



**TO:** Mayor and Councilmembers

**FROM:** Charles W. Ebeling, Public Works Director

**CONTACT:** Maureen K. Gaasch, Senior Management Analyst

**SUBJECT:** Amendment No. 3 to Agreement 2016-118 with Bengal Engineering, Inc. for Professional Design Services Agreement for the San Jose Creek Capacity Improvement Project

**RECOMMENDATION:**

Authorize the City Manager to execute Amendment No. 3 to Professional Design Services Agreement 2016-118 with Bengal Engineering, Inc. for Design Services for the San Jose Creek Capacity Improvement Project for an additional \$30,000 for a total not-to-exceed amount of \$134,000 and to extend the expiration date to December 31, 2023.

**BACKGROUND:**

The San Jose Creek Flood Control Project increased the capacity of San Jose Creek. The design included the complete removal and reconstruction of the existing concrete channel (Phase 1) and the Hollister Avenue Bridge (Phase 2). In 2015, this first phase of the project completed the replacement of the channel from downstream of Hollister Avenue to the drive-in theater property. There is currently a temporary transition element between the new channel and the existing channel upstream under Hollister Avenue.

On October 10, 2016, the City Manager, at the recommendation of staff, executed an agreement with Bengal Engineering, Inc. (Bengal) for Professional Design Service for a total amount not to exceed \$20,000. The services generally included providing assistance with the performance evaluation of the fish passage components recently constructed as part of the San Jose Creek Capacity Improvement and Fish Passage project. The scope of work included evaluating the fish passage component and assisting staff with the permitting process for the Hollister Avenue Bridge Replacement Project, and closing out reports for the Proposition 84 grant.

A winter storm event on February 17, 2017, caused significant structural damage to a number of the articulated revetment mats installed on the surface of the channel as part of the fish-passage low flow design elements. The damaged articulated revetment mats were located in the upper reach of the San Jose Creek Channel. In the same vicinity, the fish passage weirs incurred additional damage. As a result of the storm, both Federal and

State stated emergencies were officially declared, which made the City eligible for FEMA funding and the City proceeded with implementation to repairing the project.

Following the February 2017 storm, City staff, including Bengal Engineering, pursued FEMA funding to implement emergency repairs to the channel. This effort proved successful with FEMA's acceptance of a City application for funding and authorizing the City to proceed with implementation of a temporary creek channel repair. On March 7, 2017, Council approved Amendment No. 1 to the Bengal Contract for an additional compensation of \$29,000 for a total not-to-exceed of \$49,000 and extended the termination of the agreement to December 31, 2018. On November 7, 2017, Council approved Amendment No. 2 to the Bengal Engineering contract for an additional compensation amount of \$55,000 for a total not to exceed amount of \$104,000. Amendment No. 2 provided design services for a permanent repair to the existing channel and continued assistance with the performance evaluation of the fish passage components.

In August 2017, Bengal Engineering began an accelerated preparation of design and technical specifications for a bid project to address this work. The City advertised the bid package in late August and received the bids in mid-September. On September 19, 2017, Council approved the emergency repair project design and awarded a construction contract to Jeremy Harris Construction Inc. Then construction work commenced on October 5, 2017. Construction proceeded very rapidly and successfully concluded on October 20, 2017.

#### **DISCUSSION:**

In delivering the final design and technical specification and providing design support during construction of the San Jose Creek Channel Emergency Repair project, Bengal Engineering has exhausted their contract budget. City staff is recommending that Council approve Amendment No. 3 to the Bengal Engineering contract for an additional compensation amount of \$30,000 for a total not to exceed amount of \$134,000 and to extend the termination date to December 31, 2023. This additional budget will provide continued design services for a permanent repair to the existing channel, continued assistance with the Prop 84 Project Completion Report performance evaluation of the fish passage components and for hydraulic technical support in securing permits over San Jose Creek for the follow-on Hollister Avenue Bridge Project.

#### **FISCAL IMPACTS:**

There are sufficient funds in the project budget to cover the contract amendment for an additional \$30,000 to the contract not-to-exceed amount. Funding for the proposed amendment is available from the General Fund's Capital Improvement Program budget, professional services (101-5-5500-500).

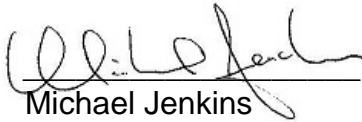
Fund	GL Account	Adopted Budget FY 18/19	YTD Actuals + Encumbrance FY 18/19	Available Budget FY 18/19
General Fund	101-5-5500-500	\$124,758	\$69,488	\$55,270
<b>Total</b>		\$124,758	\$69,488	\$55,270

**ALTERNATIVES:**

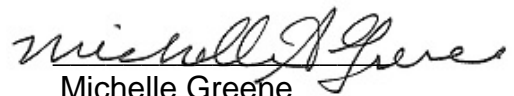
Council may elect not to proceed with Amendment No. 3 to the Bengal Engineering Contract, in which case the design team would not be available to provide a permanent repair of the existing San Jose Creek Channel or provide technical assistance in the evaluation of fish-passage performance along the completed channel.

**Reviewed By:**


Carmen Nichols  
Deputy City Manager

**Legal Review By:**


Michael Jenkins  
City Attorney

**Approved By:**


Michelle Greene  
City Manager

**ATTACHMENTS:**

1. Amendment #3 to Agreement 2016-118 with Bengal Engineering, Inc. for Professional Design Services Agreement for the San Jose Creek Capacity Improvement Project.
2. Agreement 2016-118 and Amendments 1 through 2 with Bengal Engineering, Inc. for Professional Design Services Agreement for the San Jose Creek Capacity Improvement Project (Available online only)



## **ATTACHMENT 1**

Amendment #3 to Agreement 2016-118 with Bengal Engineering, Inc. for Professional Design Services Agreement for the San Jose Creek Capacity Improvement Project.



**AMENDMENT NO. 3  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
BENGAL ENGINEERING, INC.**

This **Amendment No. 3** to a PROFESSIONAL DESIGN SERVICES AGREEMENT by and between the **City of Goleta**, a municipal corporation ("City") and **BENGAL ENGINEERING, INC.**, a California Corporation ("Consultant") dated October 10, 2016 ("Agreement," Agreement No. 2016-118) is made this 4<sup>th</sup> day of December, 2018.

**RECITALS**

**WHEREAS**, the Agreement was entered into for the purpose of providing engineering assistance with the performance evaluation of the fish passage components constructed and emergency repair in conjunction with the San Jose Creek Capacity Improvement and Fish Passage Project; and

**WHEREAS**, on October 10, 2016, the City and Consultant entered into the Agreement for the total compensation amount not to exceed \$20,000; and

**WHEREAS**, on March 7, 2017, the parties executed Amendment No.1 of the agreement to provide for an additional compensation of \$29,000, for a total compensation amount not to exceed \$49,000; and

**WHEREAS**, on November 7, 2017, the parties executed Amendment No. 2 of the agreement to amend the description of services and to provide for an additional compensation of \$55,000, for a total not to exceed \$104,000; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed one hundred four thousand dollars (\$104,000); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of thirty thousand dollars (\$30,000) for continued tasks on the San Jose Creek Capacity Improvement and Fish Passage Project; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the Agreement on December 31, 2018; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the Agreement to December 31, 2023; and

**WHEREAS**, the City Council approved this Amendment No. 3, on this 4<sup>th</sup> day of December, 2018.

## **AMENDED TERMS**

**Now therefore** City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

1. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$30,000 and to read in its entirety:

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$134,000 (herein "not to exceed amount") and shall be earned as the work progresses.

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "A," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until December 31, 2023, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

2. **Section 6. TERM, PROGRESS AND COMPLETION** of the Agreement is amended to extend the term for an additional year to read in its entirety.

The term of this Agreement is from the date first written above to December 31, 2023, unless the term of this Agreement is extended or the Agreement is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed within the term of this Agreement following the notice to proceed.

3. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.



**In concurrence and witness whereof**, this Amendment No. 3 has been executed by the parties effective on the date and year first above written.

**CITY OF GOLETA**

**CONSULTANT**

\_\_\_\_\_  
Michelle Greene, City Manager

\_\_\_\_\_  
Md. Wahiduzzaman  
Chief Executive Officer

**ATTEST:**

\_\_\_\_\_  
Deborah Lopez, City Clerk

\_\_\_\_\_  
Scott Onishuk  
Principal

**APPROVED AS TO FORM**



\_\_\_\_\_  
Winnie Cai, Assistant  
Deputy City Attorney



## **ATTACHMENT 2**

Agreement 2016-118 and Amendments 1 through 2 with Bengal Engineering, Inc. for Professional Design Services Agreement for the San Jose Creek Capacity Improvement Project.



Project Name: San Jose Creek Capacity Improvement and Fish Passage Project

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
BENGAL ENGINEERING, INC.**

This AGREEMENT FOR PROFESSIONAL DESIGN SERVICES is made and entered into this 10<sup>th</sup> day of October, 2016, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **BENGAL ENGINEERING, INC.**, (herein referred to as "CONSULTANT").

**WHEREAS**, CONSULTANT represents that they are sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the CITY; and

**WHEREAS**, CONSULTANT was selected from the City of Goleta's Pre-Authorized Qualified consultants List to provide Professional Services and prior experience with this project is recommended for award of this AGREEMENT by Director of Public Works; and

**WHEREAS**, the City Manager is authorized by Goleta Municipal Code Section 3.05.240 to execute this AGREEMENT because the value of the AGREEMENT is less than \$30,000.

CITY and CONSULTANT agree as follows:

**1. RETENTION AS CONSULTANT**

CITY hereby retains CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the services described in Section 2. CONSULTANT warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

**2. DESCRIPTION OF SERVICES**

The services to be performed by CONSULTANT are as follows:

Professional design services in conjunction with San Jose Creek Capacity Improvement and Fish Passage Project. Services shall generally include providing assistance with the performance evaluation of the fish passage components recently constructed as part of the San Jose Creek Capacity Improvement and Fish Passage Project, as more particularly set forth as follows:

- Meeting with the City officials and resource agencies as requested.

- Compile the available photos from recent storm events and evaluate fish weir performance.
- If requested by the resource agencies, update the computer modeling for the low-flow HEC-RAS hydraulic model.

### 3. COMPENSATION AND PAYMENT

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$20,000 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "A," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2017, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

(b) **Payment.** CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

### 4. EXTRA SERVICES

CITY shall pay CONSULTANT for those CITY authorized extra services, not reasonably included within the services described in Section 2, as mutually agreed to in advance. Unless CITY and CONSULTANT have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist. The applicable hourly rates for extra services shall be at the hourly rates set forth in the compensation exhibit. Any compensation for extra services shall be part of the total compensation and shall not increase the not to exceed amount identified in Section 3.

### 5. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY from time to time, and who presently is Rosemarie Gaglione. Project Manager shall have the authority to act on behalf of the CITY in

administering this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

## **6. TERM, PROGRESS AND COMPLETION**

The term of this AGREEMENT is from the date first written above to June 30, 2017, unless term of this AGREEMENT is extended or the AGREEMENT is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by paragraph 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed within 10 calendar days following the notice to proceed.

## **7. OWNERSHIP OF DOCUMENTS**

All drawings, designs, data, photographs, reports and other documentation (other than CONSULTANT's drafts, notes and internal memorandum), including duplication of same prepared by CONSULTANT in the performance of these services, are the property of CITY. CITY shall be entitled to immediate possession of the same upon completion of the work under this AGREEMENT, or at any earlier or later time when requested by CITY. CITY agrees to hold CONSULTANT harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans and specifications for purposes other than those described in this AGREEMENT, unless written authorization of CONSULTANT is first obtained.

## **8. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR**

This AGREEMENT is for professional services which are personal to CITY. Mr. Md Wahiduzzaman, MBA, PE. is deemed to be specially experienced and is a key member of CONSULTANT's firm, and shall be directly involved in performing, supervising or assisting in the performance of this work. This key person shall communicate with, and periodically report to, CITY on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, CITY may terminate this AGREEMENT. This AGREEMENT is not assignable by CONSULTANT without CITY's prior consent in writing.

## **9. HOLD HARMLESS AND INDEMNITY**

(a) **Hold Harmless for CONSULTANT's Damages.** CONSULTANT holds CITY, its elected officials, officers, agents, and employees, harmless from all of CONSULTANT's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to CONSULTANT, to CONSULTANT's employees, to CONSULTANT's contractors or subcontractors, or to the owners of CONSULTANT's firm, which damages, losses, injuries or liability occur during the work required under this AGREEMENT, or occur while CONSULTANT is on CITY property, or which are

connected, directly or indirectly, with CONSULTANT's performance of any activity or work required under this AGREEMENT.

**(b) Defense and Indemnity of Third Party Claims/Liability.** CONSULTANT shall indemnify, defend with counsel approved by CITY, and hold harmless CITY, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this AGREEMENT, except such loss or damage which is caused by the sole active negligence or willful misconduct of the CITY. Should conflict of interest principles preclude a single lawyer from representing both CITY and CONSULTANT, or should CITY otherwise find CONSULTANT's legal counsel unacceptable, then CONSULTANT shall reimburse the CITY its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The CONSULTANT shall promptly pay any final judgment rendered against the CITY (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the CONSULTANT's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this AGREEMENT.

**(c) No Waiver.** CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

## **10. INSURANCE**

CONSULTANT shall, at CONSULTANT's sole cost and expense, provide insurance as described herein. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating of A- or better, Class VII or better, or as otherwise approved by CITY.

Insurance shall include the following (or broader) coverage:

- a) Insurance Services Office Commercial Liability coverage "occurrence" form CG 00 01 or its exact equivalent with an edition date prior to 2004 and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- b) Insurance Services Office form number CA 0001 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$1,000,000 per accident. If the Service Provider owns no vehicles, this requirement may be satisfied by a non-owned and hired auto endorsement to Service Provider's commercial general liability policy.



- c) Workers' Compensation insurance complying with California worker's compensation laws, including statutory limits for workers' compensation and an Employer's Liability limit of \$1,000,000 per accident or disease.
- d) Professional Liability insurance on a policy form appropriate to CONSULTANTs profession. Limits shall be no less than \$1,000,000 per claim.

Liability insurance policies required to be provided by CONSULTANT hereunder shall contain or be endorsed to contain the following provisions:

- a) CITY, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the work performed or related to the contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10 with an edition date prior to 2004, or its exact equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37 with an edition date prior to 2004.
- b) CONSULTANT's insurance shall apply to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage will not be limited to CITY's vicarious liability.
- c) Liability coverage shall be primary and non-contributing with any insurance maintained by CITY.
- d) Evidence of coverage (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after 30 days' prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.
- e) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT's employees, or agents, from waiving the right of recovery prior to a loss. CONSULTANT waives its right of recovery against CITY.
- f) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract certificates of insurance and required endorsements.
- g) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by CONSULTANT hereunder. Any failure, actual or alleged, on the part of

CITY to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments.

- h) CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against CONSULTANT arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

## **11. RELATION OF THE PARTIES**

The relationship of the parties to this AGREEMENT shall be that of independent contractors and that in no event shall CONSULTANT be considered an officer, agent, servant or employee of CITY. CONSULTANT shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

## **12. CORRECTIONS**

In addition to the above indemnification obligations, CONSULTANT shall correct, at its expense, all errors in the work that may be disclosed during CITY's review of CONSULTANT's report or plans. Should CONSULTANT fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be charged to CONSULTANT or withheld from any funds due to CONSULTANT hereunder.

## **13. TERMINATION BY CITY**

CITY, by notifying CONSULTANT in writing, may upon 10 calendar days notice, terminate without cause any portion or all of the services agreed to be performed under this AGREEMENT. If termination is for cause, no notice period need be given. In the event of termination, CONSULTANT shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by CITY to CONSULTANT within 30 days following submission of a final statement by CONSULTANT unless termination is for cause. In such event, CONSULTANT shall be compensated only to the extent required by law.

#### **14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The acceptance by CONSULTANT of the final payment made under this AGREEMENT shall operate as and be a release of CITY from all claims and liabilities for compensation to CONSULTANT for anything done, furnished, or relating to CONSULTANT's work or services. Acceptance of payment shall be any negotiation of CITY's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by CITY shall not constitute, nor be deemed, a release of the responsibility and liability of CONSULTANT, its employees, subcontractors, agents and consultant for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by CITY for any defect or error in the work prepared by CONSULTANT, its employees, subcontractors, agents and subconsultants.

#### **15. AUDIT OF RECORDS**

At any time during normal business hours and as often as it may deem necessary, CONSULTANT shall make available to a representative of CITY for examination of all its records with respect to all matters covered by this AGREEMENT and will permit CITY to audit, examine and/or reproduce such records. CONSULTANT will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this AGREEMENT.

#### **16. WAIVER; REMEDIES CUMULATIVE**

Failure by a party to insist upon the strict performance of any of the provisions of this AGREEMENT by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this AGREEMENT, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

#### **17. CONFLICT OF INTEREST**

CONSULTANT is unaware of any CITY employee or official that has a financial interest in CONSULTANT'S business. During the term of this AGREEMENT and/or as a result of being awarded this AGREEMENT, CONSULTANT shall not offer, encourage

or accept any financial interest in CONSULTANT'S business by any CITY employee or official.

**18. CONSTRUCTION OF LANGUAGE OF AGREEMENT**

The provisions of this AGREEMENT shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

**19. MITIGATION OF DAMAGES**

In all situations arising out of this AGREEMENT, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**20. GOVERNING LAW**

This AGREEMENT, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Santa Barbara County.

**21. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

**22. NON-APPROPRIATION OF FUNDS**

Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY funds. In the event CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this AGREEMENT shall cover only those costs incurred up to the conclusion of the current fiscal year.

**23. MODIFICATION OF AGREEMENT**

The tasks described in this AGREEMENT and all other terms of this AGREEMENT may be modified only upon mutual written consent of CITY and CONSULTANT.

**24. USE OF THE TERM "CITY"**

Reference to "CITY" in this AGREEMENT includes City Manager or any authorized representative acting on behalf of CITY.

**25. PERMITS AND LICENSES**

CONSULTANT, at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates, including a CITY business license, that may be required in connection with the performance of services under this AGREEMENT.

**26. CAPTIONS**

The captions or headings in this AGREEMENT are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the AGREEMENT.

**27. AUTHORIZATION**

Each party has expressly authorized the execution of this AGREEMENT on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this AGREEMENT.

**28. ENTIRE AGREEMENT BETWEEN PARTIES**

Except for CONSULTANT'S proposals and submitted representations for obtaining this AGREEMENT, this AGREEMENT supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services.

**29. PARTIAL INVALIDITY**

If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**30. NOTICES**

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY:	Attention: Michelle Greene City of Goleta 130 Cremona Drive, Suite B Goleta, CA 93117
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TO CONSULTANT:

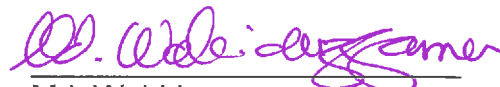
Md. Wahiduzzaman  
Bengal Engineering, Inc.  
250 Big Sur Drive  
Goleta, CA 93117

**In concurrence and witness whereof**, this AGREEMENT has been executed by the parties effective on the date and year first above written.

**CITY OF GOLETA**

  
Michelle Greene, City Manager

**CONSULTANT**

  
Md. Wahiduzzaman  
Chief Executive Officer

**ATTEST:**

  
Deborah Lopez, City Clerk

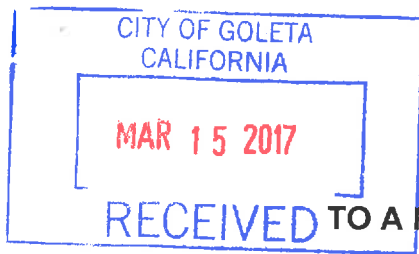
  
Scott Onishuk  
Principal

**APPROVED AS TO FORM**

  
Tim W. Giles, City Attorney

**EXHIBIT A  
FEE SCHEDULE**

Classification	Billing Rate/Hr	Experience Level
Project Manager	\$150.00	Senior Engineer w/ PE License
Bridge Engineer	\$150.00	Senior Engineer w/ PE License
Structural Engineer	\$150.00	Senior Engineer w/ PE License
Geotechnical Engineer	\$150.00	Senior Engineer w/ PE License
Civil Engineer	\$150.00	Senior Engineer w/ PE License
Hydraulics/Sanitary Engineer	\$150.00	Senior Engineer w/ PE License
Environmental	\$140.00	Senior Environmental Specialist
Drafter/Technician	\$85.00	Experience in CADD & Eng Drafting
Clerical	\$55.00	Office Assistant
Witness/Expert Witness	\$300.00	Senior Engineer w/ PE License



Agreement No. 2016-118.1  
City of Goleta, California

**AMENDMENT NO. 1  
TO A PROFESSIONAL DESIGN SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
BENGAL ENGINEERING, INC.**

**This Amendment No. 1** is made this 7<sup>th</sup> day of March, 2017, to a PROFESSIONAL DESIGN SERVICES AGREEMENT between the **CITY OF GOLETA** ("City") and **BENGAL ENGINEERING, INC.** ("Consultant") dated October 10, 2016, ("Agreement," No. 2016-118)

**RECITALS**

**WHEREAS**, the Agreement for Professional Design Services Agreement with Bengal Engineering, Inc. (Bengal Engineering) was entered into for providing assistance with the performance evaluation of the fish passage components recently constructed as part of the San Jose Creek Capacity Improvement and Fish Passage Project.

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed twenty thousand (\$20,000) dollars; and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of twenty-nine thousand (\$29,000) dollars for emergency repair of the San Jose Creek Flood Control & Fish Passage Channel; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the Agreement on June 30, 2017; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the Agreement to December 31, 2018; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 2 the complete and particular description of services as set forth for Consultant; and

**WHEREAS**, the parties desire to amend Section 2 of the Agreement by adding additional services to include Project Management/Meetings and Engineering services for emergency repair of the San Jose Creek Flood Control & Fish Passage Channel as more completely and particularly set forth in the Scope of Work, attached as Exhibit "A-1"; and

**WHEREAS**, the City Council on this 7<sup>th</sup> day of March, 2017, approved this contract Amendment No. 1.



## AMENDED TERMS

**Now therefore** City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

1. **Section 2. DESCRIPTION OF SERVICES**

The services to be performed by CONSULTANT are as follows:

Professional design services in conjunction with San Jose Creek Capacity Improvement and Fish Passage Project. Services shall generally include providing assistance with the performance evaluation of the fish passage components recently constructed as part of the San Jose Creek Capacity Improvement and Fish Passage Project, as more particularly set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein. CONSULTANT shall deliver to CITY the deliverables defined in Exhibit "A."

2. This Agreement is amended to delete and replace in its entirety:

**Exhibit A-1 "Scope of Work"** attached hereto and incorporated herein.

3. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$29,000 and to read in its entirety:

**(a) Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$49,000 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis: Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B-1," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until December 31, 2018, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

4. **Section 6. TERM, PROGRESS AND COMPLETION** of the Agreement is amended to extend the term for an additional 18 months to read in its entirety.

The term of this Agreement is from the date first written above to December 31, 2018, unless term of this Agreement is extended or the Agreement is terminated as provided for herein.


CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by paragraph 10 below,

and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed within the term of this Agreement following the notice to proceed.


5. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

**In concurrence and witness whereof**, this Amendment No. 1 has been executed by the parties effective on the date and year first above written.


**CITY OF GOLETA**


  
Michelle Greene, City Manager

**CONSULTANT**


  
Md Wahiduzzaman,  
Chief Executive Officer

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Scott Onishuk  
Principal

**APPROVED AS TO FORM**

  
Winnie Cai, Acting City Attorney

## **EXHIBIT A-1 SCOPE OF WORK**

### **TASK 1. Assistance with Performance Evaluation**

Consultant shall:

- Meeting with the City officials and resource agencies as requested.
- Compile the available photos from recent storm events and evaluate fish weir performance.
- If requested by the resource agencies, update the computer modeling for the low-flow HEC-RAS hydraulic model.

### **TASK 2. Project Management / Meetings**

Consultant shall meet with the City by phone and in person to manage and coordinate with others.

### **TASK 3. Engineering**

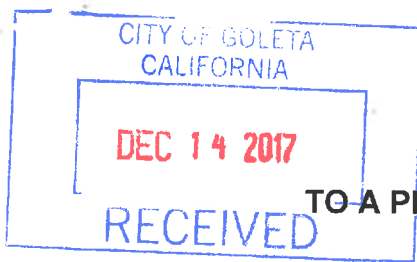
Consultant shall lead the engineering for the emergency repairs.

The work shall include:

- The Consultant shall assist the City with FEMA Damage Assessment.
- The Consultant shall provide emergency repair plans. Consultant shall provide measures to stabilize ASR and weirs. The Consultant shall develop measures to reduce the approaching water velocities from the upstream concrete-lined channel.
- The Consultant shall provide construction support as needed. Due to the unknown damage (underwater), the Consultant shall provide field engineering services (working with the construction contractor) during the emergency restoration effort.

**EXHIBIT B-1  
SCHEDULE OF FEES**

Classification	Billing Rate/Hr	Experience Level
Project Manager	\$150.00	Senior Engineer w/ PE License
Bridge Engineer	\$150.00	Senior Engineer w/ PE License
Structural Engineer	\$150.00	Senior Engineer w/ PE License
Geotechnical Engineer	\$150.00	Senior Engineer w/ PE License
Civil Engineer	\$150.00	Senior Engineer w/ PE License
Hydraulics/Sanitary Engineer	\$150.00	Senior Engineer w/ PE License
Environmental	\$140.00	Senior Environmental Specialist
Drafter/Technician	\$85.00	Experience in CADD & Eng Drafting
Clerical	\$55.00	Office Assistant
Witness/Expert Witness	\$300.00	Senior Engineer w/ PE License



Agreement No. 2016-118.2  
City of Goleta, California

**AMENDMENT NO. 2  
TO A PROFESSIONAL DESIGN SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
BENGAL ENGINEERING, INC.**

**This Amendment No. 2** to a PROFESSIONAL DESIGN SERVICES AGREEMENT is made this 7<sup>th</sup> day of November, 2017, between the **City of Goleta**, a municipal corporation ("City") and **BENGAL ENGINEERING, INC.**, ("Consultant") dated October 10, 2016 ("Agreement, Agreement No. 2016-118).

**RECITALS**

**WHEREAS**, the Agreement was entered into for the purpose of providing engineering assistance with the performance evaluation of the fish passage components recently constructed and emergency repair in conjunction with the San Jose Creek Capacity Improvement and Fish Passage Project; and

**WHEREAS**, on October 10, 2016, the City and Consultant entered into the Agreement for the total compensation amount not to exceed \$20,000; and

**WHEREAS**, on March 7, 2017, the parties executed Amendment No.1 of the agreement to provide for an additional compensation of \$29,000, for a total compensation amount not to exceed \$49,000; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 2: entitled "Description of Service" the complete and particular description of services as set forth for Consultant; and

**WHEREAS**, the parties desire to amend Section 2 of the Agreement by adding additional services, to provide design services for a permanent repair to the existing channel and continued assistance with the performance evaluation of the fish passage components and as hydraulic technical support in securing permits for the follow-on Hollister Avenue Bridge Project (over San Jose Creek Channel); and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed forty-nine thousand (\$49,000); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of fifty-five thousand dollars (\$55,000); and

**WHEREAS**, the City Council approved this Amendment No. 2, pursuant to the Goleta Municipal Code Section 3.05.240 on this 7<sup>th</sup> day of November, 2017.

## AMENDED TERMS

**Now therefore** City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

1. **Section 2. DESCRIPTION OF SERVICES** of the Agreement is amended to the following:

- Services shall generally include providing assistance with the performance evaluation of the fish passage components recently constructed as part of the San Jose Creek Capacity Improvement and Fish Passage Project
- Meeting with the City officials and resource agencies as requested.
- Compile the available photos from recent storm events and evaluate fish weir performance.
- If requested by the resource agencies, update the computer modeling for the low-flow HEC-RAS hydraulic model.
- Consultant shall provide design services for a permanent repair to the existing channel and continued assistance with the performance evaluation of the fish passage components and as hydraulic technical support in securing permits for the follow-on Hollister Avenue Bridge Project (over San Jose Creek Channel).
- Assist the City with FEMA Damage Assessment.
- Construction support as needed.


2. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$55,000 and to read in its entirety:

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$104,000 (herein "not to exceed amount"), and shall be earned as the work progresses.


3. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

**In concurrence and witness whereof**, this Amendment No. 2 has been executed by the parties effective on the date and year first above written.


**CITY OF GOLETA**


  
Michelle Greene, City Manager

**CONSULTANT**

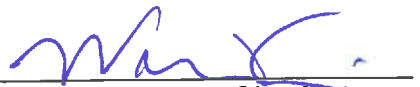
  
Md Wahiduzzaman, CEO

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Scott Onishuk, Principal

**APPROVED AS TO FORM**

  
Winnie Cai, Deputy City Attorney