

## CONTRACT

The COUNTY OF SAN BENITO ("COUNTY") and Biggs Cardoso Associates, Inc. ("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 June 28, 2016, and end on June 30, 2018, 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:	<u>1,000,000</u>
(b) Professional liability insurance:	<u>1,000,000</u>
(c) Comprehensive motor vehicle liability insurance:	<u>1,000,000</u>

**6. Termination.**

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

**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 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: Mahvash H. Harms

Title: Principal/Project Manager

Address: 865 the Alameda

San Jose, CA 95125

Telephone No.: (408) 296-5515

Fax No.: (408) 296-8114

**SIGNATURES**

APPROVED BY COUNTY:



Name: Robert Rivas

Chair, San Benito County Board of Supervisors

Date: 6/28/16

APPROVED BY CONTRACTOR:



Name: Mahvash H. Harms

Title: Principal/Project Manager

Date: 6/17/16

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office



By: Shirley Murphy, Deputy County Counsel

Date: June 17, 2016

**ATTACHMENT A**  
**Scope of Services**

**BACKGROUND INFORMATION:**

The Federal Highway Administration (FHWA) has approved replacement of Union Road Bridge at San Benito River crossing as a result of severe erosion surrounding the bridge footing called "scour condition". On December 11, 2006, the Board of Supervisors approved replacement of the Union Road Bridge pursuant to staff's report explaining the scour critical condition. As part of the procedure and following a comprehensive selection process mandated by the Caltrans Local Assistance Procedure Manual, County Staff selected Biggs Cardosa Associates Inc. (CONTRACTOR) to provide engineering, design and environmental services for the project. The following is a summary of Contractor's contracts and contract amendments with the county:

Original Contract	-	12/16/2008 to 6/30/2011	-	\$1,279,000.00
Amendment #1	-	06/22/2010 to 6/30/2011	-	\$ 374,760.00
Amendment #2	-	06/07/2011 to 6/30/2013	-	\$ 0:00
Amendment #3	-	08/02/2011 to 6/30/2013	-	\$ 728,330.00
Amendment #4	-	08/21/2012 to 6/30/2013	-	\$ 309,800.00
Amendment #5	-	01/22/2013 to 6/30/2015	-	\$ 130,000.00
Total (Orig. to Amendment #5)	-		-	\$2,821,890.00

The project had experience delays due to unforeseen circumstances encountered along the way in the design process which necessitates additional scope of services by the CONTRACTOR. The additional scope of services were necessary and inevitable for the project and were approved by Caltrans.

Amendment #6 had been prepared but had not been processed, hence, the following Scope of Services of this New Contract covers the scope of services listed in the proposed amendment #6 plus the remaining services necessary to bring the project to completion.

**SCOPE OF SERVICES:**

**1.0 Work performed outside of contract amount and while Contractor were assisting the County with obtaining approval from Caltrans for additional design and environmental services. This work has not been billed to the County due to the County's request that Contractor stop invoicing in July 2014:**

**1.1 Additional PG&E Gas Line Coordination, Design of Supports for Large Seismic Movements:**

Additional management, coordination and plan review required for design of gas line and required supports for the portion of gas line to be carried on the bridge structure. Preparation for and participation in additional design and coordination meetings with PG&E, in-depth discussions and verification of understanding of the complex bridge seismic movements, and discussions about various potential approaches to design of the gas line, casing, and the casing supports. Additional casing support detailing required for sliding supports that accommodate casing movement, and additional research required to assist PG&E with construction specifications for materials needed in the sliding supports.

## **1.2 *Additional Environmental Services:***

### **1.21 *Incidental Take Permit for California Tiger Salamander***

Preparation of a California Endangered Species Act (CESA) Section 2081 Incidental Take Permit (ITP) application requesting take approval for the California tiger salamander (*Ambystoma californiense*) at the project site. This permit application includes a description of the project, the biology of the California tiger salamander, the potential for occurrence of the salamander at the project site, the potential impacts of the project on the species, and avoidance, minimization and compensatory mitigation measures proposed to offset project impacts. Work also included coordination with the design team, the County and the California Department of Fish and Wildlife (CDFW), as well as incorporating revisions based on design team and CDFW comments.

### **1.22 *Additional Permit Processing with Central Coast Regional Water Quality Control Board (CCRWQCB)***

1.221 The Central Coast Regional Water Quality Control Board (CCRWQCB) implemented new storm water discharge requirements that were not in place when the original contract was scoped. As of July 12, 2013 the CCRWQCB requires projects that create 5,000 square feet or greater of new/replaced net impervious area to submit a Storm Water Control Plan to obtain coverage under the General Permit for discharges of storm water associated with construction activities (CRWQCB Resolution R3-2013-0032, July 12, 2013).

1.222 To comply with the new regulations, performed additional project site storm water runoff calculations required by the CCRWQCB, as well as additional detailed analysis of bridge deck runoff and deck drainage detailing, prepared the Storm Water Control Plan and implemented storm water solutions for the project, such as vegetative swales to capture and treat all runoff

from the bridge and roadway. Modified existing grading and drainage sheets to account for the above grading changes, and prepared additional plan sheets for storm water treatment.

1.223 Also provided coordination and assistance in responding to extensive comments from the Central Coast Regional Water quality Control Board (CCRWQCB) regarding the storm water runoff calculations, the drainage treatment areas, construction equipment and practices, as well as their requests for various quantities calculations and other inquiries required for permit to be finalized.

### **1.23 *Additional Permit Processing with USACE and CDFW***

1.231 Additional permit processing work, coordination with agencies and answering questions.

1.232 U.S. Army Corps of Engineers (USACE) requires that a formal Wetland Delineation Report be submitted to support the permit materials. In past years this has not been required for sites that do not support wetlands, so this constitutes a new permitting requirement that was not included in the previous scope for the project.

1.233 Ongoing coordination with California Department of Fish and Wildlife (CDFW) to update and finalize the project Lake and Streambed Alteration Agreement (LSAA). An LSAA was issued for the project in December 2013, but this included provisions to avoid take of the California tiger salamander that would have made the project impossible to build. Due to the subsequent application for an Incidental Take Permit, the LSAA must be updated to remove the avoidance provisions.

### **1.24 *Management and Coordination of the Additional Permitting Process***

Due the additional permitting requirements noted above, and the ongoing complexity of the biological issues at the site, a variety of project management and coordination activities were required, including meetings and coordination with the involved agencies, the County and the project design team, as well as review and coordination of responses to comments, tracking and review of edits to the environmental permit application documents, scheduling, etc. Also included multiple coordination and strategy meetings with the County to discuss the Incidental Take Permit, the required mitigation and associated issues, and strategies for resolving them.

## **1.3 *Additional Right-of-Way Engineering Services***

**1.31 Coordination**

Assisted the County in the coordination of items related to the project processing, coordination of Right of Way appraisals and exhibits, and coordination and research for property title questions about "triangular" remnant parcel.

**1.32 Additional Plats and Legal Descriptions for Right-of-Way and Easement Acquisition**

Current scope provided exhibits for assessment and acquisition of temporary construction easements and roadway right-of-way for up to seven parcels, and a total of twenty-eight exhibits. During the course of the project, it was determined a total of eight parcels are being affected. Additionally, in order to more clearly delineate proposed easements and right-of-way for the appraiser, each exhibit had to be separated into multiple sheets, for a total of forty-five exhibits over the eight affected parcels for the County to use in right-of-way and easement acquisition, and construction staging easement areas.

**1.4 Additional Design Coordination with Caltrans:**

Due to the additional fault rupture design requirements from Caltrans, additional design calculations and detailing beyond what were originally anticipated were required. The process for obtaining Caltrans approval for the design also involved more coordination meetings and responses to more Caltrans comments than originally estimated in Contract #1 and its Amendments.

**1.5 Additional Funding Application and Approval Work:**

Assisted the County with funding and scope change applications to Caltrans and the coordination required for obtaining approvals in 2009, 2011 and 2014. The 2011 application included five rounds of revision with Caltrans, plus an additional two rounds of revision with the Federal Highway Administration over a course of four months. The 2014 application included eight rounds of revision with Caltrans over a course of nine months. These additional rounds of revision were well beyond what was expected.

**1.6 Additional Project Management and Administrative Services:**

Due to the extended duration of the project from 8/2013 to the present (33 months), additional general project management and administrative services have been provided. These include coordination of the right-of-way acquisition process, answering County and other Agency questions, answering appraiser

questions, scheduling, and additional coordination meetings with the design team and the County.

Status: Completed all of the above tasks (1) but have not invoiced the County per County's request to wait until approval of funding.

**2.0 Work to Be Performed: New tasks, 100% construction documents and bidding:**

**2.1 *Additional Project Management and Administration:***

Additional project management, administration and coordination services will be required to complete the final design process, to advertise and bid out the project, and to bring the project to construction. These services include contract management, scheduling, coordination of the design team and the County and other Agencies, monitoring of the design, meetings with the design team, and meetings with the County.

**2.2 *Additional Budget to Complete Construction Documents, and Provide Bidding Support:***

Because the 95% design was submitted in August 2012, additional work will be required for the design team to re-familiarize themselves with the project, the remaining design and coordination issues, and to complete the design work needed to produce Final Construction Documents. Bidding support services will also be provided, including answering questions, providing consultation and interpretation of the construction documents, attendance at a pre-bid meeting, assisting the County with preparation of addenda to the PS&B as needed during the advertisement period, and bid analysis if requested.

**2.3 *Design of Water Line Relocation at San Benito Street Retaining Wall:***

During final design, it was determined that the existing 20-inch water line crossing Union Road at San Benito Street will need to be relocated during construction. A 95% level relocation plan will be provided to the Water District for review, and then Water District comments will be incorporated and a final relocation plan included in the final plan set.

**2.4 *Completion of the Incidental Take Permit for the California Tiger Salamander:***

The Incidental Take Permit is complete, but will not be issued until proof of mitigation can be provided by the County. Additional coordination and management is required to complete the proof of mitigation and obtain the permit. Currently there are no approved mitigation banks with ready-to-purchase mitigation credits available to the project now, although we are aware of at least one mitigation bank working its way through the approval process now. The project must either purchase credits at an approved bank, or provide a letter of credit for the agreed-upon amount for this permit to be formally issued.

## **2.5 *Bird Nest Deterrence Services:***

### **2.51 *Site Vegetation Removal***

2.511 Brush clearing and tree removal services within the temporary and permanent impact areas designated in the attached map (Attachment B) are not included in this proposal. It is assumed that the County will be completing this work.

2.512 Services are included for outlining the brush and tree removal area on site, ESA fencing for river access points, as well as an onsite biologist to conduct pre-vegetation removal surveys of special status animals and provide worker training and monitoring of vegetation removal activities. Please see below for further details.

## **2.6 *Approval of Biologists' Qualifications***

Per the requirements of the Biological Opinion (BO) and Natural Environment Study (NES), a summary of the qualifications of each biologist who will be proposed to conduct activities required by the Project's BO will be prepared. At least 30 days prior to the onset of any construction related activities at the site, such as the vegetation clearing, the names and credentials of biologists who would conduct activities pursuant to the USFWS BO will be submitted to the USFWS for approval.

## **2.7 *Worker Environmental Awareness Program Training***

2.71 Per the requirements of the BO and NES a Worker Environmental Awareness Program (WEAP) will be prepared and presented to vegetation-clearing crews and contractors prior to the initiation of any Project activities at the site. The training will include a brief review of listed species and other sensitive species/resources that may exist in the Project area. It will include the life history of each species, field identification, habitat requirements, locations of sensitive biological



resources, and a description of the legal status and protection under the Federal Endangered Species Act and California Endangered Species Act for each species. The training will include materials concerning the following topics: sensitive resources, resource avoidance, permit conditions, and possible consequences for violations of State or Federal environmental laws. The training will cover the Project's conservation measures, environmental permits, and regulatory compliance requirements. It will include printed material and an oral training session by a qualified biologist.

2.72 Following the initial training session, additional training will be conducted as needed (e.g., as additional personnel begin to work on vegetation-clearing activities for the Project). The budget for this task includes the development of printed training materials and the initial presentation to Project personnel. All subsequent training will be given by the biological monitor already present on the site during vegetation-clearing activities and thus the cost of providing subsequent training is included in the costs associated with the monitoring of vegetation removal.

2.73 A record of all personnel trained during the Project will be maintained, and this record will be made available to the County and relevant agencies for compliance verification.

## 2.8 *Pre-Activity Surveys*

2.81 A qualified biologist will conduct pre-activity surveys for special-status animals in accordance with the requirements of the Natural Environment Study (NES), biological opinion (BO), and incidental take permit (ITP). Pre-activity/pre-construction surveys for the California red-legged frog (*Rana draytonii*), California tiger salamander (*Ambystoma californiense*), western pond turtle (*Actinemys marmorata*), horned lizard (*Phrynosoma coronatum*), and San Joaquin whipsnake (*Coluber flagellum ruddocki*) will be conducted by a qualified biologist within 48 hours of the scheduled start of vegetation-clearing activities.

2.82 In addition, a qualified biologist will conduct a pre-activity survey for San Joaquin kit fox (*Vulpes macrotis mutica*) dens no less than 14 days and no more than 30 days prior to the beginning of any vegetation-clearing activities that include ground disturbance, and will conduct a pre-construction survey for American badger (*Taxidea taxus*) dens within 2 weeks prior to the start of any such vegetation-clearing activities.

2.83 Further, a wildlife ecologist will conduct pre-activity clearance surveys for burrowing owls based on the California Department of Fish and Wildlife's (CDFW's) 2012 Staff Report on Burrowing Owl Mitigation. During the initial site visit, which shall be conducted no more than 30 days prior to any soil-altering activity or development within the Project site, a wildlife ecologist will survey the entire Project site and (to the extent that access allows) the area within 500 feet of the site for burrowing owl habitat (i.e., ground squirrel [*Spermophilus beecheyi*] burrows). If no burrows suitable for use by burrowing owls are present, no additional surveys will be required. However, if suitable burrows are determined to be present, a wildlife ecologist will visit the site an additional three times to investigate each burrow for signs of owl use and to determine whether owls are present in areas where they could be affected by the proposed activities. The final site visit shall take place no more than 24 hours prior to the start of construction.

2.84 Within one day following the completion of each pre-activity survey, a letter report documenting the survey findings will be prepared.

## **2.9 *Monitoring of Vegetation Clearing***

A qualified biologist will be present during all vegetation-clearing activities. The biological monitor will ensure compliance with all biological resources-related conditions of the BO and ITP. The construction monitor will maintain a daily log describing construction activities, sensitive species observed, animal relocations, and any injury or mortality of animals that occurs during construction.

## **2.10 *Bat Exclusion and Installation of Bird Exclusion Netting***

2.101 Bats should be excluded after the maternity season (i.e., after 31 August) or after the winter season (i.e., after 15 February) and before the maternity season (i.e., before 15 March). Thus, bats will be evicted in early-mid February immediately prior to the installation of bird exclusion netting. An exit count will be made to determine the number of bats in the bridge before demolition occurs.

2.102 Bats using the existing bridge as a day roost will be evicted, and access to the crevices used will be blocked to prevent the establishment of a maternity roost. Bats will be evicted by installing one-way doors and/or filling the voids where bats roost. Bats will be evicted under the direction of a bat biologist.

2.103 Bird exclusion netting will be installed on the existing bridge to prevent active bird nests from becoming established. The underside of the bridge has "girder recesses" allowing for multiple locations throughout the underside of the bridge to be suitable for birds such as cliff swallows (*Petrochelidon pyrrhonota*) to build mud nests. Because of this, the bridge will require a perimeter cable and attachments to hold netting flush against the ceiling keeping bats and birds from entering the recesses for nesting or roosting. The netting's mesh will be ½ inch or smaller to prevent bats from accessing the bridge. The bridge also has pipelines on both sides that carry across the bridge and cause difficulty in keeping swallows from using the 90-degree angle at each side under the railing. This will require separate netting on the underside span ceilings and bridge overhangs. This will also require that the seven piers be addressed at the 90-degree angles that are created.

2.104 Single lane closure will be required during installation of the netting. The entire installation would never block both lanes, and work can be accomplished at night with one lane closed at a time over the course of two weeks. After the netting has been installed, weekly inspections will be conducted throughout the nesting bird season to check the integrity of the exclusion netting, and biologists conducting the nest deterrence and monitoring will check the netting whenever on-site.

## **2.11 *Installation and Monitoring of Artificial Bat Roost***

2.111 Per the requirements of the NES, a bat biologist will coordinate and complete the construction of a freestanding bat condominium (bat condo) adjacent to the existing bridge. The bat condo will be approximately 4 feet x 4 feet x 6 feet with at least 10 vertical feet between the ground surface and the bottom of the roost. In accordance with the Project's NES, the bat biologist will monitor the bat condo for up to three years following completion of the Project. Monitoring will cease prior to Year-3 if it is determined that the condo has been occupied by at least 50 percent of the number of bats observed during pre-demolition summer-time surveys.

2.112 The biologist will conduct temperature monitoring during the first year following installation of the bat condo, including up to three site visits (midsummer for the maternity season, fall, and winter) to download the temperature data. During the site visits, the bat biologist will visually assess bat occupancy of the condo. The biologist will analyze the temperature data and prepare a brief tech memo summarizing the results of the monitoring at the end of Year-1. The tech memo will compare the average measured temperatures in the condo (as a function of daytime,

nighttime, and season) to the suitable temperature range for bat use (85–105 degrees Fahrenheit). The tech memo will include recommendations to modify the condominium, if needed, to optimize the internal temperature of the condo for bat use. In Year-2 and Year-3, the bat biologist will conduct one site visit during the maternity season to visually assess bat occupancy at the bat condo.

## **2.12 *Nesting Bird Surveys and Deterrence***

2.121 To prevent Project impacts on nesting birds, and to prevent the presence of nesting birds from constraining the Project, an initial nesting bird survey will be conducted, followed by monitoring and deterrence from 1 February through 1 August. Site monitors (qualified biologists) will search all vegetation within the work area and a protective buffer zone (300 feet for raptors and 100 feet for other nesting birds, where access allows), including trees (both the foliage and cavities), shrubbery and hedges, and ground cover, for active nests. Monitors will also check the integrity of the exclusion netting on the bridge, visually scanning for gaps or holes that require repair to maintain its efficacy. The biologists will observe birds present in both the work areas and surrounding buffers to detect behavior indicative of nesting and follow birds to find nest starts. Monitors will use long poles with scrapers and hooks, ladders, and adaptive measures to find and remove nest starts and discourage nesting. Notably, a few of the tall trees within the survey area are more than 25 feet tall (i.e., beyond the reach of a ground-based monitor with a telescoping pole). Nest starts located high in trees cannot be reached with poles and ladders from the ground and would necessitate a hydraulic lift to manually remove nest starts. A 10 percent contingency has been included in the budget to allow for hiring a hydraulic lift and deterrence technician to account for the possibility that a nest is found in a tall tree that cannot be reached with a ladder and telescoping pole. Because active nests (i.e., a nest with at least one egg) cannot be disturbed per California Fish and Game Code regulations, if any active nests are observed, buffers zones (typically 300 feet for raptors and 100 feet for other species) or other measures to avoid impacts on the nest will be established via coordination with the County. However, the deterrence efforts are aimed at minimizing the potential for such nests to become established.

2.122 The level of effort needed to adequately survey the Project site is expected to vary throughout the nesting season in accordance with the level of nesting activity displayed by birds in the area. It is estimated that one site monitor will be required 3 days/week in February, 3.5 days/week in March, 4 days/week in April and May, 3.5 days/week in

June, and 3 days/week in July to adequately cover the work area and adjacent buffer areas, for a total of 91 eight-hour workdays. The frequency of monitoring is determined in part by the amount of time necessary for birds to construct a nest and lay an egg. Although for most birds, this process takes more than two days, it has been observed on other projects that birds have been able to build a nest and lay an egg in less than two days, thus necessitating the frequency of visits proposed. At a lower survey frequency, the risk of establishment of an active nest would increase. Nevertheless, the effort will be scaled to the nesting effort observed in the field, so that if it is determined that nesting effort is lower than anticipated (e.g., due to the combination of vegetation removal, netting, and deterrence efforts), the frequency of site visits or the time spent in the field by the biologists will be reduced.

2.123 If Project construction reaches its peak level of disturbance prior to 1 August, surveying and deterrence activities can be scaled back, as it is our opinion that no buffer should be required around new nests established at this point as long as the nest and its substrate are not physically disturbed and as long as construction activities do not increase in intensity (e.g., with a significant increase in noise or human/equipment activity) or occur closer to the nest after the nest has been established. By moving into areas with a certain level of existing activity and disturbance, the birds will have demonstrated their tolerance of such activities. Thus, continuing the same level (or a reduced level) of activity should not cause the abandonment of the nest. Concurrence has been obtained from CDFW on this approach for similar projects.

2.124 Monthly reports documenting all of the findings discussed in the initial survey report, as well as the monitoring efforts, will be provided. These reports will include the dates and locations of monitoring and deterrence efforts, as well as descriptions of any deterrence measures that were implemented for nesting birds. 2 hours have been budgeted for coordination with the CDFW regarding site-specific issues such as reduced buffers, should the need arise.

2.125 Close coordination with the design team, the County, the County's construction manager and the bridge replacement contractor will be provided as needed to ensure that the deterrence efforts are as efficient and cost-effective as possible, and that information regarding any netting repair work or active nests is conveyed to the appropriate parties in a timely manner.

**2.13 *Environmental Site Management and Coordination for Bird Nest Deterrence***

Given the numerous biological resources permits, avoidance and minimization measures, and mitigation measures for the Project, it is anticipated that environmental site management and coordination for bird nest deterrence, and possibly meetings with the design team and others (possibly including the County and its construction manager and contractors) to discuss the Project, will be required. A limited amount of time for this coordination, and attendance at up to two meetings has been included in the budget. If more extensive coordination or attendance at additional meetings is required, these may be provided as additional services.

**2.14 *Bird Nest Deterrence Assumptions and Exclusions***

2.141 It is assumed that once the County has hired a contractor for the bridge construction work, the responsibility for biological resources-related mitigation measures will become the responsibility of the contractor, and it is assumed that this will occur no later than 1 August. Therefore, pre-construction surveys and monitoring related to bridge demolition and construction activities are not included in this scope of work. A proposal for these services may be provided at the County's or the contractor's request.

2.142 Nesting bird surveys and deterrence services will be provided for the period of 1 February through 1 August.

2.143 Weekly inspections of the bird exclusion netting will be provided from the date of installation through 1 August. In addition, biologists will check the netting each day they are on the Project site to perform other tasks.

2.144 It is assumed that the biological monitor for the vegetation-clearing activities will be required for a maximum of 10 days.

2.145 It is assumed that the vegetation-clearing activities, and therefore the biological monitor, will take a maximum of 10 days. If the biological monitor is required for more than 10 days due to an extended period of vegetation-clearing activities, these services may be provided at additional cost.

2.146 It is assumed that the County will assist in expediting encroachment permits for the roadway use during installation of the netting on the bridge.

2.147 Costs for traffic control and roadway safety during lane closure are included.

**END OF ATTACHMENT A.**

**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           \$ 831,850.00          

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.

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

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

CONTRACTOR will perform work identified in Scope of Services #2 in Attachment A, for an amount not to exceed \$520,650.00. CONTRACTOR will submit requests for progress payments on a monthly basis. COUNTY will review these requests, comparing them by task against estimated costs and percentage of the project that is identified in Attachment B-1 which is attached hereto and incorporated herein by reference and authorize payment consistent with the provisions of Attachment B-1.

Notwithstanding anything to the contrary in this agreement, an amount equal to ten percent (10%) of each monthly invoice submitted by CONTRACTOR shall be withheld pending completion of all tasks set forth in Attachment A, and in a manner that is acceptable to the COUNTY. Upon such delivery and if CONTRACTOR is otherwise in full compliance with the terms of this agreement, the COUNTY shall promptly remit all withheld monies to CONTRACTOR.



**CONTRACTOR shall be paid by COUNTY for the works identified in Scope of Services #1 in Attachment A, for an amount not to exceed \$311,200.00. CONTRACTOR shall provide invoices for the said tasks along with back-up documentation to justify the amount being invoiced and confirmation that each of the identified tasks had been completed.**

**SUMMARY OF FEE REQUEST:**

- 1. Work to Be Performed: New tasks, 100% construction documents and bidding (See Attached Spread Sheet herein referenced as Attachment B-1): \$520,650**
- 2. Work performed outside of contract amount (Work had been performed but has not been billed): \$311,200**

**TOTAL (#1 + #2) = \$831,850.00**

**END OF ATTACHMENT B.**

**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. CONTRACTOR certifies that no one who has or will have any financial interest under this contract is an officer or employee of COUNTY.

**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 the execution of this contract. For purposes of this paragraph, obligations arising prior to 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 shall give CONTRACTOR notice of the amount of any offset and the reason for the deduction.

**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.**

**ATTACHMENT D**  
**Specific Terms and Conditions**

**Licensed Architects, Landscape Architects, Professional Engineers and  
Professional Land Surveyors**

The rights and duties of the parties to this contract are additionally governed by the following specific, additional terms and conditions:

**D-1. INDEMNIFICATION.** With regard to the design services described in California Civil Code section 2782.8 only, Paragraph C-1 of Attachment C to this contract is hereby modified to read as follows:

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend and hold harmless the COUNTY and its officers, agents, employees and representatives, from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of CONTRACTOR includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this contract. CONTRACTOR shall not be liable under this indemnification provision if the COUNTY has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence, recklessness or willful misconduct. The obligations set forth herein shall continue beyond the term of this contract.

The provisions of Paragraph C-1 of Attachment C shall remain in full force and effect and shall apply to CONTRACTOR'S provision of all other services under this contract.

**D-2. ADDITIONAL SPECIFIC TERMS AND CONDITIONS:** (check one)

There are no additional specific terms and conditions.

The following additional specific terms and conditions shall apply: (Specify)

**D-3. HARMONIZATION OF CONTRACT TERMS.** Where the specific terms and conditions set forth in this Attachment D specifically conflict with the general terms and conditions set forth in Attachment C to this contract, the more specific terms and conditions shall be deemed to control. However, the general terms and conditions in Attachment C shall remain in full force and effect, to the extent they do not specifically conflict with the specific terms and conditions set forth in this Attachment D.

**END OF ATTACHMENT D.**