noticing

CONTRACTOR assumes that County staff will be responsible for any public noticing related to the adoption of the IS/MND.

Findings of Fact

CONTRACTOR assumes that the County's legal counsel will prepare the Findings of Fact to allow adoption of the IS/MND.

Notice of Determination Filing/Payment of Fees

CONTRACTOR assumes that the applicant will file the Notice of Determination with the San Benito County Clerk's Office within five (5) business days of adoption of the IS/MND. The purpose of the Notice of Determination filing is to limit the legal challenge period to 30 days. If a Notice of Determination is not filed within five (5) business days of certification, the legal challenge period defaults to 180 days. CONTRACTOR assumes the applicant would be responsible for payment of the filing fees for the IS/MND in effect at the time of filing.

Attachment A of the original contract (Exhibit 1) is further modified to add the following table under the heading, "Schedule", immediately after the table labeled "Phase 3 – Addendum", as set forth in Attachment A. The additional table will read as follows:

Phase 4 – Initial Study/Mitigated Negative Declaration

Task	Week
Receive Notice to Proceed	1
Submit Peer Review Memo(s)	3
<i>Prepare Updates to Technical Reports based on peer review</i>	<i>TBD</i>
Submit Administrative Draft IS/MND	6
County Comments on Administrative Draft IS/MND	8
Release Draft IS/MND for 30-day public review period	9
Public Meeting(s)	TBD

All other provisions of Attachment A to the original contract shall remain the same.

☐ The services specified in the original contract are deleted in their entirety and replaced with the following services:

New Scope of Services:

(Insert new services.)

c. Payment Terms. (Check one.)

☐ The payment terms in the original contract (Exhibit 1) are not modified.

☒ The payment terms in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☒ The payment terms are modified only as specified below:

Modified or New Payment Terms:

Paragraph B-3 of Attachment B to the original contract (Exhibit 1) is amended to add \$52,800.00 to the contract budget to increase the overall budget to \$104,300.00, as follows:

Original Contract \$ 51,400.00

Amendment #1: \$ 52,800.00

Total: \$104,300.00

Accordingly, Paragraph B-3 of Attachment B to the original contract (Exhibit 1) is hereby revised to read as follows:

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR:

☐ a total lump sum payment of \$ _____, or

☒ a total sum not to exceed \$104,300.00,

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

Attachment B-1 to the original contract (Exhibit 1) is hereby revised to add the following table below the table labeled "Phase 3 – Addendum", to read as follows:

Phase 4 – Initial Study/Mitigated Negative Declaration

Task	Fee
Peer Review – Air Quality (CONTRACTOR)	\$2,000
Peer Review – Biological Resources (CONTRACTOR)	\$2,000
Peer Review – Cultural Resources (CONTRACTOR)	\$2,000
Peer Review – Geotechnical and Hazardous Materials (Leighton and Associates, Inc.)	\$5,000
Peer Review – Transportation (Fehr & Peers)	\$7,500
Peer Review – Water (Balance Hydrologics, Inc.)	\$4,800
Peer Review – Sewer Study (CIVILTEC Engineering, Inc.)	\$3,500
Technical Study – Land Evaluation and Site Assessment Model	\$4,000
Technical Study – GHG Analysis	\$3,000
Administrative Draft IS/MND	\$10,000
Draft IS/MND	\$4,000
Management and Meetings	\$3,000
Direct Costs	\$2,000
Total Professional Fee	\$52,800

All other provisions of Attachment B to the original contract (Exhibit 1) shall remain the same.

☐ The payment terms are deleted in their entirety and replaced with the following payment terms:

New Payment Terms:

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (Check one.)

- ☐ One month in arrears.
- ☐ Upon the complete performance of the services specified in the original agreement (Exhibit 1) and this amendment.
- ☐ The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of the original contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (Check one.)

☐ a total lump sum payment of \$ _____, or

☐ a total sum not to exceed \$ _____,

for services rendered pursuant to the terms and conditions of the original contract (Exhibit 1) and this amendment, and pursuant to any special compensation terms specified in paragraph B-4.

B-4. SPECIAL COMPENSATION TERMS: (Check one.)

☐ There are no additional terms of compensation.

☐ The following specific terms of compensation shall apply: (Specify)

d. **Other Terms.** (Check one.)

☒ There are no other terms of the original contract that are modified.

☐ Other terms of the original contract are modified only as specified below:

Other Modified or New Terms:

(Insert other modified or new terms.)

3. Other Terms.

All other terms and conditions of the original contract (Exhibit 1) which are not changed by this amendment shall remain the same.

CONTRACTOR

Mary Bean
Name/Title: Mary Bean, Vice-President

8/2/16
Date

COUNTY

San Benito County Board of Supervisors

Robert Rivas
Robert Rivas, Chair

8/9/16
Date

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office

Shirley L. Murphy
Shirley L. Murphy, Deputy County Counsel

Aug. 2, 2016
Date

EXHIBIT 1
TO AMENDMENT # 1

**ORIGINAL
CONTRACT**

(Please attach the initial contract and any prior amendments, from the most recent to the initial contract, in reverse chronological order.)

CONTRACT

The COUNTY OF SAN BENITO ("COUNTY") and First Carbon Solutions ("CONTRACTOR") enter into this contract which shall be effective on the date stated in Paragraph 1.

1. **Duration of Contract.**

This contract shall commence on March 8, 2016, and end on Completion of the Scope of Work Identified in Attachment A, unless sooner terminated as specified herein.

2. **Scope of Services.**

CONTRACTOR, for COUNTY's benefit shall perform the services specified on Attachment A to this contract. Attachment A is made a part of this contract.

3. **Compensation for Services.**

In consideration for CONTRACTOR's performance, COUNTY shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this contract.

4. **General Terms and Conditions.**

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

5. **Insurance Limits.**

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive general liability insurance: \$1,000,000
- (b) Professional liability insurance: \$1,000,000
- (c) Comprehensive motor vehicle liability insurance: \$250,000/\$500,000

6. **Termination.**

The number of days of advance written notice required for termination of this contract is 30.

7. **Specific Terms and Conditions** (check one)

- ☒ [X] There are no additional provisions to this contract.
- ☐ [] The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.
- ☐ [] The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment E. Attachment E is made a part of this contract.

8. Information about Contract Administrators.

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for COUNTY:

Name: Brent Barnes

Title: RMA Director

Address: 2301 Technology Parkway

Hollister, California 95023

Telephone No.: 831-636-4170

Fax No.: 831-636-4176

Contract Administrator for CONTRACTOR:

Name: Mary Bean

Title: Vice President

Address: 1350 Treat Boulevard, Suite 380

Walnut Creek, CA 94597

Telephone No.: (925) 357-2562

Email: mbean@fcs-intl.com

SIGNATURES

APPROVED BY COUNTY:



Name: Robert Rivas

Chair, Board of Supervisors

Date: 3/22/16

APPROVED BY CONTRACTOR:



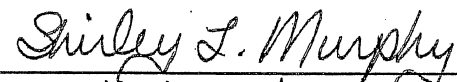
Name: Mary Bean

Title: Vice President

Date: 2.29.16

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office



By: Shirley L. Murphy
Barbara Thompson, Deputy County Counsel

Date: March 15, 2016

ATTACHMENT A

SCOPE OF SERVICES

Project Understanding

The approximately 27.26-acre project site is located at 3061 Southside Road in unincorporated San Benito County, California. The project site is bounded by Southside Road (west), an agricultural property (north), a swale and undeveloped land (east), and rural residential uses (south). The project site contains an approximately 14-acre walnut orchard and is mapped as "Prime Farmland" by the California Department of Conservation Farmland Mapping and Monitoring Program. The project site also contains a grass pasture and two single-family residential structures. The Calaveras Fault crosses the project site. The project site is designated "Rural Urban" by the County of San Benito General Plan and zoned "R-1" by the San Benito County Zoning Ordinance.

The project applicant is proposing to subdivide the project site to create 84 single-family residential lots. Vehicular access would be taken from a single street connection to Southside Road. An interim emergency vehicle access would be installed at the northern property line and would provide restricted access for public safety providers in the event of an emergency. The project's internal circulation system is contemplated to connect to a future residential subdivision to the north, which would allow for a second point of vehicular access. The eastern portion of the project site would remain undeveloped and would serve as the setback area from the Calaveras Fault. The project application requires approval of a Tentative Subdivision Map.

The County's Request For Proposals dated December 23, 2015 indicated that the County is considering the use of CEQA Guidelines Section 15183 as the basis for environmental review. CEQA Guidelines Section 15183 applies to projects that are consistent with a Community Plan, General Plan, or Zoning, and is intended to streamline the environmental review process by only evaluating project-specific characteristics that are peculiar to the project, were not evaluated in a previous EIR, or may have a more severe impact that previously disclosed in the EIR.

In this case, the County's General Plan EIR is the applicable CEQA document against which the project will be evaluated. FCS will undertake the following tasks:

1. Consider the extent of analysis that occurred in the General Plan EIR and determine whether there are site-specific or project-specific issues that require additional analysis to ensure full disclosure and mitigation of impacts;
2. Document conclusions regarding whether additional analysis is required; and
3. Describe how any significant project impacts will be adequately mitigated based on the applicable mitigation measures set forth in the General Plan EIR (supplemented to the extent necessary with additional detail to ensure mitigation measures are implemented as envisioned in the General Plan EIR) as well as the application of other uniformly applied development policies and standards.

Accordingly, we have proposed a three-phase work plan. Phase 1 pertains to the preparation of a Memorandum identifying the key conclusions of the General Plan EIR and how the proposed project's characteristics and impacts compare to those conclusions. Phase 2 encompasses the technical studies that are anticipated to be necessary to support the CEQA document. (Note that the County has the discretion to select the technical studies it determines to be necessary for this purpose.) Finally, Phase 3 provides a scope of work for an Addendum that will contain a summary of the analysis and conclusions from Phases 1 and 2, and any additional analysis required to comply with CEQA. If a document other than an addendum is determined to be necessary, FCS can revise our scope of work accordingly.

Phase 1 –Memorandum

Task 1.A: Project Initiation

FCS's Project Manager and other key team members will meet with County staff to clarify and confirm the project description, identify key contacts, discuss scheduling targets, and obtain copies of the County of San Benito General Plan, the General Plan EIR, and other relevant information. This task includes budget for a site visit at the project site.

Task 1.B: Draft Memorandum

FCS will prepare a Memorandum identifying the conclusions set forth in the County of San Benito General Plan EIR and how project characteristics and potential impacts compare to applicable policies and conclusions set forth in the General Plan EIR. The purpose of the memorandum is to confirm whether an addendum to the General Plan EIR, utilizing CEQA Section 15183 would satisfy the requirements for analysis of the project.

Using biological resources as an example, FCS will (1) determine whether the biological resources impacted by the project were previously disclosed in the General Plan EIR; and (2), if they have been disclosed, FCS will determine whether the mitigation measures contained in the General Plan EIR, or other uniformly applied development policies or standards from the General Plan or other documents or codes would substantially mitigate project impacts. The following CEQA topics will be evaluated in the Memorandum:

- Aesthetics, Light, and Glare
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology, Soils, and Seismicity
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use
- Mineral Resources
- Noise
- Population and Housing
- Public Services
- Recreation
- Transportation
- Utility Systems

Deliverables

- One (1) electronic version (via email) of the Draft Memorandum to the County of San Benito

Task 1.B: Meeting with County Staff

FCS will meet with the County to discuss the memorandum, including the evaluation of CEQA topics, and the conclusions regarding the applicability of CEQA Section 15183. If additional analysis is found to be necessary, FCS will discuss with the County the scope and extent of each technical study.

If FCS determines, based on the analysis conducted for the memorandum, that an addendum to the General Plan EIR using CEQA Section 15183 does not appear to be appropriate, FCS will discuss this with the County and will recommend an alternative course for review. (FCS would then revise the scope of work accordingly.)

Task 1.C: Final Memorandum

Following the meeting with County staff, and receipt of one set of County comments on the Draft Memorandum, FCS will revise the document to address the comments and submit the final memorandum to the County.

Deliverables

- One (1) electronic version (via email) of the Final Memorandum the County of San Benito

Phase 2 – Technical Studies

As noted in Task 1.B, FCS will discuss with the County whether any further technical analysis is required. Following the peer review in Task 2.A, FCS provides examples of additional technical analyses that are typically performed in evaluating a new subdivision. FCS will confirm with the County the specific scope and extent of any additional technical analysis before undertaking this Phase.

Task 2.A: Technical Study – Peer Review of Technical Studies

FCS will perform an initial review of the technical studies prepared by the applicant's consultants for completeness and adequacy for use in the CEQA document. The RFP included a biological constraints analysis, transportation impact study, and preliminary storm drain report; if additional studies are made available, FCS can provide an updated scope to fold them into this task. If the technical studies are deemed generally adequate, then FCS will perform a peer review to identify any specific data gaps or further recommendations. This information will be summarized for the County in a technical memorandum.

If FCS's initial review determines that any of the technical studies prepared by the applicant's consultants are not adequate for use in preparing the CEQA document, FCS will recommend to the County that our scope be amended to include preparation of new technical document(s).

Task 2.B: Technical Study – Land Evaluation and Site Assessment Model

If found necessary following the completion of Phase 1, FCS will obtain GIS data for Important Farmland, soils, and protected lands in the project vicinity and prepare maps identifying land classifications, soil classifications, and the zone of influence. Maps will be provided in color and identify the acreage of each relevant unit in the legend. Using GIS mapping, FCS will identify the scoring for the project site as it relates to various Land Evaluation and Site Assessment (LESA) Modeling categories, including project acreage, soil quality, water availability, and proximity of protected agricultural lands. FCS will sum the

relevant scores in accordance with LESA Model methodology and determine whether the proposed conversion of agricultural land to non-agricultural use constitutes a significant impact.

Task 2.C: Air Quality / Greenhouse Gas Emissions Analysis

If found necessary following the completion of Phase 1, FCS will provide an air quality and greenhouse gas assessment to support the environmental checklist. The proposed project would entail construction and operation activities that would emit air pollutants and greenhouse gas emissions. FCS will follow guidance presented by Monterey Bay Unified Air Pollution Control District (APCD) in its CEQA Air Quality Guidelines. FCS will use the APCD's CEQA Guidelines as the basis for assessing air quality and greenhouse gas emissions impacts, including the document's recommendations for analytical approaches, thresholds, and—if necessary—mitigation measures. FCS will document the project's components relative to the APCD's screening criteria and thresholds of significance to support the impact determinations. Emissions modeling methodology and assumptions, as well as model output, will be provided in an appendix to the environmental checklist.

If during the analysis, FCS finds that the project exceeds the APCD's screening criteria, a Health Risk Assessment may be required as additional work not included in this scope. A qualitative analysis will be provided for the criteria pollutants. FCS will use the most current version of the California Emissions Estimator Model (CalEEMod) at the time the analysis is prepared to quantify greenhouse gas emissions.

The analysis will include a discussion of odor impacts that can occur during construction and the types of uses that are known to be potential odor sources as described in the APCD's guidance that may require additional analysis or mitigation if proposed for the site. Finally, FCS will evaluate the project's greenhouse gas impacts, including consistency with applicable strategies intended to reduce such emissions.

Task 2.D: Phase I Cultural Resources Assessment

If found necessary following the completion of Phase 1, FCS will prepare a Phase I Cultural Resources Assessment that includes the following tasks.

Task 2.D.1: Record Searches

FCS will request a records search at the Northwest Information Center. The record search will include a review of the National Register of Historic Places (NRHP), the California Register of Historical Resources, the California Inventory of Historic Resources, the California Historical Landmarks, the California Points of Historical Interest listings, the Historic Property Data File, historic maps, and other pertinent historic data.

A letter will be sent requesting the Native American Heritage Commission (NAHC) search its Sacred Lands File and provide a list of interested Native American tribal members who may have additional information about the project area. On the basis of information received from the NAHC, a letter will be sent to specific tribal entities requesting additional information from them about the proposed project area.

Task 2.D.2: Cultural Resource Field Survey

A pedestrian field survey will be conducted for the Fay Major Subdivision project site by an FCS Project Archaeologist. Aerial photographs indicate that the project site contains at least two residential

structures; therefore, this scope of work assumes that a minimum of two structures will need to be recorded.

Task 2.D.3: Report Preparation

FCS will prepare a Phase I Cultural Resources Assessment Report that will detail the results of the field investigation, record searches, and any resources discovered. The report will meet Office of Historic Preservation (OHP) standards for Phase I Cultural Resource studies. The Phase I Report will include recommendations for further study and/or mitigation within the project area, as needed.

Optional Site Recordation

Although considered highly unlikely, if cultural resource sites or resources are found within the project area, and if completion of DPR site forms is required, the Optional Site Recordation Task will be utilized. The cost for recording individual sites depends on what is found, but \$300 is the minimum charge for recording previously unrecorded sites.

FCS cannot determine, prior to completion of the field survey, the need for recordation or the number of additional sites to be recorded; therefore, we have established the Optional Site Recordation task line.

Task 2.E: Technical Study – Noise Analysis

If found necessary following the completion of Phase 1, FCS will prepare a noise analysis for the proposed project that will include analysis of potential short-term construction and long-term operational noise impacts to adjacent noise-sensitive receptors. The existing noise conditions at the project site will be documented through traffic noise modeling and ambient noise (up to three short-term measurements) to determine compatibility for the proposed type of development with the County's land use compatibility standards. The potential noise and vibration impacts associated with project construction will also be quantified, and mitigation measures consistent with best management practices will be included as needed. A quantitative assessment of noise impacts related to project-related vehicular trips will be performed, and mitigation measures to reduce any potential impacts will be identified as needed. This technical analysis for potential noise impacts will be directly incorporated into the environmental document and noise monitoring readouts and modeling data included in the appendices.

Phase 3 – Addendum

If the County determines that the proposed project's impacts do not exceed what was previously disclosed in the County General Plan EIR or constitute the disclosure of new information known at the time of preparation of the General Plan EIR, FCS will prepare an Addendum in accordance with CEQA Guidelines Section 151583. (If the County determines that an addendum would not be the appropriate CEQA document, FCS will revise this scope of work accordingly.)

Task 3.1: Administrative Draft Addendum

FCS will prepare an Administrative Draft Addendum for County staff review that will evaluate the conclusions contained in the General Plan EIR. The Addendum format will include separate sections for discussion of each Environmental Checklist impact category, and it will be adequately supported by exhibits (including color GIS mapping, as appropriate). The Addendum will provide a conclusion at the

end of each topical section identifying whether the proposed changes alter any conclusions contained in the previous environmental document.

Deliverables

- One (1) electronic version (via email) of the Administrative Draft Addendum to the County of San Benito

Task 3.2: Final Addendum

Following receipt of one set of compiled County comments on the Administrative Draft Addendum, FCS will complete revisions and prepare the final Addendum. It is anticipated that the Addendum would be included as attachment to the Staff Report for the Planning Commission and Board of Supervisors meetings at which the Fay Major Subdivision application would be considered. Pursuant to the CEQA Guidelines, the Addendum does not need to be circulated for public review.

Deliverables

- Ten (10) hard copies (appendices on CD), one (1) reproducible master copy, and one (1) CD of the Addendum to the County of San Benito.

Task 3.3: Meeting Attendance

FCS will meet by phone with County staff during the Addendum preparation process to discuss and resolve issues, develop strategies, and confirm next steps. This proposal and its associated budget cover attendance by FCS's Project Manager at two (2) public meetings. A not-to-exceed budget has been established to cover meeting attendance. If County staff requests additional meeting attendance by FCS staff, or if the amount of time involved in these meetings exceeds the initial budget allocation, FCS will notify County staff of the additional costs and obtain authorization for the extra meeting time.

Task 3.4: Project Management

In addition to the research, analysis, communications, and report writing tasks described above, FCS will perform a variety of project management duties to ensure that the Addendum meets the County's standards of quality, and that it is delivered on time and within budget. These duties will include team supervision and coordination, oral and written communications with the applicant and County staff, project accounting, and quality assurance review by FCS's Project Director and Technical Editor of all deliverable products. These services also will include ongoing support to applicant and County staff, such as providing input to staff reports, regular schedule updates, and discussions of technical issues. This task assumes 20 hours of staff time.

Tasks Outside of Scope of Work

Below are tasks FCS has identified as being outside of its scope of work for the proposed project.

Written Responses to Comments

CEQA Guidelines Section 15164(c) states that Addendums do not need to be circulated for public review. As such, FCS's scope of work does not include time or budget for preparing written responses to

comments received by the County of San Benito concerning the Addendum. Should the County request that FCS prepare written responses to comments, a separate scope and fee will be prepared.

Newspaper Noticing/Local Noticing

FCS assumes that County staff will be responsible for any public noticing related to the adoption of the Addendum.

Findings of Fact

FCS assumes that the County's legal counsel will prepare the Findings of Fact (if necessary) to allow adoption of the Addendum.

Notice of Determination Filing/Payment of Fees

FCS assumes that County staff or the applicant will file the Notice of Determination (if applicable) with the San Benito County Clerk's Office within five (5) business days of adoption of the Addendum. The purpose of the Notice of Determination filing is to limit the legal challenge period to 30 days. If a Notice of Determination is not filed within five (5) business days of certification, the legal challenge period defaults to 180 days. In the event fees are required, this scope of work assumes the County or applicant would be responsible for payment thereof.

Schedule

Phase 1 - Memorandum

FCS has prepared the following schedule identifying the timing of each task.

Task	Week
Receive Notice to Proceed	1
Submit Draft Memorandum	4
Received County Comments on Draft Memorandum	5
Submit Final Memorandum	6

Phase 2 - Technical Studies

FCS has prepared the following schedule identifying the timing of each task.

Task	Week
Receive Notice to Proceed	1
Submit results of initial scan of applicant-prepared technical studies to County Memorandums to County	2
Submit Peer Review Memorandums to County	4
Submit Draft Technical Studies to County (if required)	7
Receive County Comments on Draft Technical Studies (if required)	9

Submit Final Technical Studies to County (if required)	11
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Phase 3 – Addendum

FCS has prepared the following schedule identifying the timing of each task.

Task	Week
Submit Administrative Draft Addendum to County (assuming no additional technical analysis is required)	8
Receive County Comments on Administrative Draft Addendum	10
Submit Final Addendum and Mitigation Monitoring and Reporting Program to County	11
Meetings	To Be Determined

Any fee projections in this Agreement are for general budgeting purposes only. Actual fees may be less or but no more than the projections unless approved by COUNTY Contract Manager. Payment shall be due within 30 days of your receipt of the invoice.

ATTACHMENT B Payment Schedule

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (check one)

- ☒ One month in arrears.
- ☐ Upon the complete performance of the services specified in Attachment A.
- ☐ The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (check one)

☐ a total lump sum payment of \$ _____, or

☒ a total sum not to exceed \$ 51,500.

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B,

B-4. SPECIAL COMPENSATION TERMS: (check one)

☐ There are no additional terms of compensation.

☒ The following specific terms of compensation shall apply: (See Attachment B-1 and the Following)

- A. Disputed invoices shall be returned within 15 days of receipt of the invoice with a clear description of the nature of the dispute.
- B. Invoices shall be prepared and submitted with Task Work Tracking. Invoices shall be submitted with the following back up:
 - a. Task Cost Accounting- itemized by assigned staff and hourly rate
 - b. Task Progress Reports – itemized by sub-task work; budget vs. actual

END OF ATTACHMENT B

ATTACHMENT B-1

Cost Proposal

Phase 1 - Memorandum

FCS has prepared the following budget identifying the costs of each task.

Task	Fee
Project Initiation	\$2,000
Draft Memorandum	\$6,000
Final Memorandum	\$2,000
Total FCS Professional Fee	\$10,000

Phase 2 – Technical Studies

FCS has prepared an estimated cost for each of the potential tasks. FCS will confirm the need for these studies with the County following preparation of the memorandum in Phase 1.

Task	Fee
Initial scan and Peer Review of Applicant's Technical Studies	\$3,000
Technical Study – Land Evaluation and Site Assessment Model	\$4,000
Technical Study – Air Quality/GHG Analysis	\$6,500
Technical Study – Phase I Cultural Resources Assessment	\$6,500
Technical Study – Noise Analysis	\$6,500
Total FCS Professional Fee	\$26,500

Phase 3 – Addendum

FCS has prepared the following budget identifying the costs associated with preparing an addendum.

Task	Fee
Administrative Draft Addendum	\$8,000
Final Addendum	\$2,000
Meeting Attendance	\$2,000
Project Management	\$3,000
Total FCS Professional Fee	\$15,000

Assumptions

The assumptions used in calculating the above fees are:

The fee is valid for up to 30 days from the date of this scope, after which it may be subject to revision.

This price is based upon completion of the work within the proposed schedule. If delays occur, an amendment of the price would be warranted to accommodate additional project management and other costs, and to reflect adjustments for updated billing rates.

Costs have been allocated to tasks, based upon FCS's proposed approach. During the work, FCS may, on its sole authority, re-allocate costs among tasks, as circumstances warrant, so long as the adjustments maintain the total price within its authorized amount.

The FCS Project Manager will be the primary representative at the project meeting and public hearing.

Scope of Work Modifications

FCS assumes a stable and complete project description and project plan set at project initiation. In the event the project description and/or scope of work change to a degree that alters the fee estimate, FCS will contact the applicant team or County staff in writing to submit a revised fee for mutual agreement, and a contract amendment will be processed. Requests for additional work will be documented, and a completion timetable and estimated fee will be submitted for applicant team or County approval.

ATTACHMENT C

General Terms and Conditions

C-1. INDEMNIFICATION.

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

C-2. GENERAL INSURANCE REQUIREMENTS.

Without limiting CONTRACTOR's duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

- (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
- (b) Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

C-3. INSURANCE COVERAGE REQUIREMENTS.

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
- (b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.

- (c) Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- (d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

C-4. CERTIFICATE OF INSURANCE.

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

C-5. RECORDS TO BE MAINTAINED.

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.

C-6. RETENTION OF RECORDS.

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.

C-7. TITLE TO DOCUMENTS; COPYRIGHT.

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COUNTY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COUNTY is prohibited.

C-8. INDEPENDENT CONTRACTOR.

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COUNTY and not officers or employees of COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to COUNTY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

C-9. CONFLICT OF INTEREST.

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed.

C-10. COMPLIANCE WITH APPLICABLE LAWS.

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

C-11. NONDISCRIMINATION.

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

C-12. BANKRUPTCY.

CONTRACTOR shall immediately notify COUNTY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

C-14. NEGOTIATED CONTRACT.

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

C-15. SEVERABILITY.

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

C-16. ENTIRE CONTRACT.

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

C-17. TIME IS OF THE ESSENCE.

Time is of the essence in the performance of this contract.

C-18. TERMINATION.

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

C-19. NOTICES.

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or

- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

C-21. MATERIALITY.

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

C-22. WAIVER.

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

C-23. AUTHORITY AND CAPACITY.

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

C-24. BINDING ON SUCCESSORS.

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

C-25. CUMULATION OF REMEDIES.

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

C-26. INDEPENDENT ADVICE.

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also

represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

C-27. NO RELIANCE ON REPRESENTATIONS.

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

C-28. REDUCTION OF CONSIDERATION.

CONTRACTOR agrees that COUNTY shall have the right to deduct from any payments specified in Attachment B any amount owed to COUNTY by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to, or after, the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COUNTY exercises the right to reduce the consideration specified in Attachment B, COUNTY, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any off-set and the reason for the reduction.

C-29. COUNTERPARTS.

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

END OF ATTACHMENT C.