

## **AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR**

**THIS AGREEMENT** (hereafter Agreement) is made by and between the **Santa Barbara County Flood Control & Water Conservation District**, a political subdivision of the State of California (hereafter COUNTY) and **Filippin Engineering** with an address at 354-D South Fairview Avenue, Goleta, CA 93117 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

**WHEREAS**, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

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

### **1. DESIGNATED REPRESENTATIVE**

Maran Thierumaran at phone number (805) 568-3458 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Kelly Wheeler at phone number (805) 845-4602 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

### **2. NOTICES**

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY:	Mr. Thomas D. Fayram, Santa Barbara County Flood Control & Water Conservation District, 130 E. Victoria Street, Suite 200, Santa Barbara, CA 93101
To CONTRACTOR:	Mr. Gino P. Filippin, Filippin Engineering, 354-D South Fairview Avenue, Goleta, CA 93117

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

### **3. SCOPE OF SERVICES**

CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

### **4. TERM**

CONTRACTOR shall commence performance on **July 14, 2020** and end performance upon completion, but no later than **December 31, 2021** unless otherwise directed by COUNTY or unless earlier terminated.

### **5. COMPENSATION OF CONTRACTOR**

In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing

shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 NOTICES above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

#### **6. INDEPENDENT CONTRACTOR**

It is mutually understood and agreed that CONTRACTOR (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions hereof. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

#### **7. STANDARD OF PERFORMANCE**

CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

#### **8. DEBARMENT AND SUSPENSION**

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.

#### **9. TAXES**

CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

#### **10. CONFLICT OF INTEREST**

CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under

this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

#### **11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any of such items to other parties except after prior written approval of COUNTY.

Unless otherwise specified in Exhibit A, CONTRACTOR hereby assigns to COUNTY all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by CONTRACTOR pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). COUNTY shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. CONTRACTOR agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. CONTRACTOR warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless COUNTY against any claim that any Copyrightable Works or Inventions or other items provided by CONTRACTOR hereunder infringe upon intellectual or other proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

#### **12. NO PUBLICITY OR ENDORSEMENT**

CONTRACTOR shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

#### **13. COUNTY PROPERTY AND INFORMATION**

All of COUNTY's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's property, and CONTRACTOR shall return any such items whenever requested by COUNTY and whenever required according to the Termination section of this Agreement. CONTRACTOR may use such items only in connection with providing the services. CONTRACTOR shall not disseminate any COUNTY property, documents, or information without COUNTY's prior written consent.

#### **14. RECORDS, AUDIT, AND REVIEW**

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at

any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

#### **15. INDEMNIFICATION AND INSURANCE**

CONTRACTOR agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

#### **16. NONDISCRIMINATION**

COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

#### **17. NONEXCLUSIVE AGREEMENT**

CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

#### **18. NON-ASSIGNMENT**

CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

#### **19. TERMINATION**

- A. By COUNTY. COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for nonappropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.
- 1. For Convenience.** COUNTY may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, CONTRACTOR shall, as directed by COUNTY, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY from such winding down and cessation of services.
  - 2. For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the

term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.

3. **For Cause.** Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services affected (unless the notice directs otherwise) and notify COUNTY as to the status of its performance. The date of termination shall be the date the notice is received by CONTRACTOR, unless the notice directs otherwise.
- B. **By CONTRACTOR.** Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in EXHIBIT B, CONTRACTOR may, at CONTRACTOR's option terminate this Agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.
- C. Upon termination, CONTRACTOR shall deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

## 20. **SECTION HEADINGS**

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

## 21. **SEVERABILITY**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

## 22. **REMEDIES NOT EXCLUSIVE**

No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

## 23. **TIME IS OF THE ESSENCE**

Time is of the essence in this Agreement and each covenant and term is a condition herein.

**24. NO WAIVER OF DEFAULT**

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

**25. ENTIRE AGREEMENT AND AMENDMENT**

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

**26. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**27. COMPLIANCE WITH LAW**

CONTRACTOR shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

**28. CALIFORNIA LAW AND JURISDICTION**

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

**29. EXECUTION OF COUNTERPARTS**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

**30. AUTHORITY**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

31. **SURVIVAL**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

32. **PRECEDENCE**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

33. **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 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.

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Agreement for Services of Independent Contractor between the **Santa Barbara County Flood Control & Water Conservation District and Filippin Engineering.**

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by COUNTY.

**ATTEST:**

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

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

By: Shirley Labuena  
Deputy Clerk

By: Gregg Hart  
Gregg Hart, Chair, Board of Directors

Date: 7-14-20

**RECOMMENDED FOR APPROVAL:**

Santa Barbara County Flood Control  
& Water Conservation District

**CONTRACTOR:**

Filippin Engineering

By: Scott D. McGolpin  
Scott D. McGolpin  
Public Works Director


By: Kelly Wheeler  
Authorized Representative

Name: Kelly Wheeler  
Title: Vice President




**APPROVED AS TO FORM:**

Michael C. Ghizzoni  
County Counsel

By:   
Brian Pettit (Jun 24, 2020 10:16 PDT)  
Deputy County Counsel

**APPROVED AS TO ACCOUNTING FORM:**

Betsy M. Schaffer, CPA  
Auditor-Controller

By:   
Deputy

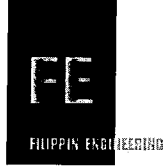
**APPROVED AS TO FORM:**

Ray Aromatorio, ARM, AIC  
Risk Manager

By:   
Risk Management

## EXHIBIT A

### STATEMENT OF WORK



May 28, 2020

Santa Barbara County Flood Control & Water Conservation District  
130 E. Victoria Street #200  
Santa Barbara, CA 93101  
Attn: Mr. Matt Griffin, P.E.

**SUBJECT: PROPOSAL FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR  
East Side Storm Drain Outlet Reconstruction Project**

Dear Mr. Griffin:

Thank you for the opportunity to submit our proposal to perform construction management and construction observation services for the East Side Storm Drain Outlet Reconstruction Project for the Santa Barbara County Flood Control and Water Conservation District (Flood Control). Filippin Engineering (FE) has performed these services on similar projects, including multiple projects with Santa Barbara County Flood Control and Water Conservation District (Flood Control).

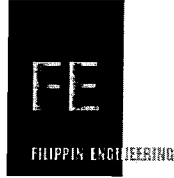
#### UNDERSTANDING OF THE PROJECT

FE's understanding of the project is based upon our conversations with Flood Control Staff and Special Provisions and Plans. Our staffing, approach, and proposed services are based on our understanding of these documents and conversations. We also anticipate the time frame for this project will start immediately after Labor Day in early September (possibly some nuisance water work prior), with a 50 working day duration.

#### PROJECT STAFFING

**Kelly Wheeler, P.E., Principal Construction Manager:** Ms. Wheeler is a registered civil engineer with over 20 years of design and construction experience. She has been the Resident Engineer on the joint City-County Mason Street Bridge, Lower Mission Creek Reach 1A-2, and Lower Mission Creek Reach 2A Projects. In the past she has been the Resident Engineer on a number of Flood Control projects including Lower Mission Creek Reach 1A-1, Lower Mission Creek Reach 2B, Lower Mission Creek Reach 1B, Montecito Creek Fish Passage, and North Avenue Storm Drain - West Phase Projects. She will be available to the FE Team and County Project Manager for any construction management and on-call tasks required.

Because of the nature of the part-time assignment, we have not yet assigned an inspector to the project, but are providing biographies of the inspectors that potentially will be working on the project. Please note that we will work closely with the Flood Control project manager to select appropriate staffing as project schedules come together, and are confident that all of our staff has the experience, knowledge, and skill set to perform well on this project.



**Fernando Perez, Assistant Construction Manager:** Mr. Perez has over 22 years of experience in the construction industry, and has performed construction management and inspection tasks on a variety of public works projects, specializing in transportation and utility relocation projects including road widenings, pavement maintenance, water and sewer pipelines, structures, drainage, retaining walls, and bridges within Caltrans right-of-way. He has experience as both a hands-on contractor and a construction inspector representing public agencies which are both instrumental in the support he provides to the Resident Engineer and Structures Representative. Fernando's most recent two projects were construction management and inspection for the City of Santa Barbara De La Guerra Bridge Project, which consisted of CIDH piles and cast in place abutments, soldier pile retaining walls, precast girders, and a cast-in-place deck, in a very tight downtown corridor, and construction inspection for the City of Goleta on their new Hollister and Kellogg Park Project which is a \$5 million project, partially federally funded (with an ATP funded crosswalk and signal, and includes grading, paving, utilities, structures (walls, footings, and a restroom facility), hardscape, and landscape. Fernando excels at claims avoidance as his attention to detail provides the RE with ample notice before project issues occur.

**Dustin Snider, Senior Construction Inspector:** Mr. Snider has 15 years of experience in Construction, Special Inspection, and Materials Testing in a variety of project settings. Dustin is knowledgeable in all areas of public project construction including underground utilities, roadway and bridge construction, paving and resurfacing, reinforced concrete and masonry, grading, backfill and earth work. He has been formally trained and certified in a variety of Deputy Inspection and Special Inspection roles, and currently holds certificates as an ICC Reinforced Concrete/Structural Masonry inspector, ACI Concrete Testing Technician, and Caltrans Testing Methods. Dustin's vast project experience includes inspection of pipeline projects, structural concrete, geotechnical anchors, large grading operations, soldier pile walls, sub drain installations, drilled pier foundations, roadway, and bridge construction. His depth of experience, excellent verbal and written communication, QA/QC implementation, and strong interpretation of project plans and specifications make Dustin an effective and integral addition to the FE team.

**Tyler Beets, Senior Construction Inspector:** Mr. Beets has over 10 years of direct experience including water and sewer pipelines, underground utilities, drainage, structures, roads, and pavement maintenance. Previously employed with Allen Construction, Tyler served as the operations and production manager, project manager and estimator during his tenure. Tyler's depth of hands-on experience and breadth of knowledge through a range of projects and roles has developed an exceptional skill set in a Construction Inspector and Manager. Tyler is currently performing construction inspection on the City of Carpinteria 2020 Pavement Rehabilitation Project.

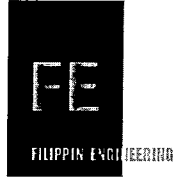
Full resumes for our staff are available upon request.

## PROJECT APPROACH

### Pre-Construction Services:

We propose the following tasks may be required to be performed prior to the construction phase:

- Attend pre-bid job walk



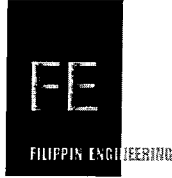
- **Pre-Construction Conference** – Coordinate and chair the Pre-construction Conference. Schedule meeting and provide notices to project participants prior to the start of any field activities. Prepare and distribute minutes of the conference.
- **Document Control** – Establish document control procedures and Construction Management procedures to ensure organized, complete, and effective construction management and documentation at the onset and throughout the project duration.

Construction Phase Services:

Based on the size and scale of this project, we anticipate that we should provide an average of part-time construction inspector (4 hours/day) and a part-time construction manager (2 hours/day) on the project. We believe that all necessary coordination, site observation, construction documentation, and other tasks necessary to administer a successful construction project can be accomplished within this amount of time. This approach will be largely dependent upon the Contractor chosen to perform the work, and FE will closely coordinate with the County throughout the project to continually evaluate the level of effort required for a successfully administered project. As the Contractor is selected, we will also work with County staff to determine if the same staff member can perform the CM and inspection on the assignment, or if the part-time for each role is more appropriate.

During the construction phase of the project, our team will perform construction management and observation including the following services, in addition to those requested by Flood Control staff. The list of services below is provided as typical services we provide during construction of similar projects:

- **On-Site Management & Construction Phase Communication** - Establish and implement coordination and communication procedures among Flood Control, other permitting agencies, property owners, Filippin Engineering, and Contractors.
- **Construction Administration Procedures** – On all projects administered by Filippin Engineering, we use the Caltrans Local Assistance Procedures Manual as a basis for construction document control, modifying as necessary for any agency or funding-specific requirements. We will utilize the Construction Management procedures for reviewing and processing request for clarifications and interpretations of the Contract Documents; shop drawings, samples and other submittals; contract schedule adjustments; change order proposals; written proposals for substitutions; payment applications; and the maintenance of logs. As Flood Control's representative at the construction site Filippin Engineering shall be the party to whom all such information shall be submitted.
- **Review of Requests for Information, Shop Drawings, & Other Submittals** - Review the Contractors' requests for information, shop drawings, samples and other submittals to determine the anticipated effect on compliance with the Project requirements, the Project and Construction Budget, and the Baseline Schedule. Forward to the County as appropriate for review of the request for clarification or interpretation, shop drawing, sample, or other submittals, along with Filippin Engineering's comments. Filippin Engineering comments shall not relate to design considerations, but rather to matters of constructability, cost, sequencing, scheduling, and time of construction. Return all information received from the County in a timely manner to the Contractor.



- **Change Order Management** - The FE Team approach in managing change orders involves the Construction Manager/Inspector constantly communicating with the Contractor to ensure that project issues are surfaced and addressed in a timely manner. If an issue does arise where the Contractor feels it is out of the contract requirements, the Construction Manager/Inspector will assess the concern promptly and coordinate with the Contractor and County Project Manager to evaluate the Notice of Potential Claim (NOPC). The FE Construction Manager will assist the County Project Manager through the formal processing of any NOPCs on the project. The FE Team approach is to continually work to resolve any project claims prior to completion of the contract in an effort to avoid arbitration or litigation at the end of the project.
- **Claims Assistance** - The FE Team will strive to resolve all NOPCs in a timely manner and avoid the claims resolution process. However, in the event that the FE Team and the Contractor cannot agree to resolve a potential claim, the FE Team will assist the County in resolving that claim. This task will include researching the project records to obtain any pertinent information and analyzing and summarizing the facts in a claim summary report that includes a recommended course of action for the County. If, after review of the claim summary report, the County and the Contractor still cannot come to a settlement, the FE Team will assist the County in developing a strategy that could involve resolving the claim by way of negotiation, a dispute resolution board, arbitration, or litigation on a time and materials basis.
- **Jobsite Progress Meetings** – Conduct weekly progress meetings to review progress and quality, notify the attendees of any contractor deficiencies, determine availability of labor, material, and equipment for upcoming work, coordinate utility outages and site disruptions, and address coordination matters. Additional special meetings may be required to address special issues and conditions and to address special coordination conditions. FE will chair these meetings, conduct each meeting according to published agenda, and have minutes prepared and promptly distributed. Minutes will detail action items, the discussions that ensued, and announce the time and date of the next meeting.
- **Contractor's Construction Schedule** - Filippin Engineering shall review each Contractor's Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the approved Baseline Schedule. In addition, we will track conformance with the project schedule, requiring submission of a make-up schedule if necessary to keep the project on track for completion within the time deadlines.
- **Progress Payments** - Filippin Engineering shall review the payment applications submitted by each Contractor and determine whether the amount requested reflects the progress of the Contractor's work. Filippin Engineering shall make appropriate adjustments to each payment application and shall prepare and forward to Flood Control a Progress Payment Report. The Report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period.
- **Photographs** - Provide photographic documentation of project site prior to, during, and after construction.
- **Reports** - Prepare weekly statements of working days, daily observation reports, and weekly status reports. Prepare any other reports related to field services requested by County staff.



- **Field Observation** - Provide full-time detailed field observation services to verify compliance and conformance with the contract documents. Daily construction reports will be completed.
- **Traffic Control and Public Safety** – Coordinate with County of Santa Barbara for review of traffic control and public safety plans. Monitor throughout construction for compliance with the approved plans and safety laws and regulations. Review all detour, lane closures, temporary access, signing, delineation and traffic control. Report deficiencies to Contractor.
- **Public Relations** – Perform public relations and outreach as necessary to the surrounding community. We are sensitive to the need to be good neighbors, being proactive, responsive, and informative.
- **Coordination** – Perform coordination between the Flood Control, permitting agencies, property owners, materials testing laboratory, and other stakeholders or agencies as necessary throughout the project.
- **Labor Compliance** – The Office Engineer will perform labor compliance checks as recommended by the Caltrans Construction Manual and the Caltrans Local Assistance Procedures Manual, including labor compliance interviews for the prime contractor and subcontractors, review of certified payrolls, and notifications of any observed labor non-compliances so that sanctions can be imposed per County (and/or Caltrans, per standard specifications as applicable) policy.
- **Materials Testing** – we have based materials testing services on approximately 3 sets of cylinders and compaction testing for the outlet structure and running a curve on the sand. We will work with the County and Contractor to ensure sufficient testing based on actual field conditions.

Close-out Services:

We anticipate the need for the following services during the construction close-out phase:

- **Reports** - Prepare reports that may be required during the final acceptance and project closeout.
- **Final Inspection and Punch list** - Provide final inspection and prepare list of project construction deficiencies for resolution by Contractor.
- **Construction Approval/Acceptance** - Make recommendations to Flood Control regarding final project approval and acceptance.
- **Final Payment** - Make recommendations regarding Contractor's final progress payment request. Prepare final progress payment report for submission to the Flood Control.
- **Project Closeout** - Prepare documentation needed for project closeout. Deliver all project documentation to Flood Control.

We look forward to working with you on this project. If you have any questions or would like to discuss our qualifications further, please don't hesitate to call me at (805) 448-5619.

Thank you,

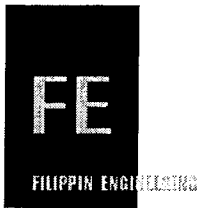
Kelly R. Wheeler, P.E.

## EXHIBIT B

### PAYMENT ARRANGEMENTS

#### Periodic Compensation (with attached Schedule of Fees)

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed **\$63,981**.
- B. Extra Work required to complete the project may be authorized only if CONTRACTOR receives written approval by the COUNTY's designated representative as identified in Paragraph 1 of the Agreement at the same rate per unit as defined in **Attachment B1**. The total amount of this contingency fund is 10% of the agreement amount or **\$6,398.10**.
- C. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **Attachment B1** (Schedule of Fees). Invoices submitted for payment that are based upon **Attachment B1** must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in **EXHIBIT A**.
- D. **Monthly**, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory and within the cost basis of **Attachment B1** shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.
- E. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.
- F. CONTRACTOR shall comply with the California Labor Code, including but not limited to the payment of prevailing wage when required. The general prevailing wage rates determined by the Director of Industrial Relations, for the county or counties in which the work is to be done, are on file at the office of the Santa Barbara County Flood Control & Water Conservation District, 130 E. Victoria Street, Suite 200, Santa Barbara, CA 93101. Copies of these general prevailing wage rates shall be made available to any interested party on request. Changes, if any to the general prevailing wage rates will be available at the same location. The prevailing wage rates are also available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/dlsr/pwd>.



## ATTACHMENT B1

May 28, 2020

Santa Barbara County Flood Control & Water Conservation District  
130 E. Victoria Street #200  
Santa Barbara, CA 93101  
Attn: Mr. Matt Griffin, P.E.

**SUBJECT: PROPOSED FEE FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR East Side Storm Drain Outlet Reconstruction Project**

Dear Mr. Griffin:

Thank you for the opportunity to submit our proposal to perform construction management and construction observation services for the East Side Storm Drain Outlet Reconstruction Project for the Santa Barbara County Flood Control and Water Conservation District (Flood Control). Project understanding, staffing, and approach are detailed in our separate proposal document, and our proposed fee and method of payment is included below.

### PROPOSED FEE AND METHOD OF PAYMENT

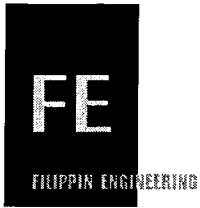
We have estimated the cost of our services based on our understanding at this time of the scope and complexity of the work. However, because our services will be performed on a time and materials to a maximum basis, it is possible that our actual charges could exceed the amount we have estimated. Likewise, if actual construction time is less, our costs will also be less. During the performance of our services, the need for additional or expanded services will be monitored and communicated to the County by the Project Manager.

We have estimated our Construction Phase services based on the following:

- Based conversations with Flood Control staff, we estimate that the project will be completed in 50 working days, or 10 weeks.
- One part time inspector (average of 4 hours/day) for the duration of the project. FE complies with all prevailing wage requirements for this assignment for inspector time.
- A part-time construction manager for the project, estimated at 2 hours/day average for the duration of the project.
- We have not budgeted additional fees for working extended hours, holidays, or weekends. Should extended hours be required, overtime rates (1.3 times the normal billing rate) will apply.

Our proposed services will be performed on a time and materials not to exceed basis and will be billed monthly at the rates shown in the table below. Charges for "time" include professional, technical and clerical support services provided by Filippin Engineering. "Materials" include all reimbursable expenses, such as photocopies, FAX transmissions, postage, shipping/delivery, mileage, plots, prints, maps/documents and outside consultant fees.





Based on our understanding of your requirements and our experience with similar projects, we estimate that the fee required for our services will be approximately **\$63,981**. The following tables illustrates the breakdown of our fee per task and phase.

Pre-Construction Phase	8	8	0		\$2,736
Construction Phase	100	200	20	\$5,775	\$56,775
Post-Construction Phase	10	10	10		\$4,470
<b>TOTAL</b>	<b>118</b>	<b>218</b>	<b>30</b>		<b>\$63,981</b>

We look forward to working with you on this project. If you have any questions or would like to discuss our qualifications further, please don't hesitate to call me at (805) 448-5619.

Thank you,

Kelly R. Wheeler, P.E.



**FILIPPIN ENGINEERING, INC.  
BILLING RATES EFFECTIVE JANUARY 1, 2020**

**Engineering**

Engineering Technician	\$ 100.00
Senior Engineering Technician	\$ 110.00
Junior Engineer	\$ 145.00
Assistant Engineer	\$ 155.00
Associate Engineer	\$ 165.00
Senior Engineer	\$ 180.00
Principal Engineer	\$ 195.00

**General**

Technical/Clerical Support	\$ 95.00
Office Engineer	\$ 105.00
Senior Program Manager	\$ 185.00

**Construction Management**

Assistant Construction Manager	\$ 155.00
Associate Construction Manager	\$ 165.00
Senior Construction Manager	\$ 175.00
Principal Construction Manager	\$ 195.00
Senior Construction Inspector (PW)	\$ 147.00
Chief Inspector/Owner's Rep (PW)	\$ 150.00
(PW) Prevailing Wage	

Sub-Consultant	Cost + 5%
Reimbursable Expenses	Cost + 5%
Outside Consultant	Cost + 5%

Note 1: Reimbursable expenses include postage, shipping, outside plot and copy reproduction costs.

Note 2: On prevailing wage assignments, overtime rates for construction inspection = 1.3 X regular rate. Double time rates = 1.5 X regular rates. Overtime will not be performed unless authorized in writing by the client. Overtime is incurred as defined on the prevailing wage determination for construction inspector.

Note 3: Billing Rates subject to change for multiple year contracts in conjunction with labor increases, which will be calculated at an increase of 3% beginning on August 1 of each year.

## EXHIBIT C

### Indemnification and Insurance Requirements (For Professional Contracts)

#### INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to reasonable attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. CONTRACTOR's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

#### NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

#### INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, his agents, representatives, employees or subcontractors.

##### A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions) Insurance** appropriate to the CONTRACTOR'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR's insurance coverage except Professional Liability and Workers' Compensation Insurance shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.

10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:

- i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

11. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

