

C O N T R A C T

The COUNTY OF SAN BENITO ("COUNTY") and Emergency Services Consulting International ("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 29, 2017, and end on October, 30, 2017, unless sooner terminated or completed 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 dollars
- (b) Professional liability insurance: _____
- (c) Comprehensive motor vehicle liability insurance: \$1,000,000
dollars _____

6. Termination.

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

7. Specific Terms and Conditions (check one)

- ☒ [X] 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: Ray Espinosa

Title: County Administrative Officer

Address: 481 Fourth Street

Hollister, California 95023

Telephone No.: 831-636-4000

Fax No.: _____

Contract Administrator for CONTRACTOR:

Name: Andrea Hobi

Title: General Manager

Address: 25030 SW Parkways Avenue

Wilsonville, OR 97070

Telephone No.: 800-757-3724

Fax No.: _____

SIGNATURES

APPROVED BY COUNTY:

Name: Jamie De La Cruz

Chair, San Benito County Board of Supervisors

Date: _____

APPROVED BY CONTRACTOR:



Name: Andrea D. Hobi

Title: GENERAL MANAGER

Date: 3/23/17

APPROVED AS TO LEGAL FORM:

Barbara Thompson, San Benito County Counsel

By: _____

Date: _____

ATTACHMENT A

Scope of Services

Phase I—Project Initiation

Task 1-A: Project Initiation & Development of Work Plan

ESCI will develop a project work plan based on the scope of work, and converse with the County of San Benito project team and/or representatives to gain a comprehensive understanding of the County's background, goals, and expectations for this project. This work plan will be developed identifying:

- Primary tasks to be performed
- Person(s) responsible for each task
- Time table for each task to be completed
- Method of evaluating results
- Resources to be utilized
- Possible obstacles or problem areas associated with the accomplishment of each task

This exchange will also help to establish working relationships, make logistical arrangements, determine an appropriate line of communications, and finalize contractual arrangements.

Task 1-B: Data Acquisition & Background Information

ESCI will request pertinent information and data from County of San Benito and/or organizations and individuals as directed. This data will be used extensively in the analysis and development of the final report. The documents and information relevant to this project will include, but not be limited to, the following:

- Past or current studies or research other reports (e.g., 2000, 2010, and 2012 fire studies; financial reports; Grand Jury reports; LAFCO municipal service reviews; annual fire reports; etc.)
- County of San Benito and City of Hollister and City of San Juan Bautista comprehensive plan documents, including current and future land use information, other documents as necessary
- Local census and demographics data
- Applicable fire department administrative policies and procedures
- Current and previous budget information and financial data, including debt information, long-range financial plans and projections; including assessment fees, revenue streams, any fire and EMS-related grants or other funding sources
- Applicable agency Standard Operating Guidelines (SOG) and service-delivery practices
- Current service-delivery objectives and targets, including required and/or internal performance criteria
- Fire department apparatus and vehicle inventories
- List of current fire department operational staff positions, salary and benefits, work schedules, and other relevant information
- Local collective bargaining agreement(s), if applicable
- Any current fire/EMS related service contracts
- List and locations of hospitals, tertiary facilities, and other facilities to which patients are regularly transported
- Automatic and mutual aid agreements
- Incident data in an Excel® spreadsheet format (3–5 years prior to current year):

- Individual fire department incident records; all call types, and preferably using the National Fire Incident Reporting System (NFIRS) data elements, locations by latitude/longitude and full address, response times, and unique incident numbers (if available)
- Any other electronic records as may be useful for this project
- Computer-Aided dispatch (CAD) incident records, if applicable (may not be necessary if agency data is provided and contains the necessary records) (3–5 years prior to current year)
- Local Geographic Information Systems (GIS) data, where available

Task 1-C: Stakeholder Input

The ESCI project team will conduct interviews with and gather information from key personnel and stakeholder including, but not limited to:

- Fire department leadership in City of Hollister
- City of San Juan Bautista City Council and City Administrator
- City of Hollister City Council and City Administrator
- County of San Benito Board of Supervisors & County Administrator
- County of San Benito Auditor-Controller
- California Department of Forestry & Fire Protection Unit Chief
- County of San Benito Sheriff
- Leadership and/or representatives of the bargaining units/labor units (e.g., IAFF, etc.)
- Other individuals or organization representatives that may contribute to this project

Phase II—Evaluation of Current Conditions

This analysis will provide a baseline assessment of the current conditions and current service-performance of the firefighting services within the County of San Benito and the incorporated cities of Hollister and San Juan Bautista. ESCI will conduct an analysis based on the elements included in the following objectives. The purpose of this evaluation is to assess the various system components and organizations in comparison to industry standards and best practices, as well as to create a benchmark against which future improvements can be measured.

Task 2-A: Organization Overview

An overview of the County of San Benito community, the various fire and EMS provider organizations, and other aspects, will be developed discussing:

- Service area population and demographics
- General descriptions and services of each of the fire departments and any other provider organizations
- Description of the current service-delivery infrastructures
- Governance and lines of authority
- Organization designs of each entity in study

Task 2-B: Staffing & Personnel Management

ESCI will review various elements involving personnel management and staffing of the primary fire department.

- Reports and recordkeeping
- Labor-management relationships and issues

- Review and evaluate administration and support staffing levels
- Review and evaluate operational staffing levels
- Review staff allocation to various functions and divisions
- Review staff scheduling methodology
- Analyze current deployment methods and staffing performance for incidents
- Review utilization of career and volunteer companies (if applicable)
- Review responsibilities and activity levels of personnel

Task 2-C: Management Components

The organization's basic management processes will be reviewed, including:

- Mission, vision, strategic planning, goals, and objectives
- Internal assessment of critical issues
- Internal assessment of future challenges
- Internal and external communications processes
- Document control and security
- Reporting and recordkeeping
- Information technology systems

Task 2-D: Capital Assets & Capital Programs

ESCI will review the status of current major capital assets (facilities, fire apparatus) and analyze needs relative to the existing condition of those assets. Observations will include:

Facilities—Tour and make observations in areas related to station efficiency and functionality. This will be a cursory evaluation, and will not involve an engineering or highly technical inspection of the facilities. Items to be contained in the report include:

- Design
- Code compliance
- Future viability & necessity for an additional facilities
- Construction
- Staff facilities
- Safety
- Efficiency

Apparatus/Vehicles—Review and make observations regarding the condition and inventory of fire apparatus. This will be a cursory evaluation, and will not involve an engineering or highly technical inspection of the facilities. Items to be reviewed include:

- Age, condition, and serviceability
- Distribution and deployment
- Maintenance
- Potential future needs
- Support equipment

Task 2-E: Service-Delivery & Performance

This analysis will evaluate fire department performance and deployment for the overall system in San Benito County, as well as performance in each specific response-zone (to the extent that data is available).

ESCI will review and make observations in areas specifically involved in, or affecting, service levels, performance, and their likely sustainability. Areas to be reviewed shall include, but not necessarily be limited to:

Service Demand Study

- Analysis and geographic display of current service demand by incident type and temporal variation

Resource Distribution Study

- Overview of the current facility and apparatus deployment strategy, analyzed through Geographical Information Systems software, with identification of service gaps and redundancies

Resource Concentration Study

- Analysis of response time to achieve full effective response force
- Analysis of company and staff distribution as related to effective response force assembly

Response Reliability Study

- Analysis of current workload, including unit hour utilization of individual companies (to the extent data is complete)
- Review of actual or estimated failure rates of individual companies (to the extent data is complete)
- Analysis of call concurrency and impact on effective response force assembly

Response Performance Summary

- Analysis of actual system reflex time performance, analyzed by individual companies (to the extent data is available)

Mutual and automatic aid systems

Task 2-F: Support Programs

ESCI will review and make overall observations involving support programs for the critical areas of training, life-safety services, Fire/EMS quality management, and communications. Items to be reviewed include:

Training

- General training competencies
- Training administration and those assigned the responsibility of training
- Training schedules and training facilities
- Training procedures, manuals, and protocols
- Maintenance of training records, and methods utilized

Fire Prevention/Public Education Programs

- Code enforcement activities

- General inspection program
- Fire and life-safety public education programs
- Community Risk Reduction (CRR) activities and/or programs
- Fire investigations
- Pre-incident planning
- Statistical collection and analysis

Task 2-G: Inclusion of the City of Hollister

ESCI will include each of the Phase II tasks applicable to the City of Hollister and the City of San Juan Bautista, as well as the County.

Phase III—Future Delivery Systems Options & Costs

Task 3-A: Service Delivery Options

ESCI will develop various options for the provision of fire department services that will ensure the current levels of service is maintained. This may include, but is not necessarily limited to:

- Any redeployment recommendations
- Maintaining the status quo
- Creation of a stand-alone Fire Department
- Identify legal requirements as required under the CORTESE-KNOX-HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT OF 2000.
- Forming a Joint Powers Authority (JPA) with a willing regional partner(s):
- Contracting fire department services with another entity
- Merger or other legal integration option with a willing regional partner
- Development of a strengths, weakness, opportunities matrix for recommended options
- ESCI will evaluate and present in graphical and descriptive format for each of the deployment option(s):
- Degree of benefit to be gained through implementation models

Task 3-B: Cost & Growth Projections

ESCI will project community growth and its effect on service demand. Additionally, ESCI will provide an analysis of current costs for the services. These costs will be evaluated for their sustainability and will be used to establish a baseline for comparison to the options identified in Phase IV of this project, specifically as it relates to:

- Facility changes or additions
- Staff changes or additions
- Primary apparatus changes or additions
- Response configuration changes

Task 3-C: Fiscal Analysis

ESCI uses model budgets for each option to allow a comparative examination of the projected public cost for service. Funding mechanisms are identified and comprehensive financial outcomes are provided for each option offered. These options are contrasted against the baseline costs for the current conditions for each of the three agencies.

- Review and analyze projected budget and revenue
- Develop budget forecast extending to a minimum of five years
- Identify financial issues associated with each option
- Identify efficiencies and areas of short and long-term savings and costs
- Provide benchmark comparisons with regional similar sized jurisdictions.

In addition, ESCI will present an evaluation of various funding advantages and disadvantages for each option, including cost allocation models (as appropriate) where partnerships are identified. Cost allocation models will be run based on:

- Area
- Assessed value
- Deployment
- Service demand
- Fixed rate
- Population
- Multiple variables

Task 3-D: Inclusion of the City of Hollister and the City of San Juan Bautista

ESCI will include each of the Phase III tasks applicable to the City of Hollister and the City of San Juan Bautista, as well as the County.

Phase IV—Development, Review, & Delivery of Report

Task 4-A: Development & Review of Draft Report

ESCI will develop and produce an electronic draft version of the written report for review by the client and client representatives. Client feedback is a critical part of this project and adequate opportunity will be provided for review and discussion of the draft report prior to finalization. The report will include:

- Detailed narrative analysis of each report component structured in easy-to-read sections and accompanied by explanatory support to encourage understanding by both staff and civilian readers
- Clearly designated recommendations highlighted for easy reference and cataloged as necessary in a report appendix
- Supportive charts, graphs, and diagrams, where appropriate
- Supportive maps, utilizing GIS analysis as necessary

Task 4-B: Delivery & Presentation of Final Report

ESCI will complete any necessary revisions of the draft and produce five publication-quality bound, final versions of the written report plus an electronic version in a format of the client's choosing. One formal presentation of the project report will be made by ESCI project team member(s) to staff, elected officials, and/or the general public as necessary and will include the following:

- A summary of the nature of the report, the methods of analysis, the primary findings, and critical recommendations
- Supportive audio-visual presentation
- Review and explanation of primary supportive charts, graphs, diagrams, and maps, where appropriate

- Opportunity for questions and answers, as needed
- All presentation materials, files, graphics, and written material will be provided to the client at the conclusion of the presentation(s)

END OF ATTACHMENT A.

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 Fifty Seven Thousand Eighty-Three Dollars (\$57,083),

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: (Specify)

The Client shall pay *CONTRACTOR* a sum not to exceed **Fifty Seven Thousand Eighty-Three Dollars (\$57,083)** including expenses.

This rate shall include inclusion of all the options listed in attachment "A".

COUNTY shall pay *CONTRACTOR* according to the following schedule:

- A. 10% due at contract signing
- B. Monthly payments as work progresses
- C. Payment shall be made within 30 days of receipt of invoice.
- D. Expenses shall be billed at actual costs.
- E. Any travel costs shall be approved in advance by the Contract Manager and shall be in accordance with the rates and regulations set forth in the County's travel policy.
- F. Payment shall be made at the hourly rates set forth on the next page:

Hourly Pay Rates

Cameron Phillips, Project Manager	\$162.50/hr
John Stouffer, Associate Consultant	\$137.50/hr
Peter Bryan, Associate Consultant	\$137.50/hr
Pam Feely, Associate Consultant	\$137.50/hr
Elise Fisher, Associate Consultant	\$137.50/hr
Melissa Swank, Quality Assurance/Proof	\$42.00/hr

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.