

**AMENDMENT TO CONTRACT**  
**#2**

The County of San Benito (“COUNTY”) and **ROBERT ENZ** (“APPLICANT”) 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 APPLICANT acknowledge that the parties entered into a contract, dated May 6, 2014.

**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: December 12, 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.)

The Consultant's scope of work, as set forth in Attachments A and A-1 to the original contract, is hereby amended to add Task 9 to the Consultant's scope of work, as described in Attachment A-1 to this amendment, attached hereto and incorporated herein by reference.

**All other provisions of Attachments A and A-1 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:**

(Insert modified or new payment terms.)

Paragraph B-5 of Attachment B to the original contract and Attachment B-1 (budget) to the original contract, are hereby amended to increase the compensation by an additional \$27,812.00 for services rendered pursuant to this amendment

This contract amendment requires additional compensation in an amount not to exceed \$27,812.00 in order to provide post-approval documentation services (Task 9) as described in this amendment, related to processing the Enz Quarry application, subject to reimbursement by the applicant, for a total amount not to exceed \$229,892.00.

Accordingly, Paragraph B-5, is hereby amended to read as follows:

**B-5. SPECIAL COMPENSATION TERMS:** (Check one.)

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

The fee shall be subject to the budget set forth in Attachment B-1 to this contract, as amended. Attachment B-1 is made a part of this contract. The anticipated total budget for this contract is \$229,892.00, but is subject to adjustment, according to the provisions of Paragraph B-3 above.

Accordingly, Attachment B-1 is replaced in its entirety with Attachment B-1 (2).

**All other provisions of Attachment B to the original contract, as previously amended, (Exhibit 1) shall remain in effect, except as expressly modified in this Amendment.**

- ] 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.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURES**

APPROVED BY COUNTY:

APPROVED BY CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_

Name: Anthony Botelho

Name: \_\_\_\_\_

Chair, San Benito County Board of Supervisors

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL FORM:**

San Benito County Counsel

\_\_\_\_\_

Sarah M. Dickinson,  
Interim Assistant County Counsel

Date: \_\_\_\_\_

## Attachment B-1 (2)

### ENZ QUARRY MINE AND RECLAMATION PLAN BUDGET - TASKS 1-8

PROJECT TASKS	BUDGET
TASK 1: COMMUNICATION COORDINATION AND MEETINGS	\$32,050
TASK 1 SUBTOTAL	\$32,050
TASK 2: APPLICATION REVIEW AND ASSISTANCE	\$39,050
TASK 2 SUBTOTAL	\$39,050
TASK 3: ENVIRONMENTAL REVIEW	\$24,000
TASK 3 SUBTOTAL	\$24,000
TASK 4: PROCESS COORDINATION	\$13,960
TASK 4 SUBTOTAL	\$13,960
TASK 5: STAFF/HEARINGS	\$48,000
TASK 5 SUBTOTAL	\$48,000
TASK 6: GEOTECHNICAL INVESTIGATION	\$20,000
TASK 6 SUBTOTAL	\$20,000
TASK 7: ADDITIONAL MODIFICATIONS TO THE APPROVED PLAN	\$14,000
TASK 7 SUBTOTAL	\$14,000
TASK 8: POSTDECISION ACTION ITEMS	\$11,020
TASK 8 SUBTOTAL	\$11,020
GRAND TOTALS:	\$202,080

### ENZ QUARRY MINE AND RECLAMATION AMENDMENT - ADDITIONAL COSTS (2018) - TASK 9

Site Specific Tasks	Estimated Costs
<b>TASK 9: POST-APPROVAL DOCUMENTATION</b>	
Task 9.1: Final Hearing Process	\$11,812.00
Task 9.2: Surveyor Coordination	\$3,500.00
Task 9.3: Graphics Adjustments/Updates	\$6,500.00
Task 9.4: Final Graphics and Professional Stamps Coordination	\$3,500.00
Task 9.5: Final Production and Submittal	\$2,500.00
<b>TASK 9 SUBTOTALS (<i>Amendment Request</i>):</b>	<b>\$27,812.00</b>
<b>TASKS 1-8 SUBTOTALS:</b>	<b>\$202,080</b>
<b>GRAND TOTAL:</b>	<b>\$229,892</b>

**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 **ROBERT ENZ** ("APPLICANT") 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 APPLICANT acknowledge that the parties entered into a contract, dated May 6, 2014.

#### 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:

(Insert modified or new services.)

The Consultant's scope of work, as set forth in Attachments A and A-1 to the original contract, is hereby amended to modify Tasks 3 through 5, and to add Tasks 6 through 8 to the Consultant's scope of work, as described in Attachment A-1 to this amendment, attached hereto and incorporated herein by reference.

**All other provisions of Attachments A and A-1 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:**

(Insert modified or new payment terms.)

Paragraph B-5 of Attachment B to the original contract and Attachment B-1 (budget) to the original contract, are hereby amended to increase the compensation by an additional \$98,280.00 for services rendered pursuant to this amendment, related to processing the Enz Quarry application, subject to reimbursement by the applicant, as follows:

Original Contract	\$103,800.00
<u>First Amendment:</u>	<u>\$ 98,280.00</u>
Total Not To Exceed:	\$202,080.00

Accordingly, Paragraph B-5 is hereby amended to read as follows:

**B-5. SPECIAL COMPENSATION TERMS (check one)**

There are no additional terms of compensation.

The following specific terms of compensation shall apply:

The fee shall be subject to the budget set forth in Attachment B-1 to this contract, as amended. Attachment B-1 is made a part of this contract. The anticipated total budget for this contract is \$202,080.00, but is subject to adjustment, according to the provisions of paragraph B-3 above.

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

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

**New Payment Terms:**

**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:**

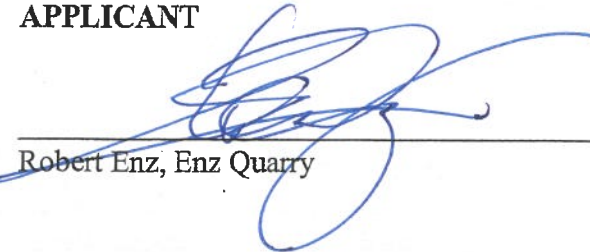
(Insert other modified or new terms.)



**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.

**APPLICANT**

  
\_\_\_\_\_  
Robert Enz, Enz Quarry

8/1/17  
Date

**COUNTY**

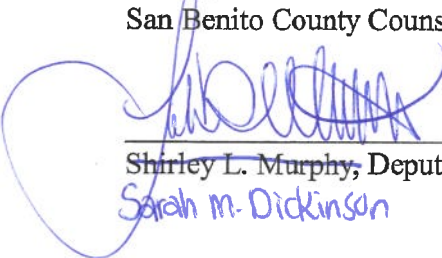
San Benito County Board of Supervisors

  
\_\_\_\_\_  
Jaime De La Cruz, Chair

12/12/17  
Date

**APPROVED AS TO LEGAL FORM:**

San Benito County Counsel's Office

  
\_\_\_\_\_  
Shirley L. Murphy, Deputy County Counsel  
Sarah M. Dickinson

August 1, 2017  
Date

## **ATTACHMENT A-1**

### **SAN BENITO COUNTY CONTRACT FOR CONSULTANT'S SERVICES WITH BENCHMARK RESOURCES CONTRACT ITEM A-2—APPLICATION PROCESSING SUPPORT**

### **ENZ QUARRY MINE AND RECLAMATION PLAN AMENDMENT**

#### **SCOPE OF WORK AND BUDGET AMENDMENT 1**

The following tasks are numerically correlated with the approved budget and consolidated on the attached Amendment 1 table.

#### **TASK 3: ENVIRONMENTAL ANALYSIS**

Benchmark Resources will support the initial study with a field analysis to ascertain the potential visibility of the expanded operation. Benchmark will observe the elevations planned for mining from local viewpoints on State Route (SR) 25 and La Cienega Road and prepare a simulation of the visibility to support initial study conclusions. We will review comments from agencies and the public and consider additional analysis or mitigation.

#### **TASK 4: PROCESS COORDINATION**

Benchmark will resolve additional Division of Mine Reclamation (DMR) concerns, including surface disturbances that may not be incorporated in the reclamation plan. Benchmark will incorporate biological surveys into the plan to demonstrate protection of fish and wildlife habitat.

#### **TASK 5: STAFF REPORT/HEARINGS**

Benchmark will prepare a draft staff report for San Benito County (County) staff review. We will prepare for and attend two hearings.

#### ***Additional Tasks***

- Address Williamson Act compatibility
- Prepare Mitigation Monitoring Reporting Program
- Additional coordination with new assigned county staff
- Prepare PowerPoint presentation
- Public notification issue
- Conditions of approval compliance and Mining Ordinance review in response to Planning Commission inquiry
- Update all Conditions of Approval

#### **TASK 6: GEOTECHNICAL INVESTIGATION**

Benchmark will assist the operator in completing rock coring for the project. We will have laboratory analysis of the core completed to determine the material properties to be used in the slope stability analysis. Benchmark will use the information collected from the geophysical site investigation to complete a stability analysis of the proposed final quarry slopes and highwalls. Should the geotechnical analysis show that changes to the original design recommended by Grice Engineering are needed, we will incorporate those changes into an updated quarry design.

#### **TASK 7: ADDITIONAL MODIFICATIONS TO THE APPROVED PLAN**

##### ***Resoiling and Revegetation***

Benchmark will:

- update soil salvage and resoiling procedures,

- modify the revegetation seed mix,
- clarify 2003 reclamation plan protection of stockpiles,
- clarify placement of topsoil under interim reclamation and final conditions, and
- update the weed control plan.

### ***Hydrology and Water Quality***

Benchmark will determine storm water pollution prevention plan requirements and overlap them with the reclamation plan and develop a site-specific erosion control plan.

### **TASK 8: POSTDECISION ACTION ITEMS**

Benchmark will assist in preparing the needed documents and implementing the required actions following the decision of the County Planning Commission. For example, Benchmark will prepare the notice of exemption and final responses to DMR, file the necessary documents with the County Clerk, and prepare and produce final documents for distribution, including the final reclamation plan amendment and conditions of approval to DMR. Includes production of hardcopy reports for applicant, county and DMR.

**ATTACHMENT B-1**

**ENZ QUARRY MINE AND RECLAMATION PLAN AMENDMENT  
SCOPE OF WORK AND BUDGET AMENDMENT 1**

PROJECT TASKS	APPROVED BUDGET	CURRENT BUDGET STATUS (THROUGH NOVEMBER 2016)	BUDGET AMENDMENT	FINAL BUDGET
<b>TASK 1: COMMUNICATION COORDINATION AND MEETINGS</b>	<b>\$32,050</b>	\$17,634.00	\$0.00	\$17,634.00
TASK 1 SUBTOTAL	\$32,050	\$17,634.00	\$0.00	\$17,634.00
<b>TASK 2: APPLICATION REVIEW AND ASSISTANCE</b>	<b>\$39,050</b>	\$60,454.80	\$0.00	\$60,454.80
TASK 2 SUBTOTAL	\$39,050	\$60,454.80	\$0.00	\$60,454.80
<b>TASK 3: ENVIRONMENTAL REVIEW</b>	<b>\$18,740</b>	\$12,491.25	\$10,820.00	\$23,311.25
TASK 3 SUBTOTAL	\$18,740	\$12,491.25	\$10,820.00	\$23,311.25
<b>TASK 4: PROCESS COORDINATION</b>	<b>\$13,960</b>	\$4,245.02	\$0.00	\$4,245.02
TASK 4 SUBTOTAL	\$13,960	\$4,245.02	\$0.00	\$4,245.02
<b>TASK 5: STAFF/HEARINGS</b>	<b>\$0</b>	\$735.00	\$45,270.00	\$46,005.00
TASK 5 SUBTOTAL	\$0	\$735.00	\$45,270.00	\$46,005.00
<b>TASK 6: GEOTECHNICAL INVESTIGATION (NEW)</b>	<b>\$0</b>	\$0.00	\$19,770.00	\$19,770.00
TASK 6 SUBTOTAL	\$0	\$0.00	\$19,770.00	\$19,770.00
<b>TASK 7: ADDITIONAL MODIFICATIONS TO THE APPROVED PLAN (NEW)</b>	<b>\$0</b>	\$0.00	\$13,220.00	\$13,220.00
TASK 7 SUBTOTAL	\$0	\$0.00	\$13,220.00	\$13,220.00
<b>TASK 8: POSTDECISION ACTION ITEMS (NEW)</b>	<b>\$0</b>	\$0.00	\$9,200.00	\$9,200.00
TASK 8 SUBTOTAL	\$0	\$0.00	\$9,200.00	\$9,200.00
<b>GRAND TOTALS:</b>	<b>\$103,800</b>	\$95,560.07	\$98,280.00	\$193,840.07

**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 FOR CONSULTANT'S SERVICES

Contract With Applicant

APPLICANT: Robert Enz  
PROJECT: Enz Quarry Amended Reclamation Plan  
COUNTY FILE NO.: Quarry ID No. 91-35-0021

The County of San Benito ("County") and Enz Quarry ("Applicant") enter into this contract for services as described herein. In consideration of the mutual promises set forth herein, the parties hereto agree as follows:

## 1. DURATION OF CONTRACT

This contract shall commence upon execution of this contract by all parties and shall end upon completion of the specified services, unless sooner terminated as specified herein.

## 2. PROJECT IDENTIFICATION

Applicant applied for County's approval of amendment of a Reclamation Plan pertaining to Quarry ID No. 91-35-0021 ("Project") in connection with the property located at 1781 Limekiln Road (APN 26-23-19), in Hollister, California. County has determined that certain consultant services are required in connection with County's consideration of the Project.

## 3. DUTIES OF COUNTY

- (a) County shall engage the services of a fully-qualified professional ("Consultant") for the evaluation and processing of the application, as more fully set forth in Attachment A ("Consultant's Scope of Services") to this contract. Attachment A is made a part of this contract. County shall select Consultant pursuant to County's contracting procedures and practices.
- (b) The Consultant services and any resulting work product shall be prepared in full compliance with federal, state and local law including, but not limited to, CEQA, the State CEQA Guidelines (Cal. Code of Regulations, tit 14, div. 6, chap. 3 (commencing with §15000)), and the San Benito County Implementing Procedures for CEQA.

## 4. DUTIES OF APPLICANT

- (a) Applicant shall cooperate fully with County and Consultant to provide information and other assistance necessary for preparation of technical reports in a timely and objective manner. Applicant understands that any unreasonable delay in meeting County's requests shall constitute grounds for tolling the contractual and statutory time limits for completion and adoption of the Project and/or related environmental documents or, alternatively, shall constitute grounds for disapproval of the Project.
- (b) Applicant understands that the contract between County and Consultant is a separate contractual agreement not subject to Applicant's review or approval. Applicant further understands that periodic progress payments made by County

to Consultant pursuant to that separate contractual agreement are not subject to Applicant's review or approval.

5. COMPENSATION

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

6. GENERAL TERMS AND CONDITIONS

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

7. SPECIFIC TERMS AND CONDITIONS (check one)

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 and conditions mutually agreed to and listed in Attachment D to this contract. Attachment D is made a part of this contract.

8. TERMINATION

The number of days of advance written notice required for termination of this contract is 5 days.

9. CONTRACT ADMINISTRATORS

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

County's Contract Administrator:

Byron Turner  
Interim Planning Director  
2501 Technology Parkway  
Hollister, CA 95023  
(408) 637-5313  
(408) 637-9015 (fax)

Applicant's Contract Administrator:


Robert Enz  
Enz Quarry  
1781 Limekiln Road  
Hollister, CA 95023  
(831) 637-6443

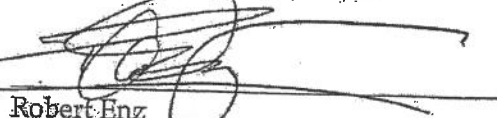
SIGNATURES ON NEXT PAGE

SIGNATURES

APPROVED BY COUNTY:

APPROVED BY APPLICANT:

  
Jerry Muenzer, Chair  
San Benito County Board of Supervisors  
Date: 5/16/14

  
Robert Enz  
Enz Quarry  
Date: 28 APR. 2014

APPROVED AS TO LEGAL FORM:  
San Benito County Counsel's Office

By: Shirley L. Murphy  
Shirley L. Murphy, Deputy County Counsel  
Date: April 29, 2014



**ATTACHMENT A**  
**Consultant's Scope of Services**

**A-1. SCOPE OF SERVICES AND SCHEDULE**

Consultant shall provide County with the services set forth in Attachment A-1 to this contract. Attachment A-1 is made a part of this contract.

**A-3. ATTENDANCE AT MEETINGS AND PUBLIC HEARINGS**

- (a) Meetings. Consultant shall attend all meetings with County, Applicant and other interested parties, as required by this contract or as requested by County.
- (b) Public Hearings. Consultant shall attend all public hearings regarding County's consideration of the Project and related environmental document.

**END OF ATTACHMENT A**

## ATTACHMENT A-1

### SAN BENITO COUNTY CONTRACT FOR CONSULTANT'S SERVICES WITH BENCHMARK RESOURCES CONTRACT ITEM A-2 - APPLICATION PROCESSING SUPPORT

#### ENZ QUARRY RECLAMATION PLAN AMENDMENT SCOPE OF WORK AND BUDGET

##### TASK 1: COMMUNICATION COORDINATION AND MEETINGS

Coordinate with County staff, operator, and other interested parties as necessary to support application and analyses. Coordination activities include the following:

- Regular dialog with County staff and Operator via telephone calls and e-mail.
- Participate in coordination meetings, teleconferences, and hearings.
- This scope of work budgets for attendance at two (2) meetings at the County offices to discuss and coordinate peer review activities, beginning with an initial coordination meeting.

For each meeting and teleconference, we will prepare meeting agendas, coordinate invitations, and assist with general meeting preparation and facilitation as necessary. Additional Benchmark Resources team members, including technical specialists, will participate as necessary via conference call.

##### TASK 2: APPLICATION REVIEW AND ASSISTANCE

###### Task 2.1: Reclamation Plan Amendment

- Assist in preparation of quarry expansion design for reclamation.
- Assist in preparation of an updated reclamation plan that meets current standards and recently issued OMR policy.
- Work with operator to review and assist in needed details for engineered drawings for reclamation. Our scope of work for this effort assumes up to two in-person meetings on site or at County offices, as needed.
- Address changes from the approved reclamation plans to the current reclamation proposal including in use changes area of mining.
- Address closure to open space conditions.

###### Task 2.2: Technical studies support:

- *Technical Studies.* Assist in coordination of updated technical studies.
- *Hydrology.* Assist in updated hydrology report that confirms SMARA standards are met.
- *Geotechnical.* Confirm no changed geotechnical issues with new mine pit design.

###### Task 2.3: County Application Forms

- Assist in completing application forms that appropriately describe the limited nature of the project (for use permit and CEQA purposes). This will involve drafting administrative draft application forms and associated graphics and attachments. Coordinating with County staff and operator staff to ensure that data accurately reflects the proposed activities and meets County expectations that are needed to prepare appropriate environmental review. Once input is provided, we will update and finalize applications for final review and submittal by operator.

##### TASK 3: ENVIRONMENTAL REVIEW

The reclamation plan amendment is a discretionary action and subject to CEQA. It is anticipated that questions will arise regarding the environmental impacts of final reclamation and closure.

### **Task 3.1: Existing Permit and Operations Baseline**

The environmental baseline is the permitted condition of the mining and reclamation. The environmental consequences therefore need to be compared to the condition as if reclamation were completed as planned, versus the conditions proposed. The environmental document will establish the existing baseline conditions and will document the degree of change that would occur if the Project is approved. The definition of baseline conditions is an important factor in developing informative and defensible environmental documents, and in ensuring consistent and accurate environmental impact analysis. Benchmark Resources Project Manager and Environmental Analyst will present and discuss the approach to baseline definition considerations during the initial coordination meeting, and will ensure that baseline conditions are clearly defined in the environmental document.

### **Task 3.2: Proposed Project Revisions**

It is important to put the proposed plan revisions in the proper context of prior approvals and changes that are and are not subject to CEQA, OMR, other state agencies, and the Public. Commonly confuse operations and reclamation issues as all subjects of the project approval and CEQA review. The key to this effort is developing an clear and concise project description that describes that activities that are subject to the County's discretionary approval. During our initial preparation of the Project Description we will prepare a detailed list of information needs and questions to assist the County in obtaining information needed for a complete Project Description adequate for meeting CEQA requirements and proving information necessary for conducting the impact analysis for the environmental document. We will then use this information to prepare a draft Project Description to be provided to the County and operator for review and further input if needed. The draft Project Description will specifically identify those aspects of the Project that may require additional clarification or confirmation of information presented in the draft. Once revisions or clarification to data requests are provided by the County and Applicant, we will then finalize the Project Description for inclusion in the environmental document.

### **Task 3.3: CEQA Exemption/ND/MND/EIR Determination**

Determine the appropriate CEQA format that is supportable and defensible. We will prepare a brief memorandum that outlines the proposed approach and the advantages and disadvantages of alternative environmental evaluations.

### **Task 3.4: Initial Study**

Prepare documentation based on technical studies completed that evaluates the potential significance of the identified impacts and will provide recommendation regarding the proposed environmental document to be relied upon. If an EIR is determined to be appropriate, the Initial Study will discuss and dispose of issues that will not need to be evaluated in greater detail in the EIR. If, however, an Mitigated Negative Declaration is the appropriate environmental determination, the Initial Study will identify mitigation measures that would be required to ensure that potentially significant impacts can be reduced to a less than significant level.

## **TASK 4: PROCESS COORDINATION**

Based on the level of anticipated concern and the recent history of OMR raising issues and involving multiple comment letters. We believe that the majority of the comments will come from OMR and we have budgeted provided for a week and half of principal's time to work with the operator and the County to respond to comments of OMR. We also will help with comments from commenting agencies on the CEQA document as well as other resource agencies.

## **TASK 5: STAFF/HEARINGS**

Support county staff in preparation of a staff report summarizing the project and the environmental review process and support at public hearings as necessary. The scope of this effort will be defined at a later date when the County, operator and Benchmark have a better understanding of the nature of the environmental document to be processed and the nature of the public process is better defined.

**ATTACHMENT B**  
**Payment Schedule**

**B-1. BILLING**

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced one month in arrears.

**B-2. PAYMENT**

Applicant shall make payment to County at the address specified in paragraph 8 of this contract or to such other location as County designates in writing, net thirty (30) days from the invoice date.

**B-3. COMPENSATION**

(a) Applicant shall place on deposit with County the sum of \$10,000.00, which sum represents a portion of Consultant's budgeted costs for the services described in Attachment A to this contract.

(i) In the event that the actual Consultant costs are less than Applicant's deposit, County shall refund the difference to Applicant.

(ii) In the event that actual Consultant costs are more than Applicant's deposit, Applicant shall remit the additional amount to County within five (5) days of County's written notification thereof.

(b) Applicant shall also remit to County the application fees applicable to the Project, pursuant to the County's adopted fee schedule set forth in chapter 5.01 of the San Benito County Code. Said fee may not be refunded, in whole or in part, in the event this contract is terminated.

**B-4. DISTRIBUTION OF FUNDS TO CONSULTANT**

County shall distribute funds collected and held on deposit under paragraph B-3(a) above to Consultant, upon adequate documentation of actual Consultant costs.

**B-5. SPECIAL COMPENSATION TERMS (check one)**

There are no additional terms of compensation.

The following specific terms of compensation shall apply: (specify).

The fee shall be subject to the budget set forth in Attachment B-1 to this contract. Attachment B-1 is made a part of this contract. The anticipated total budget for this contract is \$103,800.00, but is subject to adjustment, according to the provisions of paragraph B-3 above.

**END OF ATTACHMENT B**

ATTACHMENT B-1

ENZ QUARRY RECLAMATION PLAN AMENDMENT AND SITE CLOSURE BUDGET

TASK AND SUBTASK	COST CATEGORY				LABOR			EXPENSES		TOTAL ESTIMATED COSTS (\$)
	Principal Support (\$232/hr) (hrs)	Project Manager (\$185/hr) (hrs)	Minings Engineer/Geologist (\$165/hr) (hrs)	Technical Support (\$115/hr) (hrs)	Support Staff (\$95/hr) (hrs)	Hours	Costs	Office Expenses (10%) (\$)	Subcontractors (\$)	
<b>TASK 1: COMMUNICATION COORDINATION AND MEETINGS</b>										
1.1 Administrative										
1.2 General Communication/Correspondences	40					32	\$3,040	\$300		\$3,340
1.3 Meetings	30	10	10		40	80	\$13,200	\$1,320		\$14,520
<b>TASK 1 SUBTOTAL</b>	<b>80</b>	<b>10</b>	<b>10</b>	<b>0</b>	<b>72</b>	<b>172</b>	<b>\$29,740</b>	<b>\$2,910</b>	<b>\$0</b>	<b>\$32,650</b>
<b>TASK 2: APPLICATION REVIEW AND ASSISTANCE</b>										
2.1 Mine Plan	24	4	32	16		76	\$13,500	\$1,350		\$14,850
2.2 Reclamation Plan	32	4	24	24	24	108	\$17,280	\$1,720		\$18,990
2.3 County Application Forms	8	8		12		28	\$4,740	\$470		\$5,210
<b>TASK 2 SUBTOTAL</b>	<b>64</b>	<b>16</b>	<b>56</b>	<b>52</b>	<b>24</b>	<b>212</b>	<b>\$39,500</b>	<b>\$3,550</b>	<b>\$0</b>	<b>\$43,050</b>
<b>TASK 3: ENVIRONMENTAL REVIEW</b>										
3.1 Existing Permits and Operations Baseline	8	4		12		24	\$4,000	\$400		\$4,400
3.2 Proposed Operations Revisions	6				4	10	\$1,700	\$180		\$1,880
3.3 Initial Study Preparation	2	6			8	8	\$1,580	\$150		\$1,730
3.4 REQA Estimation/MINDEYER Determination	8	16	0	32	12	68	\$9,660	\$970		\$10,630
<b>TASK 3 SUBTOTAL</b>	<b>24</b>	<b>26</b>	<b>0</b>	<b>44</b>	<b>16</b>	<b>110</b>	<b>\$17,030</b>	<b>\$1,710</b>	<b>\$0</b>	<b>\$18,740</b>
<b>TASK 4: PROCESS COORDINATION</b>										
4.1 Office of Mins Reclamation	12	8	8		12	38	\$5,690	\$570		\$6,260
4.2 CEOA										
4.3 Other										
<b>TASK 4 SUBTOTAL</b>	<b>12</b>	<b>8</b>	<b>8</b>	<b>0</b>	<b>24</b>	<b>48</b>	<b>\$5,690</b>	<b>\$570</b>	<b>\$0</b>	<b>\$6,260</b>
<b>TASK 5: STAFF/HEARINGS</b>										
5.1 Staff Report										
5.2 Public Hearings										
<b>TASK 5 SUBTOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>SUBTOTALS</b>										<b>\$94,360</b>
<b>GRAND TOTAL</b>										<b>\$103,800</b>

**ATTACHMENT C**  
**General Terms and Conditions**

**C-1. INDEMNIFICATION**

Applicant and County each agree to indemnify, defend, and save harmless the other party and the other party's officers, agents, 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 claim. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers, agents, and employees.

**C-2. TERMINATION**

- (a) Either Applicant or County may terminate this contract, with cause, upon giving five (5) days written notice to the other party. Such notice shall set forth the effective date of the termination. Notice shall be effective as specified in paragraph C-6 of this attachment, Attachment C.
- (b) Either party may issue an oral stop work order to temporarily halt work in anticipation of written notice of termination. The party issuing the oral stop work order must provide written notice of termination within two (2) working days of the oral notice, as specified in paragraph C-6 of this attachment, Attachment C. Failure to provide written notice of termination shall result in nullification of the oral notice.
- (c) In the event of termination, Applicant remains obligated to County for all Consultant costs incurred up to the effective date of the termination.
- (d) "Cause" includes, without limitation, any breach of contract or Applicant's withdrawal of the Project for which the environmental review is conducted.

**C-3. ENTIRE AGREEMENT**

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. Any alterations to or variations of the terms of this contract shall be invalid unless made in writing and signed by both parties.

**C-4. AMENDMENT OF CONTRACT**

In the event that a change to the scope of services outlined in Attachment A to this contract is required, the party first identifying such a need shall immediately notify the other party in writing, as specified in paragraph C-6 of this attachment, Attachment C, of the need to amend this contract. Representatives of both parties shall meet and confer within two (2) working days of receipt of such notice. Any change in the scope of services mutually agreed to by both parties may result in a change in compensation terms specified in Attachment B to this contract. Any amendment of this contract resulting from such mutual agreement of the parties' representatives shall be in writing, signed by all parties.

C-5. 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 parties' employees specified, in writing, by the contract administrators. 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. Likewise, a party shall promptly give written notice to the other party of any change of the contract administrator's address or facsimile number.

C-6. NOTICES

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrators personally or by regular mail or 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 (5) days after the date the notice is deposited in the United States mail, with first-class postage fully prepaid, addressed to the party's contract administrator at the address specified in paragraph 8 of this contract or as specified in a written notice of change of address that was given to the other party's contract administrator; 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 or as specified in a written notice of change of facsimile number that was given to the other party's contract administrator, provided that an original of such notice is also deposited in the United States mail, as indicated in subparagraph (b) above, on the same day as the facsimile transmission is made.

C-7. BANKRUPTCY

Applicant shall immediately notify County in the event that Applicant 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. Where such proceedings are not withdrawn or discharged within thirty (30) days, County may at its option terminate this contract.

C-8. PROHIBITION AGAINST ASSIGNMENT

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated or subcontracted by Applicant without County's prior written consent, and any attempted assignment, subcontracting or delegation without such consent shall be void.



C-9. 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-10. 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, and to this end the provisions of this contract are declared to be severable.

C-11. TIME IS OF THE ESSENCE

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

C-12. MATERIALITY

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

C-13. 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 Applicant'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-14. AUTHORITY AND CAPACITY

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

C-15. 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 Applicant. Applicant and all of Applicant's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

C-16. 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-17. 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-18. 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-19. 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**