

Board Contract Summary

BC 18-044

For use with Expenditure Contracts submitted to the Board for approval. Complete information below, print, obtain signature of authorized departmental representative, and submit this form, along with attachments, to the appropriate departments for signature. See also: Auditor-Controller Intranet Policies->Contracts.

D1.	Fiscal Year	FY 17-18
D2.	Department Name	Flood Control
D3.	Contact Person	Rick Tomasini
D4.	Telephone	681-5636

K1.	Contract Type (check one): <input type="checkbox"/> Personal Service <input checked="" type="checkbox"/> Capital	
K2.	Brief Summary of Contract Description/Purpose.....	time and material contract for maintenance of flood control facilities
K3.	Department Project Number.....	various
K4.	Original Contract Amount.....	\$ 350,000
K5.	Contract Begin Date	7/1/17
K6.	Original Contract End Date	6/30/18
K7.	Amendment? (Yes or No).....	yes
K8.	- New Contract End Date	N/A
K9.	- Total Number of Amendments	1
K10.	- This Amendment Amount.....	N/A
K11.	- Total Previous Amendment Amounts.....	N/A
K12.	- Revised Total Contract Amount	N/A

B1.	Intended Board Agenda Date	2/13/18
B2.	Number of Workers Displaced (if any)	N/A
B3.	Number of Competitive Bids (if any).....	N/A
B4.	Lowest Bid Amount (if bid)	N/A
B5.	If Board waived bids, show Agenda Date.....	N/A
	and Agenda Item Number	
B6.	Boilerplate Contract Text Changed? (If Yes, cite Paragraph).....	Added federal clauses

F1.	Fund Number	2610
F2.	Department Number.....	054
F3.	Line Item Account Number.....	7701
F4.	Project Number (if applicable)	various
F5.	Program Number (if applicable)	3002
F6.	Org Unit Number (if applicable).....	
F7.	Payment Terms.....	net 30

V1.	Auditor-Controller Vendor Number.....	813262
V2.	Payee/Contractor Name.....	Tierra Contracting, Inc.
V3.	Mailing Address.....	P.O. Box 400
V4.	City State (two-letter) Zip (include +4 if known).....	Goleta, CA 93116
V5.	Telephone Number	805-964-8747
V6.	Vendor Contact Person	Blair Douglas
V7.	Workers Comp Insurance Expiration Date	4/1/18
V8.	Liability Insurance Expiration Date.....	4/1/18
V9.	Professional License Number	
V10.	Verified by (print name of county staff).....	clopez

V11 Company Type (Check one): Individual Sole Proprietorship Partnership Corporation

I certify information is complete and accurate; designated funds available; required concurrences evidenced on signature page.

Date: 2/6/18 Authorized Signature: Andrea Clopez

**AMENDMENT NO. 1 TO THE AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR WITH
Tierra Contracting, Inc.
(BC NO. 18-044)**

Pursuant to Paragraph 25 of the Agreement for Services of Independent Contractor (hereinafter Agreement) entered into on July 1, 2017, as BC No. 18-044 between the Santa Barbara County Flood Control and Water Conservation District (hereafter COUNTY), and Tierra Contracting, Inc. having its principal place of business at 5484 Overpass Road, Santa Barbara, CA 93111 (hereafter CONTRACTOR) the COUNTY and CONTRACTOR amend the Agreement as provided in this Amendment No. 1.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. AMENDMENTS:

a. Section 8 is deleted and replaced in its entirety as follows:

8. DEBARMENT AND SUSPENSION

- A. CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.
- B. This certification is a material representation of fact relied upon by COUNTY. If it is later determined that CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the California Governor's Office of Emergency Services and COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- C. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such CONTRACTOR is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- D. CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- E. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

b. The following clauses are hereby incorporated:

33. MANDATORY DISCLOSURE

CONTRACTOR must disclose, in a timely manner, in writing to the COUNTY all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award.

CONTRACTOR is required to report certain civil, criminal, or administrative proceedings to the System for Award Management (SAM) located at www.sam.gov. Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR part 180 and 31 U.S.C. 3321.)

34. USE OF U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) LOGO

CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval

35. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

- A. CONTRACTOR agrees to provide COUNTY, the California Governor's Office of Emergency Services, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. CONTRACTOR agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

36. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, CONTRACTOR agrees as follows:

- A. CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- C. CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- E. CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of CONTRACTOR'S noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. CONTRACTOR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

37. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund this Agreement. CONTRACTOR will only use FEMA funds as authorized herein. CONTRACTOR will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

38. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

CONTRACTOR shall file the required certification in EXHIBIT D. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

39. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- A. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- B. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section CONTRACTOR and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- C. **Withholding for unpaid wages and liquidated damages.** COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- D. **Subcontracts.** CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

40. CLEAN AIR ACT

- A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B. CONTRACTOR agrees to report each violation to the California Environmental Protection Agency and understands and agrees that the California Environmental Protection Agency will, in turn, report each violation as required to assure notification to the COUNTY, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- C. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

41. FEDERAL WATER POLLUTION CONTROL ACT

- A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. CONTRACTOR agrees to report each violation to the California State Water Resources Control Board and understands and agrees that the California State Water Resources Control Board will, in turn, report each violation as required to assure notification to the COUNTY, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- C. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

42. PROCUREMENT OF RECOVERED MATERIALS

- A. A. In the performance of this Agreement, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—
- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii. Meeting contract performance requirements; or
 - iii. At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

43. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the Agreement.

44. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR'S actions pertaining to this Agreement.

45. REGISTRATION

COUNTY hereby notifies CONTRACTOR that no contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code § 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code § 1771.1(a)); no contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code § 1725.5; and this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

46. REMEDIES FOR NONCOMPLIANCE

In the event COUNTY determines, in its sole discretion, that CONTRACTOR is not in compliance with the terms and conditions set forth herein, COUNTY may:

- A. Require payments as reimbursements rather than advance payments;
- B. Withhold authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- C. Require additional, more detailed financial reports;
- D. Require additional project monitoring;
- E. Requiring CONTRACTOR to obtain technical or management assistance; or
- F. Establish additional prior approvals.

47. CHANGES

- A. **Notice.** The primary purpose of this clause is to obtain prompt reporting of COUNTY conduct that CONTRACTOR considers to constitute a change to this contract. Except for changes identified as such in writing and signed by COUNTY, the Contractor shall notify the COUNTY in writing promptly, within five (5) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the CONTRACTOR regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state
- i. The date, nature, and circumstances of the conduct regarded as a change;
 - ii. The name, function, and activity of each Government individual and CONTRACTOR official or employee involved in or knowledgeable about such conduct;
 - iii. The identification of any documents and the substance of any oral communication involved in such conduct;
 - iv. In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
 - v. The particular elements of contract performance for which CONTRACTOR may seek an equitable adjustment under this clause, including:
 - What line items have been or may be affected by the alleged change;
 - What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
 - To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
 - What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and
 - vi. CONTRACTOR'S estimate of the time by which COUNTY must respond to CONTRACTOR'S notice to minimize cost, delay or disruption of performance.
- B. **Continued Performance.** Following submission of the required notice, CONTRACTOR shall diligently continue performance of this Agreement to the maximum extent possible in accordance with its terms and conditions as construed by the CONTRACTOR.
- C. **COUNTY Response.** COUNTY shall promptly, within ten (10) calendar days after receipt of notice, respond to the notice in writing. In responding, COUNTY shall either --
- i. Confirm that the conduct of which CONTRACTOR gave notice constitutes a change and when necessary direct the mode of further performance;
 - ii. Countermand any communication regarded as a change;
 - iii. Deny that the conduct of which CONTRACTOR gave notice constitutes a change and when necessary direct the mode of further performance; or
 - iv. In the event the Contractor's notice information is inadequate to make a decision, advise CONTRACTOR what additional information is required, and establish the date by which it should be furnished and the date thereafter by which COUNTY will respond.

D. Equitable Adjustments.

- i. If the COUNTY confirms that COUNTY conduct effected a change as alleged by the CONTRACTOR, and the conduct causes an increase or decrease in the CONTRACTOR’S cost of, or the time required for, performance of any part of the work under this Agreement, whether changed or not changed by such conduct, an equitable adjustment shall be made --
 - In the contract price or delivery schedule or both; and
 - In such other provisions of the Agreement as may be affected.
- ii. The Agreement shall be modified in writing accordingly. The equitable adjustment shall not include increased costs or time extensions for delay resulting from CONTRACTOR’S failure to provide notice or to continue performance as provided herein.

c. EXHIBIT D, CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS, is attached hereto and incorporated herein by reference.

2. RATIFICATION

The terms and provisions set forth in this Amendment No 2 shall modify and supersede all inconsistent terms and provisions set forth in the Agreement. The terms and provisions of the Agreement, except as expressly modified and superseded by this Second Amendment, are ratified and confirmed and shall continue in full force and effect, and shall continue to be legal, valid, binding and enforceable obligations of the parties.

3. COUNTERPARTS

This Amendment No. 1 may be executed in several counterparts, all of which taken together shall constitute a single agreement between the parties.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Agreement for Services of Independent Contractor with Tierra Contracting, Inc. to be effective on the date executed by the COUNTY.

ATTEST:

Mona Miyasato
Ex Officio County Executive Officer
Clerk of the Board of Directors of the
Santa Barbara County Flood Control
& Water Conservation District

**SANTA BARBARA COUNTY FLOOD
CONTROL & WATER CONSERVATION
DISTRICT:**

By: _____
Deputy Clerk

By: _____
Das Williams, Chair
Board of Directors

Date: _____

RECOMMENDED FOR APPROVAL:

Scott D. McGolpin
Public Works Director

By: 

CONTRACTOR:

Tierra Contracting Inc.

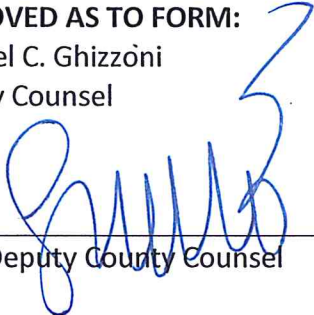
By: _____
Authorized Representative

Name: _____

Title: _____

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: 
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

Theodore A. Fallati, CPA
Auditor-Controller

By: 
Deputy

APPROVED AS TO FORM:

Risk Management

By: 
Risk Management

EXHIBIT D

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS
(Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (As Amended))

The undersigned CONTRACTOR certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CONTRACTOR, Tierra Contracting, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date