

**SPECIAL MEETING
OF THE
CACHUMA OPERATION AND MAINTENANCE BOARD**
at Cachuma Operation and Maintenance Board Office
**3301 Laurel Canyon Road
Santa Barbara, California 93105**

Tuesday, September 13, 2016

Start Time
10:00 A.M.

AGENDA

Note: This is a special meeting of the Governing Board called in accordance with Government Code Section 54956. Other than the listed agenda items, no other business will be conducted by the Governing Board.

1. **COMB CALL TO ORDER, ROLL CALL** (COMB Board of Directors)
2. **PUBLIC COMMENT** (In accordance with Government Code Section 54954.3, every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.)
3. **FISH PASSAGE IMPROVEMENT PROJECTS: QUIOTA CREEK CROSSING 0A AND QUIOTA CREEK CROSSING 4**
Action: Recommend approval by motion and roll call vote of the Board
 - a. Execution of Two (2) Purchase Orders for ConTech Engineered Solutions bottomless arched culverts
 - b. Payment of Santa Barbara County Encroachment Permit Fee
 - c. Landowner Access Agreement
 - d. Execution of Construction Contract with the Lowest Responsive and Responsible Bidder
4. **MEETING SCHEDULE**
 - **September 26, 2016 Regular Board Meeting at 2:00 P.M., COMB Office**
 - **Board Packages Available on COMB Website**
www.cachuma-board.org
5. **COMB ADJOURNMENT**

NOTICE TO PUBLIC

Posting of Agenda: This agenda was posted at COMB's offices, located at 3301 Laurel Canyon Road, Santa Barbara, California, 93105 and on COMB's website, in accordance with Government Code Section 54954.2. The agenda contains a brief general description of each item to be considered by the Governing Board. The Board reserves the right to modify the order in which agenda items are heard. Copies of staff reports or other written documents relating to each item of business are on file at the COMB offices and are available for public inspection during normal business hours. A person with a question concerning any of the agenda items may call COMB's General Manager at (805) 687-4011.

Written materials: In accordance with Government Code Section 54957.5, written materials relating to an item on this agenda which are distributed to the Governing Board less than 72 hours (for a regular meeting) or 24 hours (for a special meeting) will be made available for public inspection at the COMB offices during normal business hours. The written materials may also be posted on COMB's website subject to staff's ability to post the documents before the scheduled meeting.

Public Comment: Any member of the public may address the Board on any subject within the jurisdiction of the Board that is not scheduled for as an agenda item before the Board. The total time for this item will be limited by the President of the Board. The Board is not responsible for the content or accuracy of statements made by members of the public. No action will be taken by the Board on any Public Comment item.

Americans with Disabilities Act: in compliance with the Americans with Disabilities Act, if you need special assistance to review agenda materials or participate in this meeting, please contact the Cachuma Operation and Maintenance Board office at (805) 687-4011 at least 48 hours prior to the meeting to enable the Board to make reasonable arrangements.

Note: If you challenge in court any of the Board's decisions related to the listed agenda items you may be limited to raising only those issues you or someone else raised at any public hearing described in this notice or in written correspondence to the Governing Board prior to the public hearing.

CACHUMA OPERATION & MAINTENANCE BOARD

BOARD MEMORANDUM

Date:	September 13, 2016
Submitted by:	Tim Robinson
Approved by:	Janet Gingras

SUBJECT: Quiota Creek Crossing 0A and Crossing 4 Fish Passage Improvement Project(s)

SUMMARY:

The Quiota Creek Crossing 0A and Crossing 4 Project(s) were publicly distributed for open competitive bidding on August 23, 2016 considered as one project with two sub-projects (Crossing 0A and Crossing 4). Three bids were received on September 7, 2016. The bids were reviewed and scored accordingly by engineering staff from Montecito Water District and Carpinteria Valley Water District. Through the competitive bidding process, the lowest responsive responsible bidder, Peter Lapidus Construction (PLC), was selected to construct the project. Construction is estimated to take two to three months. Permits require that all instream work be completed by October 31st and that the project in its entirety is completed by December 1, 2016.

The following are descriptions of each sub-project.

Quiota Creek Crossing 0A

A 55-foot prefabricated bottomless arched culvert is planned to replace the current concrete low flow crossing at Quiota Creek Crossing 0A. The project is being designed to the minimum design standards set by all regulatory agencies. Pending final design approval by Santa Barbara County (County), the project will begin in September and be completed in December of 2016. Final drawings have been submitted to NMFS/CDFW and the County. All funding for this project has been secured from a CDFW-FRGP grant (\$671,635) and a landowner construction match (\$50,000). The funding and project were accepted through Resolution 612 (Exhibit 1) by the COMB Board on March 23, 2016 and May 23, 2016, respectively. Final design approval and the Notice to Proceed (NTP) from CDFW-NMFS have been obtained. Design approval from the County is expected shortly and full payment of the County fees will be needed before these last pending County permits (Land Use, Grading and Building) will be issued. COMB's resident engineer for the project will be Gino Filippin of Filippin Engineering who has been approved by the County. The temporary construction Right of Entry Agreement from the landowner within the project boundary has been obtained.

The quote for the ConTech prefabricated bottomless arched culvert (arch) system plus delivery is \$122,257.71 (tax not included), which falls within the budget that was set at \$140,000 (Exhibit 2). Justification for sole sourcing the bottomless arch system purchase to ConTech is provided (Exhibit 3).

To access the construction site on the Alisal Ranch, it will require crossing the neighboring ranch on the Davis Family property. An access agreement has been requested by the Davis Family for the construction of the project (Exhibit 4). Contained within the agreement is a financial commitment of liquidated damages if the project is not completed by December 15, 2016. There is also a nominal access fee imposed for use of the private property during construction. The agreement has been reviewed and modified by COMB legal counsel and we are awaiting response from the Davis Family.

Quiota Creek Crossing 4

A 54-foot prefabricated bottomless arched culvert with four wing walls is planned to replace the current concrete low flow crossing at Quiota Creek Crossing 4. This is a required project listed in the Proposed Actions of the 2000 Biological Opinion. The project is being designed to the minimum design standards set by all regulatory agencies. Pending final design approval by Santa Barbara County (County), the project will begin in September and be completed in December of 2016. Final drawings have been submitted to NMFS/CDFW and the County. All funding for this project has been secured from a CDFW-FRGP grant (\$938,295) and a COMB construction match (\$50,000). The funding and project were accepted through Resolution 613 (Exhibit 5) by the COMB Board on March 28, 2016 and June 27, 2016, respectively. Final design approval and the Notice to Proceed (NTP) from CDFW-NMFS have been obtained. Design approval from the County is expected shortly and full payment of the County Encroachment Permit Fee will be needed before this last pending permit will be issued. COMB's resident engineer for the project will be Gino Filippin of Filippin Engineering who has been approved by the County. The temporary construction Right of Entry Agreement from the landowner within the project boundary has been obtained.

The quote for the ConTech prefabricated bottomless arched culvert (arch) system plus delivery is \$180,812.89 (tax not included), which falls within the budget that was set at \$200,000 (Exhibit 6). Justification for sole sourcing the bottomless arch system purchase to ConTech is provided (Exhibit 7). The County Encroachment Permit fee of \$30,303 (Exhibit 8) needs to be paid prior to issuance of that permit; to date, one installment has been paid to the County of \$10,000, leaving \$20,303 outstanding.

FINANCIAL IMPACT:

Quiota Creek Crossing 0A

COMB is obligated to \$68,139 for staff time (COMB services) and \$34,130 for operations expenses (independent design review, all permit fees, etc.). The COMB budget provided \$810,000 for construction and \$30,000 for design of the project for this fiscal year. There is a secured \$50,000 construction cost match from the landowner. Revenues will cover the costs to purchase the ConTech arch system, construction of the project, and operating expenses. Trust Fund and Renewal Fund revenues are also reflected at \$60,000. A summary of the project costs broken out by estimated construction costs, COMB budget and available revenues/offsets, and Engineer's estimate and received bid and invoice are as follows:

	FY14-15	FY15-16	FY16-17
Estimated Construction Costs			
Construction Estimate			\$666,000
Project Management and Oversight			\$68,000
Operating Expenses			\$90,000
TOTAL:			\$824,000
COMB Budget			
Design (COMB Expended)	\$41,255	\$46,792	
Design (COMB Budget)			\$30,000
Services, Operations and Construction (COMB Budget)			\$810,000
TOTAL:	\$41,255	\$46,792	\$840,000
Available Revenues/Offsets:			
CDFW Grant (operating and construction)			\$671,635
Landowner Construction Match			\$50,000
Trust Fund and Renewal Fund			\$60,000
COMB Services Match (offset)			\$68,139
COMB Operating Expenses Match (offset)			\$34,130
TOTAL:			\$883,904
Engineer's Estimates (only)			
Engineer's Construction (only) Estimate			\$526,010
Engineer's Estimate Bridge (only)			\$140,000
TOTAL:			\$666,010
Bid and Invoice to Date (only)			
Construction Contractor's Bid			\$315,970
ConTech Invoice for Bridge System (delivery plus 8% tax)			\$132,038
TOTAL:			\$448,008
		Difference:	\$218,002

Quiota Creek Crossing 4

COMB is obligated to a \$50,000 construction match, \$68,420 for staff time (COMB services), and \$43,059 for operations expenses (independent design review, all permit fees, etc.). The COMB budget provided \$1,090,000 for construction and \$30,000 for design of the project for this fiscal year. Revenues will cover the costs to purchase the ConTech arch system, construction of the project, and operating expenses. Trust Fund and Renewal Fund revenues are also reflected at \$60,000. A summary of the project costs broken out by estimated construction costs, COMB budget and available revenues/offsets, and Engineer's estimate and received bid and invoice are as follows:

	FY14-15	FY15-16	FY16-17
Estimated Construction Costs			
Construction Estimate			\$932,000
Project Management and Oversight			\$68,000
Operating Expenses			\$99,000
TOTAL:			\$1,099,000
COMB Budget			
Design (COMB Expended)	\$28,938	\$44,960	
Design (COMB Budget)			\$30,000
Services, Operations and Construction (COMB Budget)			\$1,090,000
TOTAL:	\$28,938	\$44,960	\$1,120,000
Available Revenues/Offsets:			
CDFW Grant (operating and construction)			\$938,295
COMB Construction Match			\$50,000
Trust Fund and Renewal Fund			\$60,000
COMB Services Match (offset)			\$68,420
COMB Operating Expenses Match (offset)			\$43,059
TOTAL:			\$1,159,774
Engineer's Estimates (only)			
Engineer's Construction (only) Estimate			\$732,545
Engineer's Estimate Bridge (only)			\$200,000
TOTAL:			\$932,545
Bid and Invoice to Date (only)			
Construction Contractor's Bid			\$698,629
ConTech Invoice for Bridge System (delivery plus 8% tax)			\$195,278
TOTAL:			\$893,907
		Difference:	\$38,638

A summary of ongoing project (Crossing 0A and Crossing 4) financials will be presented in a monthly memo in the COMB Board packet.

Construction Contractor

The lowest responsive responsible bidder was PLC. Their bid came in at \$1,011,599 (\$315,970 for Crossing 0A and \$695,629 for Crossing 4) which is well below our Engineer's estimate of \$1,258,555 (\$526,010 for Crossing 0A and \$732,545 for Crossing 4) as reflected in the tables above.

LEGAL CONCURRENCE:

All documents have been or will be reviewed by COMB legal counsel.

ENVIRONMENTAL COMPLIANCE:

All conditions outlined in the permits for the project(s) will be followed.

COMMITTEE STATUS:

The Fisheries Committee has reviewed the project(s) prior to this meeting.

RECOMMENDATION:

Action Item 3.a: Authorize the General Manager to execute purchase orders for the prefabricated ConTech Engineered Solutions bottomless arched culvert product for Crossing 0A (Exhibits 2 and 3) and Crossing 4 (Exhibits 6 and 7), as proposed.

Action Item 3.b: Authorize the General Manager to pay the remainder of the Santa Barbara County Encroachment Permit fee (Exhibit 8) as quoted.

Action Item 3.c: Authorize the General Manager to enter into an access agreement with the Davis Family (Exhibit 4).

Action Item 3.d: Authorize the General Manager to enter into a contract for the construction of the project (Crossing 0A and Crossing 4) to the lowest responsive and responsible bidder (PLC) for \$1,011,599.

LIST OF EXHIBITS:

1. COMB Board Resolution No. 612.
2. ConTech Engineered Solutions Quotation for the purchase of the prefabricated bottomless arched culvert at Crossing 0A.
3. Non-Competitive Bid Contract justification for the purchase of the ConTech product for Crossing 0A, as proposed.
4. Access Agreement with the Davis Family.
5. COMB Board Resolution No. 613.
6. ConTech Engineered Solutions Quotation for the purchase of the prefabricated bottomless arched culvert at Crossing 4.
7. Non-Competitive Bid Contract justification for the purchase of the ConTech product for Crossing 4, as proposed.
8. Invoice for the Santa Barbara County Encroachment Permit fee assessed for the project.

RESOLUTION NO. 612

**RESOLUTION OF THE GOVERNING BOARD OF THE
CACHUMA OPERATION & MAINTENANCE BOARD APPROVING EXPENDITURES
FOR THE CONSTRUCTION OF THE FISH PASSAGE IMPROVEMENT AT QUIOTA
CREEK CROSSING NUMBER 0a**

WHEREAS, the Cachuma Operation & Maintenance Board (“COMB”) is a joint powers authority and public entity, organized and existing in the County of Santa Barbara in accordance with Government Code Section 6500 et seq., and operating pursuant to the 1996 Amended and Restated Agreement for the Establishment of a Board of Control to Operate and Maintain the Cachuma Project - Cachuma Operation And Maintenance Board, dated May 23, 1996 (“Amended and Restated Agreement”), as amended by an Amendment to the Amended and Restated Agreement made effective September 16, 2003 (collectively the “Joint Powers Agreement”); and

WHEREAS, COMB operates and maintains Cachuma Project facilities pursuant to a Transfer of Operation and Maintenance Contract with the United States Bureau of Reclamation; and

WHEREAS, the Member Agencies of COMB consist of the City of Santa Barbara, the Goleta Water District, the Montecito Water District, the Carpinteria Valley Water District (collectively herein the “South Coast Member Agencies”), and the Santa Ynez River Water Conservation District, Improvement District No. 1 (“ID No. 1”); and

WHEREAS, in August, 1997, the National Marine Fisheries Service (“NMFS”) listed anadromous steelhead in the Southern California Evolutionarily Significant Unit, including the Santa Ynez River downstream of Bradley Dam, as an endangered species under the federal Endangered Species Act, and completed and issued on September 11, 2000, a Biological Opinion relative to Cachuma Project operations as they relate to steelhead; and

WHEREAS, COMB is committed to implement and cooperate in operations and other management actions designed to protect and enhance habitat conditions for steelhead in the Santa Ynez River and its tributaries downstream of Bradbury Dam; and

WHEREAS, the fish passage improvements at Crossing Number 0a on Quiota Creek, a tributary to the Lower Santa Ynez River, will provide improved access to the perennial reaches of Quiota Creek and restore habitat to enhance conditions for steelhead (the “Project”). The Project is located on Old Santa Rosa Road, now within a privately-owned parcel that is zoned agricultural (AG-II-100) and thus, has a long history of being grazed and maintained as pastureland, with a narrow stream channel traversing the parcel; and

WHEREAS, COMB has prepared a detailed Scope of Work with specific tasks to be performed, a schedule of completion and a detailed budget that will be used for selection of a construction contractor and construction management of the Project; and

WHEREAS, final approvals of the Project’s 100% design drawings (produced by HDR Fisheries Design Center) by the California Department of Fish and Wildlife (“CDFW”), NMFS fish passage engineers and Santa Barbara County is expected in the early Summer 2016. The bulk of the on-the-ground construction activities for the Project will be accomplished by a hired contractor who will be determined through a competitive bidding process using a pre-approved CDFW-qualified contractor list. Pending obtaining all necessary permits, the Project will be constructed in the late Summer/Fall (September – December) 2016, and is expected to take approximately 75 days to complete; and

WHEREAS, COMB estimates that the total expenditures for the Project would be approximately Eight Hundred Forty Thousand Dollars (\$840,000), which would include a significant amount of state grant funding, along with Warren Act funding, assessments to Member Agencies and a landowner construction match of \$50,000; and

WHEREAS, in 2014, COMB was awarded Six Hundred Seventy-One Thousand Six Hundred Thirty-Five Dollars (\$671,635) in CDFW-Fisheries Restoration Grant Program (“FRGP”) funding (the “Grant”); and

WHEREAS, on March 23, 2015, the COMB Governing Board approved Resolution 594 accepting the Grant to fund a significant portion of the total expenditures necessary for the Project; and

WHEREAS, on March 1, 2016, the Project was reviewed and considered by COMB’s Fisheries Committee; and

WHEREAS, the Governing Board desires to authorize and approve the total expenditures for the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF COMB AS FOLLOWS:

1. The Governing Board finds and determines that the facts set forth in the above recitals and in the documents referenced herein are true and correct.
2. The Governing Board supports the Fish Passage Improvements on Quiota Creek, including the Project at Crossing 0a, which are considered essential to the steelhead restoration effort in the Lower Santa Ynez River.
3. The Governing Board approves and authorizes the requested expenditure for the Project.
4. The Governing Board further authorizes COMB’s officers and staff, including the General Manager, to continue to do all things necessary and appropriate, including, but not limited to, execution and delivery of necessary documents, the obtaining of applicable permits, and any other actions to construct and implement the Project using the approved expenditures.
5. This Resolution shall take effect immediately.

PASSED, APPROVED AND ADOPTED by the Governing Board of the Cachuma Operation and Maintenance Board, this 23rd day of May 2016, by the following roll call vote:

Ayes: Holcombe, Hanson, Morgan

Nays: Walsh

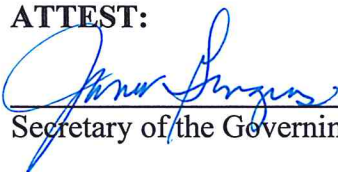
Abstain: Absent: White

APPROVED:



President of the Governing Board

ATTEST:



Secretary of the Governing Board

Quote # QUO-254858-Q8G8Z2					
Date	7/27/2016	Account Name	Cachuma Operation and Maintenance Board	Reply-To	
Quote #	QUO-254858-Q8G8Z2	Contact Name	Tim Robinson	Contech Rep.	Michael Blank
		Phone	(805) 687-4011	Address	5670 Greenwood Plaza #530, Greenwood Village, Colorado, 80111
Project Name	Quiota Creek Crossing 0	Fax		Phone	(206) 390-3711
Project #	444906	Email	trobinson@cachuma-board.org	Fax	
Project City/State	Santa Barbara, CA			Email	mblank@conteches.com

Contech's offer to sell the products described in this quotation is expressly conditioned upon Buyer's assent to the Contech Conditions of Sale ("Contech COS") included herewith and/or viewable at www.conteches.com/cos. A valid tax exemption certificate must be issued to Contech or sales tax will be added.

Item #	Description	Pieces	Quantity	Extended Unit Price	Unit	Unit Total
	CON/SPAN O-Series – O-1055: 55'-0" Span x 8'-11 1/8" Rise Precast Bridge Units. Length (ft): 16, 4 unit(s), 4 ft. typical Lay Length. HS-25 Loading, 1 ft. Max Cover. (2) - Detached Counterfort Precast Headwalls *** See Fabrications drawings dated 6-20-2016 for additional information	1.00	1.00	\$122,257.71	EA	\$122,257.71
Total						\$122,257.71
(Tax not included)						Net Total
						\$122,257.71

Standard Notes

1. All orders must be shipped within 30 days of manufacture or a storage charge applies equal to a maximum of 5% per month of the selling price of the stored material.
2. Construction loadings typically exceed the intended post-construction live load used for design. Contact your Contech representative for specific guidelines and limitations based on the construction live loads anticipated.
3. Flexible structures of the type on this project are reliant on the type of structural backfill used, the compaction of that material and the balanced placement of structural backfill. Contact your Contech representative for specific information.
4. In addition to any other procedures outlined or remedies provided, at the time of order, Contech will request a desired delivery date for the quoted materials from the purchasing customer. After drawing approval and prior to manufacturing Contech may again confirm the requested delivery date with the purchasing customer. If purchasing customer cannot take delivery of finished materials on requested date, and after Contech has manufactured the product(s), Contech will invoice for the total amount of the order with payment due within 30 days. Additionally, Contech may also assess fees in the amount of 10% of the total order for materials that are not shipped within 30 days after the requested delivery date for storage and handling.
5. One or more of the products quoted herein is nonstandard and not returnable. A down payment equal to 1/3 of the item(s) total is required and must be received prior to commencement of any performance by Contech.
6. Prices are f.o.b. origin with freight allowed to the jobsite with unloading by others at a truck accessible location.
7. Quotation is based upon estimated (not guaranteed) quantities. Buyer must verify final quantities needed prior to commencement of work by Contech. If Buyer elects to purchase from Seller only a portion of the material quoted, Seller retains the right to adjust its prices.
8. The estimated manufacturing lead time for this material is 6-9 weeks from the receipt of approved submittal documents.
9. The sale of these materials requires a preconstruction meeting be held that must include Contech and all parties directly involved in the construction process.
10. This material will be manufactured for this particular project and is not subject to cancellation. See Section 19 of the Contech COS.
11. This quotation expires 30 days from the date shown. Prices are firm for shipment within 120 days of the date of quotation and are subject to a maximum escalation of 8% for each 30 days thereafter.
12. This quote is based on live off loading ONLY, Staging/Jockeying of trailers can be provided upon request for an additional fee. Cancellation of scheduled delivery loads requiring permits within 48hrs may result in additional permits and will be the responsibility of the purchaser. Specialized haulers and or equipment are utilized in the shipping of bridge components (ie "trailer rental"), costs incurred by CONTECH due to cancellation and or postponement of the delivery of bridge components will be the responsibility of the purchaser.
13. Weight = 23 tons

Quote # QUO-254858-Q8G8Z2

Scope Of Work

CON/SPAN O-Series

CON/SPAN O-Series pricing includes precast concrete units, associated headwalls and wingwalls with mounting hardware (if applicable and specified), joint sealant material, masonite shims, filter fabric for vertical wingwall joints and perforated drain tile behind precast wall system. Contech will provide contract drawings, fabrication drawings, structural calculations upon request, and on-site consultation during installation of precast units.

Pricing does not include any site preparation, foundation work, installation of any kind, or backfill monitoring. As part of the construction process, the contractor is to perform the items listed below in accordance with the Contech contract drawings:

1. Construct cast-in-place foundations or install precast foundations as appropriate
2. Unload and set structure utilizing crane
3. Grout the unit legs and wingwalls into the keyway
4. Apply all joint sealing material
5. Excavate for and backfill the structure (Select backfill material is required per CONTECH specifications)
6. Any and all permits, inspection fees, flagmen, barricades, flares, traffic control devices, utility protection, and/or other safety devices as may be required

All materials and services that are not expressly included in the aforementioned scope of work are excluded and subject to additional charges.

PAYMENT TERMS ARE 1/2%-10, NET 30 DAYS FROM DATE OF INVOICE UNLESS MATERIAL IS OTHERWISE NOTED AS NON-STANDARD ABOVE. IF NON-STANDARD, PAYMENT TERMS ARE 1/3 AT ORDER ACCEPTANCE AND PRIOR TO START OF PRODUCTION, 2/3 NET 30 DAYS FROM DATE OF INVOICE. THIS OFFER IS SUBJECT TO CREDIT APPROVAL. PRICES QUOTED APPLY ONLY TO THE REFERENCED PROJECT AND ARE IN EFFECT FOR 30 DAYS FROM THE DATE OF QUOTATION. SELLER RESERVES THE RIGHT TO ADJUST PRICES AFTER 30 DAYS FROM THE DATE OF QUOTATION BUT THE CONTECH COS REMAIN APPLICABLE. PRICES ARE BASED ON ESTIMATED QUANTITIES SHOWN. IF A DIFFERENT QUANTITY IS PURCHASED, CONTECH RESERVES THE RIGHT TO ADJUST THE PRICES. THIS QUOTATION CONTAINS THE ENTIRE AGREEMENT WITH RESPECT TO PURCHASE AND SALE OF PRODUCTS DESCRIBED AND SUPERSEDES ALL PREVIOUS COMMUNICATIONS, BUYER'S SIGNATURE BELOW, DIRECTION TO MANUFACTURE, OR ACCEPTANCE OF DELIVERY OF GOODS DESCRIBED ABOVE, SHALL BE DEEMED AN ACCEPTANCE OF THE CONTECH COS. SELLER EXPRESSLY REJECTS ANY OTHER TERMS AND CONDITIONS. PRICES ARE F.O.B. ORIGIN WITH FREIGHT ALLOWED TO THE JOBSITE WITH UNLOADING BY OTHERS AT A TRUCK ACCESSIBLE LOCATION. THIS QUOTATION IS ISSUED BY CONTECH ENGINEERED SOLUTIONS LLC FOR ITSELF AND/OR ON BEHALF OF ONE OR MORE OF ITS SUBSIDIARIES, INCLUDING BUT NOT LIMITED TO KEYSTONE RETAINING WALL SYSTEMS LLC.

<u>Acceptance</u>		<u>Contech Engineered Solutions LLC.</u>	
WE HEREBY ORDER THE DESCRIBED MATERIAL SUBJECT TO ALL TERMS AND CONDITIONS OF THIS QUOTATION AND IN THE Contech COS INCLUDED HEREWITH AND VIEWABLE AT www.conteches.com/cos		By	Michael Blank
Company		(O)	(206) 390-3711
By		(F)	
Title		(Cell)	
Date		Title	

Quote # QUO-254858-Q8G8Z2

Contech - CONDITIONS OF SALE

1. **ACCEPTANCE.** This quotation is an offer to sell to potential customer(s). BUYER'S RIGHT TO ACCEPT THIS OFFER IS LIMITED TO BUYER'S ASSENT TO THE TERMS AND CONDITIONS PRINTED HEREON AND THE ATTACHED OR ACCOMPANYING QUOTE, AND NO TERMS ADDITIONAL TO OR DIFFERENT FROM THOSE IN THIS OFFER ARE BINDING ON SELLER. THERE ARE NO UNDERSTANDINGS, TERMS, CONDITIONS OR WARRANTIES NOT FULLY EXPRESSED HEREIN.

2. **LIMITED WARRANTIES.** Seller warrants that it can convey good title to the products sold under this contract and that they are free of liens and encumbrances. Seller also warrants that the products sold under this contract are substantially free from defects in material and workmanship for a period of one year after the date of delivery. There are no express or implied warranties with respect to products sold hereunder which are misused, abused or used in conjunction with mechanical equipment improperly designed, used or maintained, or which are used, supplied for use or made available for use in any nuclear application of which Seller has not been notified in writing by Buyer at the time of order for the products sold hereunder. SELLER MAKES NO OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND ALL IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE ARE DISCLAIMED BY SELLER AND EXCLUDED FROM THIS CONTRACT.

3. **LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY.** Seller's liability hereunder shall be limited to the obligation to repair or replace only those products proven to have been defective in material or workmanship at the time of delivery, or allow credit, at its option. Seller's total cumulative liability in any way arising from or pertaining to any product or service sold or required to be sold under this contract shall NOT in any case exceed the purchase price paid by Buyer for such products or services. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR COMMERCIAL LOSS, LOST PROFITS, CLAIMS FOR LABOR, OR CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY TYPE, WHETHER BUYER'S CLAIM BE BASED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE. IT IS EXPRESSLY AGREED THAT BUYER'S REMEDIES EXPRESSED IN THIS PARAGRAPH ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES.

4. **LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY FOR FAILURE OR DELAY IN DELIVERY.** NO DELIVERY DATES ARE GUARANTEED. BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ONLY LIABILITY FOR ANY DELAY IN DELIVERY SHALL BE LIMITED AS SET FORTH IN PARAGRAPH 3 OF THIS CONTRACT.

5. **FORCE MAJEURE.** In any event and in addition to all other limitations stated herein, Seller shall not be liable for any act, omission, result or consequence, including but not limited to any delay in delivery or performance, which is (i) due to any act of God, the performance of any government order, any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law, local labor shortage, fire, flood or other casualty, governmental regulation or requirement, shortage or failure of raw material, supply, fuel, power or transportation, breakdown of equipment, or any cause beyond Seller's reasonable control whether of similar or dissimilar nature to those above enumerated, or (ii) due to any strike, labor dispute, or difference with workers, regardless of whether or not Seller is capable of settling any such labor problem.

6. **BUYER'S OBLIGATION TO PASS ON LIMITATION OR WARRANTIES AND REMEDIES.** In order to protect Seller against claims by Buyer's buyer, if Buyer resells any of the products purchased under this agreement, Buyer shall include the language contained in paragraphs 2 and 3 of this agreement, dealing with Seller's limitations of warranties and remedies, in an enforceable agreement with Buyer's buyer, or otherwise include language in an enforceable agreement with its buyer that makes Seller's limitation of warranties and remedies binding on its buyer. Buyer shall also include a provision in its agreement with its buyer applying Ohio law to any claims its buyer might assert against Seller with respect to products manufactured by Seller, and requiring its buyer to bring any such action against Seller either in federal district court in Cincinnati, Ohio or the common pleas court for Butler County, Ohio. Buyer shall defend, indemnify and hold Seller harmless from any and all claims, causes of action, damages, losses or expenses (including reasonable attorneys' fees) that Seller incurs by reason of Buyer's failure to comply with this paragraph.

7. **PASSAGE OF TITLE.** Title to the products sold hereunder shall pass upon delivery to the carrier at the point of shipment. Neither

Buyer nor the consignee shall have the right to divert or reconsign such shipment to any destination other than specified in the bill of lading without permission of the Seller. Unless otherwise agreed Seller reserves the right to select the mode of transportation.

8. **PAYMENTS AND LATE CHARGES ON PAST DUE ACCOUNTS.** Buyer represents that Buyer is solvent and can and will pay for the products sold to Buyer in accordance with the terms hereof. If Buyer shall fail to comply with any provision or to make payments in accordance with the terms of this contract or any other contract between Buyer and Seller, Seller may at its option defer shipments or, without waiving any other rights it may have, terminate this contract. All deliveries shall be subject to the approval of Seller's Credit Department. Seller reserves the right, before making any delivery, to require payment in cash or security for payment, and if Buyer fails to comply with such requirement, Seller may terminate this contract. A late charge of 1-1/2% monthly (18% annual rate) or the maximum allowed by state law, if less, will be imposed on all past due accounts, and Buyer is responsible for all costs of collection including without limitation reasonable attorneys' fees and court costs.

9. **TRANSPORTATION CHARGES.** Delivered prices or prices involving competitive transportation adjustments shall be subject to appropriate adjustment to reflect changes in transportation charges.

10. **CLAIMS BY BUYER.** Buyer shall thoroughly inspect products sold under this contract immediately upon receipt to verify conformance with the specifications of the contract. Buyer must notify Seller of claims for failure or delay in delivery within 30 days after the scheduled delivery date. Buyer must notify Seller of any claims for nonconforming or defective products within 30 days after the nonconformity or defect was or should have been discovered. In addition, Seller must be given an opportunity to investigate the claim before Buyer disposes of the material, or else Buyer's claim will be barred. Seller shall incur no liability for damage, shortages, or other cause alleged to have occurred or existed at or prior to delivery to the carrier unless the Buyer shall have entered full details thereof on its receipt to the carrier.

11. **MECHANICAL PROPERTIES; CHEMICAL ANALYSES.** Data referring to mechanical properties or chemical analysis are the result of tests performed on specimens obtained from specific locations of the product(s) in accordance with prescribed sampling procedures; any warranty thereof is limited to the values obtained at such locations and by such procedures. There is no warranty with respect to values of the materials at other locations.

12. **PATENTS.** Seller shall indemnify Buyer against attorneys' fees and any damages or costs awarded against Buyer in the event any legal proceeding is brought against Buyer by a third person claiming the material delivered hereunder in itself constitutes an infringement of any U.S. patent, provided Buyer gives Seller prompt notice of any such suit being brought, gives Seller the opportunity to defend any such suit, and cooperates with Seller with respect to any such defense; unless the material is made in accordance with material designs, or specifications required by Buyer, in which case Buyer shall similarly indemnify Seller.

13. **PERMISSIBLE VARIATIONS.** The products sold hereunder shall be subject to Seller's standard manufacturing variations, tolerances and classifications.

14. **TECHNICAL ADVICE.** Buyer represents that it has made its own independent determination that the products it is purchasing under this contract meet the design requirements of Buyer's project and are suitable for Buyer's intended application. Buyer further represents that it has not relied in any respect on any written or oral statements or advice from Seller, other than the standard product specifications set forth in the most recent addition of Seller's published product brochures, in making that determination.

15. **TAXES.** No taxes imposed with respect of the sale of the products or services sold hereunder are included in any quotation by Seller. All applicable taxes shall be added and paid by Buyer in addition to the purchase price.

16. **BUYER'S RIGHT OF TERMINATION.** Buyer may terminate this contract in whole or in part upon notice in writing to Seller. Seller shall thereupon cease work and transfer to Buyer title to all completed and partially completed products and to any raw materials or supplies acquired by Seller especially for the purpose of performing this contract, and Buyer shall pay Seller the sum of the following:
(1) the contract price for all products which have been completed prior to termination;
(2) the cost to Seller of the material or work in process as shown on the books of Seller in accordance with the accounting practice

consistently maintained by Seller plus a reasonable profit thereon, but in no event more than the contract price;
(3) the cost f.o.b. Seller's plant of materials and supplies acquired especially for the purpose of performing this contract; and
(4) reasonable cancellation charges, if any, paid by Seller on account of any commitment(s) made hereunder.

17. **SELLER'S RIGHT OF TERMINATION.** In addition to the other rights of termination provided for in this contract, and if this contract is made pursuant to any governmental rule or regulation, plan, order or other directive, upon the directive, effected or impaired termination thereof, Seller shall have the option of canceling this contract in whole or in part.

18. **WAIVER.** Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences.

19. **DELIVERY.** Unless otherwise agreed to in writing by the Seller, the Buyer hereby agrees to take delivery of the materials on this order within the later of thirty (30) days after the wanted date shown on the face of the order or within thirty (30) days after notification, oral or written, that the materials are ready for shipment. In the event that the Buyer does not arrange to take delivery of the materials in accordance with this Contract, Seller, at Seller's option, may:
(a) invoice the Buyer for the materials less freight if applicable; store the material in Seller's yard for a period not to exceed sixty (60) days from the date of invoice; charge a storage fee not to exceed 5% per month or fraction thereof of the selling price of the stored materials; add any applicable price increases listed on the face of the order; charge for any repair work to protective coatings harmed by weathering while such material is being stored; and charge applicable freight when shipment to the Buyer is made. Materials remaining in storage after sixty (60) days from the invoice date shall become the property of the Seller for disposition at the Seller's discretion. In that event, Buyer shall not be liable for the invoice price of the materials, but shall be liable for the storage fee and any repair work to protective coatings; or
(b) cancel the order and invoice the Buyer for cancellation charges, which shall be 25% of the selling price of the materials if the materials are standard, in-stock material, or the full selling price if the materials are special or nonstandard in nature and were especially fabricated for the Buyer.

20. **PERIOD OF LIMITATIONS.** Buyer and Seller agree that any action by Buyer against Seller relating to this contract or the products sold hereunder, including, without limitation, any action for breach of contract or warranty, or otherwise in connection with the products sold under this contract, must be commenced by Buyer against Seller within one year after the cause of action therefore accrues or one year of delivery of the products sold hereunder, if less.

21. **CONFLICTING PROVISIONS OFFERED BY BUYER.** Any terms and conditions of any purchase order or other instrument issued by the Buyer, in connection with the subject matter of this document, which are in addition to or inconsistent with the terms and conditions expressed herein, will not be binding on Seller in any matter whatsoever unless accepted by Seller in writing.

22. **SEVERABILITY.** In case any provision of this contract shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

23. **APPLICABLE LAW.** This contract shall be governed by, and construed and enforced in accordance with, the laws of Ohio. Buyer and Seller specifically agree that any legal action brought relating to this contract shall be brought and tried exclusively in the federal district court in Cincinnati, Ohio, or, in the absence of jurisdiction, the Butler County Court of Common Pleas in Hamilton, Ohio.

REV. 03/15

Quiota Creek Crossing 0A Project

Non-Competitively Bid (NCB) Contract Justification Corrective Action Plan

To: Cachuma Operation and Maintenance Board

From: Timothy H. Robinson (Project Manager, COMB) and Michael C. Garelo (Design Engineer, HDR)

Contract: Procurement of a prefabricated ConTech bottomless arch culvert bridge system for the Quiota Creek Crossing 0A Project as required by the project design.

Complete responses must be provided for all of the following questions:

A. Factors of Consideration

1. *Why is the submission of a NCB necessary and what are the determining factors that caused the problem?*

ConTech is the sole vendor for the required 55 foot bottomless arched culvert (arch) system (O-Series) that meets the design criteria for the Quiota Creek Crossing 0A project. In short, there are no other suppliers/vendors that provide the same product, design specifications, and price that are required for the project.

Factors determining that conclusion are as follows:

- California Department of Fish and Wildlife (CDFW), as the grantor, requires the use of qualified and experienced contractors and vendors to perform work and supply materials. The basis for that requirement is to ensure project design specifications and construction meets the obligation to prevent environmental degradation and enhance the steelhead fishery.
- Santa Barbara County (County) requires that the proposed bridge system meet and/or exceed Caltrans design standards for a public road. The specific ConTech arch system proposed for the project satisfies those requirements and was the only vendor that provided the necessary span length and load capacity. Caltrans and other national state Department of Transportations (DOT) recognize that ConTech arch systems are standardized to meet state DOT loading requirements.
- In 2010, COMB's design engineer at HDR with staff conducted a search for the most cost effective bridge or bottomless arched culvert system suitable for replacing low flow concrete stream crossings on Refugio Road where it crosses Quiota Creek. ConTech arch systems were the only product that met that engineering design criteria and esthetics requested by the landowners. The specific ConTech arch system selected was compared to other vendors of bridge or arch system specifically for span length, load capacity, flow conveyance, off-site fabrication, installation ease, cost, esthetics, and service provided by the vendor. The results of the study were presented to COMB Member Unit managers on 3/3/09, the COMB Board on 11/22/10, and

summarized in a design memo (4/22/10). ConTech was the sole vendor to meet the design criteria and requests of the landowners.

- Fabrication of the ConTech product in the Los Angeles and Bakersfield areas reduces shipping costs and oversight expenses incurred by the County and COMB engineers for fabrication oversight required by the County.
- The selected arch system is the initial and central component of the design process. The O-Series provides greater flow conveyance at a lower cost than the B-Series that was used in previous projects. Once the arch system is determined, the entire project is then designed around that structure. Five similar projects on Quiota Creek (48-foot arch for Quiota Creek Crossing 6 in 2008, a 60-foot arch for Quiota Creek Crossing 2 in 2010, a 60-foot arch for Quiota Creek Crossing 7 in 2012, a 60-foot arch for Quiota Creek Crossing 1 in 2013, and a 53-foot arch for Quiota Creek Crossing 3) have successfully followed this design process, each with substantially reduced design and permit costs due to using the same vendor (ConTech) and arch system.
- The vendor is required to supply shop drawings and calculations to COMB and Santa Barbara County (County) that are provided to a third party for independent review. Therefore, the bridge structure has to be selected, reviewed by the County and an independent engineer, and approved by COMB's design engineer and the County prior to the issuance of the project County Encroachment Permit. ConTech has met this obligation in a timely manner at no cost to COMB.
- ConTech is the only vendor that offers the O-Series product which does carry a patent. Other vendors supply fabricated bridge or arch systems but do not meet the design requirements listed above. Vendors considered and the reasons their product does not meet the obligation and unique design criteria for the current project as provided by HDR are as follows:
 - TechSpan – Height to span ratios are not favorable for Refugio Road applications. This system has a rounded arch that is too tall for the required span and flow conveyance of Quiota Creek along Refugio Road. In addition, foundations are larger and as a result more costly than the ConTech arch system.
 - SFC Bridge Systems – Their maximum span is 48 feet. The design for the Quiota Creek Crossing 0A project requires a 53 foot span.
 - TriCon Precast Limited – Has similar arch systems but their Redi-Arch product comes in spans of 12-42 feet which does not meet the span length requirement for this project. Also they are based and only fabricate in Texas, making for high shipping costs.
 - Oldcastle Precast – Has box and arch style bridge systems with spans 30 feet or less. Their arches are ConTech designed and this fabricator serves as middle man for ConTech.
 - Big-R – Sells steel parallel chord truss bridges. Although they are popular, footing and abutment design and construction costs for this style of bridge would exceed those of the ConTech arch system. Use of this system would require substantial redesign for a product that costs

more than the selected and superior Contech arch system. Also this system is not as esthetic in the eyes of the landowners.

Hence, the required flow conveyance, design, height, span length, minimum load capacity, cost, proximity of the fabricator, and esthetics make the ConTech product unique for the required arch system on Quiota Creek, specifically at Crossing 0A.

- The ConTech arch systems provide design flexibility with regard to meeting the combination of height, span, and flow conveyance requirements. The height and span are governed by the conveyance requirement which is under the bottom chord of the bridge at the 25-year flood event with no freeboard. Other road design and safety factors which govern the vertical curve of the road also support the use of the ConTech arch system. The bridge system is also design to meet a No-Rise criterion for that area due to it being in the Floodway of the Santa Ynez River. No other vendor is capable of providing this construction flexibility.

2. *What are the consequences of not having this NCB approved?*

- The project would not meet the requirements of the County set forth to ensure span length and load capacity.
- The project would have to be completely redesigned for an alternative bridge / arch system. This would require reconfiguring the foundations, re-analyzing the hydraulic design for flow conveyance under the structure, and determining the required scour protection for the foundations, rock slope protection, and associated embankment fill and revegetation.
- A redesign would result in further engineering costs both in design and review for the bridge/arch system, road, embankments, in-stream structures, and revegetation.
- The County Encroachment Permit fee would increase due to lack of familiarity with a different structure.
- Other bridge/arch system may increase the size of the project specifically if the County does not grant variances. Currently COMB has received five design variances for each of the Quiota Creek projects that cumulatively reduce the size and subsequently the cost of the project while maintaining road safety standards, fish passage, the rural esthetics of the area, and landowner cooperation. Without those variances, the project would cost significantly more and would not be of the same rural character or be acceptable to the landowners.

3. *How will your agency ensure adequate planning to prevent submittal of NCB's for goods or services that should have been competitively bid?*

- COMB's staff and design engineer at HDR continue to study the market, technologies, and availability of bridge/arch systems. If a better system comes onto the market at less cost, it will be evaluated in comparison with the current ConTech arch system.
- To date, alternative bridge/arch systems have failed to meet County design standards specifically for minimum load bearing and flood conveyance; for

example a multiple recessed box culvert that was proposed for one of the Quiota Creek crossings. Staff will continue to work closely with the County on our designs so that we propose projects with products that are acceptable to the County standards and design criteria.

- The vendor product selection is determined by the unique setting of each project regarding geologic, hydrologic, and fluvial geomorphic characteristics. Quiota Creek Crossings 0 through 9 have very similar characteristics and the ConTech arch system is particularly well suited for those conditions. Where other bridge options are appropriate in design and economically viable, and appropriate, they are being evaluated.

B. Price Analysis

1. *How was the price offered determined to be fair and reasonable?*

- COMB's project engineering team evaluated and conducted a design and price comparison and found the ConTech arch system to meet design and price obligations.
- The required product is just not available from other vendors or prefabricators.

2. *Describe any cost savings realized or costs avoided by acquiring the goods/services from this supplier.*

- Due to the sign of the vendor and their volume of sales, the supplier is able to provide to COMB at no cost signed and sealed Shop Drawing and calculations required for project design evaluation; a benefit that other vendors cannot provide.
- COMB and HDR review costs are expedited by using nearly identical products for each of the Quiota Creek projects to date.
- Spread footings are much easier to design and construct than are typical footings and abutments required by other bridge/arch systems.

TEMPORARY LICENSE FOR TRANSIT OVER ROADWAY

Project: **Quiota Creek Crossing 0A along Refugio Road**

Assessor Parcel Number: **141-280-024**

COMB Project No.: **QC-XOA**

This Temporary License For Transit Over Roadway (“**Agreement**”) is dated as of September __ 2016 and is between the Cachuma Operation and Maintenance Board (COMB), a Joint Powers Authority, hereinafter referred to as “**COMB**”, and the Davis 2000 Family Trust, hereinafter referred to as “**OWNER.**” COMB and Owner hereby agree as follows:

COMB intends to construct a fish passage enhancement project on Quiota Creek and related road improvement project (collectively “**Improvements**” or “**Project**”) on that certain real property located in the unincorporated area of the County of Santa Barbara, State of California, more particularly described as Assessor Parcel Number ~~_____~~ 137-290-027, owned by the Jackson Family Trust, and commonly known as Alisal Ranch, hereinafter the “**Alisal Property.**” In order to access the Project site and construct the Project, COMB desires to access and cross a portion of the Davis Property (defined below) owned by OWNER.

On and subject to the terms of this Agreement, OWNER hereby grants to COMB, and its authorized agents, contractors, officers and employees (collectively, the “**COMB Representatives**”), a temporary license to enter and move workers, equipment, and materials over the existing unimproved private road shown on **Exhibit A** attached hereto (the “**License Area**”), located on a portion of the real property in the unincorporated area of the County of Santa Barbara, State of California, more particularly described as Assessor Parcel Number 141-280-024 and commonly known as the Davis Family Property, hereinafter the “**Davis Property.**”

The license to access and use the License Area granted herein is strictly for COMB’s and the COMB Representatives’ transit across the License Area to reach the Alisal Property for COMB’s installation of the Improvements, and is expressly subject to the terms and conditions set forth herein. Additional access details or conditions regarding use of the License Area may be set by the OWNER in a written notice to COMB prior to COMB initiating use of the License Area.

This Agreement is subject to the following additional provisions, covenants, requirements, and restrictions:

1. COMB’s use of the License Area shall be limited to Monday through Friday, between the hours of 7:00 am and 6:00 pm Pacific Time, excluding any locally celebrated holidays (“**Work Hours**”). Work on the Improvements also shall be limited to the Work Hours.
2. COMB and the COMB Representatives shall keep any gates or fences on the License Area closed and locked at all times not specifically in use by COMB or the COMB Representatives, and COMB shall not allow any third parties to use or access the License Area or other portions of the Davis Property while COMB or COMB Representatives are present.

3. All construction and other work on or related to the Improvements, including the loading, unloading, storage or staging of equipment, materials or debris, shall occur on the Alisal Property, not on any portion of the Davis Property, including the License Area. In no event shall access to the Davis Property or the License Area be blocked at any time.
4. The term of this Agreement shall commence upon the later signature date of OWNER or COMB as set forth below. COMB shall complete all construction and installation work, and use of the License Area, prior to December 15, 2016 (the "**Completion Date**"). The parties hereby acknowledge that any failure by COMB to complete the Project by the Completion Date that results in COMB's continued access and entry upon the Davis Property in accordance with the terms herein, will result in substantial injury to OWNER, and as damages arising from such failure are not reasonably attainable at this time and cannot be calculated with any degree of certainty, it is hereby further agreed by the parties that if COMB continues to use the License Area after the Completion Date in accordance with the provisions of this Agreement, COMB shall pay to OWNER, as liquidated damages for such delay and injury, and not as a penalty, the amount of \$200 per calendar day after the Completion date. Nothing in this paragraph, however, shall be construed as allowing COMB to continue to use the License Area beyond the Termination Date, as defined below.
5. Notwithstanding anything to the contrary herein, this Agreement shall automatically expire and terminate upon the earlier of (i) completion of construction of the Improvements, and (ii) December 31, 2016 (the "**Termination Date**"). There shall be no continued right to use the License Area after the Termination Date.
6. COMB and the COMB Representatives may not make any modifications or changes to the License Area or to any gates, fences or other improvements on or near the License Area, nor may they cut, trim or remove plants, trees or other vegetation on or near the License Area.
7. COMB and the COMB Representatives shall maintain the License Area in good condition and free of all trash or debris, and shall promptly repair any injury or damage to the License Area, any associated facilities (including gates and fences), or nearby trees or vegetation, caused by the activities of COMB or the COMB Representatives. Any trees or vegetation injured or damaged shall be promptly replaced with the same type, size, quality and quantity of trees or vegetation removed, and such planted trees or vegetation shall be guaranteed by COMB for one year after planting. If any trash or debris from the Project become located on portions of the Davis Property outside the License Area, COMB shall promptly remove any such material. In addition, COMB and the COMB Representatives shall take reasonable and customary measures to limit the amount of dust generated by its activities associated with the Project, including transit of the License Area.

8. OWNER assumes no liability for loss or damage to any property of COMB or the COMB Representatives, or for any injury to or death of any of persons associated with COMB or any COMB Representative. COMB shall be solely responsible for providing protection and security for the equipment and materials being used in connection with the Project.
9. OWNER makes no representations as to the condition of the License Area or as to the suitability of the License Area for use in connection with the Project and shall not be required to improve or maintain the License Area for use by COMB or the COMB Representatives. COMB and the COMB Representatives have inspected the License Area and are accepting it in it "AS IS" condition and state of repair, and acknowledge that they are not relying on any warranties or representations of any kind whatsoever, express or implied, from OWNER, its agents, and contractors as to any matters concerning the Davis Property, including the License Area.
10. COMB, on behalf of itself and each COMB Representative, hereby waives, releases, acquits and forever discharges OWNER, its agents, and contractors, of and from any and all claims, liabilities, obligations, demands, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that it now has, or which may arise in the future, on account of or in any way growing out of or connected with the Davis Property, including the License Area, except to the extent such claims, liabilities, obligations, demands, actions, causes of action, demands, rights, damages, costs, expenses or compensation result from the sole negligence or intentional misconduct of OWNER.
11. COMB agrees to defend, indemnify and hold OWNER harmless from any claims or damages resulting from the use of the License Area, breach of this Agreement, negligence or willful misconduct, by COMB or any of the COMB Representatives, except to the extent such claims or damages are the result of OWNER'S sole negligence or intentional misconduct.
12. If a party hereto is in default of any provision of the Agreement, the non-defaulting party may give written notice thereof to the defaulting party and if the default is not cured within 10 days after delivery of such notice, the non-defaulting party may terminate this Agreement by delivering written notice of such termination to the other party.
13. This Agreement may not be recorded or otherwise placed in the Public Records of the Santa Barbara County Recorder.
14. In consideration for OWNER's granting of this Agreement, COMB agrees to make a one-time payment in the amount of \$1,~~50,000~~.00 to OWNER, which shall be due and payable within ten (10) days following the mutual execution of this instrument.

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Nothing contained herein shall be construed as dedicating any land or establishing any form of easement rights for the benefit of COMB or the COMB Representatives. Time is of the essence of this Agreement and each and every term and provision hereof.

[signatures on next page]

By its signature, OWNER certifies that it is the sole owner(s) of the Davis Property. Further, the signatories hereto represent and warrant that each is authorized to enter into this Agreement on behalf of the respective parties. This Agreement may be signed in counterparts.

OWNER:

COMB:

Signature

Davis 2000 Family Trust
Print Name/Title

Owner
Address
111 S. Refugio Road
Santa Ynez, CA 93460

City, State, Zip

Date

Signature

Janet Gingras
Cachuma Operations Maintenance Board

Print Name/Title

General Manager
Address
3301 Laurel Canyon Road
Santa Barbara, CA 93105

City, State, Zip

Date

|

EXHIBIT A
LOCATION OF LICENSE AREA

[To be attached]

DRAFT

RESOLUTION NO. 613

RESOLUTION OF THE GOVERNING BOARD OF THE CACHUMA OPERATION & MAINTENANCE BOARD APPROVING EXPENDITURES FOR THE CONSTRUCTION OF THE FISH PASSAGE IMPROVEMENT AT QUIOTA CREEK CROSSING NUMBER 4

WHEREAS, the Cachuma Operation & Maintenance Board (“COMB”) is a joint powers authority and public entity, organized and existing in the County of Santa Barbara in accordance with Government Code Section 6500 et seq., and operating pursuant to the 1996 Amended and Restated Agreement for the Establishment of a Board of Control to Operate and Maintain the Cachuma Project - Cachuma Operation And Maintenance Board, dated May 23, 1996 (“Amended and Restated Agreement”), as amended by an Amendment to the Amended and Restated Agreement made effective September 16, 2003 (collectively the “Joint Powers Agreement”); and

WHEREAS, COMB operates and maintains Cachuma Project facilities pursuant to a Transfer of Operation and Maintenance Contract with the United States Bureau of Reclamation; and

WHEREAS, the Member Agencies of COMB consist of the City of Santa Barbara, the Goleta Water District, the Montecito Water District, the Carpinteria Valley Water District (collectively herein the “South Coast Member Agencies”), and the Santa Ynez River Water Conservation District, Improvement District No. 1 (“ID No. 1”); and

WHEREAS, in August, 1997, the National Marine Fisheries Service (“NMFS”) listed anadromous steelhead in the Southern California Evolutionarily Significant Unit, including the Santa Ynez River downstream of Bradbury Dam, as an endangered species under the federal Endangered Species Act, and completed and issued on September 11, 2000, a Biological Opinion relative to Cachuma Project operations as they relate to steelhead; and

WHEREAS, COMB is committed to implement and cooperate in operations and other management actions designed to protect and enhance habitat conditions for steelhead in the Santa Ynez River and its tributaries downstream of Bradbury Dam; and

WHEREAS, the fish passage improvements at Crossing Number 4 on Quiota Creek, a tributary to the Lower Santa Ynez River, will provide improved access to the perennial reaches of Quiota Creek and restore habitat to enhance conditions for steelhead (the “Project”). The Project will replace an existing “at-grade” Arizona-type concrete crossing with a 53-foot prefabricated concrete bottom-less arched culvert (or bridge), which will remain owned, operated and maintained by the County of Santa Barbara. The new bridge system will consist of an internal span of 53 feet and rise approximately 12 feet. A single 18-foot wide lane road surface will be constructed over the top of the arch of the bridge connecting to the existing County road surface; and

WHEREAS, COMB has prepared a detailed Scope of Work with specific tasks to be performed, a schedule of completion and a detailed budget that will be used for selection of a construction contractor and construction management of the Project; and

WHEREAS, final approval of the Project's 100% design drawings (produced by HDR Fisheries Design Center) by the California Department of Fish and Wildlife ("CDFW"), NMFS fish passage engineers and Santa Barbara County is expected in the early Summer 2016. The bulk of the on-the-ground construction activities for the Project will be accomplished by a hired contractor who will be determined through a competitive bidding process using a pre-approved CDFW-qualified contractor list. Pending obtaining all necessary permits, the Project will be constructed in the late Summer/Fall (September – December) 2016, and is expected to take approximately 75 days to complete; and

WHEREAS, COMB estimates that the total expenditures for the Project would be approximately One Million One Hundred Sixteen Thousand Four Hundred Ninety-Six Dollars (\$1,116,496), which would include a significant amount of state grant funding, along with Warren Act funding, assessments to Member Agencies and a construction match of \$50,000; and

WHEREAS, in 2015, COMB was awarded Nine Hundred Thirty-Eight Thousand Two Hundred Ninety-Five Dollars (\$938,295) in CDFW-Fisheries Restoration Grant Program ("FRGP") funding (the "Grant"); and

WHEREAS, on March 28, 2016, the COMB Governing Board approved Resolution 611 accepting the Grant to fund a significant portion of the total expenditures necessary for the Project; and

WHEREAS, on May 6, 2016, the Project was reviewed and considered by COMB's Fisheries Committee and forwarded to the Governing Board with a recommendation for approval; and

WHEREAS, the Governing Board desires to authorize and approve the total expenditures for the Project, of which the net cost to the Member Agencies will be below the \$1 million threshold requiring an unanimous vote for approval by the Governing Board as provided in the Joint Powers Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF COMB AS FOLLOWS:

1. The Governing Board finds and determines that the facts set forth in the above recitals and in the documents referenced herein are true and correct.
2. The Governing Board supports the Fish Passage Improvements on Quiota Creek, including the Project at Crossing 4, which are considered essential to the steelhead restoration effort in the Lower Santa Ynez River.
3. The Governing Board approves and authorizes the requested expenditure for the Project.

4. The Governing Board further authorizes COMB's officers and staff, including the General Manager, to continue to do all things necessary and appropriate, including, but not limited to, execution and delivery of necessary documents, the obtaining of applicable permits, and any other actions to construct and implement the Project using the approved expenditures.

5. This Resolution shall take effect immediately.


PASSED, APPROVED AND ADOPTED by the Governing Board of the Cachuma Operation and Maintenance Board, this 27th day of June 2016, by the following roll call vote:

Ayes: White, Holcombe, Hanson, Morgan

Nays: None

Abstain: **Absent:** Walsh

APPROVED:



President of the Governing Board

ATTEST:



Secretary of the Governing Board

Quote # QUO-254851-P0V4D3					
Date	7/27/2016	Account Name	Cachuma Operation and Maintenance Board	Reply-To	
Quote #	QUO-254851-P0V4D3	Contact Name	Tim Robinson	Contech Rep.	Michael Blank
		Phone	(805) 687-4011	Address	5670 Greenwood Plaza #530, Greenwood Village, Colorado, 80111
Project Name	Quiota Creek Crossing 4	Fax		Phone	(206) 390-3711
Project #	540845	Email	trobenson@cachuma-board.org	Fax	
Project City/State	Santa Barbara, CA			Email	mblank@conteches.com

Contech's offer to sell the products described in this quotation is expressly conditioned upon Buyer's assent to the Contech Conditions of Sale ("Contech COS") included herewith and/or viewable at www.conteches.com/cos. A valid tax exemption certificate must be issued to Contech or sales tax will be added.

Item #	Description	Pieces	Quantity	Extended Unit Price	Unit	Unit Total
	CON/SPAN O-Series – O-954: 54'-0" Span x 12'-10 7/8" Rise Precast Bridge Units. Length (ft): 20, 5 unit(s), 4 ft. typical Lay Length. HS-25 Loading, 1 ft. Max Cover. (2) - Detached Counterfort Precast Headwalls (3) - Precast Wingwalls - 12 ft. Long (1) - Precast Wingwalls - 18 ft. Long *** See Fabrications drawings dated 5-12-2016 for additional information	1.00	1.00	\$180,812.89	EA	\$180,812.89
					Total	\$180,812.89
					(Tax not included) Net Total	\$180,812.89

Standard Notes
1.All orders must be shipped within 30 days of manufacture or a storage charge applies equal to a maximum of 5% per month of the selling price of the stored material.
2.Construction loadings typically exceed the intended post-construction live load used for design. Contact your Contech representative for specific guidelines and limitations based on the construction live loads anticipated.
3.Flexible structures of the type on this project are reliant on the type of structural backfill used, the compaction of that material and the balanced placement of structural backfill. Contact your Contech representative for specific information.
4.In addition to any other procedures outlined or remedies provided, at the time of order, Contech will request a desired delivery date for the quoted materials from the purchasing customer. After drawing approval and prior to manufacturing Contech may again confirm the requested delivery date with the purchasing customer. If purchasing customer cannot take delivery of finished materials on requested date, and after Contech has manufactured the product(s), Contech will invoice for the total amount of the order with payment due within 30 days. Additionally, Contech may also assess fees in the amount of 10% of the total order for materials that are not shipped within 30 days after the requested delivery date for storage and handling.
5.One or more of the products quoted herein is nonstandard and not returnable. A down payment equal to 1/3 of the item(s) total is required and must be received prior to commencement of any performance by Contech.
6.Prices are f.o.b. origin with freight allowed to the jobsite with unloading by others at a truck accessible location.
7.Quotation is based upon estimated (not guaranteed) quantities. Buyer must verify final quantities needed prior to commencement of work by Contech. If Buyer elects to purchase from Seller only a portion of the material quoted, Seller retains the right to adjust its prices.
8.The estimated manufacturing lead time for this material is 6 to 9 weeks from the receipt of approved submittal documents.
9.The sale of these materials requires a preconstruction meeting be held that must include Contech and all parties directly involved in the construction process.
10.This material will be manufactured for this particular project and is not subject to cancellation. See Section 19 of the Contech COS.
11.This quotation expires 30 days from the date shown. Prices are firm for shipment within 120 days of the date of quotation and are subject to a maximum escalation of 8% for each 30 days thereafter.
12.This quote is based on live off loading ONLY, Staging/Jockeying of trailers can be provided upon request for an additional fee. Cancellation of scheduled delivery loads requiring permits within 48hrs may result in additional permits and will be the responsibility of the purchaser. Specialized haulers and or equipment are utilized in the shipping of bridge components (ie "trailer rental"), costs incurred by CONTECH due to cancellation and or postponement of the delivery of bridge components will be the responsibility of the purchaser.
13.Weight = 23 tons

Quote # QUO-254851-POV4D3

Scope Of Work

CON/SPAN O-Series

CON/SPAN O-Series pricing includes precast concrete units, associated headwalls and wingwalls with mounting hardware (if applicable and specified), joint sealant material, masonite shims, filter fabric for vertical wingwall joints and perforated drain tile behind precast wall system. Contech will provide contract drawings, fabrication drawings, structural calculations upon request, and on-site consultation during installation of precast units.

Pricing does not include any site preparation, foundation work, installation of any kind, or backfill monitoring. As part of the construction process, the contractor is to perform the items listed below in accordance with the Contech contract drawings:

1. Construct cast-in-place foundations or install precast foundations as appropriate
2. Unload and set structure utilizing crane
3. Grout the unit legs and wingwalls into the keyway
4. Apply all joint sealing material
5. Excavate for and backfill the structure (Select backfill material is required per CONTECH specifications)
6. Any and all permits, inspection fees, flagmen, barricades, flares, traffic control devices, utility protection, and/or other safety devices as may be required

All materials and services that are not expressly included in the aforementioned scope of work are excluded and subject to additional charges.

PAYMENT TERMS ARE 1/2%-10, NET 30 DAYS FROM DATE OF INVOICE UNLESS MATERIAL IS OTHERWISE NOTED AS NON-STANDARD ABOVE. IF NON-STANDARD, PAYMENT TERMS ARE 1/3 AT ORDER ACCEPTANCE AND PRIOR TO START OF PRODUCTION, 2/3 NET 30 DAYS FROM DATE OF INVOICE. THIS OFFER IS SUBJECT TO CREDIT APPROVAL. PRICES QUOTED APPLY ONLY TO THE REFERENCED PROJECT AND ARE IN EFFECT FOR 30 DAYS FROM THE DATE OF QUOTATION. SELLER RESERVES THE RIGHT TO ADJUST PRICES AFTER 30 DAYS FROM THE DATE OF QUOTATION BUT THE CONTECH COS REMAIN APPLICABLE. PRICES ARE BASED ON ESTIMATED QUANTITIES SHOWN. IF A DIFFERENT QUANTITY IS PURCHASED, CONTECH RESERVES THE RIGHT TO ADJUST THE PRICES. THIS QUOTATION CONTAINS THE ENTIRE AGREEMENT WITH RESPECT TO PURCHASE AND SALE OF PRODUCTS DESCRIBED AND SUPERSEDES ALL PREVIOUS COMMUNICATIONS, BUYER'S SIGNATURE BELOW, DIRECTION TO MANUFACTURE, OR ACCEPTANCE OF DELIVERY OF GOODS DESCRIBED ABOVE, SHALL BE DEEMED AN ACCEPTANCE OF THE CONTECH COS. SELLER EXPRESSLY REJECTS ANY OTHER TERMS AND CONDITIONS. PRICES ARE F.O.B. ORIGIN WITH FREIGHT ALLOWED TO THE JOBSITE WITH UNLOADING BY OTHERS AT A TRUCK ACCESSIBLE LOCATION. THIS QUOTATION IS ISSUED BY CONTECH ENGINEERED SOLUTIONS LLC FOR ITSELF AND/OR ON BEHALF OF ONE OR MORE OF ITS SUBSIDIARIES, INCLUDING BUT NOT LIMITED TO KEYSTONE RETAINING WALL SYSTEMS LLC.

<u>Acceptance</u>		<u>Contech Engineered Solutions LLC.</u>	
WE HEREBY ORDER THE DESCRIBED MATERIAL SUBJECT TO ALL TERMS AND CONDITIONS OF THIS QUOTATION AND IN THE Contech COS INCLUDED HEREWITH AND VIEWABLE AT www.conteches.com/cos		By	Michael Blank
Company		(O)	(206) 390-3711
By		(F)	
Title		(Cell)	
Date		Title	

Quote # QUO-254851-POV4D3

Contech - CONDITIONS OF SALE

1. **ACCEPTANCE.** This quotation is an offer to sell to potential customer(s). BUYER'S RIGHT TO ACCEPT THIS OFFER IS LIMITED TO BUYER'S ASSENT TO THE TERMS AND CONDITIONS PRINTED HEREON AND THE ATTACHED OR ACCOMPANYING QUOTE, AND NO TERMS ADDITIONAL TO OR DIFFERENT FROM THOSE IN THIS OFFER ARE BINDING ON SELLER. THERE ARE NO UNDERSTANDINGS, TERMS, CONDITIONS OR WARRANTIES NOT FULLY EXPRESSED HEREIN.

2. **LIMITED WARRANTIES.** Seller warrants that it can convey good title to the products sold under this contract and that they are free of liens and encumbrances. Seller also warrants that the products sold under this contract are substantially free from defects in material and workmanship for a period of one year after the date of delivery. There are no express or implied warranties with respect to products sold hereunder which are misused, abused or used in conjunction with mechanical equipment improperly designed, used or maintained, or which are used, supplied for use or made available for use in any nuclear application of which Seller has not been notified in writing by Buyer at the time of order for the products sold hereunder. SELLER MAKES NO OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND ALL IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE ARE DISCLAIMED BY SELLER AND EXCLUDED FROM THIS CONTRACT.

3. **LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY.** Seller's liability hereunder shall be limited to the obligation to repair or replace only those products proven to have been defective in material or workmanship at the time of delivery, or allow credit, at its option. Seller's total cumulative liability in any way arising from or pertaining to any product or service sold or required to be sold under this contract shall NOT in any case exceed the purchase price paid by Buyer for such products or services. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR COMMERCIAL LOSS, LOST PROFITS, CLAIMS FOR LABOR, OR CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY TYPE, WHETHER BUYER'S CLAIM BE BASED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE. IT IS EXPRESSLY AGREED THAT BUYER'S REMEDIES EXPRESSED IN THIS PARAGRAPH ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES.

4. **LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY FOR FAILURE OR DELAY IN DELIVERY.** NO DELIVERY DATES ARE GUARANTEED. BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ONLY LIABILITY FOR ANY DELAY IN DELIVERY SHALL BE LIMITED AS SET FORTH IN PARAGRAPH 3 OF THIS CONTRACT.

5. **FORCE MAJEURE.** In any event and in addition to all other limitations stated herein, Seller shall not be liable for any act, omission, result or consequence, including but not limited to any delay in delivery or performance, which is (i) due to any act of God, the performance of any government order, any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law, local labor shortage, fire, flood or other casualty, governmental regulation or requirement, shortage or failure of raw material, supply, fuel, power or transportation, breakdown of equipment, or any cause beyond Seller's reasonable control whether of similar or dissimilar nature to those above enumerated, or (ii) due to any strike, labor dispute, or difference with workers, regardless of whether or not Seller is capable of settling any such labor problem.

6. **BUYER'S OBLIGATION TO PASS ON LIMITATION OR WARRANTIES AND REMEDIES.** In order to protect Seller against claims by Buyer's buyer, if Buyer resells any of the products purchased under this agreement, Buyer shall include the language contained in paragraphs 2 and 3 of this agreement, dealing with Seller's limitations of warranties and remedies, in an enforceable agreement with Buyer's buyer, or otherwise include language in an enforceable agreement with its buyer that makes Seller's limitation of warranties and remedies binding on its buyer. Buyer shall also include a provision in its agreement with its buyer applying Ohio law to any claims its buyer might assert against Seller with respect to products manufactured by Seller, and requiring its buyer to bring any such action against Seller either in federal district court in Cincinnati, Ohio or the common pleas court for Butler County, Ohio. Buyer shall defend, indemnify and hold Seller harmless from any and all claims, causes of action, damages, losses or expenses (including reasonable attorneys' fees) that Seller incurs by reason of Buyer's failure to comply with this paragraph.

7. **PASSAGE OF TITLE.** Title to the products sold hereunder shall pass upon delivery to the carrier at the point of shipment. Neither

Buyer nor the consignee shall have the right to divert or reconsign such shipment to any destination other than specified in the bill of lading without permission of the Seller. Unless otherwise agreed Seller reserves the right to select the mode of transportation.

8. **PAYMENTS AND LATE CHARGES ON PAST DUE ACCOUNTS.** Buyer represents that Buyer is solvent and can and will pay for the products sold to Buyer in accordance with the terms hereof. If Buyer shall fail to comply with any provision or to make payments in accordance with the terms of this contract or any other contract between Buyer and Seller, Seller may at its option defer shipments or, without waiving any other rights it may have, terminate this contract. All deliveries shall be subject to the approval of Seller's Credit Department. Seller reserves the right, before making any delivery, to require payment in cash or security for payment, and if Buyer fails to comply with such requirement, Seller may terminate this contract. A late charge of 1-1/2% monthly (18% annual rate) or the maximum allowed by state law, if less, will be imposed on all past due accounts, and Buyer is responsible for all costs of collection including without limitation reasonable attorneys' fees and court costs.

9. **TRANSPORTATION CHARGES.** Delivered prices or prices involving competitive transportation adjustments shall be subject to appropriate adjustment to reflect changes in transportation charges.

10. **CLAIMS BY BUYER.** Buyer shall thoroughly inspect products sold under this contract immediately upon receipt to verify conformance with the specifications of the contract. Buyer must notify Seller of claims for failure or delay in delivery within 30 days after the scheduled delivery date. Buyer must notify Seller of any claims for nonconforming or defective products within 30 days after the nonconformity or defect was or should have been discovered. In addition, Seller must be given an opportunity to investigate the claim before Buyer disposes of the material, or else Buyer's claim will be barred. Seller shall incur no liability for damage, shortages, or other cause alleged to have occurred or existed at or prior to delivery to the carrier unless the Buyer shall have entered full details thereof on its receipt to the carrier.

11. **MECHANICAL PROPERTIES; CHEMICAL ANALYSES.** Data referring to mechanical properties or chemical analysis are the result of tests performed on specimens obtained from specific locations of the product(s) in accordance with prescribed sampling procedures; any warranty thereof is limited to the values obtained at such locations and by such procedures. There is no warranty with respect to values of the materials at other locations.

12. **PATENTS.** Seller shall indemnify Buyer against attorneys' fees and any damages or costs awarded against Buyer in the event any legal proceeding is brought against Buyer by a third person claiming the material delivered hereunder in itself constitutes an infringement of any U.S. patent, provided Buyer gives Seller prompt notice of any such suit being brought, gives Seller the opportunity to defend any such suit, and cooperates with Seller with respect to any such defense; unless the material is made in accordance with material designs, or specifications required by Buyer, in which case Buyer shall similarly indemnify Seller.

13. **PERMISSIBLE VARIATIONS.** The products sold hereunder shall be subject to Seller's standard manufacturing variations, tolerances and classifications.

14. **TECHNICAL ADVICE.** Buyer represents that it has made its own independent determination that the products it is purchasing under this contract meet the design requirements of Buyer's project and are suitable for Buyer's intended application. Buyer further represents that it has not relied in any respect on any written or oral statements or advice from Seller, other than the standard product specifications set forth in the most recent addition of Seller's published product brochures, in making that determination.

15. **TAXES.** No taxes imposed with respect of the sale of the products or services sold hereunder are included in any quotation by Seller. All applicable taxes shall be added and paid by Buyer in addition to the purchase price.

16. **BUYER'S RIGHT OF TERMINATION.** Buyer may terminate this contract in whole or in part upon notice in writing to Seller. Seller shall thereupon cease work and transfer to Buyer title to all completed and partially completed products and to any raw materials or supplies acquired by Seller especially for the purpose of performing this contract, and Buyer shall pay Seller the sum of the following:
(1) the contract price for all products which have been completed prior to termination;
(2) the cost to Seller of the material or work in process as shown on the books of Seller in accordance with the accounting practice

consistently maintained by Seller plus a reasonable profit thereon, but in no event more than the contract price;
(3) the cost f.o.b. Seller's plant of materials and supplies acquired especially for the purpose of performing this contract; and
(4) reasonable cancellation charges, if any, paid by Seller on account of any commitment(s) made hereunder.

17. **SELLER'S RIGHT OF TERMINATION.** In addition to the other rights of termination provided for in this contract, and if this contract is made pursuant to any governmental rule or regulation, plan, order or other directive, upon the directive, effected or impaired termination thereof, Seller shall have the option of canceling this contract in whole or in part.

18. **WAIVER.** Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences.

19. **DELIVERY.** Unless otherwise agreed to in writing by the Seller, the Buyer hereby agrees to take delivery of the materials on this order within the later of thirty (30) days after the wanted date shown on the face of the order or within thirty (30) days after notification, oral or written, that the materials are ready for shipment. In the event that the Buyer does not arrange to take delivery of the materials in accordance with this Contract, Seller, at Seller's option, may:
(a) invoice the Buyer for the materials less freight if applicable; store the material in Seller's yard for a period not to exceed sixty (60) days from the date of invoice; charge a storage fee not to exceed 5% per month or fraction thereof of the selling price of the stored materials; add any applicable price increases listed on the face of the order; charge for any repair work to protective coatings harmed by weathering while such material is being stored; and charge applicable freight when shipment to the Buyer is made. Materials remaining in storage after sixty (60) days from the invoice date shall become the property of the Seller for disposition at the Seller's discretion. In that event, Buyer shall not be liable for the invoice price of the materials, but shall be liable for the storage fee and any repair work to protective coatings; or
(b) cancel the order and invoice the Buyer for cancellation charges, which shall be 25% of the selling price of the materials if the materials are standard, in-stock material, or the full selling price if the materials are special or nonstandard in nature and were especially fabricated for the Buyer.

20. **PERIOD OF LIMITATIONS.** Buyer and Seller agree that any action by Buyer against Seller relating to this contract or the products sold hereunder, including, without limitation, any action for breach of contract or warranty, or otherwise in connection with the products sold under this contract, must be commenced by Buyer against Seller within one year after the cause of action therefore accrues or one year of delivery of the products sold hereunder, if less.

21. **CONFLICTING PROVISIONS OFFERED BY BUYER.** Any terms and conditions of any purchase order or other instrument issued by the Buyer, in connection with the subject matter of this document, which are in addition to or inconsistent with the terms and conditions expressed herein, will not be binding on Seller in any matter whatsoever unless accepted by Seller in writing.

22. **SEVERABILITY.** In case any provision of this contract shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

23. **APPLICABLE LAW.** This contract shall be governed by, and construed and enforced in accordance with, the laws of Ohio. Buyer and Seller specifically agree that any legal action brought relating to this contract shall be brought and tried exclusively in the federal district court in Cincinnati, Ohio, or, in the absence of jurisdiction, the Butler County Court of Common Pleas in Hamilton, Ohio.

REV. 03/15

Quiota Creek Crossing 4 Project

Non-Competitively Bid (NCB) Contract Justification Corrective Action Plan

To: Cachuma Operation and Maintenance Board

From: Timothy H. Robinson (Project Manager, COMB) and Michael C. Garello (Design Engineer, HDR)

Contract: Procurement of a prefabricated ConTech bottomless arch culvert bridge system for the Quiota Creek Crossing 4 Project as required by the project design.

Complete responses must be provided for all of the following questions:

A. Factors of Consideration

1. *Why is the submission of a NCB necessary and what are the determining factors that caused the problem?*

ConTech is the sole vendor for the required 54 foot bottomless arched culvert (arch) system (O-Series) that meets the design criteria for the Quiota Creek Crossing 4 project. In short, there are no other suppliers/vendors that provide the same product, design specifications, and price that are required for the project.

Factors determining that conclusion are as follows:

- California Department of Fish and Wildlife (CDFW), as the grantor, requires the use of qualified and experienced contractors and vendors to perform work and supply materials. The basis for that requirement is to ensure project design specifications and construction meets the obligation to prevent environmental degradation and enhance the steelhead fishery.
- Santa Barbara County (County) requires that the proposed bridge system meet and/or exceed Caltrans design standards for a public road. The specific ConTech arch system proposed for the project satisfies those requirements and was the only vendor that provided the necessary span length and load capacity. Caltrans and other national state Department of Transportations (DOT) recognize that ConTech arch systems are standardized to meet state DOT loading requirements.
- In 2010, COMB's design engineer at HDR with staff conducted a search for the most cost effective bridge or bottomless arched culvert system suitable for replacing low flow concrete stream crossings on Refugio Road where it crosses Quiota Creek. ConTech arch systems were the only product that met that engineering design criteria and esthetics requested by the landowners. The specific ConTech arch system selected was compared to other vendors of bridge or arch system specifically for span length, load capacity, flow conveyance, off-site fabrication, installation ease, cost, esthetics, and service provided by the vendor. The results of the study were presented to COMB Member Unit managers on 3/3/09, the COMB Board on 11/22/10, and

summarized in a design memo (4/22/10). ConTech was the sole vendor to meet the design criteria and requests of the landowners.

- Fabrication of the ConTech product in the Los Angeles and Bakersfield areas reduces shipping costs and oversight expenses incurred by the County and COMB engineers for fabrication oversight required by the County.
- The selected arch system is the initial and central component of the design process. The O-Series provides greater flow conveyance at a lower cost than the B-Series that was used in previous projects. Once the arch system is determined, the entire project is then designed around that structure. Five similar projects on Quiota Creek (48-foot arch for Quiota Creek Crossing 6 in 2008, a 60-foot arch for Quiota Creek Crossing 2 in 2010, a 60-foot arch for Quiota Creek Crossing 7 in 2012, a 60-foot arch for Quiota Creek Crossing 1 in 2013, and a 53-foot arch for Quiota Creek Crossing 3) have successfully followed this design process, each with substantially reduced design and permit costs due to using the same vendor (ConTech) and arch system.
- The vendor is required to supply shop drawings and calculations to COMB and Santa Barbara County (County) that are provided to a third party for independent review. Therefore, the bridge structure has to be selected, reviewed by the County and an independent engineer, and approved by COMB's design engineer and the County prior to the issuance of the project County Encroachment Permit. ConTech has met this obligation in a timely manner at no cost to COMB.
- ConTech is the only vendor that offers the O-Series product which does carry a patent. Other vendors supply fabricated bridge or arch systems but do not meet the design requirements listed above. Vendors considered and the reasons their product does not meet the obligation and unique design criteria for the current project as provided by HDR are as follows:
 - TechSpan – Height to span ratios are not favorable for Refugio Road applications. This system has a rounded arch that is too tall for the required span and flow conveyance of Quiota Creek along Refugio Road. In addition, foundations are larger and as a result more costly than the ConTech arch system.
 - SFC Bridge Systems – Their maximum span is 48 feet. The design for the Quiota Creek Crossing 4 project requires a 53 foot span.
 - TriCon Precast Limited – Has similar arch systems but their Redi-Arch product comes in spans of 12-42 feet which does not meet the span length requirement for this project. Also they are based and only fabricate in Texas, making for high shipping costs.
 - Oldcastle Precast – Has box and arch style bridge systems with spans 30 feet or less. Their arches are ConTech designed and this fabricator serves as middle man for ConTech.
 - Big-R – Sells steel parallel chord truss bridges. Although they are popular, footing and abutment design and construction costs for this style of bridge would exceed those of the ConTech arch system. Use of this system would require substantial redesign for a product that costs

more than the selected and superior Contech arch system. Also this system is not as esthetic in the eyes of the landowners.

Hence, the required flow conveyance, design, height, span length, minimum load capacity, cost, proximity of the fabricator, and esthetics make the ConTech product unique for the required arch system on Quiota Creek, specifically at Crossing 4.

- The ConTech arch systems provide design flexibility with regard to meeting the combination of height, span, and flow conveyance requirements. The height and span are governed by the conveyance requirement which is 1 foot of freeboard under the bottom chord of the bridge at the 50-year flood event. Other road design and safety factors which govern the vertical curve of the road also support the use of the ConTech arch system. No other vendor is capable of providing this construction flexibility.

2. *What are the consequences of not having this NCB approved?*

- The project would not meet the requirements of the County set forth to ensure span length and load capacity.
- The project would have to be completely redesigned for an alternative bridge / arch system. This would require reconfiguring the foundations, re-analyzing the hydraulic design for flow conveyance under the structure, and determining the required scour protection for the foundations, rock slope protection, and associated embankment fill and revegetation.
- A redesign would result in further engineering costs both in design and review for the bridge/arch system, road, embankments, in-stream structures, and revegetation.
- The County Encroachment Permit fee would increase due to lack of familiarity with a different structure.
- Other bridge/arch system may increase the size of the project specifically if the County does not grant variances. Currently COMB has received five design variances for each of the Quiota Creek projects that cumulatively reduce the size and subsequently the cost of the project while maintaining road safety standards, fish passage, the rural esthetics of the area, and landowner cooperation. Without those variances, the project would cost significantly more and would not be of the same rural character or be acceptable to the landowners.

3. *How will your agency ensure adequate planning to prevent submittal of NCB's for goods or services that should have been competitively bid?*

- COMB's staff and design engineer at HDR continue to study the market, technologies, and availability of bridge/arch systems. If a better system comes onto the market at less cost, it will be evaluated in comparison with the current ConTech arch system.
- To date, alternative bridge/arch systems have failed to meet County design standards specifically for minimum load bearing and flood conveyance; for example a multiple recessed box culvert that was proposed for one of the Quiota Creek crossings. Staff will continue to work closely with the County on

our designs so that we propose projects with products that are acceptable to the County standards and design criteria.

- The vendor product selection is determined by the unique setting of each project regarding geologic, hydrologic, and fluvial geomorphic characteristics. Quiota Creek Crossings 0 through 9 have very similar characteristics and the ConTech arch system is particularly well suited for those conditions. Where other bridge options are appropriate in design and economically viable, and appropriate, they are being evaluated.

B. Price Analysis

1. *How was the price offered determined to be fair and reasonable?*

- COMB's project engineering team evaluated and conducted a design and price comparison and found the ConTech arch system to meet design and price obligations.
- The required product is just not available from other vendors or prefabricators.

2. *Describe any cost savings realized or costs avoided by acquiring the goods/services from this supplier.*

- Due to the sign of the vendor and their volume of sales, the supplier is able to provide to COMB at no cost signed and sealed Shop Drawing and calculations required for project design evaluation; a benefit that other vendors cannot provide.
- COMB and HDR review costs are expedited by using nearly identical products for each of the Quiota Creek projects to date.
- Spread footings are much easier to design and construct than are typical footings and abutments required by other bridge/arch systems.

COUNTY OF SANTA BARBARA
DEPARTMENT OF PUBLIC WORKS
TRANSPORTATION DIVISION
123 E. Anapamu St.
Santa Barbara, CA 93101

INVOICE

Invoice : D0190069

Invoice Date : 5/13/16

*Please make checks payable to:
County of S.B. - P.W. Trans.*

Cachuma Operation & Maintenance Board

Attn.: Timothy H, Robinson, Ph.D

3301 Laurel Canyon Road

Santa Barbara, CA 93105

Re: COMB Quiota Creek Crossing #4 Project
Permit D0190069

Description	Amount
Project : COMB Quiota Creek Crossing (Permit #D0190069)	
Encroachment Permit Issuance	\$ 68.00
Road Closure Permit	\$ 1,235.00
Engineering Design Plan Check Review-Hourly (Est. Deposit)	\$ 10,000.00
County Inspection Oversight & Admin-Hourly (Est. Deposit)	\$ 17,000.00
Final Reports - Closeout and Review-Hourly (Est. Deposit)	\$ 2,000.00
	<u>\$ 30,303.00</u>
Total Amount Due	\$ 30,303.00

D

Please reference the invoice number on your check. Please enclose REMIT copy with payment and mail to:
County of Santa Barbara - Public Works Dept. Road Permits - Jemmi Irabon 4417 Cathedral Oaks Road Santa Barbara, CA 93110

DUPLICATE INVOICE: ONE for REMITTANCE, ONE for CUSTOMER