

**AGREEMENT FOR SERVICES OF AN INDEPENDENT CONTRACTOR
FINAL DESIGN SERVICES AS IT RELATES TO
OLIVE MILL ROAD AND SAN YSIDRO ROAD ROUNDABOUTS**

THIS AGREEMENT (hereafter, "Agreement") is made by and between the SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS (hereafter, "SBCAG") and MARK THOMAS COMPANY having its principal place of business at 2121 Alton Parkway, Suite 210, Irvine, CA 92606 (hereafter, "CONTRACTOR"), individually referred to as Party, or collectively as Parties, wherein CONTRACTOR agrees to provide and SBCAG 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 SBCAG and SBCAG 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 REPRESENTATIVES.** Fred Luna, Director of Project Development and Construction, at 805-961-8926 (office) or 805-456-9362 (mobile) is the representative of SBCAG and will administer this Agreement for and on behalf of SBCAG. Zach Siviglia at phone number 916-390-5131 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 first class mail, postage prepaid, or otherwise delivered as follows:

To SBCAG: Santa Barbara County Association of Governments
 260 North San Antonio
 Road, Suite B Santa
 Barbara, CA 93110
 Attention: Marjie Kirn, Executive Director

To CONTRACTOR: Mark Thomas and Company
 2121 Alton Parkway, Suite 210
 Irvine, CA 92606

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notice section. Notices and consents under this section, which are sent by mail, 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 SBCAG in accordance with Exhibit A, attached hereto and incorporated herein by reference.

4. **TERM.** CONTRACTOR shall commence performance on May 20, 2021 and end performance upon completion, but no later than December 31, 2023 unless otherwise directed by SBCAG 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 SBCAG and which is delivered to the address given in Section 2, **NOTICES,** above, following completion of the increments identified in Exhibit B. Unless otherwise specified in 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 SBCAG and not as an officer, agent, servant, employee, joint venturer, partner, or associate of SBCAG. Furthermore, SBCAG shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, SBCAG 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 SBCAG 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 SBCAG 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 SBCAG 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 SBCAG pursuant to this Agreement shall be prepared in a professional 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 SBCAG'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 SBCAG that it and its

employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state or local 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. SBCAG shall not be responsible for paying any taxes on CONTRACTOR's behalf and, should SBCAG be required to do so by State, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse SBCAG 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. CONTRACTOR shall provide its social security number or tax identification number to SBCAG, which SBCAG shall keep on file at its offices.

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

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

Unless otherwise specified in Exhibit A, CONTRACTOR hereby assigns to SBCAG 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 herein as "Copyrightable Works and Inventions").

SBCAG 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 reports, data, documents or other materials prepared under this Agreement. 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 SBCAG against any claim that any Copyrightable Works or Inventions or other items provided by CONTRACTOR hereunder infringe upon any intellectual property 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 SBCAG in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of the Agreement.

12. **NO PUBLICITY OR ENDORSEMENT.** CONTRACTOR shall not use SBCAG's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials, unless otherwise required. CONTRACTOR shall not use SBCAG's name or logo in any manner that would give the appearance that the SBCAG is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of SBCAG's. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the SBCAG or its projects without obtaining the prior written approval of SBCAG.

13. **SBCAG PROPERTY AND INFORMATION.** All of SBCAG's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain SBCAG's property, and CONTRACTOR shall return any such items whenever requested by SBCAG 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 SBCAG property, documents, or information without SBCAG 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 practices. SBCAG 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 State Auditor General 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 review, whether by SBCAG or the State, at no charge to SBCAG.

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

15. **INDEMNIFICATION AND INSURANCE.** CONTRACTOR agrees to defend, indemnify and hold harmless the SBCAG and to procure and maintain insurance in accordance with the provisions of Exhibit C, attached hereto and incorporated herein by reference.

16. **NONDISCRIMINATION.** CONTRACTOR shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with the provisions contained in Title 49, Code of Federal Regulations (CFR), Part 21 through Appendix C and 23 CFR 710.405(b). During the performance of this Agreement, the CONTRACTOR, for itself, its assignees and successors in interest agrees as follows:

- A. **Compliance with Regulations.** CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- B. **Nondiscrimination.** The CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT- assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate. CONTRACTOR, with regard to the work performed by it during the agreement, shall not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection or retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the regulations.
- C. **Solicitations for Subcontractors, including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under the subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligations under this agreement, and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age or national origin.
- D. **Information and Reports.** CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by SBCAG to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to SBCAG, and shall set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance.** In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this Agreement, SBCAG shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

1. Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies, and/or
2. Cancellation, termination or suspension of the Agreement in whole or in part.

17. **NON-EXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive agreement and that SBCAG 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 SBCAG 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 SBCAG and any attempt to so assign or so subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

19. **TERMINATION.**

- A. **By SBCAG.** SBCAG may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part, whether for SBCAG's convenience, for non-appropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.
 1. **For Convenience.** SBCAG 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 SBCAG, 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 SBCAG 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 local governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then SBCAG will notify CONTRACTOR of such occurrence and SBCAG 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, SBCAG 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, SBCAG may, at SBCAG'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 SBCAG 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.** Except where SBCAG withholds payment pursuant to other terms of this Agreement, should SBCAG 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 SBCAG within thirty (30) days of written notice to SBCAG of such late payment.
- C. **Upon termination,** CONTRACTOR shall deliver to SBCAG 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 SBCAG may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, SBCAG 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 SBCAG such financial information as in the judgment of SBCAG 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 SBCAG shall be final. The foregoing is cumulative and shall not affect any right or remedy which SBCAG 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 SBCAG 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 SBCAG 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 SBCAG shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of SBCAG.

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 SBCAG, State and Federal ordinances and statutes, including regulations 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 SBCAG is a party thereto or not, that CONTRACTOR has violated any such ordinance statute, or regulation, shall be conclusive of that fact as between CONTRACTOR and SBCAG.

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 numbered sections shall prevail over those in the Exhibits.

33. **SUSPENSION FOR CONVENIENCE.** SBCAG may, without cause, order CONTRACTOR in writing to suspend, delay, or interrupt the services under this Agreement in whole or in part for up to 180 days. SBCAG shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this Agreement.

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

CONTRACTOR

**SANTA BARBARA COUNTY
ASSOCIATION OF GOVERNMENTS**

By: _____
Zach Siviglia
Vice President
Date _____

By: _____
Holly Sierra
Chair, Board of Directors
Date: _____

Attest:

By: _____
Marjie Kirn
Executive Director, Clerk of the Board

Approved as To Form:

Michael C. Ghizzoni
County Counsel

By: _____

Deputy County Counsel

EXHIBIT A
SCOPE OF SERVICES

Mark Thomas (Contractor) agrees to perform the scope of services outlined below upon execution of the agreement. This scope of services includes all efforts required by Contractor to complete the Plans, Specifications and Estimate (PS&E) and Right of Way (RW) phases for the Olive Mill Road and San Ysidro Road Roundabouts (“projects” and “project area”). Contractor’s activities include:

Task 1	Project Management & Quality Control
	<p>Task 1.1 – Project Meetings/Agency Coordination: Contractor will arrange a kick-off meeting with the Project Development Team (PDT). This task also includes coordination meetings with the Construction Manager/General Contractor (CMGC) contractor during the design development. Contractor will lead the kick-off meetings; prepare agendas, meeting notes and action items for 24 Bi-Weekly PDT meetings and lead all external team and agency coordination with SBCAG as needed for the development of the design. Contractor will coordinate with Traffic Analysis firm retained by SBCAG in the development of PS&E, as necessary. An additional 10 focus meetings with SBCAG, CMGC, Caltrans or other stakeholders are included in order to develop the design in conjunction with 101 Project North and to resolve project specific items. This task also includes preparing monthly progress reports, schedule updates and monthly invoicing. CMGC coordination related to the Opinion of Probable Construction Cost (OPCC) process and constructability review are included as part of Task 5. Caltrans and City/County coordination are included as part of Task 6 and 7, respectively.</p>
	<p>Task 1.2 – Internal Team Coordination: Contractor will manage all internal team coordination and will hold weekly team meetings during the development of PS&E plans. This coordination includes phone calls, virtual meetings and e-mails. Contractor will also maintain all project files to be consistent with Highway 101 Project 4D North (“4D North”).</p>
	<p>Task 1.3 – Quality Assurance and Control: Contractor will assign a Quality Control (QC) Manager to the project who will be responsible for providing quality control throughout the project including assigning reviews to appropriate technical reviewers prior the submittal of each milestone submittal. The QC Manager will develop and maintain a Quality Assurance Plan (QAP) that will be utilized during the project and ensure that the QAP processes are adhered to by Contractor and its subconsultants.</p>
	<p>Task 1 Deliverables:</p> <ul style="list-style-type: none"> - Kickoff Team Meeting, Agenda, and Notes - Monthly Team Meeting Exhibits, Agendas, Notes and Action

	<p>Items</p> <ul style="list-style-type: none"> - Monthly Progress Reports and Invoices - Monthly CPM Schedule Updates - QA/QC Plan
Task 2	Data Collection, Analysis, and Topographic and Other Field Surveys
	Task 2.1 – Refine/Confirm Base Mapping of the Project Area
	Task 2.2 – Engineering and Photogrammetric Survey: Contractor assumes refinement and confirmation of base mapping (including all utility base mapping) and the acquisition of additional photogrammetric and/or supplemental field survey is not required. All planimetrics being utilized for the 4D North are sufficient for the development of the PS&E for this project.
Task 3	Right of Way Engineering, Appraisals, Acquisitions and Utility Coordination
	Task 3.1 – Right of Way Needs Determination: Contractor will determine Right of Way (R/W) needs for the roundabout projects following the geometric refinements and refined into the development of the 65% PS&E. A R/W requirements map will be prepared and submitted to Caltrans, as necessary.
	Task 3.2 – Appraisals/Appraisal Meeting: Contractor assumes appraisals and appraisal mapping are not required as there are no permanent or temporary construction easements required as part of this project.
	Task 3.3 – Acquisitions: Contractor assumes acquisitions and negotiation services are not required as there are no permanent or temporary construction easements required as part of this project.
	Task 3.4 – Utility Coordination: The Contractor Team will utilize existing mapping and data from 4D North in the preparation of "B" and "C" letters along with Notice to Owners, Reports of Investigation and Utility Agreements to satisfy Caltrans requirements. Once completed, Utility Certification packages will be sent to SBCAG and Caltrans for approval and included in the Right of Way Certification package. Additional potholing is not anticipated as it will be completed and utilized from the 4D North available information.
	Task 3.5 – Regulatory Permits: Contractor does not anticipate any regulatory permits will be required, however, will coordinate and assist the County with regulatory permits as required. This task will not be used and billed unless required.
	Task 3.6 – Right of Way Certification: The Contractor Team will prepare R/W certification documentation including utility certification as noted in Task 3.4 in accordance with Chapter 13, Section 13.10 of the Caltrans Local Assistance Procedures Manual (LAPM), to ensure appropriate right of way certifications are met before the project proceeds to construction.

	<p>Task 3 Deliverables:</p> <ul style="list-style-type: none"> - Right of Way Requirements Map - Utility “B” and “C” letters - Utility Verification Maps - Utility Conflict Maps - Notice to Owners - Reports of Investigation - Utility Agreements - Utility Certification - Draft and Final R/W of Certification
<p>Task 4</p>	<p>PS&E Development</p> <p>Task 4.1 – Engineering Reports: Contractor will prepare the necessary technical studies required for the approval of the project through Caltrans including Drainage, Storm Water Data Report (SWDR), Traffic Management Plan (TMP) and Design Standard Decision Documents (DSDD’s). Technical studies to be submitted with PS&E milestones as required. Contractor will prepare a preliminary drainage layout as a basis for the Drainage Report. The SWDR will incorporate the analysis as completed as part of the Drainage Report and meet Caltrans requirements for stormwater. The Geotechnical, Foundation and Materials/Pavement Reports are assumed to be prepared by Caltrans to be consistent with the development of those reports with the 101 Project North. Contractor will coordinate with Caltrans on the preparation of the Geotechnical Design Report (GDR), Foundation Report (for standard retaining walls) and Materials/Pavement Report, this coordination effort including review of reports to determine they address the range of design features is included under Task 6. Design Decision Document and the DIB 78-03 checklist will be combined with the 4D North Design Decision Documents as agreed to by Caltrans. These Design Documents will document all current design exceptions along the remaining 4D North Corridor and use latest version (upon execution of this work) of the Caltrans Highway Design Manual.</p> <p>Task 4.2 – Design Refinement: Contractor will develop geometric design refinements for Caltrans approval, prior to the development final design (PS&E). Upon approval of geometric refinements by Caltrans and the PDT, the Contractor team will begin development of 65% PS&E.</p> <p>Task 4.3 – 65% PS&E: The Contractor Team will prepare the 65% roadway plans based on the approved and refined GAD prepared by Contractor. The plans will be designed using Autodesk Civil 3D and drafted using AutoCAD. Drafting style will conform to Caltrans standards. Contractor will prepare Special Provisions for inclusion within the contract documents. The special provisions (SSPs) will follow Caltrans 2018 Standard Special Provisions and Standard Plans. Contractor will review and update references as appropriate for use of the Caltrans Special Provisions.</p>

Contractor will develop detailed quantities to be utilized for the CMGC Quantity Reconciliation process and utilizing Bluebeam for backup of quantity in comparison with CMGC and ICE quantities. Contractor will prepare an itemized engineer's estimate for the 65%. The format will follow to the Caltrans BEES format, including supplemental funding items. The unit costs will be determined by reviewing similar recent project bid summaries, the most current Caltrans Contract cost data, the California Highway Construction Cost Index information, the Caltrans Estimating Support Center (ESC) site and CMGC cost data from 4D North. Caltrans will enter the estimate into BEES.

Task 4.4 – 95% PS&E: The Contractor Team will address all Caltrans, City/County and CMGC comments and assumes all comments will be compiled and addressed at the same time and during the development of 95% PS&E. The Contractor will organize all comments and respond to comments, a response to comment matrix will be submitted with 95% PS&E package. The scope includes the same items in Task 4.3.

Task 4.5 – 100% PS&E: The Contractor Team will address all Caltrans, City/County and CMGC comments and assumes all comments will be compiled and addressed at the same time and during the development of 100% PS&E. The Contractor will organize all comments and respond to comments, a response to comment matrix will be submitted with 100% PS&E package. The scope includes the same items in Task 4.3.

Task 4.6 – Final PS&E: The Contractor Team will address all Caltrans, City/County and CMGC comments and assumes all comments will be compiled and addressed at the same time and during the development of Final PS&E. The Contractor will organize all comments and respond to comments, a response to comment matrix will be submitted with Final PS&E package. The scope includes the same items in Task 4.3.

Task 4.7 – Modeling/General Cross Sections: The Contractor team will prepare modeling required for the development of general cross sections for both roundabouts at 50-foot intervals to determine embankment and right of way impacts and to aid in the development of the OPCC. It is assumed additional modeling for Stage Construction and the development of General Cross Sections by Stage are not required as done for 4D North. The Contractor team will prepare slope stake notes for the project.

Task 4.8 – Prepare Ready to List Package: Contractor will prepare the necessary final documents for Ready to List milestones including the preparation of electronic file in Microstation as required by Caltrans.

Task 4 Deliverables:

- Draft and Final Drainage Report
- Draft and Final Storm Water Data Report
- Draft and Final Traffic Management Plan
- Draft and Final Design Decision Documents (DSDD)
- GAD Refinement Exhibit
- 65% Plans, SSPs (outline), Quantities, Estimate

	<ul style="list-style-type: none"> - 95% Plans, SSPs, Quantities, Estimate - 100% Plans, SSPs, Quantities, Estimate - Final Plans, SSPs, Quantities, Estimate - Response to Comments at 65%, 95%, 100%, and Final - General Cross Sections at every 50' (65%, 95%, 100% submittals) - Slope Stake Notes
Task 5	<p>CMGC Coordination</p> <p>Task 5.1 – CMGC Coordination/Constructability Review: The Contractor Team will perform and participate in a constructability at the 65% submittal and 95% submittal. Following each constructability review meeting, Contractor will incorporate comments made in the subsequent submittal. This task also includes on-going coordination, focus/task team meetings with the CMGC contractor and resolution for CMGC design innovations.</p> <p>Task 5.2 – OPCC Participation: Following each submittal, Contractor will coordinate with the Independent Cost Estimator (ICE) and the CMGC to reconcile quantity calculations at each submittal milestone and participate in each cost estimate reconciliation. Contractor will address comments provided by the CMGC/ICE in order to help reduce cost in the development of the OPCC and final project.</p> <p>Task 5 Deliverables:</p> <ul style="list-style-type: none"> - CMGC Constructability Review Meeting - Focus/Task Meetings - Quantity Reconciliation Meetings (3 Total) - Cost Estimate Reconciliation Meetings (3 Total) - Response to Constructability Review Comments
Task 6	<p>Caltrans Oversight Coordination</p> <p>Task 6.1 – 4D North Coordination: Contractor does not anticipate any additional effort to coordinate the work with the 4D North work</p> <p>Task 6.2 – Caltrans Coordination: Contractor will coordinate with Caltrans Office Engineer for the approval of PS&E plans including organization and participation in focus meetings with the various functional units to resolve design challenges and includes email, phone, virtual meetings as necessary to aid in the development of the project.</p> <p>Task 6.3 – Prepare Project Report/DEER: Contractor will prepare a Supplemental Project Report or Design Engineering Evaluation Report (DEER), as appropriate to include the roundabouts and will work with Caltrans for approval of the report. The DEER checklist as part of the Caltrans Project Development Procedures Manual (PDPM) will be utilized to determine if a DEER can be used in lieu of a Supplemental Project Report. If a DEER does not meet requirements identified in the PDPM, Contractor will prepare a Supplemental Project Report in order to obtain project approval through Caltrans.</p> <p>Task 6.4 – Freeway Maintenance Agreement: If required, Contractor will participate in discussions related in the preparation and development of any revised Freeway Maintenance Agreement that may be executed between Caltrans and the local agency. Contractor will</p>

	<p>ensure conformance of access control with the Highway Design Manual as part of the Freeway Maintenance Agreement and assist Caltrans staff in the seeking approval of the Freeway Maintenance Agreement by the District Director.</p> <p>Task 6.5 – Environmental Revalidation Coordination: Contractor will assist Caltrans in the preparation of the Environmental Revalidation efforts which include a revalidation of the 101 Project EIR to include the Olive Mill and San Ysidro roundabouts. Contractor will support Caltrans as necessary to provide exhibits, documentation and/or review of the design elements to ensure consistency of the revalidation document with the design.</p> <p>Task 6.6 – Encroachment Permit Coordination: Contractor will prepare the encroachment permit for surveying and design team field reviews that are within Caltrans right of way. Contractor will also prepare permit applications for construction encroachments on City or County public rights of way as required.</p> <p>Task 6.7 – Caltrans Constructability Review: Contractor will perform and participate in a Caltrans constructability review which is typically completed after the 65% submittal. Following each constructability review meeting, Contractor will incorporate comments made in the subsequent submittal.</p> <p>Task 6.8 – Caltrans Safety Review: As a component of the Constructability Review meeting, Contractor will perform a Safety Review of the project with Caltrans Staff. This includes preparing meeting notes and resolution of comments. Contractor will also develop a Safety Plan and submit to SBCAG within one month of Notice to Proceed.</p> <p>Deliverables:</p> <ul style="list-style-type: none"> - Caltrans Meetings including Constructability Review and Safety Review Meetings - Response to comments for Caltrans Constructability Review and Safety Review - Supplemental Project Report or DEER (as appropriate) Safety Plan
Task 7	<p style="text-align: center;">CITY/COUNTY COORDINATION</p> <p>Task 7.1 – Supplemental Permitting Support: Contractor will provide design support for permitting and environmental processes as required by the City/County to ensure the construction of the roundabouts with the 4D North. Contractor will actively participate in meetings with SBCAG and Caltrans to monitor progress on deliverables to meet schedule requirements</p> <p>Task 7.2 – Coastal Permits Support: Contractor will coordinate with the PDT and provide technical data and exhibits required to assist the County with support for the Coastal Development Permit (CDP) with the City and County of Santa Barbara. A separate CDP process is not anticipated for this project and the recommendations from the efforts of the 101 Project North team will be</p>

	<p>incorporated as part of this project as part of Task 7.3. It is assumed the Contractor will not be responsible for any public outreach efforts as part of this task.</p>
	<p>Task 7.3 – Implement Design Review Team (DRT) Aesthetics: Contractor will implement DRT aesthetics from the 4D North team and will be implemented into the PS&E design package for the roundabouts.</p>
	<p>Deliverables:</p> <ul style="list-style-type: none"> - City/County Meeting Support - Implementation of DRT Aesthetics will be incorporated as part of Task 4.

Assumptions:

- Overall Scope: The project will be constructed by the Construction Manager/General Contractor (CMGC) with Caltrans providing construction phase administration, engineering, management, inspection, materials, testing and staking.
- Task 2 – Contractor to utilize 101 Project North base mapping/field survey data. No additional survey is required.
- Task 3 – Contractor will be responsible for complying with Caltrans oversight requirements for right of way and utility certification. Additional potholing is not required. Contractor to utilize Potholing
- Task 4 – The following engineering reports will be provided by Caltrans as done on 101 Project North: Geotechnical Design Report, Materials Report, Foundation Reports. Soundwalls are not anticipated to be required.
- Task 7 – Public Outreach to be completed by County/SBCAG.

EXHIBIT B
PAYMENT ARRANGEMENTS

- A. For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, up to but not to exceed **\$1,960,000**.
- B. 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 SBCAG.
- C. 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 to provide supporting documentation to connect requirements specified in Exhibit A.
- D. Monthly, CONTRACTOR, shall submit to the SBCAG Designated Representative an invoice or certified claim for the service performed over the period specified. SBCAG's 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. SBCAG shall pay invoices or claims for satisfactory work within 30 days of presentation.
- E. SBCAG's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of SBCAG's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

Attachment B1 – DETAIL BUDGET

Agreement	Authorization Date	Amount Allocated		Exhibit B, Section A Agreement Amount Running Total Not to Exceed
		Segment 4D	Segment 4E	
Master Agreement	5/20/2021	\$980,000	\$980,000	\$1,960,000

OLIVE MILL ROUNDABOUT – PROJECT CODE 3703

Original Agt/Task Orders (TO)	Date	Agreement Amount Balance (A)	Amendment (B)	Amount Authorized (C)	Unused Agreement Amount (D) = (A)+(B)-(C)	TO Amount Remaining Unused (E)	Agreement Running Total Not to Exceed (F) = (D) + (E)
Orig Agt	5/20/2021	\$980,000	\$0	\$932,885	\$47,115	\$0	\$303,123

SAN YSIDRO ROUNDABOUT – PROJECT CODE 3704

Task Orders (TO)	Date	Agreement Amount Balance (A)	Amendment (B)	Amount Authorized (C)	Unused Agreement Amount (D) = (A)+(B)-(C)	TO Amount Remaining Unused (E)	Agreement Running Total Not to Exceed (F) = (D) + (E)
Orig Agt	5/20/2021	\$980,000	\$0	\$932,885	\$0	\$0	\$303,124

EXHIBIT C
INDEMNIFICATION AND INSURANCE PROVISIONS

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

For claims related to design professional services, CONTRACTOR agrees to fully indemnify and hold harmless SBCAG and its officers, officials, employees, and volunteers from and against any and all claims, actions, losses, suits damages, costs, expenses, judgments and/or liabilities to the extent that they 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 in accordance with California Civil Code 2782.8, but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful acts of the SBCAG. This indemnity includes the cost to defend SBCAG to the extent of the CONTRACTOR's proportionate percentage of fault. Should one (or more) defendants be unable to pay its share of the defense costs due to bankruptcy or dissolution of the business, CONTRACTOR shall meet and confer with other parties regarding unpaid defense costs..

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify SBCAG 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

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 \$5,000,000 per occurrence and \$5,000,000 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, SBCAG 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 SBCAG.

B. Other Insurance Provisions

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

1. **Additional Insured** - SBCAG, 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 SBCAG, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by SBCAG, 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 SBCAG.
4. **Waiver of Subrogation Rights** - CONTRACTOR hereby grants to SBCAG a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the SBCAG 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 SBCAG 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 SBCAG. SBCAG 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, insurance shall be written by insurers authorized to do business in the State of California and with a minimum AM. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** - CONTRACTOR shall furnish SBCAG 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 SBCAG 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. SBCAG 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, SBCAG 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 SBCAG 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 SBCAG 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** - SBCAG 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 SBCAG 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 SBCAG.