

## CONTRACT

The COUNTY OF SAN BENITO ("COUNTY") and Rincon Consultants, Inc. ("CONTRACTOR") enter into this contract which shall be effective on the date stated in Paragraph 1.

1. **Duration of Contract.**

This contract shall commence on March 8, 2016, and end on Completion of the Scope of Work Identified In Attachment A, unless sooner terminated as specified herein.

2. **Scope of Services.**

CONTRACTOR, for COUNTY's benefit shall perform the services specified on Attachment A to this contract. Attachment A is made a part of this contract.

3. **Compensation for Services.**

In consideration for CONTRACTOR's performance, COUNTY shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this contract.

4. **General Terms and Conditions.**

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

5. **Insurance Limits.**

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive general liability insurance: \$1,000,000
- (b) Professional liability insurance: \$1,000,000
- (c) Comprehensive motor vehicle liability insurance: \$250,000/\$500,000

6. **Termination.**

The number of days of advance written notice required for termination of this contract is 30.

7. **Specific Terms and Conditions** (check one)

- ☒ There are no additional provisions to this contract.
- ☐ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.
- ☐ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment E. Attachment E is made a part of this contract.

8. Information about Contract Administrators.

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for COUNTY:

Name: Brent Barnes

Title: RMA Director

Address: 2301 Technology Parkway

Hollister, California 95023

Telephone No.: 831-636-4170

Fax No.: 831-636-4176

Contract Administrator for CONTRACTOR:

Name: Richard Daulton, MURP

Title: Principal

Address: 437 Figueroa Street, Ste. 203

Monterey, CA 93940

Telephone No.: 831-333-0310

Email: mjones@rlinconsultants.com

SIGNATURES

APPROVED BY COUNTY:

Name: Robert Rivas

Chair, Board of Supervisors

Date: \_\_\_\_\_

APPROVED BY CONTRACTOR:

Name: RICHARD DAULTON

Title: PRINCIPAL

Date: 2/29/16

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office

Barbara Thompson

By: Barbara Thompson, Assistant Deputy County Counsel

Date: 2/29/16

## ATTACHMENT A

### SCOPE OF SERVICES

CONSULTANT shall provide services necessary for California Environmental Quality Act (CEQA) review and Processing Services for the proposed project "The Bluffs at Ridgemark". Services shall include the following:

#### SCOPE OF SERVICES

**Task 1: PRELIMINARY COORDINATION.** CONSULTANT will coordinate with County staff to confirm study objectives at a "kickoff meeting." The kickoff meeting will allow the County and the consultant team an opportunity to thoroughly discuss the project description, approach to environmental evaluation, and any community concerns regarding the project that have surfaced to date. This step will allow the team to better focus the scope of the study. Prior to this meeting, CONSULTANT will identify key information and documents that will be needed to complete the IS-MND.

**Task 2: PREPARE PROJECT DESCRIPTION.** Working with the County's Project Manager, CONSULTANT will prepare a detailed project description. Organization of this information is critical, since it forms the basis for environmental evaluation under CEQA. The project description will focus on the overall boundary of both project sites. The following graphics will be prepared based on information to be provided by the County:

- ☐ *Location and vicinity maps; and,*
- ☐ *Project site plan.*

**Task 3: ADMINISTRATIVE DRAFT IS-MND.** After County staff review and approval of the project description, CONSULTANT will prepare an Administrative Draft IS-MND. The IS-MND for the project will be prepared in accordance with CEQA Statutes and Guidelines. Each of the environmental issue areas included in the CEQA Environmental Checklist Form will be addressed at a level of detail sufficient to allow CONSULTANT to make determinations of significance. The IS-MND will be organized such that each topical section is consecutively numbered to allow easy cross referencing of impacts and mitigation measures. Where appropriate, impacts will be quantified. If existing data does not allow definitive quantification, reasonable assumptions will be used to qualitatively forecast potential impacts.

Determinations will be made as to whether such measures are adequate to reduce impacts to less than significant levels. If necessary, mitigation measures may include a broad range of programs and resource protection procedures as required by resource protection law. Mitigation measures will be

presented in wording that can be directly incorporated into project design and applied as conditions of approval. Following each mitigation measure will be a discussion of the significance of the impact, and disposition with appropriate and feasible mitigation. CONSULTANT will provide a digital version of the report for County review.

**Task 4: SCREENCHECK DRAFT IS-MND.** After County staff has prepared comments and suggested revisions to the administrative draft, CONSULTANT staff will edit the document for final publication. A "Screencheck" Draft will be provided to County staff for review prior to authorization to publish for public review.

**Task 5: PUBLICATION of DRAFT IS-MND.** This task involves the production, editorial work and communication processes anticipated to publish the Draft IS-MND for public review and comment.

CONSULTANT will prepare a notice of intent to adopt, but we assume that the County will be responsible for preparing the notice of availability and all publication fees. CONSULTANT will assist in the distribution to the State Clearinghouse, responsible and trustee agencies, and the public as may be required, including any prior interested parties.

CONSULTANT will provide the County with the following:

- ☐ 15 hard copies of complete report for distribution to State Clearinghouse;
- ☐ Camera-ready reproducible copy of complete report;
- ☐ Digital version of report.

A 30-day public and agency review period is recommended.

**Task 6: RESPONSE to COMMENTS.** Though not a required part of the MND process, CONSULTANT recommends preparation of written responses to all comments on the IS-MND. This approach will serve as the formal documentation that the County has considered all comments received. After receipt of all comments, CONSULTANT will respond to public comments after review with County staff, and provide draft Responses to Comments to County staff. This scope of work assumes that 13 professional staff hours will be adequate to respond to comments received. If a higher level of effort is necessary to respond to the comments received, a scope amendment may be required.

**Task 7: FINAL IS-MND.** Subsequent to adoption of the IS-MND, CONSULTANT will deliver a reproducible copy and transmit a digital copy of the Final IS-MND to County staff. CONSULTANT will provide:

- ☐ Camera-ready reproducible copy of complete report;
- ☐ Digital version of report.

**Task 8: MITIGATION MONITORING and REPORTING PROGRAM.** CONSULTANT will prepare a Mitigation Monitoring and Reporting Program (MMRP) with corresponding mitigation measures to accompany the Draft and Final document through the public review process. The MMRP will include:

- ☐ Implementation Responsibility;
- ☐ Timing;
- ☐ Monitoring Division; and,
- ☐ Standard for Success.

**Task 9: HEARING ATTENDANCE.** CONSULTANT's Project Manager will attend up to two (2) public hearing(s) on the project.

#### **4.0 APPROACH TO TECHNICAL ISSUES**

Each of the issues included in the Initial Study form will be addressed and analyzed at a level of detail that leads to a definitive conclusion relative to significance. For the issue areas not specifically described below, this evaluation will consist of brief discussions of impacts for these issue areas, based on literature review, original research, and analysis. This scope of work presumes that environmental impacts for these issue areas do not exceed thresholds, either with or without the application of standard conditions of approval or other existing regulatory requirements. If during the course of analysis we determine that one or more impacts may be

potentially significant, we will alert the County immediately and consult on how best to address the issue. The Initial Study will focus on the following issue areas.

**Aesthetics.** The proposed project is not located in a County- or State-designated Scenic Highway Corridor. However, the site is adjacent to and would be visible from Southside Road, and the Project. The introduction of paved areas, structures, and nighttime lighting will alter existing views, the open character of portions of the site, and the surrounding area. The project will also be located on the top of a bluff, and may silhouette against the sky as viewed from Southside Road. The aesthetics analysis will include visual characterization of the project site and general project area; discussion of the impact of the proposed land use changes on scenic resources, aesthetic character, and nighttime views; and identification of mitigation measures as appropriate.

**Air Quality.** The IS-MND will analyze and determine whether the proposed project would have the potential to expose sensitive receptors to pollutant concentrations, based on modified project characteristics and the project traffic study. Both temporary construction impacts and long-term operational impacts will be addressed. The IS-MND will estimate temporary emissions generated during site preparation and construction for the project facilities as a whole, and individually for all phases of development. The analysis will address fugitive dust resulting from grading and materials handling, and construction workers' vehicular traffic, as well as exhaust from heavy-duty gasoline and diesel powered vehicles. Standard dust control measures are required under the Clean Air Plan for all discretionary construction activities. The potential impact and mitigation of construction dust emissions on adjacent residential uses will also be addressed. Potential long-term emissions associated with the project would primarily be a result of increased traffic generated by the proposed project and/or increased vehicle miles traveled. These emissions will be quantified for the proposed project using CalEEMod, and will be based on trip generation data to be provided in the traffic study prepared for the project. Emissions associated with electricity and natural gas use will also be quantified using CalEEMod. The project's total operational emissions will be compared to MBUAPCD thresholds of significance to determine their significance. If projected emissions would exceed MBUAPCD thresholds, appropriate mitigation for all impacts identified.

**Biological Resources.** The biological resources analysis will include a review of all readily available existing reports (i.e. reports that may have been prepared for any nearby projects), project plans, aerial imagery, databases (i.e. California Natural Diversity Database [CNDDB] and California Native Plant Society [CNPS] rare plant inventory) and other available literature, as well as a reconnaissance-level field survey to map and record vegetation communities and wildlife habitats present on site, and to document incidental observations of common and special status plant and animal taxa (species, subspecies, varieties) on the proposed project site. Our scope does not include protocol-level botanical or wildlife surveys. CONSULTANT biologists will conduct the biological resources analysis with the express purpose of:

- 1) documenting the existing baseline conditions for biological resources;
- 2) evaluate the potential for special status plants and animals to occur on the project site;
- 3) conduct an impacts analysis for biological resources; and
- 4) proposing suitable mitigation if necessary to reduce potential impacts to less than significant. This evaluation will be presented within the body of the ISMND and does not include the preparation of a stand-alone biological resources analysis report.

**Cultural Resources.** CONSULTANT will conduct a Phase I cultural resources study of the approximately 50-acre project site. The study will include a search of the California Historical Resources Information System (CHRIS) at the Northwest Information Center (NWIC), Native American scoping with the California Native American Heritage Commission (NAHC) and

NAHC-provided contacts, intensive pedestrian survey of the project site, and incorporation of the results into a technical report. The technical report will be summarized in the IS-MND section, and the report will be attached as an appendix to the IS-MND. Any potential impacts will be identified and mitigation measures will be recommended as necessary. Our cost estimate assumes that no cultural resources (archaeological, historic built, or tribal) will be identified within the project site that require recordation or evaluations. Paleontological resources will also be briefly discussed in the IS-MND section, but will not be included in the cultural resources study.

**Geology and Soils.** The project site lies in an area subject to substantial ground-shaking hazards. This section will identify the issues associated with seismic risk as well as soil-related hazards (e.g liquefaction, shrink-swell, erosion, etc.), based upon the Geotechnical Investigation prepared for the project (Stevens Ferrone & Bailey, June 2015). A CONSULTANT technical expert will peer review the study and incorporate relevant information into the IS-MND. As appropriate, measures to mitigate specific geologic hazards will be identified.

**Greenhouse Gas Emissions.** The IS-MND will evaluate the proposed project's potential contribution to cumulative impacts related to climate change. The analysis will quantify carbon dioxide equivalent (CDE) units associated with project construction and operation through the use of CalEEMod. The MBUAPCD has not formally adopted thresholds to evaluate GHG emissions. CONSULTANT will consult with MBUAPCD staff during the preparation of the IS-MND to determine appropriate thresholds, confirm assumptions, and ensure accuracy.

**Hazardous Materials.** CONSULTANT will conduct a hazardous materials records search to determine the potential for on-site contamination or off-site contamination that could migrate onto the site and result in adverse health impacts. Current information for leaking underground storage tank sites located upgradient from the project site will be reviewed and summarized. In addition, the historic agricultural use of the site may have resulted in residual agricultural chemicals on the property. The potential for exposure of construction workers and future residents to such chemicals will be assessed. The IS-MND will examine these issues and provide appropriate mitigative actions.

**Noise.** CONSULTANT will discuss potential project impacts related to short-term and long-term noise generation and exposure. CONSULTANT will quantitatively evaluate project noise levels and noise level increases related to site preparation/ construction at sensitive receptors. CONSULTANT will examine existing noise sources in the project area and will conduct ambient noise measurements in the field to characterize the existing noise conditions in the vicinity of the project site. The measurements will be taken using an ANSI Type II sound level meter. Up to three 20-minute daytime measurements will be taken. These noise levels and modeled increases will be evaluated relative to County noise standards. The primary construction noise source is presumed to be heavy equipment associated with grading of the site. Long-term operational noise would primarily occur as a result of increased traffic to the site. Traffic noise will be forecast using the Federal Highway Administration Traffic Noise Model® (TNM version 2.5). Traffic generated by implementation of the project will be added to the current traffic volumes and the incremental noise level increases will be calculated. Mitigation measures will be recommended to reduce noise impacts as necessary.

**Public Services.** CONSULTANT will assess the project's effects on public services by reviewing existing plans and contacting local service providers, including the City of Hollister Fire Department, the San Benito County Sheriff's Office, the Hollister School District, and the County Parks and Recreation Department to assess current service levels and potential effects of the

proposed project on service standards. CONSULTANT will quantify project student generation and demands on parkland. This evaluation will discuss the applicable impact fees that would be required to offset public services impacts.

**Traffic and Circulation.** CONSULTANT will provide a CEQA-compliant impact analysis based on the traffic study currently being prepared for the project by the applicant team, which will be peer reviewed by Wood Rodgers. The peer review will primarily focus on the completeness and reasonableness of the TIS' evaluation of project-related traffic characteristics, such as: trip generation, trip distribution, trip assignment/routing, etc., as well as the reasonableness of project impacts and mitigation measures. Wood Rodgers will also review existing, background (near-term) and cumulative (long-term) traffic volumes, traffic safety issues, improvement geometrics, as well as agency regulatory policies, to investigate whether the TIS report adequately addresses/incorporates these items. Any additional traffic-related issues associated with the proposed project that needs to be addressed in the TIS will also be identified, as relevant. Other technical comments and suggestions will be offered if they are likely to significantly alter the results, findings and/or recommendations contained in the TIS report. Wood Rodgers will prepare a technical memorandum summarizing the TIS peer review, and findings/recommendations. This memorandum will be included as an appendix to the ISMND. This scope of work assumes that the peer review will determine that the applicant provided traffic study is technically accurate and acceptable for use as the basis of the CEQA analysis. CONSULTANT will discuss potential project impacts related to traffic congestion, and potential conflicts with the congestion management plan, based on the TIS and Wood Rodgers' peer review.

**Utilities and Service Systems.** CONSULTANT will use information provided in the County General Plan, the Sunnyslope Water District's Hollister Urban Area Urban Water Management Plan, consultation with the County's Integrated Waste Management Department, and landfill information provided by Department of Resources Recycling and Recovery (formerly known as the California Integrated Waste Management Board) to quantitatively describe the impacts of the project on utilities and services, including water and wastewater systems and applicable landfills. The analysis will quantify existing demand and compare projected demands to service capabilities. Where service deficiencies are identified, mitigation programs will be developed to avoid or minimize potentially adverse impacts. CONSULTANT will prepare a water supply evaluation based on information contained in the 2010 Hollister Urban Area Urban Water Management Plan and other sources. The assessment will include a description of baseline water conditions, proposed water use (using County-approved water factors), and the impact of the project on available water supply.

## 5.0 SCHEDULE

The following schedule for preparation of the IS-MND is proposed:

### Task Weeks – Total 25 Weeks

1) Kickoff Meeting	-
2) Prepare Project Description	2
3) County Review of Project Description	1
4) Prepare Administrative Draft IS-MND	6
5) County Review of Administrative Draft	3
6) Screencheck Draft IS-MND	2
7) County Review of Screencheck Draft	1
8) Public Draft IS-MND (including production)	2
9) Public Comment Period	4
10) Preparation of Responses to Comments	2
11) County Review of Responses to Comments	1
12) Final IS-MND and MMRP	1

Based on the above, the CEQA process can be completed within 25 weeks of the kickoff meeting. The ability to meet this schedule depends on the level of public comment, the number of public hearings needed, timely receipt of project description and technical information, and staff's direction on addressing unanticipated issues that may arise during the process.



## ATTACHMENT B Payment Schedule

### B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (check one)

- ☒ One month in arrears.
- ☐ Upon the complete performance of the services specified in Attachment A.
- ☐ The basis specified in paragraph B-4.

### B-2. PAYMENT

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

### B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (check one)

☐ a total lump sum payment of \$ \_\_\_\_\_, or

☒ a total sum not to exceed \$ 35,634.00

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

### B-4. SPECIAL COMPENSATION TERMS: (check one)

☐ There are no additional terms of compensation.

☒ The following specific terms of compensation shall apply: (See Attachment B-1 and the Following)

- A. Disputed invoices shall be returned within 15 days of receipt of the invoice with a clear description of the nature of the dispute.
- B. Invoices shall be prepared and submitted with Task Work Tracking. Invoices shall be submitted with the following back up:
  - a. Task Cost Accounting- itemized by assigned staff and hourly rate
  - b. Task Progress Reports - itemized by sub-task work; budget vs. actual

END OF ATTACHMENT B

ATTACHM

# County of San Benito

## The Bluffs at Ridgemark IS-MND

### Cost Estimate

Tasks	Cost	Rincon Labor Hours
1. Preliminary Coordination	\$580	4
2. Project Description	\$1,935	17
3. Administrative Draft IS-MND		
Aesthetics	\$765	7
Air Quality	\$1,220	10
Biological Resources	\$2,805	24
Cultural Resources	\$585	5
Cultural Resources Technical Study	\$4,450	48.5
Geology and Soils	\$675	6
Greenhouse Gas Emissions	\$1,000	8
Hazardous Materials	\$805	7
Noise	\$2,230	20
Public Services	\$805	7
Traffic and Circulation	\$765	7
Utilities and Service Systems	\$780	6
Other CEQA Issues (6)	\$1,130	10
4. Screencheck Draft IS-MND	\$1,660	13
5. Publication of Draft IS-MND	\$625	7
6. Response to Comments	\$1,725	13
7. Final IS-MND	\$625	7
8. Mitigation Monitoring and Reporting Program	\$845	7
9. Hearing Attendance (2)	\$1,805	13
Project Management/Coordination	\$1,680	12
Subtotal Labor:	\$29,495	259
<b>Additional Costs</b>		
Subconsultants		
Wood Rodgers (Traffic Peer Review)	\$3,460	
Direct Expenses		
Cultural Records Search	\$518	
Hazardous Materials Records Search	\$100	
Travel Expenses	\$564	
Supplies and Miscellaneous Expenses	\$885	
General & Administrative	\$612	
Subtotal Additional Costs (Base Fee):	\$5,139	
<b>TOTAL LABOR + ADDITIONAL COSTS</b>	<b>\$35,634</b>	

# MENT B-1

9/2/2015

Principal I \$195/hr	Sr. Prof. II \$145/hour	Prof. III \$110/hour	Archaeo I \$80/hour	GIS/CADD I \$90/hour	Clerical/Admin I \$65/hour
1	4 3	8		4	1
	1	4		2	
1	1	8			
1	4	16		3	
	1	4			
1	7		38	15	1
	1	4		1	
1	1	6			
	1	6			
	2	16		2	
	1	6			
	1	4		2	
1	1	4			
1	1	6			2
1	5	4		1	1
	1	2			4
1	6	6			
	1	2			4
1	1	4			1
	12				1
2	8				2
12	65	110		17	17

## ATTACHMENT C

### General Terms and Conditions

#### C-1. INDEMNIFICATION.

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

#### C-2. GENERAL INSURANCE REQUIREMENTS.

Without limiting CONTRACTOR's duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 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) Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

#### C-3. INSURANCE COVERAGE REQUIREMENTS.

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
- (b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.

- (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 contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- (d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance 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 contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

#### **C-4. CERTIFICATE OF INSURANCE.**

Prior to 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 contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on 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 contract within thirty (30) days of such change.

#### **C-5. RECORDS TO BE MAINTAINED.**

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.

#### **C-6. RETENTION OF RECORDS.**

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.

#### **C-7. TITLE TO DOCUMENTS; COPYRIGHT.**

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COUNTY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COUNTY is prohibited.

#### **C-8. INDEPENDENT CONTRACTOR.**

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COUNTY and not officers or employees of COUNTY. Nothing in this contract shall create any of 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 or benefits arise out of the performance of this contract. CONTRACTOR further represents to COUNTY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

#### **C-9. CONFLICT OF INTEREST.**

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed.

#### **C-10. COMPLIANCE WITH APPLICABLE LAWS.**

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

#### **C-11. NONDISCRIMINATION.**

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

#### **C-12. BANKRUPTCY.**

CONTRACTOR shall immediately notify COUNTY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

### **C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.**

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

### **C-14. NEGOTIATED CONTRACT.**

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

### **C-15. SEVERABILITY.**

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

### **C-16. ENTIRE CONTRACT.**

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

### **C-17. TIME IS OF THE ESSENCE.**

Time is of the essence in the performance of this contract.

### **C-18. TERMINATION.**

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

### **C-19. NOTICES.**

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or

- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

#### **C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.**

All matters concerning this contract 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.

#### **C-21. MATERIALITY.**

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

#### **C-22. WAIVER.**

Waiver by either party of a breach of any covenant of this contract will 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 contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

#### **C-23. AUTHORITY AND CAPACITY.**

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

#### **C-24. BINDING ON SUCCESSORS.**

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

#### **C-25. CUMULATION OF REMEDIES.**

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

#### **C-26. INDEPENDENT ADVICE.**

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also



represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

**C-27. NO RELIANCE ON REPRESENTATIONS.**

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract 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 that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

**C-28. REDUCTION OF CONSIDERATION.**

CONTRACTOR agrees that COUNTY shall have the right to deduct from any payments specified in Attachment B any amount owed to COUNTY by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to, or after, the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COUNTY exercises the right to reduce the consideration specified in Attachment B, COUNTY, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any off-set and the reason for the reduction.

**C-29. COUNTERPARTS.**

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

**END OF ATTACHMENT C.**