

**COUNTY OF SAN BENITO**  
**AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES**  
**Regional Analysis and Planning Services**  
**Resource Management Agency/Implementation of Organizational Review**

THIS AGREEMENT is executed this \_\_\_\_\_ by and between the COUNTY OF SAN BENITO (hereinafter the COUNTY), and Regional Analysis and Planning Services, Inc. (hereinafter "CONSULTANT").

**IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:**

1. **Scope.** CONSULTANT hereby agrees to provide to COUNTY with the necessary services to implement the recommendations related to organizational review of the COUNTY's Resource Management Agency (RMA) as the scope of services under this Agreement as set forth in the proposal for services dated February 1, 2018 (Exhibit "A"), attached hereto and incorporated herein by this reference.

2. **Timely Work.** CONSULTANT shall perform all duties incidental or necessary in a timely fashion; and shall be performed diligently, competently, and in accordance with professional standards of performance. Failure to so perform is hereby deemed a material breach of this Agreement, and COUNTY may terminate this Agreement with no further liability hereunder. COUNTY may agree in writing with CONSULTANT to an extension of time. It is expressly agreed and understood that CONSULTANT shall not be held responsible for delays occasioned by factors beyond their control, nor by factors that could not reasonably have been foreseen at the time of execution of this AGREEMENT.

3. **Term.** The work under this Agreement shall commence on April 17, 2018 and terminate on February 28, 2019. The parties may agree to extend or amend this Agreement prior to its expiration.

4. **Compensation.** COUNTY shall pay CONSULTANT in an amount not to exceed \$73,713.00 which said sum shall include all costs, as presented in the proposal dated February 1, 2018 (Exhibit "A"), and in accordance with this Agreement.

Compensation under this Agreement shall become due and payable thirty (30) days after CONSULTANT'S submission of monthly written invoices. Written invoices shall clearly itemize each charge. The payment of any compensation to CONSULTANT hereunder shall be contingent upon performance of the terms and conditions of this Agreement to the reasonable satisfaction of the COUNTY Administrative Officer.

If the COUNTY Administrative Officer determines that the work set forth in the written invoice has not been performed in accordance with the terms of this Agreement, COUNTY shall not be responsible for payment until such time as the work has been performed to the reasonable satisfaction of the COUNTY Administrative Officer.

5. **Additional Services.** In the event that COUNTY should request additional services not covered by the terms of this Agreement, said additional services and compensation shall require the written amendment by the Parties, approved by the San Benito County Board of Supervisors.

6. **Meet and Confer.** CONSULTANT agrees to meet and confer with COUNTY or its agents or employees with regard to services as set forth herein as may be required by COUNTY Administrative Officer to insure timely and adequate performance of this Agreement.

7. **Suspensions or Termination of Agreement Without Cause.** COUNTY may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the CONSULTANT at least ten (10) business days prior written notice. Upon receipt of said notice CONSULTANT shall immediately cease all work under this

Agreement unless the notice provides otherwise. If COUNTY suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

Notwithstanding the foregoing, this Agreement may be terminated by either party upon thirty (30) calendar day's written notice to the other party.

In the event this Agreement is terminated pursuant to this section, COUNTY shall pay CONSULTANT for all services performed in accordance with this Agreement up to the date of termination provided that the work performed meets the requirements of this Agreement and is approved by COUNTY. CONSULTANT shall submit an itemized invoice/ statement of the work performed up to the date of termination to COUNTY pursuant to section 4 of this Agreement. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion, and to complete and incomplete drawings and other documents whether delivered to COUNTY or in the possession of the CONSULTANT.

8. **Default of CONSULTANT.** CONSULTANT'S failure to comply with the provisions of this Agreement shall constitute a default. In the event that CONSULTANT is in default for cause under the terms of this Agreement, COUNTY shall have no obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and can terminate this Agreement immediately by written notice to CONSULTANT. If such failure by CONSULTANT to make progress in the performance of work hereunder arises out of causes beyond CONSULTANT'S control, and without fault or negligence of CONSULTANT, it shall not be considered a default.

9. **Indemnification.** CONSULTANT hereby agrees to the following indemnification clause:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6, if applicable), CONSULTANT shall indemnify and hold harmless COUNTY from and against loss, cost, damage, injury expense and liability (including incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise out of the negligence, recklessness, or willful misconduct of CONSULTANT related to the performance of the work associated with this Agreement. Such obligations to hold harmless and indemnify any Indemnatee shall not apply to the extent that such Liabilities are caused in part by the negligence, or willful misconduct of such Indemnatee.

10. **Insurance.** CONSULTANT shall submit and maintain in full force insurance as described herein. Without altering or limiting CONSULTANT'S duty to indemnify, CONSULTANT shall maintain in effect throughout the term of this Agreement, a policy or policies of insurance with the following minimum limits of liability:

**Commercial general liability insurance** including but not limited to premises, personal injuries, bodily injuries, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

**Workers' Compensation Insurance** If CONSULTANT employs others in the performance of this Agreement, CONSULTANT shall maintain workers' compensation insurance in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence for employers' liability.

### **Other Insurance Requirements**

- A. All insurance required under this Agreement must be written by an insurance company either:
- 1) Admitted to do business in California with a current A.M. Best rating of no less than A:VI;
  - Or
  - 2) An insurance company with a current A.M. Best rating of no less than A: VII
- Exception may be made for the State Compensation Insurance Fund when not specifically rated.
- B. Each insurance policy required by this Agreement shall be endorsed to state that COUNTY shall be given notice in writing at least thirty (30) days in advance of any cancellation thereof, except COUNTY shall be given TEN (10) days' notice for nonpayment of the premium.
- C. Prior to the start of work under this Agreement CONSULTANT shall file certificates of insurance and endorsements evidencing the coverage required by this Agreement with the COUNTY Administrative Officer. CONSULTANT shall file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.
- D. Any deductible or self-insured retentions must be declared to and approved by COUNTY. At the option of COUNTY either: the insured shall reduce or eliminate such deductibles or self-insured retentions as respects COUNTY, its officers, officials, employees, and volunteers; or CONSULTANT shall provide a financial guarantee satisfactory to COUNTY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

11. **Ownership of Work.** Upon completion of the work under this Agreement, ownership and title to all materials and deliverables produced as part of this Agreement will automatically be vested in COUNTY and no further Agreement will be necessary to transfer ownership to COUNTY. CONSULTANT shall not be held liable for any modification or re-use of COUNTY-owned materials and deliverables for purposes outside their original intent.

12. [REMOVED]

13. **Agency.** In performing the services specified under this Agreement, CONSULTANT is hereby deemed to be an independent CONSULTANT and not an agent or employee of COUNTY.

14. **Authority of the COUNTY Administrative Officer.** CONSULTANT shall perform all necessary services provided under this Agreement and outlined in the proposal and shall do, perform, and carry out said work in accordance with this Agreement as determined by and to the reasonable satisfaction of the COUNTY Administrative Officer. The COUNTY Administrative Officer reserves the right to make changes, additions or deletions, to the scope of work as deemed necessary or advisable to implement and carry out the purposes of this

Agreement, subject to the requirements of paragraph 5 regarding additional services. The COUNTY Administrative Officer is authorized to execute change orders, subject to approval by the Board of Supervisors.

15. **Responsibility of Consultant.** By executing this CONSULTANT represents and state to COUNTY that he/she possesses, or will arrange to secure from others, all necessary professional capabilities, experience, resources and facilities necessary to provide to COUNTY the services contemplated under this Agreement. CONSULTANT further represents that he/she will follow the current generally accepted practices of the profession to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the project for which services are rendered under this Agreement.

16. **Materials and Equipment.** CONSULTANT shall furnish at his/her own expense, all materials and equipment necessary to carry out the terms of this Agreement.

17. **Audit Authority.** CONSULTANT shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be satisfactory to COUNTY. COUNTY and COUNTY's auditor shall be afforded access to CONSULTANT's records, books, correspondence and other data relating to this Agreement. CONSULTANT shall preserve these records, books, correspondence and other data relating to this Agreement for a period of four (4) years after final payment or for such longer period as may be required by law. In addition, CONSULTANT agrees to make said records, books, correspondence and other data relating to this Agreement available to COUNTY at COUNTY's principle place of business upon seventy-two (72) hours advance written notice. The COUNTY Administrative Officer, or his or her designee, shall at all times have the right to inspect the work, services, or materials. CONSULTANT shall furnish all reasonable aid and assistance required by COUNTY for the proper examination of the work or services and all parts thereof. Such inspection shall not relieve CONSULTANT from any obligation to perform said work or services strictly in accordance with the specifications of any modifications thereof and in compliance with the law.

18. **Notices.** All notices herein provided to be given, or which may be given by either party to the other, shall be considered fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:

COUNTY:	COUNTY Administrative Officer County of San Benito County Administration Building 481 4 <sup>th</sup> Street Hollister, CA 95023-3840
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CONSULTANT:	Regional Analysis and Planning Services, In. Maura Twomey, Executive Director P.O. Box 2453 Seaside, CA 93955
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20. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto and supersedes any and all prior Agreements, whether oral or written, relating to the subject matter thereof. Any modification of this Agreement will be effective only if it is in writing signed by both parties hereto.

21. **Validity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.

22. **Assignment of Interest.** The duties under this Agreement shall not be assignable, delegable, or transferable without the prior written consent of COUNTY. Any such purported assignment, delegation, or transfer shall constitute a material breach of this Agreement.

23. **Conflict of Interest/Political Reform Act.** CONSULTANT shall at all times avoid conflicts of interest, or the appearance of conflicts of interest, in the performance of this Agreement.

If COUNTY determines CONSULTANT comes within the definition of CONSULTANT under the Political Reform Act (Government Code Sections 87100 et seq.) CONSULTANT shall complete and file, and shall require any other person doing work under this Agreement, to complete and file a "Statement of Economic Interest" with COUNTY disclosing CONSULTANT'S and/or such other person's financial interests.

24. **Non-discrimination/Affirmative Action.** CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, national origin, marital status, physical or other motor handicap, unless based upon bonafide occupational disqualification.

CONSULTANT will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, age, national origin, marital status, physical or other motor handicap.

25. **Counterparts.** This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

26. **Laws.** CONSULTANT agrees that in the performance of this Agreement it will reasonably comply with all applicable state, federal and local laws and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the COUNTY of San Benito.

27. **Attorney's Fees and Court Venue.** Should either party to this Agreement bring legal action against the other, (formal judicial proceeding, mediation or arbitration), the case shall be handled in Monterey County, California, and the party prevailing in such action shall be entitled to a reasonable attorney's fee which shall be fixed by the judge, mediator or arbitrator hearing the case and such fee shall be included in the judgment, together with all costs.

IN WITNESS WHEREOF, this Agreement is entered into by the parties hereto in San Benito County, California, on the day and year first written above.

**COUNTY OF SAN BENITO:**

By: \_\_\_\_\_  
Anthony Botelho, Chair, Board of  
Supervisors

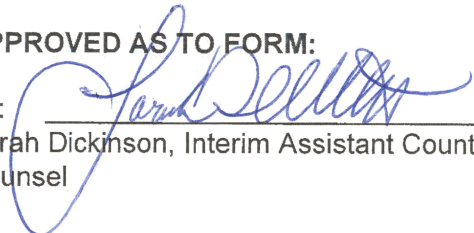
Date: \_\_\_\_\_

**CONSULTANT:**

By:  \_\_\_\_\_  
Maura F. Twomey, Executive Director

Date: 4-5-18

**APPROVED AS TO FORM:**

By:  \_\_\_\_\_  
Sarah Dickinson, Interim Assistant County  
Counsel

Date: April 5, 2018

Exhibit A

Proposal for Services: San Benito RMA

No.	Tasks	Total Est. hours	Hours: Twomey	Hours: Fidam	Cost: Twomey \$299/hr	Cost: Fidam \$110/hr	Total cost
1	Develop work plans for tasks 2-6 for the RMA director's approval.	15	2	13	\$598	\$1,430	\$2,028
2	Review Caltrans invoices since January 2015 for consistency with the Caltrans Local Programs Procedures Manual.	100	10	90	\$2,990	\$9,900	\$12,890
3	Based on established Board priorities, assist and coordinate the development of a priority-based RMA budget.	30	5	25	\$1,495	\$2,750	\$4,245
4	Document the RMA organization structure, including organization charts and duty statements.	80	5	75	\$1,495	\$8,250	\$9,745
5	Develop an action plan to address the improvements necessary to make the County's accounting and cost accounting systems compliant with the requirements for Indirect Cost Allocation Plan approval.	25	5	20	\$1,495	\$2,750	\$4,245
6	Develop a framework of policies, procedures and manuals for RMA.	150	20	130	\$5,980	\$14,300	\$20,280

Exhibit A

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Proposal for Services: San Benito RMA

7	Develop a system of internal and administrative controls for RMA, including project management and invoice processes, as well as records management protocols.	150	20	130	\$5,980	\$14,300	\$20,280
	TOTALS	550	67	483	\$20,033	\$53,680	\$73,713