

## PROFESSIONAL SERVICES CONTRACT

The COUNTY OF SAN BENITO ("COUNTY") and Ascent Environmental, Inc. a California corporation ("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 April 26, 2022, and end on June 30, 2023, 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: \$1,000,000.00 / \$2,000,000.00
- (b) Professional liability insurance: \$1,000,000.00 / \$2,000,000.00
- (c) Comprehensive motor vehicle liability insurance: \$500,000.00

**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: Arielle Goodspeed

Title: Principal Planner

Address: 2301 Technology Parkway

Hollister, California 95023

Telephone No.: (831) 636-4170

Fax No.: \_\_\_\_\_

Contract Administrator for CONTRACTOR:

Name: Pat Angell

Title: Principal

Address: 455 Capitol Mall, Suite 300

Sacramento, California 95814

Telephone No.: (916) 732-3324

Fax No.: \_\_\_\_\_

**SIGNATURES**

APPROVED BY COUNTY:

\_\_\_\_\_

Name: Bea Gonzales

Title: Chair, Board of Supervisors

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

APPROVED BY CONTRACTOR:

DocuSigned by:  
Pat Angell  
AC80423F9G4D429...

Name: Pat Angell

Title: Principal

Date: 4/19/2022

**APPROVED AS TO LEGAL FORM:**

Barbara J. Thompson, County Counsel

Joel Ellinwood

By: Joel Ellinwood, Assistant County Counsel

Date: 4/26/2022

## **ATTACHMENT A**

### **Scope of Services**

CONTRACTOR, for the COUNTY'S benefit, shall provide the following Environmental and planning support for the preparation of the EIR and CEQA compliance services for the Betabel Commercial Development Conditional Use Permit. The proposed Betabel Commercial Development project is located in the unincorporated area of the county, south of the US Route 101 Betabel Road interchange, west of Betabel Road and Route 101, and east of the Pajaro and San Benito Rivers.

CONTRACTOR will assist the COUNTY with the review and refinement of the Applicant's Technical Studies and Materials, Policies and Regulations Addressing Environmental Issues, and will ensure evaluation of the entire project. The following scope of work describes the anticipated activities to be performed by the CONTRACTOR in preparing the EIR.

#### **TASK 1: PROJECT KICKOFF, DATA COLLECTION, AND BACKGROUND INFORMATION REVIEW**

CONTRACTOR will attend a project kickoff meeting and site visit with the applicant and the COUNTY. The purpose of the meeting is to further discuss project characteristics, confirm project objectives, discuss areas of controversy and potential strategies, establish communication/review protocols, review and potentially refine the project schedule and milestones, and discuss any other important details. Issues to be discussed will also include the EIR format.

##### ***DELIVERABLES: (sent electronically)***

- *Kickoff meeting*
- *Attendance*
- *Agenda*
- *Meeting minutes in MS word*
- *Site visit.*

#### **TASK 2: SCOPING MEETING**

The COUNTY will prepare the Notice of Preparation (NOP) and will submit it to the State Clearinghouse as will release locally. CONTRACTOR will work with the COUNTY to prepare materials for the scoping meeting, will attend the meeting, and present the project and environmental process. CONTRACTOR will take minutes and prepare a scoping meeting memo outlining the key issues and topics related to the environmental review for inclusion in the EIR.

***DELIVERABLES: (sent electronically)***

- *Attendance by Project Manager at one scoping meeting*
- *Power point presentation*
- *PDF copy scoping meeting minutes*
- *Summary of scoping meeting comments in MS Word and PDF*

**TASK 3: PROJECT DESCRIPTION**

CONTRACTOR will prepare the EIR project description as early in the process as possible to confirm that all elements of the project are appropriately described. Key elements would include the land use plan, Use Permit, proposed infrastructure improvements/extensions (on-site and off-site), drainage improvements, and the nature of anticipated events at the site. The EIR project description will identify project objectives; project characteristics, including requisite off-site improvements and construction staging areas; and a list of discretionary approvals expected to be needed for project implementation. A draft project description will be submitted for review and comment. Comments will be incorporated, and a revised project description will be prepared for use in the Administrative Draft EIR.

**TASK 4: ADMINISTRATIVE DRAFT EIR**

CONTRACTOR'S technical experts and BAC will conduct the analyses needed to provide the substantial evidence necessary to support the EIR. CONTRACTOR will prepare the Administrative Draft EIR (ADEIR), in accordance with CEQA and the State CEQA Guidelines. The EIR will adhere to all CEQA requirements and will evaluate all resource categories in the chapters described below.

Prior to completion of the ADEIR, CONTRACTOR will peer review all applicant technical studies for suitability to support the EIR impact analysis. CONTRACTOR will prepare a technical memorandum documenting the results of the peer review and any recommended changes to the report. Technical studies and materials to be provided by the applicant include the following:

- ▲ Architectural design and renderings of the project
- ▲ Betabel Road Rest Stop Project Biological Resources Report
- ▲ Geotechnical studies
- ▲ Septic system design (leach fields)
- ▲ Well capacity/test data
- ▲ Traffic Impact Analysis

The DEIR will include the following sections:

## Executive Summary

The executive summary will provide an overview of the project, alternatives evaluated, areas of controversy and issues to be resolved, and project impacts and mitigation measures. This chapter will include a summary table of all impacts and mitigation measures identified in the EIR. The summary table will be included in the Screencheck Draft EIR submittal.

## Introduction

The introduction will describe the purpose of the EIR and its intended uses and will provide an outline of its contents. The chapter will also include a summary of the comments received on the NOP and where the issues raised are addressed in the EIR.

## Project Description

Using the information compiled as part of Task 1 and the draft project description included in Task 3, Ascent will prepare the project description chapter of the EIR. It will also briefly describe the annexation process and include a list of potential subsequent approvals (e.g., County and other responsible agencies) and other information relevant to an understanding of the project.

## Environmental Setting, Impacts, and Mitigation Measures

Each environmental resource section will include a description of the environmental setting (i.e., the baseline environmental conditions), regulatory setting (i.e., federal, state, and local regulations), criteria used to determine the significance of impacts, analysis methodology and assumptions, and detailed discussion of the potential environmental effects of the project. Impact conclusions will be based on substantial evidence, and mitigation measures will be recommended for significant impacts. References will be provided as necessary to the supporting technical studies, which will be included as appendices to the EIR, as necessary.

### ***DELIVERABLES: (Sent electronically)***

- *Draft EIR project description in MS Word and PDF*

## EIR Technical Chapters

### ***Aesthetics***

CONTRACTOR will prepare the existing aesthetics setting based on the site visit, photo-documentation, and other existing information. CONTRACTOR will evaluate potential environmental effects on visual and scenic resources from implementation of the proposed project. To accomplish this, the EIR section will identify up to three representative viewpoints on the project site and in adjacent areas (e.g., US Route 101, a County-designated scenic highway) to characterize the existing visual environment, including long-distance views and topography, and existing uses that could be sensitive to changes in the site's visual character and the project's compliance with General Plan Policies NCR-8.1 through NCR-8.7 and County Code Section 25.15.062. Existing light and glare in the area will also be discussed. Visual simulations are not anticipated to be required and are not included as part of this scope of work. It is assumed that the applicant's architect would provide building renderings and visual simulations.

## *Agriculture*

The agriculture section of the EIR will evaluate environmental impacts associated with the conversion of mapped Prime Farmland to urban uses, as well as the project's consistency with County policies protecting farmland resources. This section will also carefully evaluate conflicts between the project operations and nearby agricultural operations. Mitigation will be recommended to reduce or eliminate project impacts, where available. Forestry resources do not exist on the site and will not be evaluated in the EIR.

## *Air Quality*

The air quality section will include a summary of applicable air quality regulations and existing conditions information relevant to the project site and the region. The specific analysis approach is explained below by impact issue area.

### Criteria Air Pollutants and Ozone Precursors

CONTRACTOR will conduct the air quality impact analysis pursuant to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) CEQA Thresholds and State CEQA Appendix G. Specifically, CONTRACTOR will use the California Emissions Estimator Model (CalEEMod) to estimate construction and operational emissions of criteria air pollutants and precursors.

Construction emissions modeling will be based on proposed land use type/sizes, anticipated buildout phasing, and default settings in CalEEMod. Operational emissions modeling will be conducted using inputs such as square footage and land use types, as well as project-specific VMT and daily trip generation, as provided by the applicant's traffic analysis for this project. All modeling results will be compared to MBUAPCD thresholds. To address the California Supreme Court decision in *Sierra Club v. County of Fresno* (Case No. S219783 – Friant Ranch), CONTRACTOR will include an analysis of health impacts from air pollutant emissions. Mitigation measures will be identified for significant impacts.

### Toxic Air Contaminants, Carbon Monoxide and Odors

Provided that existing sensitive receptors (Betabel RV Resort) are located within 500 feet of proposed construction and operation of uses known to include toxic air contaminant (TAC) sources (e.g., truck idling, gas station, mechanical equipment), CONTRACTOR proposes to conduct a health risk assessment (HRA) to evaluate construction and operational TAC emissions. The construction analysis will evaluate diesel particulate matter (DPM) for health risks and fugitive dust particulate matter concentrations (PM) for comparison to MBUAPCD thresholds and ambient air quality standards (AAQS). The operational analysis will evaluate all onsite TAC sources (e.g., truck idling and transport, gas station, combustion equipment).

To prepare the HRA, air dispersion modeling will be conducted, using unit emission rates, with the most recent version of the American Meteorological Society/Environmental Protection Agency Regulatory Model Improvement Committee modeling system (AERMOD) and levels of cancer risk will be estimated using the Hotspots Analysis and Reporting Program Version 2 (HARP 2). Mass

emissions estimates for construction and operational activities will be applied to the air dispersion model to estimate ground-level concentrations at nearby receptors.

Modeling parameters will be developed in accordance with MBUAPCD and the Office of Environmental Health Hazard Assessment's most recent guidance. For both construction and operational analyses, one risk scenario will be modeled for residential receptors, using conservative residential exposure duration and receptor pathways. The construction analysis will include an additional model run for fugitive dust PM concentration. If the HRA indicates that risk or PM concentrations exceed thresholds of significance, CONTRACTOR will include recommendations for potential mitigation measures and model one mitigated scenario for the purpose of discussing residual impacts in the EIR.

The HRA will be prepared as part of the air quality analysis, with detailed modeling inputs/outputs included in an abbreviated memorandum that will be included in the Appendix to describe the detailed methodology, AERMOD input parameters, modeled source parameters, emission rates for the modeled source, and risk results in tabular and graphic form. The results summary and map will include the point of maximum impact (PMI) and the maximally exposed individual resident (MEIR). Results from the HRA, including any mitigation measures, will be incorporated into the EIR analysis. All model inputs and outputs will be provided as appendices to the EIR. For localized carbon monoxide emissions and odors, Ascent will conduct a qualitative evaluation.

### ***Biological Resources***

CONTRACTOR'S biologists will conduct a peer review of the Betabel Road Rest Stop Project Biological Resources Report (Denise Duffy & Associates 2020) for technical adequacy for use in the EIR. CONTRACTOR will compile and analyze existing documentation pertinent to the biological resources in the project area. The California Natural Diversity Database, California Native Plant Society's Electronic Inventory of Rare Plants, US Fish and Wildlife Service's Information for Planning and Consultation, and National Wetland Inventory will be queried for information about sensitive biological resources in the area.

A site reconnaissance survey will be conducted by a qualified biologist to evaluate habitat conditions and describe current biological resources in the project area. A comprehensive review of the sensitive resources with potential to be affected by the project will be conducted, using updated lists of special-status species and their current regulatory status. The likelihood of presence in the project area will be based on habitat suitability, species ranges, and documented occurrences. Protocol-level surveys for special-status species or wetland delineation will not be conducted.

The biological resources analysis will include a detailed project description and proposed land uses, regulatory background, methods, and results, describing the existing conditions of the project site, including soils, biological communities, special-status species, critical habitat, and wildlife movement corridors. The assessment will identify potential impacts and recommended mitigation measures for the project.

## ***Cultural and Tribal Cultural Resources***

This section of the EIR will address archaeological, historical, and tribal cultural resources, including a discussion of the applicable federal, state, or local policies and regulations; a summary of the prehistoric, ethnographic, and historic-era setting of the project area; a summary of the methods used to evaluate cultural resources; a description of known historic properties or archaeological resources; and a discussion of impacts and mitigation measures as needed. The analysis of archaeological and historical resources will be developed based on the cultural resources technical report, as described below. The analysis of tribal cultural resources will be based on the outcome of Assembly Bill (AB) 52 (Statutes of 2014) consultation and the Integrative Cultural Resource Survey being prepared by the Amah Mutsun Tribal Band. This scope of work assumes that the COUNTY will initiate consultation with applicable tribes, per AB 52. Any information pertaining to Native American tribal cultural resources gleaned from consultation will be incorporated into the tribal cultural resources section.

### **Cultural Resources Technical Report**

CONTRACTOR will complete an archaeological and historical resources pedestrian survey for the site (assuming approximately 112 acres). The survey begins with background research prior to fieldwork. CONTRACTOR will conduct a California Historical Resources Information System records search within a 0.25-mile radius of the project area at the Northwest Information Center to identify any previously recorded built environment and archaeological resources known to exist within or adjacent to the project site. CONTRACTOR will request that a search of the Sacred Lands File be conducted by the Native American Heritage Commission (NAHC) to identify any areas of Native American heritage significance. The NAHC will provide a list of tribal contacts that may have further information regarding the project area. CONTRACTOR will submit a project information letter and location map to each tribal representative on the NAHC list for background information.

An archaeologist and historian meeting the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (36 CFR Part 61) will conduct the survey using transects spaced at maximum intervals of 15 meters. For purposes of this proposal, CONTRACTOR assumes five resources will be identified in the field and recorded and evaluated on DPR forms. Upon completion of the pedestrian survey, CONTRACTOR will prepare a cultural resources technical report for the project site. The report will document the results of the records review, NAHC search, any tribal input, and the field survey. This report will provide a historical context of the project site, describe any historical or archaeological resources identified, and present evaluation findings. The report will also include management recommendations for the proposed project in accordance with State CEQA Guidelines Section 15064.5. The report will also be consistent with San Benito County Code Section 19.05.005.

## ***Energy***

CONTRACTOR will evaluate whether the project would result in a wasteful, inefficient, or unnecessary use of energy. Using much of the same data relied upon to estimate emissions for the air quality and GHG analysis, CONTRACTOR will estimate the levels of electricity, natural gas, gasoline, and diesel that would be consumed in the construction and operation of the project. The analysis will consider applicable plans, including the State's renewable energy goals.



### ***Geology and Soils***

This section will analyze potential environmental impacts related to soil stability, soil erosion, and loss of paleontological resources, if any, from project implementation. The analysis will be based on existing studies and published material and will briefly describe the geologic setting and soil characteristics. It is assumed that the applicant will provide a geotechnical analysis of the site for use in the EIR. The EIR section will address potential effects associated with soils and foundation stability, soil stability, and erosion impacts associated with site development, as well as potential obstruction to important mineral resources. Potential damage and loss of paleontological resources will be based on identification of geologic formations that are known to contain resources.

### ***Greenhouse Gas Emissions and Climate Change***

CONTRACTOR will estimate project construction and operational GHG emissions using the latest version of CalEEMod for comparison to current state GHG reduction efforts (e.g., 2017 Scoping Plan) and consistency with General Plan Policies HS-5.7 and HS-5.8. Potential mitigation measures will consist of emission reduction measures.

### ***Hazards and Hazardous Materials***

This EIR section will describe the existing hazards and hazardous materials setting, including airport hazards, based on existing information available from the COUNTY, Regional Water Quality Control Board, California Department of Toxic Substances Control, and other sources. CONTRACTOR will evaluate the potential hazards and hazardous materials impacts associated with project implementation. This section will also evaluate the potential for the project to result in a hazard to the public or the environment through transport, upset, or emission of hazardous materials.

### ***Hydrology and Water Quality***

CONTRACTOR will describe the existing hydrologic setting of the project area. The EIR section will summarize appropriate federal, state, and county regulations and policies related to flooding, drainage, and water quality. This will include the current impaired status of the Pajaro River and San Benito River for sediment, metals, pathogens, pesticides, turbidity, and salinity. Using this information as well as the project's drainage analysis (assumed to be provided), CONTRACTOR will evaluate the potential impacts of project implementation with respect to groundwater use, drainage patterns, decreased water quality, runoff, and flooding. This scope assumes the drainage study will be available during preparation of the Administrative Draft EIR. This EIR section will also address current efforts in the region regarding groundwater management pursuant to the Sustainable Groundwater Management Act (SGMA) through the implementation of the North San Benito Groundwater Sustainability Plan (currently under state review), although the issue of water supply will be addressed as part of the utilities and service systems analysis described below.

### ***Land Use and Planning***

CONTRACTOR will examine the existing land use patterns in the area and will describe any potential for division or conflicts with existing communities as well as factoring planned land use patterns under the General Plan.

### *Noise*

CONTRACTOR and BAC will conduct a technical noise analysis of the project. Construction noise and vibration will be evaluated based on the anticipated project phasing schedule, proximity of activities to existing receptors (e.g., residential uses adjacent to the south of the project site), and reference noise and vibration levels for typical construction activities.

Operational noise will be evaluated based on the proposed land use types and associated likely noise sources; this will include long-term increases in traffic noise and new stationary source sources that include operation of the proposed 500-seat outdoor event center. To conduct the traffic noise analysis, CONTRACTOR will rely on project-specific traffic data from the applicant's traffic analysis to model project-generated traffic noise increases. This scope assumes four model runs: existing conditions, existing plus project conditions, cumulative no project, and cumulative plus project. In addition, long-term increases in stationary noise associated with the proposed land uses (e.g., mechanical equipment, loading docks, outdoor event center) will be evaluated using published data and previous noise analyses from outdoor events and concerts. Based on our understanding of the proposed uses, an evaluation of existing noise sources (e.g., traffic) is not required by CEQA but can be prepared separately upon request. All project-generated noise levels will be evaluated for significance using the General Plan and County Code Chapter 19.39 noise standards. Mitigation will be included for potentially significant impacts.

### *Population and Housing*

The EIR will describe the population of the region, as well as local and regional employment and housing statistics. The analysis will evaluate the potential for project implementation to result in substantial population growth from job creation that could induce the need for additional housing. The project would not displace housing or people. This discussion will focus on projected population growth and whether the region would be able to accommodate this growth.

### *Public Services and Recreation*

Buildout of the project could directly and indirectly result in an increased demand for emergency services (law enforcement and fire), public schools, park and recreation services, and library facilities.

This EIR section will describe the potential for project implementation to result in increased demand for public services including such that new or expanded facilities might be constructed or that proposed facilities would result in significant impacts to the environment. It is assumed that the EIR discussion and significance conclusions will be based on communication with service providers.

### *Public Utilities*

The project design proposes on-site water and wastewater facilities. The analysis will address whether the operation of on-site wells, septic fields, and drainage facilities could create environmental impacts (e.g., significant reductions in groundwater supply and conflict with area wells and failure of leach fields that create a public health impact) based on technical information on well operations, drainage analysis, and septic system design provided by the applicant. The analysis will also assess any potential for project

implementation to affect electrical distribution facilities and solid waste, particularly as it relates to the capacity of existing facilities. The EIR section will discuss impacts from the demand for these services and will also assess the long-term availability and reliability of services to the site.

### ***Transportation***

CONTRACTOR will prepare the transportation section of the EIR based on the transportation impact analysis (TIA) prepared by Pinnacle Traffic Engineering (Pinnacle). Based on CONTRACTOR'S preliminary review of the TIA completed on December 9, 2019, it is anticipated that Pinnacle will need to revise the document to adequately address vehicle miles traveled pursuant to Senate Bill (SB) 743, PRC Section 21099, and California Code of Regulations (CCR) Section 15064.3. CONTRACTOR will coordinate with Pinnacle to ensure that the methodology, approach, and analysis will fully and adequately support a CEQA section. As part of this coordination, CONTRACTOR will confirm that the final TIA evaluates the impacts to bicycle, pedestrian, and transit facilities; roadway hazards and obstructions; emergency access; and VMT.

Upon receiving the updated TIA from Pinnacle, CONTRACTOR will conduct a peer review of the analysis to ensure that it will adequately support a CEQA section. If it is determined through the peer review process that additional details or data are needed from Pinnacle in order to complete the CEQA section, CONTRACTOR will prepare a technical memo detailing the results of the peer review and specifying changes required to address specific CEQA impacts. This scope assumes one round of CONTRACTOR'S comments related to the peer review. Upon Pinnacle's submittal of the revised TIA (if required), any additional revisions could require an amendment.

Pursuant to SB 743, PRC Section 21099, and CCR Section 15064.3(a), generally, VMT is the most appropriate measure of transportation impacts and a project's effect on automobile delay shall no longer constitute a significant impact under CEQA. Therefore, it is assumed that the transportation analysis in the EIR will evaluate impacts using VMT and will not include level of service (LOS) or delay-based impact analysis. In the absence of adopted lead agency VMT thresholds and/or guidance, it is recommended that Pinnacle rely on the recommended significance criteria and approach detailed in the *Technical Advisory on Evaluating Transportation Impacts in CEQA*, published by the Governor's Office of Planning and Research (OPR). The OPR guidance provided thus far relative to VMT significance criteria is focused on residential, office, and retail uses. Therefore, it should be noted that the development and justification related to VMT significance criteria, methodology, and approach for any other land use types are critical.

### ***Wildfire***

The EIR section will discuss the potential for the project to increase wildfire risk in the area as well as impacts to evacuation and emergency response. It will include an assessment (based on publicly available information from the California Department of Forestry and Fire Protection [CAL FIRE]) of historic wildfires in the region (within a 10-mile radius of the site), including an assessment of the cause and extent of any wildfires. The impact analysis will evaluate whether the project could exacerbate the extent of wildfire hazards in the project area.

## Alternatives

CEQA requires that an EIR describe a range of reasonable alternatives to a project that feasibly attain most of the objectives but could avoid or reduce at least one environmental impact. CONTRACTOR assumes that up to three alternatives to the project, including the No Project Alternative, will be analyzed in a separate section of the EIR, and will work closely with the applicant and the COUNTY to identify these alternatives. The alternatives section will include sufficient detail to compare the impacts of the project against the other alternatives. A qualitative (quantitative where practical) discussion of each of the EIR's issue areas will be presented for each alternative.

## Other CEQA Sections

CONTRACTOR will prepare a complete EIR, containing all sections required by CEQA. Sections required by CEQA not mentioned above include table of contents, executive summary, significant and unavoidable environmental effects, discussion of effects found not to be significant, discussion of irreversible commitment of resources, growth-inducing effects, references, and individuals and agencies consulted. The EIR will include visual aids, such as maps and diagrams, to clearly present the environmental analysis to decision-makers, responsible agencies, and the public. The executive summary (which will be provided as part of the Screencheck Draft EIR, described below in Task 5) will include a summary table of all impacts and mitigation measures identified in the EIR. Ascent will provide a complete EIR, containing all sections required by CEQA, including the following:

### Cumulative Impacts

CONTRACTOR will evaluate the impacts of cumulative development and activities on all the resource issues evaluated in the EIR. CONTRACTOR will work closely with the COUNTY to establish the cumulative setting, which involves identification of reasonably foreseeable projects and activities in the region and an accurate list of cumulative projects (proposed, approved, and under construction).

### Growth-Inducing Impacts

Given the nature of the project, the analysis of growth-inducing impacts will be particularly important. This section will qualitatively evaluate the project's potential to induce growth and subsequent environmental impacts that would occur (pursuant to CEQA Guidelines Section 15126[d]).

### Significant Environmental Effects Which Cannot Be Avoided/Significant Irreversible Environmental Changes

This section will clearly and succinctly summarize significant and unavoidable environmental effects of the proposed project and alternatives as evaluated in the EIR.

### Effects Not Found to Be Significant

This section will include a discussion of the reasons that various possible significant effects of the project were determined not to be significant and were therefore not discussed in detail in the EIR (pursuant to CEQA Guidelines Section 15128).

As part of preparation of the Administrative Draft EIR, CONTRACTOR will compile an electronic copy of all cited literature, studies, personal communications, and reference materials used in the preparation of the EIR.

***DELIVERABLES: (sent electronically)***

- *Peer review memorandums on applicant technical studies in MS Word and PDF*
- *Administrative Draft EIR in MS Word and PDF*

**TASK 5: SCREENCHECK DRAFT EIR**

Upon receipt of comments on the Administrative Draft EIR from the applicant and the COUNTY, CONTRACTOR will revise the Administrative Draft EIR and prepare a Screencheck Draft EIR, as well as a draft Notice of Completion (NOC) and Notice of Availability (NOA), for review. This will include a track-changes version of the EIR to confirm changes as well as a clean version. This may be provided in EIR section bundles rather than the entire EIR to expedite the schedule.

The scope of work assumes that comments will not require analysis of new issues or substantially revised analysis of issues already addressed in the administrative draft. Additionally, this scope assumes the COUNTY will distribute notices, including newspaper notices, and will complete all requisite public noticing.

***DELIVERABLES: (sent electronically)***

- *Draft NOC and NOA in PDF format*
- *Screencheck Draft EIR (or in sections) in MS Word and PDF format of each chapter*

**TASK 6: PUBLIC REVIEW DRAFT EIR**

Upon receipt of comments on the Screencheck Draft EIR, CONTRACTOR will revise the document and prepare a Draft EIR suitable for public review. CONTRACTOR will also finalize the NOA and NOC. It is assumed that the COUNTY will distribute the EIR, post the NOA at the County Clerk, and publish the NOA in the local newspaper. CONTRACTOR will deliver the EIR and NOC to the State Clearinghouse electronically. At the time of publication of the Draft EIR, CONTRACTOR will also provide the COUNTY with a complete electronic record of all references used in the environmental analysis, which must be made available to the public upon request. The references will be provided via USB drive.

Paper copies of the Draft EIR are not included in the scope of work but can be provided with a budget modification.

***DELIVERABLES: (sent electronically)***

- *Draft EIR in MS Word and PDF format*
- *NOC and NOA in PDF format*
- *Electronic submittal of the Draft EIR to the State Clearinghouse with NOC on behalf of the COUNTY*

**TASK 7: FINAL EIR AND MITIGATION MONITORING AND REPORTING PROGRAM**

## Final EIR

This task includes the preparation of an Administrative Final EIR that contains responses to all written and oral comments received from agencies and the public during the public review period and to show revisions to the public Draft EIR. After comments on the public Draft EIR are received, CONTRACTOR will meet with the applicant and the COUNTY to discuss the comments and to develop a strategy for responses. CONTRACTOR will prepare a list of commenters, compile and organize the comments, and develop draft responses to significant environmental points raised in the comments. It is assumed that responses will involve explanation, clarification, or elaboration of existing analysis and findings, but not include new analysis, issues, or alternatives. The scope of the response-to-comments effort is difficult to predict in advance, but this scope assumes that responses to comments will be completed with approximately 117 hours of technical staff labor. CONTRACTOR will alert the COUNTY if the number of comments received or the number of technical issues raised would exceed the response preparation time included in this scope of work.

The Administrative Final EIR will include the following components: an introductory chapter; a description of changes to the project that may have occurred since the Draft EIR, if any; analysis supporting the conclusion that project changes do not trigger recirculation of the EIR; all excerpted text revisions to Draft EIR chapters with modifications indicated in strikeout (strikeout) for deletions and underline (underline) for additions; a list of persons, organizations, and public agencies commenting on the Draft EIR; enumerated comment letters and public hearing transcripts; and responses to the environmental issues raised in comments received on the Draft EIR. Reproduction of the entire Draft EIR with revisions and modifications is assumed not to be necessary and is not included in this scope of work.

Based on comments on the Administrative Final EIR from the applicant and the COUNTY, CONTRACTOR will revise the Final EIR and produce a Final EIR suitable for public distribution. Proposed responses to public agency comments will be provided to those agencies at least 10 days prior to certification of the EIR, in accordance with Section 21092.5 of the CEQA Statute. It is assumed that the COUNTY will facilitate any distribution of responses to individual commenters. Following project approval and EIR certification, CONTRACTOR will prepare and file the Notice of Determination (NOD) with the County Clerk's Office and the State Clearinghouse. It is assumed that fees associated with NOD filing will be paid directly by the applicant.

Paper copies of the Final EIR are not included in the scope of work but can be provided with a budget modification.

### ***DELIVERABLES: (sent electronically)***

- *Administrative draft Final EIR in MS Word and PDF format if desired*
- *Public Final EIR sent in MS Word and PDF format on USB Drive*
- *NOD – Electronic copy for COUNTY signature*

## Mitigation Monitoring and Reporting Program

CONTRACTOR will prepare the Mitigation Monitoring and Reporting Program (MMRP) for mitigation measures recommended in the EIR. The MMRP will include all mitigation measures in the EIR and will identify timing, responsible party, implementing party, and

implementation actions, as applicable. CONTRACTOR will prepare a draft MMRP and will submit it (electronically) to the applicant and the COUNTY for review and comment. CONTRACTOR will incorporate comments and produce the final MMRP.

**DELIVERABLES:** *(sent electronically)*

- *Draft MMRP in MS Word and PDF format*
- *Final MMRP in MS Word and PDF format*

**TASK 8: FINDINGS OF FACT and STATEMENT OF OVERRIDING CONSIDERATIONS**

CONTRACTOR will prepare the CEQA Findings of Fact (Findings) and a Statement of Overriding Considerations (SOC), if significant and unavoidable impacts are identified for the project. The Findings will specify mitigation measures that have been incorporated into the project and will explain why other measures, if any, have been found to be infeasible. If applicable, the Findings will also identify feasible project alternatives that could reduce adverse environmental effects but are not being implemented, with an explanation as to why they are infeasible. CONTRACTOR will prepare a draft of the Findings and will submit it (electronically) to the applicant and the COUNTY for review and comment. CONTRACTOR will incorporate comments and deliver an electronic file of the final Findings.

**DELIVERABLES:** *(sent electronically)*

- *Draft Findings/SOC in MS Word and PDF format*
- *Final Findings/SOC in MS Word and PDF format*

**TASK 9: PUBLIC HEARINGS**

CONTRACTOR'S project director and project manager will attend up to three public meetings/hearings (including Draft EIR comment meetings). CONTRACTOR will prepare the environmental documentation portion of a PowerPoint presentation for these meetings.

**DELIVERABLES:**

- *Attendance of up to three public meetings/hearings by the Project Director and Project Manager*
- *Preparation of the environmental documentation portion of a PowerPoint Presentation*

**TASK 10: PROJECT MANAGEMENT**

CONTRACTOR will devote effort each month to ensure an efficient and timely process for project execution. This task provides budget for CONTRACTOR'S management team to be available for meetings or conference calls with the applicant and the COUNTY, as well as to consult with all appropriate public agencies that have jurisdiction over the project. Early identification of issues and agreement upon resolution is critical for maintaining the overall project schedule. CONTRACTOR will maintain close communication to ensure objectives are met, the schedule is maintained, and the project is implemented within established budget parameters. This task assumes 12 check-in conference calls/virtual meetings, as well as up to three in-person meetings.

## PROJECT SCHEDULE

CONTRACTOR will make its best efforts to accomplish the Tasks listed above in accordance with the following schedule, however, unforeseen events outside the control of COUNTY, the CONTRACTOR, or the Project applicant may require modification or adjustment of the schedule as necessary:

Task	Target Date
Notice to Proceed	April 26, 2022
Task 1: Project Kickoff, Data Collection, and Background Information Review	Week of April 25, 2022
Task 2: Scoping Meeting	
Scoping Meeting	Week of May 2, 2022
Task 3: Project Description	April 29, 2022 <sup>1</sup>
Task 4: Administrative Draft EIR	
Technical Peer Review Memoranda on Applicant Technical Studies	April 29, 2022
Administrative Draft EIR Submitted	June 3, 2022 <sup>2</sup>
Task 5: Screencheck Draft EIR	
Comments on Administrative Draft EIR Provided to Ascent	June 10, 2022
Screencheck Draft EIR (or in Sections) Submitted	June 20, 2022
Task 6: Public Review Draft EIR	
Comments on Screencheck Draft EIR Provided to Ascent	June 24, 2022
Draft EIR Public Release	July 1, 2022
End of 45-Day Public Review Period	August 15, 2022
Task 7: Final EIR and Mitigation Monitoring and Reporting Program	
Administrative Final EIR Submitted	September 2, 2022
Comments on Administrative Final EIR Provided to Ascent	September 9, 2022
Final EIR and MMRP Released	September 20, 2022
Task 8: Findings of Fact and Statement of Overriding Considerations	
Draft Findings of Fact and Statement of Overriding Considerations Submitted	September 9, 2022
Comments on Draft Findings Provided to Ascent	September 14, 2022
Final Findings Provided	September 20, 2022
Task 9: Public Hearings	To Be Determined
Task 10: Project Management	Ongoing
<sup>1</sup> The project description preparation will start after release of the NOP but will be finalized after the NOP comment period in order to factor comments received that may impact the project description. <sup>2</sup> The Administrative Draft EIR schedule assumes that technical studies from the applicant are provided at contract execution and requested edits to the technical studies are provided by May 6, 2022.	

**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 a time and materials incurred monthly, with one copy to the Project applicant and one copy to the COUNTY: (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, or the Project Applicant with proof of payment to the 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, or the Project Applicant pursuant to the terms of a Reimbursement and Indemnification Agreement, as amended, between the COUNTY and the Project Applicant, shall pay to CONTRACTOR: (check one)

- ☐ a total lump sum payment of \$ \_\_\_\_\_, or
- ☒ a total sum not to exceed \$324,695.00,

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: (Specify)

Total compensation specified in paragraph B-3 of this contract is broken down by the cost estimate by task as shown in Table 1 below:

**PRICE PROPOSAL****Betabel Use Permit EIR**

Date: April 7, 2022

Hourly rate:

Task 1: Project Kickoff, Data Collection, Background Information	Price	Hours
Kickoff Meeting and Site Visit	\$ 3,760	16
Document Review and Additional Information Request	\$ 2,340	14
<b>Subtotal, Task 1</b>	<b>\$ 6,100</b>	<b>30</b>

Task 2: Scoping Meeting	Price	Hours
Notice of Preparation and Scoping Meeting	\$ 5,380	26
<b>Subtotal, Task 2</b>	<b>\$ 5,380</b>	<b>26</b>

Task 3: Project Description	Price	Hours
Draft Project Description	\$ 12,395	69
<b>Subtotal, Task 3</b>	<b>\$ 12,395</b>	<b>69</b>

Task 4: Administrative Draft EIR	Price	Hours
Executive Summary	\$ 1,250	9
Introduction	\$ 1,165	8
Project Description (see also Task 3)	\$ 960	6
EIR Technical Chapters	\$ -	0
Aesthetics	\$ 5,240	36
Agriculture	\$ 2,580	18
Air Quality (including health risk assessment)	\$ 25,955	174
Biological Resources	\$ 10,405	61
Cultural and Tribal Cultural Resources (including report)	\$ 29,535	179
Energy	\$ 4,585	31
Geology and Soils	\$ 2,615	18
Greenhouse Gas Emissions	\$ 8,345	56
Hazards and Hazardous Materials	\$ 2,785	19
Hydrology and Water Quality	\$ 7,000	44
Land Use and Planning	\$ 3,195	19
Noise	\$ 9,895	69
Population and Housing	\$ 2,615	18
Public Services	\$ 3,945	27
Public Utilities	\$ 6,565	44
Transportation	\$ 11,540	74
Alternatives	\$ 6,595	37
Other CEQA Sections	\$ 2,565	17
Document Compilation (TOC, References, Senior Review)	\$ 30,600	176
<b>Subtotal, Task 4</b>	<b>\$ 179,935</b>	<b>1140</b>

Angell Principal-in- Charge/ Project Director	Cunningham Project Manager	Babcock Asst. Project Manager	Antoniou AQ/GHG/ Noise Task Leader	Way AQ/GHG/ Noise Analyst	Leeman Natural Resources Task Leader	Fuller Wildlife Biologist	Zelazo Cultural Resources Task Leader	Miller Transportation Planner	Lowenthal Env. Planner	Asghary Env. Planner	Graphics/ GIS	WP/Admin
\$300	\$170	\$175	\$190	\$140	\$295	\$160	\$165	\$170	\$160	\$145	\$135	\$125
8	8											
8	8					2		2	2			
8	16	0	0	0	0	2	0	2	2	0	0	0
8	16										1	1
8	16	0	0	0	0	0	0	0	0	0	1	1
6	60										2	1
6	60	0	0	0	0	0	0	0	0	0	2	1
	1									4		4
	1									6		1
		4									1	1
	2									32	1	1
										16	1	1
1	2		28	140							2	1
	2				6	46					6	1
	8						170					1
	2		4	24								1
	1									16		1
1	2		6	46								1
	2									16		1
	2								40		1	1
		16									2	1
	2		4	60							2	1
	1									16		1
	2									24		1
1	2									40		1
1	2							25		45		1
2		32									2	1
		4								12		1
24	40	20								80		12
30	74	76	42	270	6	46	170	25	40	307	18	36

Attachment B: Page 3 of 4

**END OF ATTACHMENT B.**

## **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. CONTRACTOR certifies that no one who has or will have any financial interest under this contract is an officer or employee of COUNTY.

**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 the execution of this contract. For purposes of this paragraph, obligations arising prior to 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 shall give CONTRACTOR notice of the amount of any off-set and the reason for the deduction.

**C-29. COUNTERPARTS.**

This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

**C-30. FACSIMILE AND ELECTRONIC DIGITAL SIGNATURES**

The Parties hereby acknowledge and agree that facsimile or scanned signatures or signatures transmitted by electronic mail in so-called "PDF" format shall be legal and binding and shall have the same full force and effect as if an original of this Agreement had been delivered. The Parties (a) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (b) are aware that the other Party will rely on such signatures, and (c) hereby waive any defenses to the enforcement of the terms of this Agreement based on the forgoing forms of signature

The parties further agree that this agreement may be electronically signed. The parties agree that the electronic signatures appearing on this agreement (if electronic signatures are used) are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

**END OF ATTACHMENT C.**

**ATTACHMENT D**  
**Specific Terms and Conditions**

Paragraph C-1 of the General Terms and Conditions set forth in Attachment C, is modified to read as follows:

**C-1. INDEMNIFICATION**

CONTRACTOR shall indemnify, defend and hold harmless the COUNTY and its officers and employees, from and against any and all claims, liabilities, and losses whatsoever arising out of, or in any way related to, the CONTRACTOR'S negligence or willful misconduct in performance under this contract, including, but not limited to, claims for property damage and injuries to or death of persons, and any legal expenses (such as reasonable attorneys' fees, court costs, investigation costs, and experts' fees) occurring or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death, incurred by the COUNTY in connection with such claims, liabilities, or losses. and arising out of or connected with CONTRACTOR'S performance of this contract, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the COUNTY. The CONTRACTOR'S "performance" includes the CONTRACTOR'S action or inaction and the action or inaction of its officers, employees, and agents. The duty to defend is separate and independent to the duty to defend and hold harmless. In defending the COUNTY, CONTRACTOR shall use attorneys and other professionals retained by Contractor and reasonably approved by County. In the event of a conflict of interest, COUNTY **may** elect to engage its own attorneys and other professionals, at CONTRACTOR's expense, to defend or to assist in the defense. In no event shall any matter be settled without prior approval by the COUNTY if the settlement affects the COUNTY in any manner.

**END OF ATTACHMENT D.**