

COPY

**SANTA BARBARA COUNTY FLOOD CONTROL DISTRICT
AGREEMENT FOR:**

COUNTY PROJECT NO. SC8364

Auditor-Controller Contract No. _____

THIS AGREEMENT, herein called Agreement, is made by and between the Santa Barbara County Flood Control and Water Conservation District, a political subdivision of the State of California, herein called District, and Brough Construction, Inc. herein referred to as Contractor, for the completion of the work identified herein, on the following terms, conditions, and provisions:

1. CONTRACT

This Agreement includes and incorporates by reference all Contract Documents.

The Contract is comprised of all documents distributed to bidders as part of the Bid Package, including, but not limited to:

1. Notice to Bidders and Special Provisions
2. Project Plans
3. State of California, Department of Transportation 2018 Standard Specifications as modified by County Provisions
4. State of California, Department of Transportation 2018 Standard Plans
5. State of California, Department of Transportation 2018 Revised Standard Specifications
6. County of Santa Barbara, Department of Public Works, Standard Details dated September 2011
7. Santa Barbara County Code
8. Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished
9. The Bid Book/Proposal executed and submitted by the Contractor
10. Notice to Bidders
11. The Faithful Performance and Payment Bonds, and
12. Any Addenda (including Addendum No. 1 dated June 4, 2020 and Addendum No. 2 dated June 8, 2020) or Change Orders

The Contractor acknowledges receipt of all such documents as were not already in the Contractor's possession. Said incorporated documents are referred to herein as the "Contract" or "Contract Documents".

Copies of all said documents are on file in the District's Santa Barbara office and have been and will be made available to the Contractor during the term of this Agreement.

The Special Provisions for the work to be done are entitled:

SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERAVTION DISTRICT; NOTICE TO BIDDERS AND SPECIAL PROVISIONS FOR East Side Storm Drain Beach Outlet Reconstruction

The project plans for the work to be done are entitled:

SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT; East Side Storm Drain Beach Outlet Reconstruction

2. WORK

Contractor agrees, at his own proper cost and expense, to do all the work and furnish all equipment and materials, except such as mentioned in the specifications to be furnished by the District, necessary to perform and complete the work described in the documents referred to above, in a good and workmanlike manner to the satisfaction of the Director of Public Works of said County, all in strict accordance with the Plans and the Contract Documents provided.

3. TERM

The Contractor shall complete work in 50 working days and in accordance with 8-1.04B.

4. PAYMENTS NOT ACCEPTANCE

No certificate given or payments made under this Contract shall be evidence of the performance of this Contract, either wholly or in part, against any claim upon Contractor. Final payment for the work performed under this Contract shall not be made until the lapse of thirty (30) days after the Notice of Completion of said work has been filed for record and no payment shall be construed to be acceptance of any defective work or improper materials. Contractor's acceptance of payment for final quantities due under this Contract and the payment of undisputed contract amounts due for any work in accordance with any amendments of this Contract, shall release the District from any and all claims or liabilities on account of work performed under this Contract or any amendments thereof related to those amounts. In addition to guarantees required elsewhere, Contractor shall and does hereby guarantee all workmanship and material to be free of defects for a period of one year from and after the recordation of the Notice of Completion by the District, and Contractor shall repair or replace any or all work and material, together with any other portions of the work which may be displaced in so doing, that in the opinion of the Engineer, is or becomes defective during the period of said guarantee without expense whatsoever to the District.

5. PAYMENT

As full compensation for furnishing all labor, supervision, overhead, materials, and equipment and for doing all the work completed and embraced in this Agreement and subject to adjustments and liquidated damages, if any, as provided in the Contract Documents, the base amount to be paid to the Contractor for satisfactory completion of all requirements of the Contractor under this Agreement is and shall be \$464,160.00 to be paid as provided in the Contract Documents.

The Engineer is authorized to order the performance of supplemental work itemized in the bid item list, to be paid as provided in the Contract Documents. In no event shall the District be liable for the cost of any supplemental work unless approved in advance and in writing by the Engineer.

The Engineer is authorized to order, as change order work, changes and additions to the work being performed under this contract in an amount not to exceed \$35,708.00 (Contingency) in accordance with California Public Contract Code Sections 20142 and 20395, as applicable, to be paid as provided in the Contract Documents.

6. 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. Contractor must promptly disclose to District, in writing, any potential conflict of interest. District retains the right to waive a conflict of interest disclosed by Contractor if District determines it to be immaterial, and such waiver is only effective if provided by District to Contractor in writing.

7. NO PUBLICITY OR ENDORSEMENT

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

8. DISTRICT PROPERTY AND INFORMATION

All of District's property, documents, and information provided for Contractor's use in connection with the services shall remain District's property, and Contractor shall return any such items whenever requested by District 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 District property, documents, or information without District's prior written consent.

9. 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. District 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 District or as part of any audit of the District, 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 District or the State, at no charge to District.

If federal, state, or District audit exceptions are made relating to this Agreement, Contractor shall reimburse all costs incurred by federal, state, and/or District 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 District, Contractor shall reimburse the amount of the audit exceptions and any other related costs directly to District as specified by District in the notification.

10. 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.

11. ENTIRE AGREEMENT AND CHANGE ORDERS

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.

12. 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 District 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 District.

13. 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, if in state court, or in the federal district court nearest to the County, if in federal court.

14. 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.

15. 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.

16. 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.

17. PRECEDENCE

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in Section 1, contract documents herein, these numbered sections shall prevail.

CONTRACTOR SIGNATURE PAGE

Agreement for services and work to be performed by CONTRACTOR between the DISTRICT and CONTRACTOR.

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

CONTRACTOR:

Brough Construction, Inc.
634 Printz Road
Arroyo Grande, CA 93420

License No. 851220
Business Type:
Corporation

By: _____
Authorized Representative

Date: _____

DISTRICT SIGNATURE PAGE

Agreement for services and work to be performed by CONTRACTOR between the DISTRICT and CONTRACTOR.

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

BY: _____ **DATE:** _____

SCOTT D. MCGOLPIN
Director of Public Works

APPROVED AS TO FORM:

RAY AROMATORIO, ARM, AIC
Risk Manager

By: _____

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI
County Counsel

By: _____

Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

BETSY M. SCHAFFER, CPA
Auditor-Controller

By: _____

Fiscal Responsibility _____

Department	Division	Subdivision	Program	Organization Unit	Fund	Account	Area
054			3005		2610	SC8364	ESSD

BID ITEM LIST

Item No.	F ¹	Item Code	Description	Unit	Quantity	Unit Price	Item Total
1		120090	Project Information Sign	EA	1	\$2,500.00	\$ 2,500.00
2		130100	Job Site Management	LS	1	\$19,500.00	\$ 19,500.00
3		130300	Prepare Storm Water Pollution Control Program	LS	1	\$1,500.00	\$ 1,500.00
4		130610A	Storm Drain Nuisance Water Management and Temporary Cofferdam	LS	1	\$13,200.00	\$ 13,200.00
5		153213	Remove Concrete (Structure)	LS	1	\$22,300.00	\$ 22,300.00
6		192001	Structure Excavation	LS	1	\$8,100.00	\$ 8,100.00
7		193013	Structure Backfill	LS	1	\$10,800.00	\$ 10,800.00
8		480600A	Temporary Shoring & Ocean Protection Barrier	LS	1	\$199,000.00	\$199,000.00
9	F	510050	Structural Concrete	CY	22	\$2,530.00	\$ 55,660.00
10	F	520101	Bar Reinforcing Steel (Epoxy Coated)	LS	1	\$31,500.00	\$ 31,500.00
11		750030A	Sloped Protection Barrier	LS	1	\$60,000.00	\$ 60,000.00
12		999990	Mobilization	LS	1	\$15,100.00	\$ 15,100.00
CONTRACTOR'S BID ITEMS SUBTOTAL							\$439,160.00
13			Supplemental work (Pile Repair)	1	LS	\$10,000	\$ 10,000.00
14			Supplemental work (Additional Water Pollution Control)	1	LS	\$5,000	\$ 5,000.00
15			Supplemental work (Nuisance Water Management)	1	LS	\$10,000	\$ 10,000.00
SUPPLEMENTAL WORK BID ITEMS SUBTOTAL							\$ 25,000.00
TOTAL BID							\$464,160.00

¹ "F" denotes Final Pay Item

CERTIFICATE OF COMPLIANCE

This is to certify that all requirements for insurance of subcontractors as specified for this project have been met.

Brough Construction, Inc.
FIRM NAME

BY

Title

Date

CALIFORNIA LABOR CODE SECTION 1860 AND 1861 CERTIFICATION

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Brough Construction, Inc.
FIRM NAME

BY

Title

Date

Submit completed form with your Agreement, Bonds, and Certificates of Insurance.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That the Santa Barbara Flood Control and Water Conservation District of the State of California (hereinafter referred to as the District) and Brough Construction, Inc. (hereinafter referred to as Principal) have by written agreement dated _____, entered into a Contract identified as:

Project Title: East Side Storm Drain Beach Outlet Reconstruction
County Project No.: SC8364

(Hereinafter referred to as the Contract) and

That, pursuant to law and to said Contract, and before entering upon the performance of said Contract, the principal is required to file with the District a good and sufficient bond to secure the payment of labor and materials claims.

NOW, THEREFORE, said Principal and _____

_____ as corporate surety (hereinafter referred to as Surety), are held firmly bound unto the District in the amount of \$464,160.00 for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally. The payment bond must also contain provisions which automatically increase amounts thereof and/or time of completion or both for all change orders, extensions and additions to the work provided pursuant to this Agreement. Surety shall be and hereby warrants that it is currently listed as an insurer authorized and admitted by the California Insurance Commissioner to issue surety insurance in the State of California, in the list published by the California Department of Insurance.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named or referred to in Section 9100 of the California Civil Code, or amounts due under Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Contractor and his Subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor as required by Division 3, Part 4, Title XV, Chapter 7 (commencing at Section 9550) of the California Civil Code, or this bond, then said Surety will pay for the same, in an amount not to exceed the amount hereinafter set forth.

This bond shall insure to the benefit of any and all persons, entities, companies and corporations named or referred to in Section 9100 of the California Civil Code, so as to give a right of action to them or their assign in any suit brought upon this bond.

And the said Surety, for value received, hereby agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Specifications.

PAYMENT BOND

In the event suit is brought upon this Bond by District and judgment is recovered, Surety shall pay all costs incurred by the District in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability, or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

Principal

Surety

BY:

Signature of Attorney-in-fact

DATED:

Address

City, State, Zip

Surety's Agent for Service of Process (located within the State of California):

Name of Agent

Address

City, State, Zip

Fax Number

NOTE: Signature of those executing for Surety must be properly acknowledged.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That the Santa Barbara County Flood Control and Water Conservation of the State of California (hereinafter referred to as the District) and Brough Construction, Inc. (hereinafter referred to as Principal) have by written agreement dated _____, entered into a Contract identified as:

Project Title: East Side Storm Drain Beach Outlet Reconstruction
County Project No.: SC8364

(Hereinafter referred to as the Contract) and

That, the Principal is required under the terms and conditions of said Contract to furnish a bond for the faithful performance of Contract.

NOW, THEREFORE, said Principal and _____

as corporate surety (hereinafter referred to as Surety), are held firmly bound unto the District in the amount of \$464,160.00 for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally. Surety shall be and hereby warrants that it is currently listed as an insurer authorized and admitted by the California Insurance Commissioner to issue surety insurance in the State of California, in the list published by the California Department of Insurance.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his heirs, executors, administrators, successors, or assigns, shall perform all of the covenants, conditions and agreements in said Contract and any alteration thereof made as herein provided, in his or their part, to be kept and performed at the time, and in the manner therein specified, and shall indemnify and save harmless District, its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force, virtue and effect.

And the said Surety, for value received, hereby agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or additions to the terms of the Contract or to the work or to the specifications.

PERFORMANCE BOND

In the event suit is brought upon this Bond by District and judgment is recovered, Surety shall pay all costs incurred by the County in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability, or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

Principal

Surety

BY:

Signature of Attorney-in-fact

DATED:

Address

City, State, Zip

Surety's Agent for Service of Process (located within the State of California):

Name of Agent

Address

City, State, Zip

Fax Number

NOTE: Signature of those executing for Surety must be properly acknowledged.

STATEMENT OF
UNLAWFUL DISCRIMINATION IN EMPLOYMENT PRACTICES
(SANTA BARBARA COUNTY CODE, SECTION 2-95)

The party contracting with the Santa Barbara County Flood Control and Water Conservation District agrees that it will not discriminate against any employee or applicant for employment in violation of any applicable State or Federal laws, rules or regulations which may now or hereafter specifically prohibit such discrimination on such grounds as race, religion, sex, color, national origin, physical or mental disability, Vietnam era veteran/disabled, age, medical condition, marital status, ancestry, sexual orientation, or other legally protected status. If it is determined by the Board of Directors upon recommendation of the Affirmative Action Officer and the County Counsel that during the life of this agreement any such unlawful discriminations have occurred, the Board of Directors may forthwith terminate this agreement. Said party contracting with the District further agrees that whether or not the term of this agreement is still in existence at the time of final determination of such unlawful discrimination, that it will forthwith reimburse the District for any and all damages, costs and expenses incurred in connection with such unlawful discrimination, including but not limited to damages from loss of Federal or State grants, subventions or loans; costs of processing, investigating and reporting complaints of unlawful discrimination; additional costs of expenses incurred in completion of this agreement by another party if this agreement is terminated before completion; all costs of suit including reasonable attorney's fees incurred in collecting any such damages, costs and expenses; and interest on all such damages, costs and expenses from the date they are incurred to date of payment.

Employment practices shall include, but are not limited to employment, promotion, demotion, transfer, recruitment and advertising for recruitment, layoff or other termination, rates of pay, employee benefits and all other forms of compensation, selection for training and apprenticeship and probationary periods.

Said party contracting with the District further agrees to permit access at all reasonable times and places to all of its records of employment advertising, application forms, tests and all other pertinent employment data and records, to the Santa Barbara County Flood Control and Water Conservation District, its officers, employees and agents for the purpose of investigation to ascertain if any unlawful discrimination as described herein has occurred or is being practiced.

Failure to fully comply with any of the foregoing provisions relating to unlawful discrimination in employment practices shall be deemed to be a material breach of this agreement.