

C O N T R A C T

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

1. Duration of Contract.

This contract shall commence on June 12, 2018, and end on June 30, 2019, unless sooner terminated as specified herein.

2. Scope of Services.

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

3. Compensation for Services.

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

4. General Terms and Conditions.

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

5. Insurance Limits.

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

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

6. Termination.

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

7. Specific Terms and Conditions (check one)

- ☒ [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: John Guertin

Title: Resource Management Agency Director

Address: 2301 Technology Parkway

Hollister, California 95023

Telephone No.: 831-636-4170

Fax No.: 831-636-4176

Contract Administrator for CONTRACTOR:

Name: David Daitch, Ph.D.

Title: Program Manager

Address: 437 Figueroa St., Suite 203

Monterey, CA 93940

Telephone No.: 831-333-0310

Fax No.: 831-333-0310

SIGNATURES

APPROVED BY COUNTY:

Name: Anthony Botelho

Chair, Board of Supervisors

Date: _____

APPROVED BY CONTRACTOR:



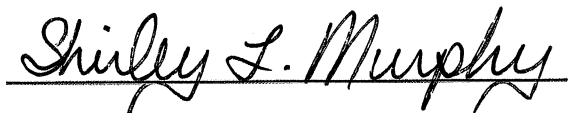
Name: Michael P. Gialketsis

Title: President

Date: 6/1/2018

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office



By: Shirley L. Murphy, Deputy County Counsel

Date: June 7, 2018

ATTACHMENT A

SCOPE OF SERVICES

CONTRACTOR shall provide Biological and Cultural Resource Compliance for the River Parkway Phase I (Access Road) Project located adjacent to San Benito Street, JSO Nash Road in Hollister, California. The project is located adjacent to the existing San Benito High School and consists of a roughly ¾ mile road. Based on information provided by the County, this scope and fee assumes a projected construction schedule that includes not more than six (6) weeks of ground disturbance and clearing activity. Contractor further understands that the project was approved with an Environmental Impact Report (EIR) and that the County is requesting support on meeting the compliance measures for biological and cultural resources. Specifically, Contractor is proposing to provide support on the following measures:

- ☐ B-1a *Preconstruction Special Status Plant Survey.*
- ☐ B-1c *California Red-legged frog and tiger salamander avoidance and minimization*
- ☐ B-1f *San Joaquin kit fox surveys and avoidance*
- ☐ B-1g *FESA and CESA consultation*
- ☐ B-1h *Conduct burrowing owl surveys*
- ☐ B-1i *Western pond turtle, western spadefoot, san Joaquin coachwhip, and coast range newt survey, capture & relocation*
- ☐ B-1j *Special status bat surveys and impact avoidance*
- ☐ B-1k *American badger pre-construction survey and impact avoidance*
- ☐ B-1l *Pre-construction surveys for nesting birds*
- ☐ B-1m *Worker environmental awareness program*
- ☐ CR-1a *Pre-construction prehistoric and archaeological resources survey*
- ☐ CR-2a *Archaeological resource construction monitoring*
- ☐ CR-2b *Unanticipated discovery of cultural remains*
- ☐ CR-3 *Paleontological resource construction monitoring*

The complete mitigation language for each of the above measures is included as an attachment for reference. The following outlines the proposed scope of work for this work program.

SCOPE OF WORK:

The scope of work for this project involves nine principal tasks as described below, with corresponding rates for these tasks contained in Attachment B.

Task 1. Biological Resources

The following Subtasks address biological resources measures B-1a, B-1c, B-1f, B-1g, B-1h, B-1i, B-1j, B-1k, B-1l, and B-1m:

Subtask 1.1 Preconstruction Special Status Plant Surveys

Contractor will conduct a special status plant survey as required under measures B-1a. The special status plant surveys will be conducted by a qualified botanist and will be seasonally timed so as to ensure observation of Monterey spineflower during the blooming period (April through July). A botanist will conduct a site visit of a reference site location to ensure known populations of Monterey spineflower are blooming and are likely to be detected on the project site if present. The actual time of the bloom varies from year to year and region to region based on annual and geographic variation in temperature and precipitation, and it may require several reference site visits to confirm the species is in bloom prior to conducting the preconstruction survey. As such, Contractor has scoped for up to 3 reference site visits; however, Contractor will monitor botanical networks for local information on blooming activity, and try to limit this task to a single reference site visit. Any Monterey spineflower observed on the project site will be mapped using a Global Positioning System (GPS) unit. In addition to mapping the location of Monterey spineflower, any annual grassland or coastal oak woodland observed on the project site will be mapped. The location(s), acreage(s), and approximate number(s) of Monterey spineflower, annual grassland, and coast oak woodland within the construction area will be depicted on site-specific aerial photographs at a scale of no less than 1"=200'.

Subtask 1.2 Preconstruction Special Status Wildlife Survey

Contractor will conduct a preconstruction survey as required under measures B-1c, to cover California red-legged frog (CRLF) and California tiger salamander (CTS); B-1f, to cover San Joaquin kit fox (SJKF); B-1h, to cover burrowing owl; B-1i, to cover western pond turtle (WPT), western spadefoot (WESP), San Joaquin coachwhip

(SJC), and Coast Range newt (CRN); B-1j, to cover special status bats; and B-1k, to cover American badger (AMBA). The survey will be conducted by a CDFW/USFWS-approved biologist and will be conducted not more than 14 days prior to initiation of construction activities. Surveys will consist of visual scans using binoculars while walking transects throughout the entire project footprint within potentially suitable habitat, plus all accessible areas within a 250-foot buffer from the project footprint, for 100% visual coverage for the presence of the above species. All observations of the above listed species will be documented with their location(s) mapped.

If any burrowing owl burrows are detected during the clearance survey, a qualified Rincon biologist will establish environmentally sensitive area (ESA) buffers around the detected burrow(s) according to CDFW (2012) and the Burrowing Owl Consortium (1993) minimization measures. If avoidance of burrowing owl burrows is not possible, Contractor will consult on the need to prepare an Exclusion Plan and Mitigation and Monitoring Plan in coordination with CDFW. If Plans are needed Rincon will provide an additional scope and cost to prepare these plans; however, Contractor considers the potential to be very low for burrowing owls to occur in project work areas for this phase of construction.

If any listed species are observed on the project site during the preconstruction survey, the species will have to be avoided and agencies may have to be consulted. For those species addressed under measure B-1i, the approved biologist could capture and relocate the species to a County-approved location that provides suitable habitat within the same or nearest possible habitat location, if necessary, but Contractor recommends allowing species to move of the work areas of their own accord, and would only recommend relocation if construction activity is at risk of delay during biological monitoring. For all special status species observed, Contractor will submit CNDDB forms as required under project measures.

Within 24 hours following completion of the preconstruction survey, Contractor will provide an email update of the results of the survey to the County. Contractor will prepare and submit a preconstruction survey report that summarizes the results of the survey (see Subtask 1.4). For the purposes of reporting and cost estimates, Contractor assumes no special status species will be identified during preconstruction surveys. Contractor assumes this survey can be completed by one biologist in one day (inclusive of travel).

Subtask 1.3 Preconstruction Nesting Bird Survey

Contractor will conduct a preconstruction nesting bird survey as required under measure B-1l. The nesting bird survey will be conducted on the same day as the burrowing owl survey. The preconstruction nesting bird survey will be conducted within 14 days before the start of construction activities. The survey will be conducted at the start of the day right after completing the burrowing owl clearance survey. The survey will consist of a qualified biologist conducting a visual inspection of the project site and vicinity within a 250-foot buffer, as is feasible depending on possible access and/or line-of-site constraints, to detect any suitable nesting locations and determine if any nests occur. The survey will involve a combination of driving around the project area and walking transects on the project site and within the 250-foot buffer to maximize the area survey and potential for observing a nest. All trees, shrubs, and ground surfaces suitable for nesting locations will be visually scanned using binoculars. We anticipate the nesting bird survey will require three (3) hours to complete and will be conducted on the same day as the preconstruction wildlife survey.

If nests are detected on or in the vicinity of the project site, biologists will identify the species, if possible, and will advise the County immediately of the presence of the nest(s). Avoidance buffers will be established depending on the species; 250 feet for raptors and 50 feet for non-raptor species. Certain raptor species, Swainson's hawk and golden eagle, for example, require larger avoidance buffer areas. Contractor understands the project biologist has full discretion for establishing a suitable buffer. If, based on nest location, avoidance buffers would potentially present a hardship on project implementation, Contractor will assist the County in negotiating with wildlife agencies to recommend a reduced avoidance buffer and biological monitoring during construction to ensure nesting birds are not disturbed by construction activities.

Subtask 1.4 Preconstruction Survey Report

A draft preconstruction survey letter report will be prepared and provided to the County within three weeks of completion of all preconstruction surveys. A single preconstruction survey report would be provided and will include methods, results, and any recommendations for avoidance or minimization of impacts to special status plant and wildlife species. The draft report would be submitted to San Benito County for review and approval. Contractor would respond to one round of review comments from the County and would provide a final report to the County. The final preconstruction survey report would be sufficient for submittal to the CDFW and USFWS for formal determination of the need of permits for impacts to sensitive biological resources.

Subtask 1.5 Wildlife Exclusion Fencing

Contractor will provide oversight during installation of exclusion fencing as required by B-1c and B-1i. Contractor shall provide a qualified biologist familiar with project related species to support the contractor with the proper

installation of exclusion fencing. Rincon assumes this work will be completed in no more than three days. As needed, Contractor will provide advice on any required repairs to the fence.

Subtask 1.6 Worker Environmental Awareness Program Training

Contractor will provide a worker environmental awareness program (WEAP) training as required by measure B-1c. In accordance with the project environmental measures, all construction personnel will be provided a WEAP training prior to beginning any work on the project site. Contractor will prepare WEAP training materials to address all special status species that may be present on the project site and where they may most likely be encountered, nesting birds and breeding bird behavior, and information on any nests located within proximity to the project. This program will include brief life history information on special status species potentially present on site, as well as measures to avoidance or minimization the risk of impacts to species or their burrows or nests. The WEAP training will address the role of the approved project biologist and what to do in the event of encountering special status species on site.

Contractor will design and produce a WEAP training hard-hat stickers for all personnel to indicate that the training has been attended. Contractor will provide training to a County or contractor representative to act in the event the biologist is not present on site.

Contractor assumes that a single training can be provided at the start of construction, and that up to two (2) additional trainings will be required throughout the life of the project. We have budgeted 12 hours for the preparation of the training material and six (6) hours for in-person training. Contractor will maintain a list of signatures of all personnel who completed the initial WEAP training for the Counties records.

Subtask 1.7 Construction Monitoring

Contractor will provide biological monitoring during construction activities as required under project measures B-1c, B-1f, and B-1i. Rincon understands biological monitoring is only required during ground disturbing activities, including vegetation removal, grading, and exclusion fencing installation and removal. Contractor will conduct on-site biological monitoring during all initial ground disturbing project activities including vegetation clearing, grading, and ground breaking activities. The biological monitor will be fully familiar with existing ESAs and will provide recommendations concerning project activities in close proximity to ESAs. The biological monitor will observe work activities to ensure that special status species are not present during constructing and that no special status species are impacted implementation of the project. Contractor understands biological monitors have stop work authority in the event special status species are observed in the work area and the biological monitor will ensure compliance with all project measures.

TASK 2 Phase I Cultural Resources Study

In accordance with MM CR-1(a), Rincon will complete a Phase I Cultural Resources Study of the project site to identify the potential for the project to impact cultural resources.

Subtask 2.1 Cultural Resources Records Search Update.

Contractor will conduct a California Historical Resources Information System (CHRIS) records search of the project site and a 0.25-mile radius around the project site at the Northwest Information Center (NWIC). The primary purpose of the records search is to identify any previously recorded cultural resources known to exist within or adjacent to the project site that may have been recorded since the preparation of the San Benito River Parkway and Regional Park Master Plan. In addition to the archaeological inventory records and reports, an examination will be made of historic maps, the National Register of Historic Places (NRHP), California Register of Historical Resources (CRHR), the California Historical Resources Inventory, and the listing of California Historical Landmarks. The records search will also reveal the nature and extent of any cultural resources work previously conducted within the project site. Because we have retained the results of the records search conducted for the Master Plan, Contractor assumes a cost savings for this updated records search and that NWIC direct expenses will not exceed \$300.

Subtask 2.2 Native American Scoping

Contractor will coordinate with local Native American individuals and groups who may have knowledge of, or concerns about, Native American resources in the area. Contractor will initiate this task by contacting the Native American Heritage Commission (NAHC) to request a Sacred Lands File (SLF) search and to request a list of Native American contacts. Upon receipt of the SLF search, Contractor will prepare and mail informal outreach letters to each of the NAHC-listed contacts, requesting information, in writing, if they are aware of any Native American religious or cultural resources located within or immediately adjacent to the project site. This task does not constitute consultation under Assembly Bill (AB) 52.

Subtask 2.3 Cultural Resources Field Survey.

In accordance with MM CR-1(a), Contractor will conduct a pedestrian survey of the project site. Contractor cultural resources specialists will conduct an intensive pedestrian survey using transects spaced at maximum intervals of 10 meters where conditions permit. Transect accuracy will be maintained through use of a hand-held GPS unit. For the purposes of this proposal and cost estimate, Contractor assumes that the survey will be negative for cultural resources (i.e., no archaeological or historic built environment resources will be encountered that require recordation or updating). If resources are identified during the study, a budget augmentation would be required to complete the steps necessary for compliance with MM CR-1(a), including possible Phase II testing, archaeological capping, or Phase III data recovery.

Subtask 2.4 Cultural Resources Technical Report.

Upon completion of the survey, Contractor will prepare a cultural resources technical report. This report will document the results of the cultural resources records search update, Native American scoping, and survey and will identify the need for subsequent investigations and/or archaeological monitoring in accordance with MM-CR-2(a). The report will include figures depicting the area surveyed and studied for cultural resources. For the purposes of this proposal and cost estimate, Rincon assumes that the study will be negative for cultural resources.

One digital copy of the draft report will be submitted to the County for review and approval. Based on one round of comments by the County, one copy of the final report will be submitted to the County and one copy submitted to the NWIC per their requirements.

Project Management

This task includes project task and budget management, quality assurance/quality control, and administration required to complete the biological services outlined above. Communication protocols between Contractor, County, and project staff will be established prior to project activities. Contractor will participate in email communication or teleconference meetings to coordinate project schedule, schedule changes, or other matters that may arise in coordinating preconstruction surveys and construction monitoring. We have assumed up to two (2) meetings, each no longer than 2 hours in duration. This task also includes general consulting, Principal review and oversight, coordination, and general contract administration.

SCHEDULE AND ASSUMPTIONS

The proposed work program identified above can be initiated within one week of receiving a signed contract and notice to proceed (NTP). Preconstruction surveys should be scheduled to occur not more than 14 days prior to the start of construction activities. Preconstruction survey reports will be completed within three weeks of completion of the survey. Preparation of the WEAP training materials can commence within one week of NTP and will be completed once preconstruction surveys are completed and details of species presence on the project site are known.

We have made following assumptions regarding the overall work program:

- One preconstruction survey to cover CRLF, CTS, SJKF, AMBA, WPT, WESP, SJC, CRN, and bats will be required.
- One preconstruction burrowing owl/nesting bird survey will be required.
- One preconstruction survey report only to cover all biological preconstruction surveys.
- This proposal does not include protocol surveys for specific species, such as San Joaquin kit fox, Swainson's hawk, or burrowing owl.
- One digital copy of the draft preconstruction nesting survey report will be prepared and submitted. Upon one review and round of comments, a final digital report will be prepared and submitted.
- Assumes comments are not extensive and will not take more than two (2) hours of staff time to address.

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 \$ 45,983.00

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:

Tasks	Rincon Labor Classification →				Senior Professional II	Senior Professional I	Professional III	Professional II	Daily Bio Monitoring Rate	Technical Editor	GIS/CADD Specialist I	Clerical/Admin Assistant I
	Labor Cost	Direct Expense	Hours	Principal I								
Task 1: Biological Resources												
Subtask 1.1 Preconstruction Special Status Plant Survey	\$1,060	\$200	9				8				1	
Subtask 1.2 Preconstruction Special Status Wildlife Survey	\$1,060	\$200	9				8				1	
Subtask 1.3 Preconstruction Nesting Bird Survey	\$1,060		9				8				1	
Subtask 1.4 Preconstruction Survey Report	\$3,600		29	1	2		24		3	1	1	
Subtask 1.5 Wildlife Exclusion Fencing	\$3,000		3									
Subtask 1.6 Worker Environmental Awareness Program Training	\$2,865		23	1	1		20		15		1	
Subtask 1.7 Biological Construction Monitoring	\$16,455		27	1	2		32				1	
Subtask 1.8 Site Inspections	\$3,840		32									
Subtask 1.9 FESA/CESA Consultation	\$730		4	2	2							
Task Subtotal	\$33,670	\$40	145	5	7	8	100	8	18	1	6	
Task 2: Cultural Resources												
Subtask 2.1 Cultural Resources Records Search Update	\$393	\$345	4		0.5			2			1	
Subtask 2.2 Initial Native American Scoping	\$293		3		0.5			2				
Subtask 2.3 Cultural Resources Survey	\$1,005	\$228	9		1			8				
Subtask 2.4 Technical Report	\$3,690		33	1	2			28		1	1	
Task Subtotal	\$5,380	\$57	48	1	4			40		1	2	
Project Management												
Project Management	\$5,960		42	4		30						8
Task Subtotal	\$5,960		42	4		30						8

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.

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.