

LEGAL SERVICES AGREEMENT BETWEEN COUNTY OF SAN BENITO
AND MILLER STARR REGALIA

THE BLUFFS PROJECT

THIS LEGAL SERVICES AGREEMENT ("AGREEMENT") is by and between the County of San Benito ("COUNTY") and Miller Starr Regalia ("CONTRACTOR").

1. CONTRACTOR SERVICES

COUNTY hereby retains CONTRACTOR as an independent contractor through the services of the following key persons: Nadia Costa and Matthew Henderson, and such other partners, associates and staff members employed by CONTRACTOR as CONTRACTOR deems necessary and COUNTY'S County Counsel ("COUNTY COUNSEL"), or his or her designee, approves by email or other written document. CONTRACTOR shall not replace any of the key persons named above without the prior express approval of the COUNTY COUNSEL or his or her designee.

The services to be performed by CONTRACTOR in this AGREEMENT shall consist of legal services, including, but not limited to, advice, assistance and representation, with respect to the management and processing of the application submitted by the developers for the land use project known as the Bluffs Project ("Bluffs" or "Project") and shall include legal services concerning all aspects of the land use application, as assigned by COUNTY COUNSEL. Services to be provided shall include litigation and litigation support should that become necessary, although a separate scope of work with an estimated budget shall be prepared before proceeding with any litigation.

During the term of this Agreement, CONTRACTOR shall perform legal services in the following more specific areas concerning the Project and shall use diligent and good faith efforts to complete said legal services consistent with the indicated time frames, as appropriate and as directed by COUNTY COUNSEL:

- (a) Review and comment, as directed by COUNTY COUNSEL, on the Project, particularly as it may relate to implementation issues and ensuring consistency with the project description in the Project's environmental impact report ("EIR"). (Estimated time: 10-15 hrs., to be completed within one (1) week of direction from COUNTY COUNSEL to proceed)
- (b) Advise COUNTY COUNSEL and staff regarding various legal issues related to CEQA considerations, as needed, throughout the Project's CEQA process. (Estimated time: 20-30 hrs., to be completed throughout the Project's environmental review process as directed by COUNTY COUNSEL)
- (c) Review and provide comments on the Administrative Draft EIR for purposes of legal sufficiency. Said scope assumes that CONTRACTOR will provide one (1) set of detailed written comments on the Administrative Draft EIR. (Estimated time: 50-80 hrs., to be completed within three (3) weeks of direction from COUNTY COUNSEL to proceed)

- (d) Review and provide comments (if needed) on the Screencheck Draft EIR for the limited purpose of confirming that all legal comments have been adequately addressed. (Estimated time: 20-40 hrs., to be completed within one (1) week of direction from COUNTY COUNSEL to proceed)
- (e) Advise COUNTY COUNSEL and staff regarding various environmental issues raised in comments to the Draft EIR and assist the Project's environmental consultant and County in preparing Responses to Comments to the Draft EIR and preparing the Final EIR. Said scope assumes that Rincon will prepare the first draft of all Responses to Comments (except those that may raise specific legal issues, in which case CONTRACTOR and COUNTY COUNSEL will prepare the first draft of any such responses) and administrative Final EIR, and that CONTRACTOR will provide one (1) set of detailed written comments on the administrative Final EIR and Responses to Comments. (Estimated time: 50-85 hrs., to be completed within two (2) weeks of direction from COUNTY COUNSEL to proceed)
- (f) Review and provide comments (if needed) on the Screencheck Final EIR for the limited purpose of confirming that all legal comments have been adequately addressed. (Estimated time: 10-25 hrs., to be completed within one (1) week of direction from COUNTY COUNSEL to proceed)
- (g) Negotiate and prepare a development agreement, in the event the COUNTY and DEVELOPER determine to pursue said agreement. (Estimated time: 25-35 hrs., completion time dependent on negotiations).
- (h) Review and provide comments on staff reports, Project conditions of approval, draft resolutions and ordinances, as well as draft findings in connection with the public hearing process for the Project. (Estimated time: 20-30 hrs., to be completed within one (1) week of direction from COUNTY COUNSEL to proceed)
- (i) Advise COUNTY COUNSEL and staff, and meet with the Project applicant, as appropriate, to finalize the EIR and other documents associated with the County decisionmakers' consideration of the Project. (Estimated time: 15-45 hrs., to be completed throughout the Project's entitlement process as directed by COUNTY COUNSEL)
- (j) Advise COUNTY COUNSEL and staff, and meet with the Project applicant team, as appropriate, to address potential utility service, other technical issues, and the formation of any potential financing districts or mechanisms (including, without limitation, a Geological Hazard Abatement District), and any legal issues related thereto. (Estimated time: 15-45 hrs., to be completed throughout the Project's entitlement process as directed by COUNTY COUNSEL)
- (k) Advise COUNTY COUNSEL and staff with respect to the consistency of the Project with the General Plan (as needed), including recommendations to the

County of means by which any policy issues raised by this analysis could be addressed and resolved. (Estimated time: 10-30 hrs., to be completed within one (1) week of direction from COUNTY COUNSEL to proceed)

- (l) Advise COUNTY COUNSEL and staff with respect to the consistency of the Project with the County Code (as needed), including recommendations to the County of means by which any policy issues raised by this analysis could be addressed and resolved. (Estimated time: 10-15 hrs., to be completed within one (1) week of direction from COUNTY COUNSEL to proceed)
- (m) Prepare for and participate in the public hearing process for the Project, as requested by COUNTY COUNSEL and staff. (Estimated time: 10-25 hrs.)

CONTRACTOR may have any of the key persons perform such services as set forth above so as to have the work performed in as expeditious a manner as possible. CONTRACTOR may also coordinate with COUNTY so as to share and coordinate the performance of work which may reduce the estimates set forth above.

Notwithstanding the specificity of the foregoing, CONTRACTOR may be requested to perform legal services in other areas, and to coordinate the legal services provided to COUNTY, in connection with the Bluffs Project. CONTRACTOR has not been engaged to act as counsel for, or to assume any duties to, any other parties who may be affiliated with or related to COUNTY, such as financing districts.

2. CONTRACTOR PERFORMANCE

CONTRACTOR shall provide only those services that are necessary to carry out the work specified herein for COUNTY in an efficient and effective manner. CONTRACTOR shall provide only those services assigned by County Counsel and all matters shall be handled in collaboration with that office. CONTRACTOR acknowledges that COUNTY is relying on a Reimbursement Agreement with Developer (attached as Exhibit 1 and incorporated herein by reference) and deposit by the Developer to pay CONTRACTOR'S fees. CONTRACTOR agrees to comply with any applicable or relevant terms of the Reimbursement Agreement between COUNTY and Developer. Estimates of work and expected monthly costs shall be provided as required by COUNTY.

All invoices for work performed are subject to review and approval by COUNTY COUNSEL. CONTRACTOR shall avoid unnecessary duplicative efforts on the part of CONTRACTOR and CONTRACTOR'S partners, associates and staff members. CONTRACTOR shall keep COUNTY informed of progress and developments and respond promptly to COUNTY inquiries and communications.

Costs involved in training or learning of CONTRACTOR personnel shall not be charged to COUNTY. In order to avoid duplication of effort and to minimize legal fees, CONTRACTOR shall limit the number of attorneys or staff attending meetings or proceedings to those necessary as agreed to by COUNTY. To avoid duplication of effort and keep the cost of legal and other research to a minimum, significant research projects should be discussed with COUNTY

COUNSEL prior to commencement of such work. It is inappropriate for COUNTY to pay legal fees for research on basic issues of law, especially where outside counsel has been hired for a specific area of expertise.

3. CONTRACTOR COMPENSATION

Total compensation for the services and reimbursable expenses pursuant to this AGREEMENT shall not exceed One Hundred Ninety Seven Thousand, Five Hundred Dollars (\$197,500). CONTRACTOR shall notify COUNTY when seventy five percent (75%) of the maximum compensation limit has been billed.

A. FEE COMPENSATION:

COUNTY agrees to pay and CONTRACTOR agrees to accept as full compensation for performance of tasks under this AGREEMENT the following sum per hour per person:

A "blended rate" for all attorneys, including the key persons: \$395/hour.

Upon the prior approval, by email or other writing, of the COUNTY COUNSEL or his or her designee, CONTRACTOR may provide additional partners, associates, paralegals or staff employed by its firm to provide services under this AGREEMENT.

B. EXPENSES:

CONTRACTOR shall be reimbursed for actual, reasonable and necessary out-of-pocket expenses as follows: telephone charges, matter specific computer research charges, filing fees, printing and photographic reproduction expenses, court reporter's fees and all other directly related expenses, excluding facsimile charges and postage charges. COUNTY'S reimbursement for said expenses shall be the cost of the expenses to the CONTRACTOR.

CONTRACTOR shall not be reimbursed for secretarial, clerical, word processing or typist services (including overtime hours worked), travel expenses or attorneys' time while traveling, or normal office operating expenses, with the exception of those charges and expenses stated above. In addition, CONTRACTOR shall not be reimbursed for such services performed or expenses incurred regardless of whether such tasks are performed or expenses incurred by CONTRACTOR'S partners, associate attorneys or anyone else.

4. PAYMENT PROVISIONS

Subject to Section 3 of this AGREEMENT, payment of compensation for the services provided and reimbursement for related, actual, reasonable and necessary out-of-pocket expenses incurred which are described here shall be made by COUNTY every 30 days after submission of an itemized invoice by CONTRACTOR. All such invoices shall have sufficient detail as may be required by COUNTY'S Auditor.

5. TERM OF AGREEMENT

This AGREEMENT shall commence on August 23, 2016, and continue in full force and effect until the earlier of the date (a) the work is completed, (b) \$197,500 of services and reimbursable expenses have been incurred, or (c) the AGREEMENT is extended or terminated as provided in this AGREEMENT.

6. TERMINATION

COUNTY may terminate this AGREEMENT with or without cause at any time. CONTRACTOR may withdraw and terminate this AGREEMENT with COUNTY'S consent or for good cause, if permitted under the Rules of Professional Conduct of the State Bar of California. CONTRACTOR, in order to terminate this AGREEMENT, shall give at least 30 days' advanced written notice to COUNTY. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of termination.

7. CONTRACTOR DUTIES UPON TERMINATION

Upon termination of the AGREEMENT, all finished or unfinished documents, data, studies, maps, photographs, reports and other materials (hereinafter collectively referred to as "materials") prepared by CONTRACTOR under this AGREEMENT shall become property of COUNTY and shall be delivered to COUNTY promptly. Upon receipt of such materials CONTRACTOR shall be paid for services performed and reimbursable expenses incurred to the date of termination.

8. NON-EXCLUSIVE REMEDIES

COUNTY'S right to terminate this AGREEMENT is not its exclusive remedy but is in addition to all other remedies provided to COUNTY by law, in equity, or under the provisions of this AGREEMENT.

9. NO SPECIAL DAMAGES

In no event shall COUNTY be liable to CONTRACTOR for any direct, special or consequential damages or lost profits arising out of or relating to this AGREEMENT or the performance or breach thereof. CONTRACTOR promises, covenants and warrants that the performance of its services and representation to COUNTY under this AGREEMENT shall not result in a conflict of interest as that term is used in the Rules of Professional Conduct of the State Bar of California. In the event of a conflict of interest or a potential conflict, CONTRACTOR shall disclose such conflict to COUNTY COUNSEL and shall request COUNTY'S Board of Supervisors waive such conflict on a case-by-case basis.

10. INDEPENDENT CONTRACTOR

CONTRACTOR and its officers and employees, in the performance of this AGREEMENT, are independent contractors in relation to COUNTY and not officers and employees of COUNTY. Nothing in this AGREEMENT shall create the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be

solely liable for all applicable taxes or benefits including, but not limited to, federal and state income taxes, social security taxes or ERISA retirement benefits, which taxes arise out the performance of this AGREEMENT. CONTRACTOR shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. No person performing the work or services described herein shall be considered an officer, agent, servant or employee of COUNTY, nor shall any such person be entitled to any benefits available or granted to employees of COUNTY.

11. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES

The services to be performed by CONTRACTOR are personal in character, except as specifically authorized herein. No rights under this AGREEMENT may be assigned and no duties under this AGREEMENT may be delegated by CONTRACTOR without the prior written consent of COUNTY and any attempted assignment or delegation without such consent shall be void.

12. NONDISCRIMINATION

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this AGREEMENT on any legally impermissible basis including the basis of race, color, national origin, ancestry, age, sex or disability of such person.

13. GOVERNING LAW; VENUE

This AGREEMENT shall be construed and enforced in accordance with the laws of the State of California. Proper venue for legal action regarding this AGREEMENT shall be in COUNTY of San Benito.

14. ENTIRE AGREEMENT

This AGREEMENT is the entire AGREEMENT of the parties. There are no understandings or agreements pertaining to this AGREEMENT except as are expressly stated in writing in this AGREEMENT or in any document attached hereto or incorporated herein by reference.

15. INDEMNIFICATION

CONTRACTOR shall indemnify, defend and hold harmless County of San Benito, its officers, agents and employees from and against any claim, liability, loss, injury or damage whatsoever arising as a result of and during the performance of this AGREEMENT by CONTRACTOR and/or its agents, officers or employees, including, but not limited to, claims for property damage, personal injury, death and any legal expenses (such as attorney's fees, court costs, investigation costs and expert fees) excepting only the extent of loss, injury or damage caused by the negligence or willful misconduct of personnel employed by COUNTY. It is the intent of the parties of the AGREEMENT to provide the broadest possible coverage for COUNTY. The term "performance" includes action or inaction of a party of its officers and employees.

16. GENERAL INSURANCE REQUIREMENTS

Without limiting CONTRACTOR'S duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements as follows:

- (a) Comprehensive General Liability Insurance: One million dollars each; two million dollars aggregate.
- (b) Professional Liability Insurance: Ten million dollars each; ten million dollars aggregate;
- (c) Comprehensive Motor Vehicle Liability Insurance: One million dollars.

Those insurance policies mandated by the provisions stated above shall satisfy the following requirements: (a) each policy shall be issued by a company authorized by law to transact business in the state of California, (b) CONTRACTOR shall ensure that COUNTY shall be given notice in writing at least 30 days in advance of any change, cancellation or non-renewal of each policy, unless such change, cancellation or non-renewal thereof provides for a new policy which satisfies the provisions mandated above; (c) the comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming COUNTY of San Benito and its officers, agents and employees as additional insured, and (d) the required coverage shall be maintained in effect throughout the term of this AGREEMENT.

17. INSURANCE COVERAGE REQUIREMENTS

If required by the insurance coverage addressed in the preceding section, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this AGREEMENT:

- (a) Comprehensive General Liability Insurance: CONTRACTOR shall maintain comprehensive general liability insurance covering all of CONTRACTOR'S operations with the combined single limit of not less than the amount set out in the preceding section.
- (b) Professional Liability Insurance: CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in the preceding section.
- (c) Comprehensive Motor Vehicle Liability Insurance: CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this AGREEMENT with a combined single limit of not less than the amount set out in the preceding section.
- (d) Workers Compensation Insurance: CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code §3700, either through workers' compensation issued by an insurance company or through a plan of self insurance certified by the State Director of

Industrial Relations. If CONTRACTOR elects to be self-insured, the Certificate of Insurance otherwise required by this AGREEMENT shall be replaced with a Consent to Self-Insure issued by the State Director of Industrial Relations.

18. CERTIFICATE OF INSURANCE

Within thirty (30) days of the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file Certificates of Insurance with COUNTY showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended Certificate promptly after any changes made in any insurance policy which would alter the Certificate then on file. In lieu of providing proof of insurance CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR'S self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this AGREEMENT within 30 days of such change.

19. SEVERABILITY

Should any provision herein be found or deemed to be invalid, this AGREEMENT shall be construed as not containing such provision and all other provisions which are otherwise lawful shall remain in full force and effect until the provisions of this AGREEMENT are declared to be severable.

20. SUCCESSORS AND ASSIGNS

Subject to the provisions of this AGREEMENT restricting CONTRACTOR'S right to assign or subcontract, the terms, covenants and conditions in the AGREEMENT shall bind and inure to the benefit of COUNTY and CONTRACTOR and, except as otherwise provided herein, their personal representatives, successors and assigns.

21. NO RELIANCE ON REPRESENTATIONS

Each party hereby represents and warrants that it is not relying and has not relied upon any representation or statement of the other party with respect to the facts involved or rights or duties of either party under this AGREEMENT. Each party understands and agrees the facts relevant or believed to be relevant to this AGREEMENT may hereunder turn out to be other than, or different from, the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree this AGREEMENT shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

22. COUNTERPARTS

This AGREEMENT may be executed in any number of counterparts each of which so executed shall be deemed an original. The counterpart shall together constitute one AGREEMENT.

23. AUTHORITY AND CAPACITY

CONTRACTOR and CONTRACTOR'S signatory each warrant and represent that each has full authority and capacity to enter into this AGREEMENT.

24. WAIVER

Waiver by either party of a breach of any covenant of this AGREEMENT shall not be construed to be a continuing waiver of any subsequent breach. COUNTY'S receipt of consideration with knowledge of CONTRACTOR'S violation of a covenant does not waive its right to enforce any covenant of this AGREEMENT. The parties shall not waive any provisions of this AGREEMENT unless the waiver is in writing and is signed by all parties.

25. NOTICES

All notices required by this AGREEMENT shall be in writing and shall be deemed to be duly given only if delivered personally or deposited in the United States mail, postage pre-paid, return receipt required, addressed to the other party at the address or addresses set forth below or at such other address the party may designate in writing in accordance with this section.

COUNTY: Barbara Thompson, Assistant County Counsel
San Benito County Counsel's Office
481 Fourth Street, Second Floor
Hollister, CA 95023
(831) 636-4040

CONTRACTOR Nadia L. Costa
Miller Starr Regalia
1331 North California Blvd., Fifth Floor
Walnut Creek, CA 94596
(925) 941-3235

26. COMPLIANCE WITH APPLICABLE LAWS

CONTRACTOR shall comply with all applicable federal, state and local laws now or hereafter in force and any applicable regulations in performing the work and providing the services specified in this AGREEMENT. This obligation includes, without limitation, the acquisition and maintenance of any licenses or any other entitlements necessary to perform the duties imposed expressly or impliedly under this AGREEMENT.

27. NEGOTIATED AGREEMENT

This AGREEMENT has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this AGREEMENT within the meaning of California Civil Code §1654.

28. RESPONSIBILITY OF CONTRACT ADMINISTRATORS

All matters concerning this AGREEMENT which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified in writing by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

29. NON-EXCLUSIVE AGREEMENT

This AGREEMENT is non-exclusive and COUNTY retains the right to contract with any other attorney or law firm to provide any legal services desired by COUNTY concerning the Bluffs Project.

The parties have caused this AGREEMENT to be executed by their duly authorized representatives.

COUNTY OF SAN BENITO
Board of Supervisors

MILLER STARR REGALIA

Robert Rivas, Chair

Date: _____



Nadia L. Costa

Date: 8/15/16

APPROVED AS TO LEGAL FORM:
San Benito County Counsel's Office

Barbara Thompson, Assistant County Counsel

Date: _____