

CONSTRUCTION COOPERATIVE AGREEMENT

This Agreement is entered into between the County of Santa Barbara (“COUNTY”), a political subdivision of the State of California, and the Cachuma Operations and Maintenance Board (“COMB”), a Joint Powers Authority, collectively referred to herein as “PARTIES”.

RECITALS

1. WHEREAS, the PARTIES are authorized to enter into this cooperative agreement to complete improvements to Refugio Road where it crosses Quiota Creek at Crossing 8, approximately 4 miles south of the City of Santa Ynez and State Highway 246 in unincorporated Santa Barbara County.
2. WHEREAS, Refugio Road is a COUNTY road for which the COUNTY maintains the roadway, guardrails, road shoulders, culverts, and bridges including bridge rails and signage.
3. WHEREAS, Refugio Road at Crossing 8 is an aging, substandard, temporary bridge (State Bridge No. 51C0377) that is owned and maintained by the COUNTY.
4. WHEREAS, the Highway Bridge Program (“HBP”) is a federally funded program administered through the Federal Highway Administration (“FHWA”) and California Department of Transportation (“CALTRANS”) that enables local agencies to maintain their highway bridges through replacement, rehabilitation and preventive maintenance.
5. WHEREAS, a recent inspection by CALTRANS rated Quiota Creek Crossing 8 as *Structurally Deficient* and therefore eligible for replacement funding through the HBP.
6. WHEREAS, COUNTY has previously entered into a Master Agreement with CALTRANS which defines the general terms and conditions which must be met for the COUNTY to receive federal-aid funds for Federal-Aid Highway Programs such as the HBP.
7. WHEREAS, COMB, in cooperation with the Bureau of Reclamation, operates Lake Cachuma and its water delivery system to the communities of southern Santa Barbara County and conducts all required compliance measures for that water supply project. This includes providing fish passage for the endangered southern steelhead within tributary creeks downstream of Lake Cachuma (Bradbury Dam) in the Santa Ynez river watershed, such as Quiota Creek which has been designated as critical habitat by the National Marine Fisheries Service (NMFS).

8. WHEREAS, COMB is required to improve fish passage along Quiota Creek, including at crossing 8, as a condition of COMB's permit to operate Lake Cachuma and its water delivery system.
9. WHEREAS, COMB is willing to deliver, at no cost to COUNTY and pursuant to an Agreement for Services of Independent Contractor, the Quiota Creek Crossing 8 Bridge Replacement Project, described and identified in Exhibit "A" (PROJECT Scope and Anticipated Schedule) and hereinafter referred to as "PROJECT".
10. WHEREAS, at no cost to COMB, COUNTY is willing to apply for HBP funds to complete the PROJECT and provide COMB with guidance on how to satisfy federal and state requirements associated with using HBP funds to complete the PROJECT.

NOW THEREFORE, the PARTIES hereby agree as follows:

I. COMB OBLIGATIONS AND DUTIES

COMB AGREES:

1. To enter into an Agreement for Services of Independent Contractor with COUNTY to define the responsibilities and requirements for the delivery of Preliminary Engineering, Environmental, Right of Way, Utility and Construction Administration services for PROJECT.
2. At no cost to COUNTY:
 - a) As an independent contractor, to provide Preliminary Engineering, Environmental, Right of Way, Utility and Construction Administration Services, including all contracting out services, for the PROJECT in accordance with the Agreement for Services of Independent Contractor and applicable federal and state regulations, laws, guidelines and standards;
 - b) To acquire in the name of the COUNTY any permits necessary to complete the PROJECT; and
 - c) To identify and to provide a legal depiction (drawing showing the Right of Way line work and acquisition areas) of any Right of Way necessary to complete the PROJECT and to acquire in the name of the COUNTY any Right of Way necessary to complete the PROJECT.
3. For the purposes of reimbursement from CALTRANS, to provide invoices and necessary financial backup to COUNTY for Preliminary Engineering, Environment, Right of Way, Utility and Construction Administration phases of PROJECT.

4. As consideration for the benefits COMB will receive from this Agreement, to reimburse COUNTY for any costs incurred by COUNTY that are not reimbursable through HBP.

II. COUNTY OBLIGATIONS AND DUTIES

COUNTY AGREES:

1. To serve as Responsible Agency for PROJECT for purposes of the California Environmental Quality Act (“CEQA”) and National Environmental Policy Act (NEPA), and to apply for HBP funding for delivery of PROJECT through the Preliminary Engineering, Environmental, Right of Way, Utility and Construction phases as defined by the HBP. As Responsible Agency, COUNTY acknowledges that it is ultimately responsible for delivery of PROJECT in the eyes of Caltrans and the Federal Highway Administration (FHWA).
2. Subject to approval by the COUNTY, to enter into an Agreement for Services of Independent Contractor with COMB to define the responsibilities and requirements for the delivery of Preliminary Engineering, Environmental, Right of Way, Utility and Construction Administration services for PROJECT.
3. At no cost to COMB,
 - a) To review all products prepared by COMB toward delivery of PROJECT prior to submittal to CALTRANS;
 - b) To provide legal access to COUNTY Right of Way for Preliminary Engineering, Environmental, Right of Way, Utility and Construction phases;
 - c) To provide oversight of COMB Construction Administration, during the Construction Phase;
 - d) To participate in PROJECT meetings when appropriate;
 - e) To prepare and submit to CALTRANS reimbursement claims for any work eligible for HBP funds;
 - f) To provide guidance on how to satisfy federal and state requirements associated with using HBP funds to complete the PROJECT;
 - g) To bid PROJECT for construction and to award a construction contract and serve as administering agency for construction; and
 - h) To request the COUNTY Board of Supervisors to execute any Purchase Contracts or approve any Deeds necessary to acquire Right of Way.

4. To invoice COMB for any costs incurred by COUNTY that are not reimbursable through HBP.

III. GENERAL CONDITIONS

1. This Agreement changes neither ownership of nor any responsibilities that PARTIES currently have for either the existing bridge (State Bridge No. 51C0377) or associated facilities outside the scope of the PROJECT. COUNTY will own the bridge and any associated facilities constructed by PROJECT, and the PARTIES' respective responsibilities for the bridge and any associated facilities constructed by the PROJECT will be identical to the PARTIES' respective responsibilities for the existing bridge and its associated facilities.
2. COMB will retain records pertaining to the PROJECT for a period of three (3) years after final voucher (acceptance) for completed PROJECT. COUNTY, the State, the Federal Government and any of their designees shall have the right to audit, review, inspect, examine, monitor, copy, excerpt and transcribe all such documents and records at any time during COMB's regular business hours or upon reasonable notice.
3. Any notice which may be required under this Agreement shall be in writing to the PARTIES at addresses set forth below. Notice is effective five days after deposit, with postage fully prepaid, into the United States mail, or otherwise upon confirmation of receipt:

County of Santa Barbara
Public Works Director
123 East Anapamu Street
Santa Barbara, CA 93101

Cachuma Operation and Maintenance Board
Quiota Creek Crossing 8 Project Manager
3301 Laurel Canyon Road
Santa Barbara, CA 92105

IV. MUTUAL INDEMNIFICATIONS AND INSURANCE

1. COMB shall defend, indemnify, and hold COUNTY, its officers, officials, employees or agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of COMB, its officers, officials, employees or agents.

COUNTY shall defend, indemnify, and hold COMB, its officers, officials, employees or agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense,

attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of COUNTY, its officers, officials, employees or agents.

INSURANCE

Each party shall maintain its own insurance coverage, through commercial insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage, or liability arising out of the performance of its responsibilities pursuant to this Agreement.

V. TERM AND OBLIGATION OF AGREEMENT

1. This Agreement shall remain in effect until discharged or terminated as follows:
 - a) The Agreement may be terminated at any time by mutual consent of the PARTIES.
 - b) This Agreement shall be discharged, and the PARTIES shall have no further obligation to each other, either upon completion of the PROJECT or upon the failure of the COUNTY Board of Supervisors to award a contract to construct the Project.
 - c) All obligations of COMB under the terms of this Agreement are subject to allocation of HBP funds to COUNTY. COMB may terminate this Agreement by written notice to COUNTY upon COMB determination that the necessary funds have not been allocated.
2. This Agreement represents the entire agreement of the PARTIES with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.
3. This Agreement may not be changed, modified or rescinded except in writing, signed by all PARTIES hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.
4. The PARTIES render their services under this Agreement as independent agencies. None of the employees or agents of any party shall be employees or agents of any other party to this Agreement.
5. The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other parties.
6. Should any part of the Agreement be determined to be unenforceable, invalid, or beyond the authority of any party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

7. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the PARTIES; each counterpart shall be deemed an original but all counterparts shall constitute a single document.
8. No remedy or election of remedies provided for in this Agreement shall be deemed exclusive, but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.
9. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.
10. The waiver by any of the PARTIES of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.
11. Nothing in this Agreement, expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any third party, nor in anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to the Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.
12. Each of the PARTIES warrants to each other that he or she is fully authorized and competent to enter into this Agreement in the capacity indicated by his or her signature and agrees to be bound by this Agreement upon the execution of this Agreement by each of the PARTIES.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date when fully executed by both parties.

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County Santa Barbara, State of California, on this _____ day of _____, 2016 by the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

ATTEST:
MONA MIYASATO
COUNTY EXECUTIVE OFFICER
CLERK OF BOARD

COUNTY OF SANTA BARBARA

By: _____
Deputy Clerk

By: _____
Peter Adam, Chair
Board of Supervisors

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

APPROVED AS TO FORM:
RAY AROMATORIO
RISK MANAGEMENT

By: _____
Deputy County Counsel

By: _____

APPROVED AS TO ACCOUNTING FORM:
THEODORE A. FALLATI, C.P.A.,
AUDITOR CONTROLLER

By: _____
Deputy

Cachuma Operation and Maintenance Board
3301 Laurel Canyon Road
Santa Barbara, CA 92105

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Legal Counsel, COMB

EXHIBIT A

PROJECT SCOPE & SCHEDULE

SCOPE:

Project is to replace existing structurally deficient timber and steel bridge along Refugio Road at Crossing 8 of Quiota Creek in Santa Barbara County. The new bridge will allow fish-passage and increased flow capacity.

ANTICIPATED SCHEDULE:

Activity	Projected Completion Date
1 Secure Authorization to Proceed from Caltrans	July 2016
2 Approval of Professional Services Agreement Between County and COMB	September 2016
3 COMB Complete Consultant Selection	November 2016
4 Complete Environmental	April 2017
5 Complete Design	July 2017
6 Secure Right of Way and Secure Permitting	September 2017
7 Advertise for Construction	December 2017
8 Award for Construct	March 2018
9 Complete Construction	July 2018

EXHIBIT B

PROJECT COST ESTIMATE AND FUNDING PLAN

Quiota Creek Crossing 8 Project - COST AND FUNDING PLAN									05/19/16	
Phase	Responsp	Non-Federal COMB Cost	HBR Fed Program						Total COMB Costs	Total Project Costs
			Estimated Reimbursed Costs		COMB Share - Federal	COUNTY Share - Federal	Federal Share	Total		
			COMB	County						
Env	COMB	\$0	\$70,000	\$10,000	\$0	\$0	\$80,000	\$80,000	\$0	\$80,000
Design	COMB	\$0	\$70,000	\$20,000	\$0	\$0	\$90,000	\$90,000	\$0	\$90,000
Permitting	COMB	\$0	\$20,000	\$10,000	\$0	\$0	\$30,000	\$30,000	\$0	\$30,000
Right of way (Engineering, Coordination + Acquisition)	COMB	\$0	\$60,000	\$15,000	\$0	\$0	\$75,000	\$75,000	\$0	\$75,000
Admin/Management	COMB	\$30,000	\$0	\$0	\$0	\$0	\$0	\$0	\$30,000	\$30,000
Construction Admin/CM	COMB/ Consultant / County	\$0	\$100,000	\$30,000	\$0	\$0	\$130,000	\$130,000	\$0	\$130,000
Construction Capital	County/ Contractor	\$0		\$1,251,000	\$0	\$0	\$1,251,000	\$1,251,000	\$0	\$1,251,000
Total		\$30,000	\$320,000	\$1,336,000	\$0	\$0	\$1,656,000	\$1,656,000	\$30,000	\$1,686,000