

BC 17-117

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 Bengal Engineering Inc. with an address at 250 Big Sur Drive, 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

Jon Frye at phone number (805) 568-3444 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Tom Conti at phone number (805) 563-0788 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 Water Agency, 130 E. Victoria Street, Suite 200, Santa Barbara, CA 93101
To CONTRACTOR:	Mr. Thomas Conti, Bengal Engineering, 250 Big Sur Drive, 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 August 23, 2016 and end performance upon completion, but no later than December 31, 2018 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.

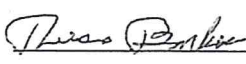
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Agreement for Services of Independent Contractor between the Santa Barbara County Flood Control & Water Conservation District and Bengal Engineering Inc.


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 the Board of Directors of the Santa Barbara County Flood Control and Water Conservation District

By: 
Deputy Clerk

SANTA BARBARA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT:

By: 
Peter Adam, Chair
Board of Directors

Date: 8-23-16

RECOMMENDED FOR APPROVAL:

Santa Barbara County Flood Control & Water Conservation District

By: 
Scott D. McGolpin
Public Works Director

CONTRACTOR:

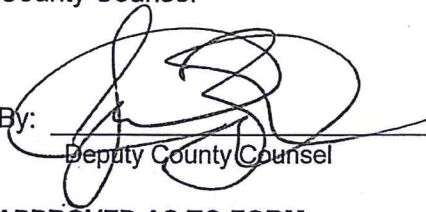
Bengal Engineering Inc.

By: 
Authorized Representative

Name: MD. WAHIDUZZAMAN
Title: CEO

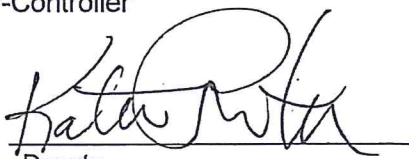
APPROVED AS TO FORM:

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:

Ray Aromatorio, ARM, AIC
Risk Manager

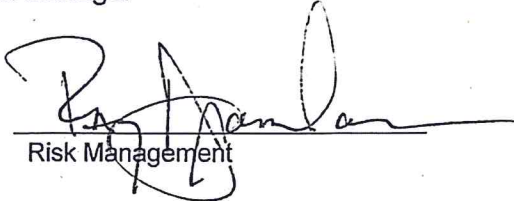
By: 
Risk Management

EXHIBIT A
STATEMENT OF WORK



June 27, 2016

Mr. Jon Frye, PE
130 E. Victoria Street, Suite 200
Santa Barbara, CA 93101

RE: Lower Mission Creek Flood Control Project: Reach 3 and 4 - Final Design

Dear Mr. Frye,

Bengal Engineering (Bengal) is pleased to provide this proposal for engineering design services in accordance with your request to complete the Lower Mission Creek Flood Control Project (LMCFCP).

The anticipated start of construction is spring/summer of 2018 and possibly spring/summer of 2017 if Reach 3 is constructed concurrently with Reach 2B-2.

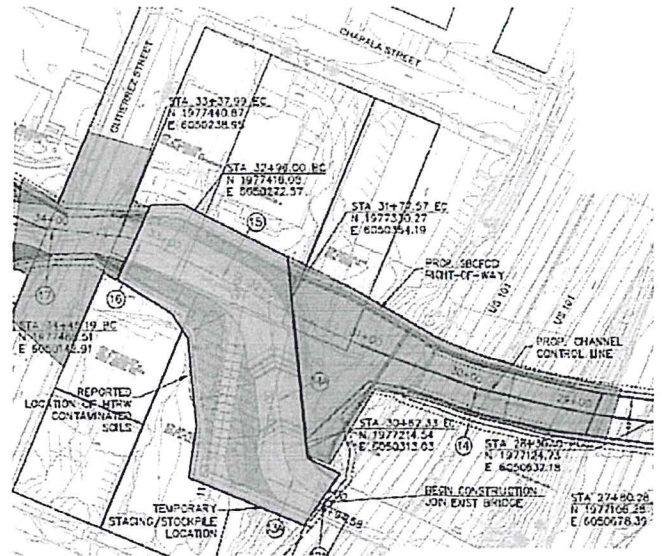
Scope of Work:

Bengal will start with the partially- completed U.S Army Corps 60% PSE, and prepare "bid-ready" documents, including the plans, specifications and engineer's estimate (PSE) for two reaches including:

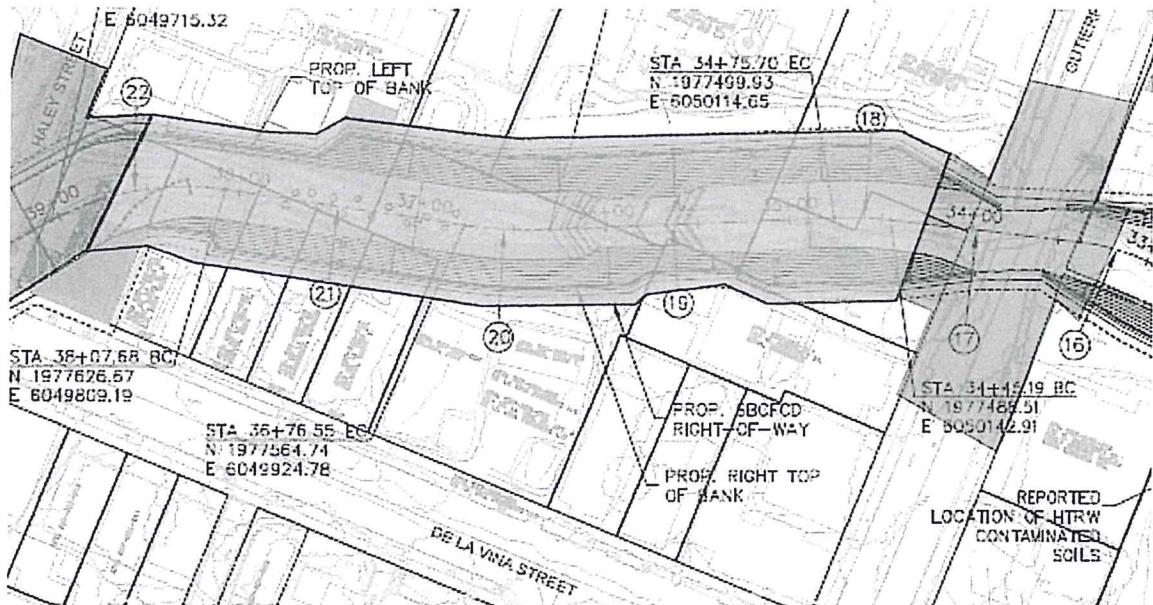
LMCFCP Reach 3 (shown in center of map, orange color)

This section of the project is between the downstream project limits of the Gutierrez Street Bridge Replacement project (red) and the upstream reaches of the LMCFCP Reach 2B-2 (green). LMCFCP Reach 2B-2 section is the portion of the LMCFCP that runs underneath US highway 101 (101) to the weir located upstream of 101.

Concurrently the City of Santa Barbara is designing the Gutierrez Street Bridge Replacement project and SBFCWD is designing the LMCFCP Reach 2B-2.



LMCFCP Reach 4 (shown in center of map orange color)



This section of the project is between the upstream area of the Gutierrez Street Bridge Replacement project (red) and the completed Haley / De La Vina Bridge project (blue).

The proposed design work will build upon Lower Mission Creek 100% Design Documentation Report (DDR) completed by SBFCWCD and Army Corps of Engineers in July of 2011.

Scope of Work

1. Project Administration

A. Project Management

Bengal will manage the project by tracking the schedule and budget.

B. Progress Meetings

Project Manager and appropriate staff will meet with the county and others by phone and in person to manage and deliver this project. For purposes of this scope, one face-to-face meeting each month is assumed. Regular team teleconference meetings can be scheduled bi-weekly to keep SBFCWCD informed of the status of the project to obtain timely decisions.

C. Quality Assurance/Quality Control (QA/QC)

As the effort progresses Bengal will ensure appropriate levels of QA/QC are included in all disciplines of the project.

2. Surveys and Mapping

Bengal's sub-consultant, Reese Water and Land Surveying Services, will perform the boundary survey and right of way mapping for the project.

Surveying will include:

A. Preliminary Title Reports

This task includes: 16 PTRs for the 16 Assessor Parcels along Mission Creek within Reach 3 & 4. The cost for one PRT is \$400. Costs will be forwarded without markup. These will be used to determine rights and extent of title for the parcels along Mission Creek within project limits.

B. Right of Way Determination and Field Ties

This task includes: map and document research and acquisition; review of 16 PTRs and plots of title information; field monument recovery; field ties to found survey monumentation; QA/QC office work and compilation of data, both record and field; preliminary mapping.

C. Right of Way - Existing

This task includes: mapping of existing lot lines, easements, etc. from PTRs for use by Bengal and the County for right of way planning and project engineering.

D. Right of Way - Proposed

This task includes: mapping from Task C; draft mapping of proposed right of way takes; mapping of proposed temporary construction easements (TCEs); draft legal descriptions for right of way takes and draft TCEs.

For this task, it is assumed there will be 16 separate legal descriptions for right of way "takes", 8 legal descriptions for TCEs.

Since this task's scope and cost is dependent on unknown future design and configuration, the scope and cost is an estimate. Mapping and legal descriptions are intended for use by Bengal Engineering and the City for right-of-way appraisal and acquisition.

E. Survey Control

This task includes: establishing project survey control for monumentation ties and primary control, to perform topographic surveys. This task will also provide for coordination so that right of way work and topographic survey are on the same horizontal and vertical datum.

F. Survey – Topo (uncleared)

This task includes: topographic survey work from bank to bank within Reach 3 & 4; topographic mapping; surface model construction; and delivery of digital data.

Because these reaches are heavily vegetated channel the survey work will be slow and difficult without brush-clearing.

For this task we assume:

- 1) No clearing will have been done prior to our work (but that we can clear vegetation as necessary)
- 2) No USA marks will be available prior to our work
- 3) Utility location will consist of observable surface indications of subsurface utilities.

Note: Brush-clearing the channel prior to survey will reduce costs considerably and improve quality of the survey.

G. Brush clearing (budget figure)

These reaches of the LMCFCP project have a substantial amount of overgrown brush. In order to expedite the survey topography and potentially save survey effort/fee we are proposing to add an as needed brush clearing/hauling. This task is a budgetary figure and could be more or less depending on precise needs.

3. Utility Coordination

A. Preliminary Utility Coordination

Bengal will perform preliminary utility coordination early in the project. Work will consist of the initial contact with the utility companies notifying them of the project and requesting their facility maps for the project area.

All utility companies known to operate in the vicinity of the project will be contacted.

Bengal will prepare initial notices (utility verification letters) and submit an electronic copy to the SBFCWCD Project Manager for transmittal to recipients.

Deliverables -

- Utility Verification Letters with 60% Plans

B. Final Utility Coordination

After the project design of 65% PSE complete, Bengal will coordinate with the City of Santa Barbara and prepare initial relocation notices (utility claim letters) and submit to the SBFCWCD Project Manager for transmittal. SBFCWCD will forward to Bengal a copy of all correspondence received.

Deliverables -

- Utility Claim Letters
- Utility Notice of Conflicts Letters and Plans

C. Final Utility Noticing

Final relocation notices will be prepared by Bengal and sent to the SBFCWCD for distribution.

Deliverables -

- Utility Notice to Owner Letters and Plans
- Approval of Utility Relocation Plan

4. Water Quality Management Plans (if required)

A. Conceptual erosion control and post-construction storm water management plans

This task includes the preparation of in accordance with the City Storm Water Management Plan (SWMP) and post construction Best Management Practices (BMP) Manual, including a Water Quality Management Plan in the PS&E package.

Bengal will incorporate storm water management principles that address pre- and post-construction measures to the extent practicable using the above referenced documents and will also comply with Chapter 9 of the Caltrans Environmental Handbook, Volume 1: Guidance for Compliance: Hydrology/Water Quality /Storm Water as described in the most current version of Caltrans Division of Design Storm Water Quality Handbook - Project Planning and Design Guide.

B. Site Soil/Infiltration Assessment – Storm Water Management Program

It is our understanding that the project will be required to meet the requirements outlined in the State Water Resources Control Board's (Water Board) NPDES General Permit for municipal storm water discharges.

In-lieu of Regional Water Quality Control Board requirements, the City of Santa Barbara has in place their own Storm Water Management Plan/Program.

As it appears that the project will require the use of storm water Best Management Practices (BMP), Bengal will perform a site assessment including soil infiltration capacity evaluation in accordance with the City's Storm Water BMP Guidance Manual (July, 2013).

As the project is likely considered to be a Tier 3 project, Bengal's engineering geologist will perform the test pit investigation and infiltration testing. This work will be done subsequent to approval of the preliminary design concept.

Bengal will excavate, sample and log one (1) or two (2) shallow test pit(s) in order to perform water infiltration testing at or near the proposed bottom of the BMP. The results will be provided to Bengal's design staff to aid in the selection of BMP's for on-site infiltration.

5. Contaminated Materials Management Plan Preparation (Reach 3)

Information provided from the US Army Corp of Engineers plans indicates there are possible contaminated soils in excess of California hazardous waste thresholds per Title 22 California Code of Regulations, Section 66261.24 et seq. (Title 22) along the southern bank of Mission Creek from station 32 to 33. Bengal will research the status of this site in the State Water Resource Control Board's Geotracker system [Caltrans Property; 324 De La Vina, Global ID SL0608319356, Verification Monitoring RB Case #: S307) to determine the scope of the CMMP. Results of this research will be shared with the SBFCWCD real property acquisition team.

The objective of the CMMP is to present the procedures and protocols to be followed during project construction activities to properly segregate and manage soils identified with chemicals of concern at concentrations in excess of Title 22 thresholds. Padre understands that the CMMP will be submitted to SBFCWCD to complete this Project.

Padre and Associates will prepare a CMMP that will present the field procedures and protocols that will be performed by SBCFCWCD and its contractor during construction activities at the Site. Padre will stipulate appropriate sampling/analysis, handling, and disposal of contaminated waste to comply with state and federal regulations. The CMMP will be prepared in draft form and submitted to Bengal and/or SBCFCD for review and comment. Following the receipt of comments, copies of the final CMMP will be prepared for use by contractor. The CMMP will be signed and certified by a Professional Geologist registered in the State of California.

6. Civil Engineering – Design Services

Two plan sets (PSE) will be created: one for reach 3 and one reach 4 to allow bidding the projects separately. 65% Plans and Updated Estimate

The design will proceed based on the approved design from the US Army Corps Lower Mission Creek 100% DDR including the 60% plans for reaches 1B and 3-7.

Our work will include:

65% PS & E

A. Mission Creek Channel Design

Channel plan and profile plans will be prepared at appropriate scales. The plans will indicate general creek grading improvements and bank protection details (creek planting will be detailed in the creek restoration plans). Channel design plans will also include pertinent fish features and grade control structures at locations shown on the USACE plans.

B. Mission Creek Wall Foundation Design and Detailing

Wall foundation plans and details will be prepared for the creek walls. Aesthetic detailing requested by the stakeholders will have to be evaluated and included in the wall details.

The vertical walls will be constructed in two methods according to their proximity to any existing structures. The first method will use an inverted "T" footing, which will be applied in areas where sufficient right-of-way are available without directly impacting existing structures. The second method will use either a soldier pile or a secant pile walls, which will be applied in areas with limited right-of-way. These wall types have been developed and selected by previously constructed Reaches of the Lower Mission Creek Project.

C. Landscape and Mission Creek Restoration Design

The landscape plans will be developed by David Black addressing comments from the HLC/ABR previous approvals and in consultation with SBCFCWCD Biologists Maureen Spencer and Andrew Raaf. The landscape design includes planting and irrigation plans (95% and 100% PSE only).

Traffic Handling and Construction Area Sign Design

Traffic handling plans and details will show detour route signage to be used during construction. Advisory and construction area signs (CAS) will be shown on a Construction Area Signs Sheet.

E. Storm Drain Design

Bengal will evaluate the areas around/behind the walls to include drainage facilities to adequately handle flow from the surrounding private property to drain back to the creek. Included in the drainage design will be measures reviewed and approved in the City of Santa Barbara's SWMP.

F. Utility Design

Water and sewer utilities discovered in the way of the proposed work will be redesigned by Bengal. Because the majority of the work will be in backyards abutting the creek it is unknown how much utility work will be encountered. Bengal included a nominal amount of effort which is a budgetary amount.

G. 65% Specifications

Bengal will prepare technical special provisions for the project. Bengal will supply project specific information to include in SBFCWCD supplied boilerplate specifications. The basis of the specifications will be the latest Caltrans Standard Specifications. It is assumed that SBFCWCD will prepare the "boiler plate" documents, including the notice to bidders, proposal, bond forms, and agreement.

H. 65% Engineers Estimate

Unit prices will be applied to each contract item resulting in the Engineer's Estimate of Probable Construction Cost (Estimate). Prices used will be based on the latest available data from the region and Caltrans, reflecting the location of the project and the quantity of each item. Twenty (20) percent of the total estimate will be added for contingencies.

I. 65% Hydraulic Design (if required)

If the design parameters and alignment changes from the DDR plans further confirmation of the hydraulics will be required. Bengal will use the current hydraulic model and update it with the proposed channel geometry.

Deliverables -

65% PS&E

- 2 – 11 x 17 (half size)
- 1 –Special Provisions (hardcopy)
- 1 – Engineers Estimate (hardcopy)
- 1 – Electronic copy (PDF format)

J. 95% Plans, Specifications and Estimate

Bengal will perform a QA/QC as outlined from task I. QA/QC will be an internal review of the 65% PSE from Bengal staff not directly working on the project. Upon completion of QA/QC, discrepancies will be reconciled and plans updated for preparation of quantities, estimate and specifications. The 95% PS&E submittal will include update adding further information. Bengal Engineering will prepare responses to comments received on the 65% submittal.

- 1 Submittal of 95% PS&E will be made to SBFCWCD. The submittal will include the plans, specifications and estimate update of the 65% PSE.

Deliverables -

95% PS&E

- 2 – 11 x 17 (half size)***
- 1 –Special Provisions (hardcopy)***
- 1 – Engineers Estimate (hardcopy)***
- 1 – Electronic copy (PDF format)***

K. 100% PS&E

Upon receipt of comments from the 95% PS&E submittal to the SBFCWCD, and other jurisdictional agencies, which will be routed through the SBFCWCD, final revisions will be made. The 100% PS&E submittal will include update adding final information. Bengal will incorporate appropriate comments in the plans, specifications, and estimate. Bengal Engineering will perform an independent QA/QC review of the 100% submittal package and incorporate appropriate revisions prior to submittal.

Deliverables -

100% PS&E

- 1 – 11 x 17 (half size)*
- 1 – 22 x 34 (full size)*
- 1 – Specifications (hardcopy)*
- 1 – Engineers Estimate (hardcopy)*
- 1 – Electronic copy (PDF format)*

7. City of Santa Barbara Discretionary Review Boards

Architectural Board of Review/Historic Landmarks Commission (ABR/HLC)

Bengal understands that portions of the project will require the City of Santa Barbara discretionary review board approval. As we understand reach 3 would require HLC review/approval and reach 4 will require ABR review/approval. Bengal will present at ABR/HLC meetings the project for concept/project design and final design approvals. Bengal and David Black will lead in making presentations.

A. ABR/HLC Prepare Exhibits for City Planning Boards and Commissions

1. 65% Rendering

Upon approval of the 65% design concept the 65% rendering will be prepared for City Boards and Commission review.

B. Exhibit Modifications

65% Rendering will be revised with requested modifications from the CITY Boards and Commissions for 95% board meetings.

8. Construction Bidding Support

Bengal will provide bidding assistance to the SBFCWCD. This will include consultation and interpretation of the contract documents and assisting the SBFCWCD in preparing addenda to the PS&E, and attending pre-bid or construction meetings. Since the nature of questions and number of questions asked is out of the control of Bengal and the SBFCWCD, this work will be provided on a time and materials basis, and a nominal amount has been included in the fee estimate.

Deliverables -

Prepare Addenda as required

Respond to RFI's as required

Fee

We propose to work on the project on a Time-and-Material basis. Please see the attached project fee estimate. Actual costs could be more or less.

SBFCWCD will provide

1. Applicable information and other pertinent project files as necessary.
2. Any specific restrictions from the property owner controlling the proposed improvements.
3. Environmental permitting.
4. Effort for coordination in utility relocation requests.

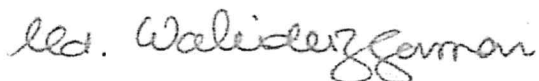
We may request additional information or help which we have not foreseen at this time.

Timeline

We are ready to start work.

Thank you for contacting Bengal Engineering. We look forward to your response.

Sincerely,



Md Wahiduzzaman, PE
Project Manager

9. ASSUMPTIONS & EXCLUSIONS

1. We assume the SBFCWCD will perform the environmental documentation and permitting for the project.
2. It is assumed that all new or relocated private utility facilities will be designed and constructed by the applicable utility owners.
3. Public utility relocations, water and sewer effort is a budgetary figure. Effort shown for public utility relocation coordination is a budgetary figure; actual effort may be more or less.
4. We assume that the project will proceed uninterrupted.
5. Building evaluation or building redesign is excluded.
6. Reviews: we assume the SBFCWCD will provide review "redlines" scanned for our use. Comments will be prepared in electronic format to limit effort required to respond.
7. SBFCWCD will perform all right of way interaction with landowners.
8. The preparation of either a Storm Water Pollution Protection Plan or a Water Pollution Control Plan is excluded. Bengal will include plan requirements in the technical specifications. The preparation of the plan will be included as a construction contract item.
9. Estimate for reproductions (copies) is a budget figure. We assume the SBFCWCD will print "bid documents".
10. Bengal was retained as the USACE geotechnical sub consultant for LMCFCP. We assume this effort is sufficient for final design. No further soils investigation or geotechnical reporting is included.
11. No field work will be required to complete the proposed scope of services for the CCMP.
12. Additional information if available on the identified hazardous, toxic, or radioactive waste (HTRW) contaminated materials will be supplied to Bengal.
13. The proposed scope of services for the CCMP is intended to prepare only a plan for identifying and characterize the conditions at the Project Site. Additional assessment may be required to adequately define the extent of affected soil at the Project Site, or if additional areas of concern are identified during construction.
14. We assume that either the secant pile or the soldier pile wall will be selected for use in the "tight" right-of-way areas. Our effort includes one option.
15. We assume brush clearing/hauling will be allowed under the Santa Barbara County maintenance protocols and permits.

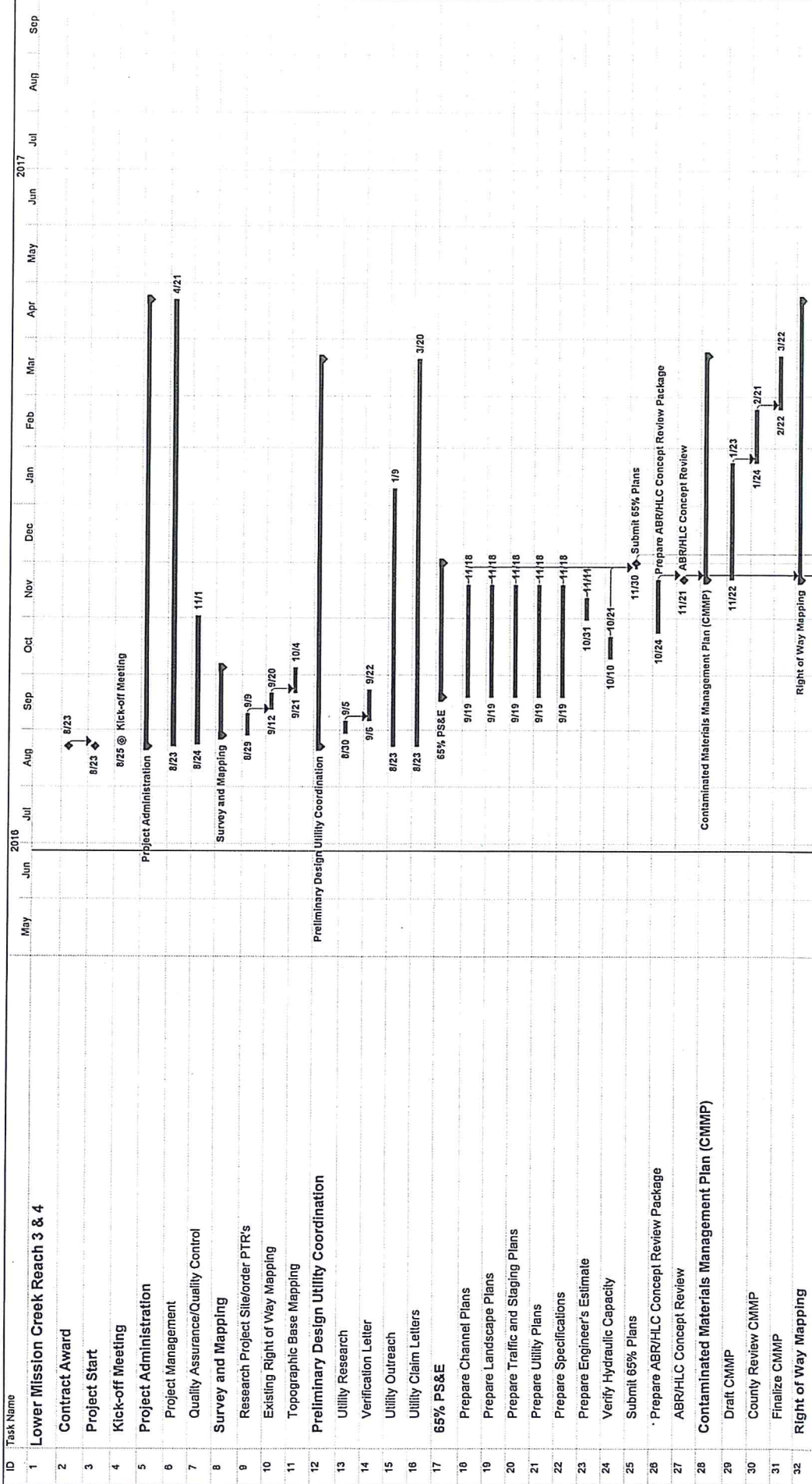
10. FEE SCHEDULE

Bengal Engineering's Proposal for Lower Mission Creek Project – Engineering Design
P 14

BENGAL ENGINEERING Task Summary, Resource Estimate & Fees Lower Mission Creek - Engineering Design Reach 3 and 4														
TASK NO	TASK DESCRIPTION	Bengal Engineering							TOTAL LABOR HOURS	BENGAL ENGINEERING FEE	DAVID BLACK FEE	PADRE & ASSOC. FEE	REESE WATER AND LAND SURVEYING SERVICES FEE	TOTAL FEE
		PROJECT MANAGER \$150/HR	CIVIL ENGINEER \$150/HR	ENGINEERING GEOLOGIST \$150/HR	GEOTECHNICAL ENGINEER \$150/HR	TECHNICIAN \$85/HR	ADMIN/ CLERICAL \$55/HR							
		HRS	HRS	HRS	HRS	HRS	HRS	HRS	\$	\$	\$	\$	\$	
1	Project Administration													
	Project Management	16	48					24	88					
	Progress Meetings	12	36						48					
	Quality Assurance/Quality Control	16	8					8	4					
	subtotal	44	92	0	0			28	172	\$ 22,620				\$ 22,620
2	Survey and Mapping													
	Preliminary Title Reports (see reimbursable's)		2					1	3					
	Right of Determination and Field Ties		4					2	6				\$ 19,550	
	Right of Way - Existing	2	4					2	8				\$ 4,600	
	Right of Way - Proposed	2	4					2	8				\$ 13,225	
	Survey Control							2	2				\$ 3,450	
	Survey Topo	4	12					2	2				\$ 26,450	
	Brush Clearing (as required)							2	2				\$ 10,000	
	subtotal	8	26	0	0	0	0	13	47	\$ 5,815	\$ -	\$ -	\$ 77,275	\$ 83,090
3	Utility Coordination													
	Preliminary Utility Coordination	8	24					16	4					
	Final Utility Coordination	16	48					32	4					
	Final Utility Noticing	10	32					24	2					
	subtotal	34	104	0	0			72	10	\$ 27,370				\$ 27,370
4	Water Quality Management Plans (if required)													
	Storm water Management Plans	16	48					32	4					
	Site Soil/Infiltration Assesment (Each Reach)	4	32	50					2					
	subtotal	20	80	50	0			32	6	\$ 25,550				\$ 25,550
5	Contaminated Materials Management Plan (CMMP)													
	CMMP preparation		12					12	4			\$ 5,210		
	subtotal	0	12	0	0			12	4	\$ 3,040		\$ 5,210		\$ 8,250
6	Civil Engineering - Design Services													
	65% Plans	48	160			36	240	12	496		\$ 7,820			
	65% Specifications	12	48				8	8	76					
	65% Engineers Estimate	2	10				24	4	36					
	65% Hydraulic Design (if required)	10	60				16	4	90					
	95% PSE	36	120			24	140	4	324		\$ 13,685			
	100% PSE	16	80			12	100	4	212		\$ 2,990			
	subtotal	124	478	0	72	528	32	1234		\$ 147,740	\$ 24,495			\$ 172,235
7	City of Santa Barbara Discretionary Review Boards													
	65% Rendering and Exhibits	6	24				48	6	84					
	95% Rendering and Exhibits	4	12				24	4	44					
	subtotal	10	36	0	0	72	10	128		\$ 13,570				\$ 13,570
8	Construction Bidding Support													
	Preparation of Addendums and RFI responses	4	8				8	2	22					
	subtotal	4	8					2	22	\$ 2,590				\$ 2,590
		244	836	50	72	732	105	2039		\$ 248,295	\$ 24,495	\$ 5,210	\$ 77,275	\$ 355,275

Reimbursable Expenses	BENGAL	BLACK	PADRE	REESE	Item \$
Reproduction Services/Mailing	\$ 500	\$ 200		\$ 200	\$ 900
Travel Expenses	\$ -			\$ -	\$ -
Title Report	\$ -			\$ 6,400	\$ 6,400
Miscellaneous				\$ -	\$ -
Sub total	\$ 500	\$ 200	\$ -	\$ 6,600	\$ 7,300
					\$ 362,575

11. PROJECT SCHEDULE



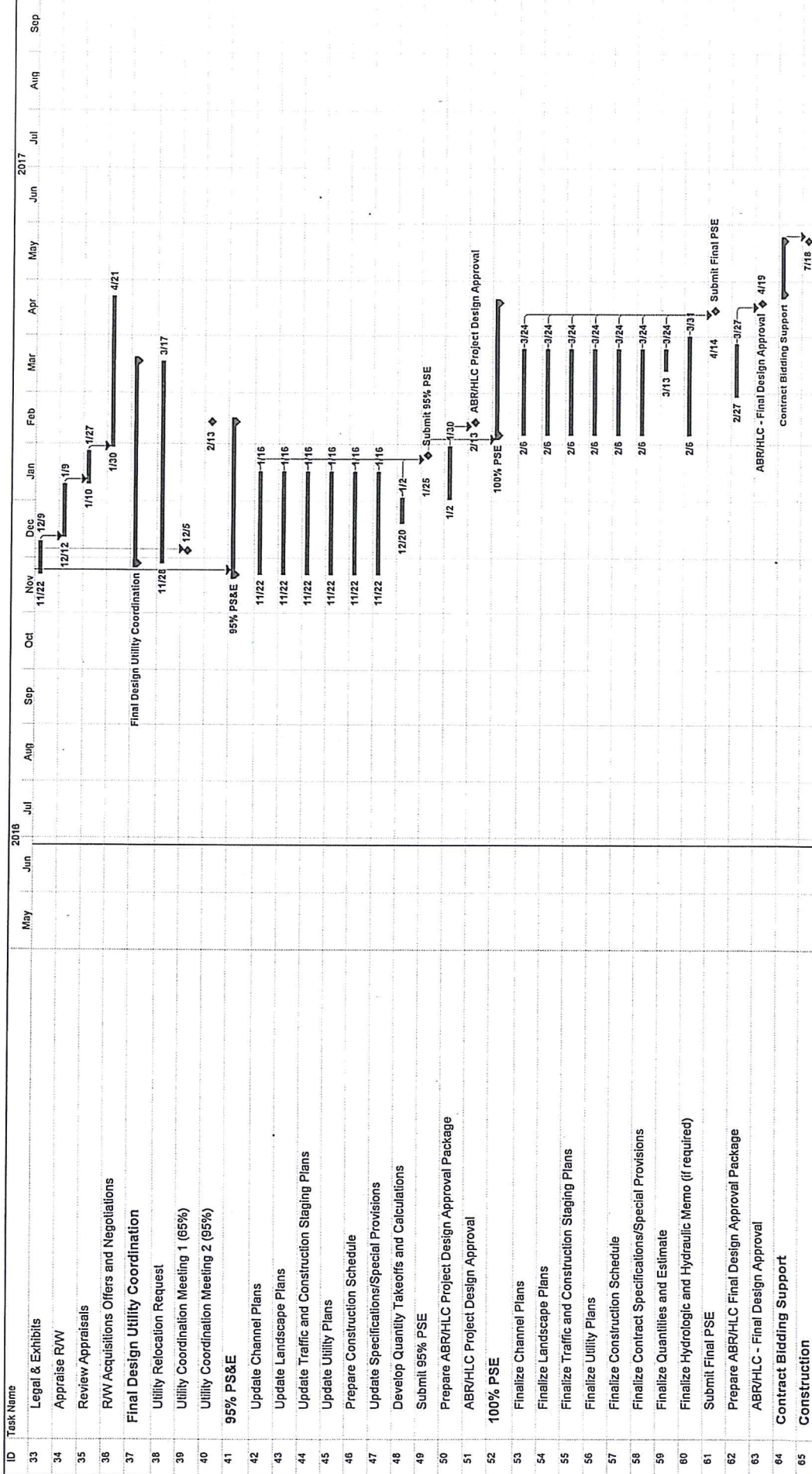


EXHIBIT B

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 \$362,575.
- 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 \$36,257.50.
- 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 Water Agency, 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

January, 2016

Bengal Engineering's Fee Schedule and Classification of Personnel

Classification	Rate/hr
Project Manager	\$ 150.00
Bridge Engineer	\$ 150.00
Civil Engineer	\$ 150.00
Geotechnical Engineer	\$ 150.00
Drafter/Technician	\$ 85.00
Clerical	\$ 55.00

Hourly rates will be increased 5% annually over the next two years.

Direct Costs

Travel	Cost + 15%
Vehicle	\$0.35/mile; No cost for local projects
Reproduction/ Postage/ Reimbursable	Cost + 15%

EXHIBIT C

Indemnification and Insurance Requirements (For Design 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, costs, expenses (including but not limited to attorneys' fees), judgments and/or liabilities that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONTRACTOR and its employees, subcontractors, or agents in the performance of services under this Agreement, but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful acts of the COUNTY.

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, its 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 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 contract 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.