

C O N T R A C T

The COUNTY OF SAN BENITO ("COUNTY") and Denise Duffy & Associates, 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 26, 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)

- 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.
- The following additional provisions are made a part of this contract:

1. Reimbursement Agreement Contingency. It is acknowledged and agreed by the Parties that the continued existence of this Contract is expressly contingent upon the COUNTY executing a Reimbursement Agreement with the TSM 09-82 project applicant which will allow the COUNTY to fully recover costs of the CONTRACTOR'S Services under this Agreement. The COUNTY will have sixty (60) calendar days after execution of this Agreement to execute such reimbursement agreement. If the reimbursement agreement is not executed within this time, for any reason, either Party may by written notice to the other Party declare this Agreement to be null and void; and the Agreement will be null and void as of the other Party's receipt of this notice. It is acknowledged and agreed that CONTRACTOR shall not commence performance of the Services hereunder unless and until the reimbursement agreement has been executed.

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 Mgmt. Agency Director

Address: 2301 Technology Parkway

Hollister, CA 95023-2513

Telephone No.: 831 636-4170

Fax No.: 831 636-4176

Contract Administrator for CONTRACTOR:

Name: Tyler Potter

Title: Senior Planner, Denise Duffy & Assoc.

Address: 947 Cass Street, Suite 5

Monterey, CA 93940-4525

Telephone No.: 831 373-4341

Fax No.: _____

SIGNATURES

APPROVED BY COUNTY:

Name: Anthony Botelho

Chair, San Benito County Board of Supervisors

Date: _____

APPROVED BY CONTRACTOR:

Denise Duffy

Name: Denise Duffy

Title: President

Date: 6/18/18

APPROVED AS TO LEGAL FORM:

San Benito County Counsel

Sarah M. Dickinson
By: Sarah M. Dickinson, Interim Assistant County Counsel

Date: June 19, 2018

ATTACHMENT A

Scope of Services

PROJECT UNDERSTANDING

The Project consists of a proposed subdivision, which would create six parcels and an additional remainder lot out of a 37.43 acre parcel of land, located north of U.S. 101 in Aromas, California. Each of the parcels created would be between five and six acres in size and would consist of residential land uses, in keeping with the surrounding land uses. Construction of driveways and building sites would result in the grading of 9,000 cubic yards of earth. Each lot would have its own septic system, power provided by PG&E, and communication lines maintained by AT&T. It is to be determined if the lots will have a shared water system or if the Aromas Water District will provide water.

The project site is zoned both under the Rural designation in the County General Plan and under the Rural/Open Space zoning designation, allowing for new lots of a minimum of five acres in size to be created in areas unsuitable for agricultural uses. The project site consists of hilly grassland with some slopes over 30 percent and scattered or clustered trees, is considered a high fire hazard, and is listed as Grazing Land under the Farmland Mapping and Monitoring Program. The site also has the potential to be home to southwestern pond turtles, California tiger salamander, and pallid bat, and has known archaeological sensitivity.

PROJECT APPROACH

The following approach has been specifically tailored to meet the needs of the Project. It is DD&A's intent to work closely with the County to ensure that all project deliverables are completed in a timely and cost-effective manner. Specifically, DD&A proposes the following approach:

- Development of an initial understanding of the project site and objectives, as well as confirm the project description and team roles, responsibilities, and timeline;
- Coordination on a regular basis with the client and sub-consultants to identify: 1) key project issues/constraints early in the environmental review process; 2) project specific goals and critical CEQA milestones; and 3) key deliverables;
- Preparation of technical reports on key topical areas;
- Identification of important technical issues (including environmental, processing, and other project constraints) and suggestions of objective strategies for addressing identified issues;
- Identification of feasible mitigation to reduce or eliminate impacts and evaluation of the potential direct and indirect impacts associated with implementing the recommended mitigation measures; and,
- Facilitation of public hearings, as determined necessary.

Below is a detailed description of anticipated tasks, corresponding assumptions, and associated work products.

TASK 1. PROJECT INITIATION/DATA COLLECTION

This task consists of initial project review and consultation with County staff and other interested parties, as determined appropriate. The purpose of this task is to: 1) collect and review relevant background information related to the project site; 2) confirm expectations related to specific

deliverables, format of products, level of detail required, staff assignments and roles, and appropriate paths of communication; and, 3) discuss critical milestones and finalize the schedule. Data gathered as part of this task will be reviewed and used to develop a comprehensive picture of the physical, technical, and environmental resources that may be affected by the Project. This information will be utilized in developing a comprehensive assessment of known environmental constraints affecting the area, as supplemented by specific information developed in subsequent tasks. The purpose of this task is to build upon DD&A's knowledge of the area by using existing documentation where feasible to avoid redundant analysis.

This task assumes that the DD&A Project Manager will attend an initial kick-off meeting. This task assumes an additional two (2) meetings and/or conference calls with County staff to coordinate logistical aspects related to the Project and confirm project approach.

- **Deliverables:** Schedule, Communication Protocol, Milestones
- **County Responsibilities:** N/A

TASK 2. PROJECT DESCRIPTION

As part of this task, DD&A will review all the relevant and most current information provided by the County to develop a comprehensive project description. DD&A will coordinate directly with the County to create a project description consistent with the requirements of CEQA Guidelines Section 15124. A thorough and detailed project description is critical to the environmental review process and helps to: 1) avoid uncertainty during the environmental review process; 2) reduce cost; and, 3) avoid delays and related expenses. DD&A will prepare an Administrative Draft Project Description for review and comment by County staff. Upon receipt of written comments, DD&A will revise the project description. The revised project description will constitute the final project description that will be used for the purposes of CEQA review. This description will also be used for the purposes of the technical reports discussed below. *Please note that this task assumes one (1) round of comments on the Administrative Draft Project Description. DD&A will be available for one (1) conference call and/or meeting to review comments.*

- **Deliverables:** Administrative Draft Project Description, Final Project Description
- **County Responsibilities:** Comments

TASK 3. TECHNICAL STUDIES & BIOLOGICAL SURVEY (OPTIONAL)

Based on the information provided in the County's RFP, DD&A has identified that additional technical analysis is warranted in the areas of cultural resources and biological resources. For the purposes of this scope of work, this task is identified as optional and DD&A assumes that the Applicant will be responsible for the preparation of a Cultural Resources Assessment and a Biological Survey for the Project that satisfies the requirements of San Benito County. If, however, the Applicant does not wish to perform this work, this task can be authorized by San Benito County and DD&A will complete the requisite technical analysis as described below.

DD&A will retain Basin Research Associates ("Basin") to prepare a Cultural Resources Assessment that will summarize potential constraints or cultural resources impacts associated with the construction and operation of the Project. Please note that this scope of work assumes that Basin will be available on a limited basis to help facilitate consultation with Tribal Representatives

pursuant to AB 52. It is assumed that the County will undertake the required consultation process with support from Basin. As part of this task, DD&A will be responsible for: 1) the on-going management of our technical subconsultant; and 2) reviewing and commenting on draft technical reports to ensure they satisfy the requirements of CEQA.

As part of this task, DD&A will also utilize our in-house Natural Resources Division (NRD) to conduct a site survey/field evaluation of potential biological resources affected by the Project. Information developed as part of the site survey/field evaluation will be incorporated into the IS/MND as part of the Biological Resources section. DD&A will conduct reconnaissance-level biological surveys of the Project area to assess the environmental conditions of the site and its surroundings. Prior to site surveys, DD&A will review available reference materials, including the DFW's California Natural Diversity Database (CNDDDB) occurrence reports, USFWS species lists, aerial photographs, and other relevant biological documentation that has been prepared for other projects in the project area. The reconnaissance survey will provide an evaluation of general habitat features at the project site and within the local vicinity and will evaluate potential habitat for special-status plant and wildlife species. Results of the survey will provide a basis for a determination of the potential for impacts to occur. Reconnaissance-level surveys do not include focused botanical surveys, protocol-level surveys for listed species, or jurisdictional wetland determinations. However, evaluation of the project areas during the survey effort will determine the necessity for additional focused surveys and DD&A is available to perform these surveys, if necessary. *Please note that a separate biological report will not be prepared as part of this task. Rather, the biological survey information will be incorporated directly into the Biological Resources section of the IS/MND.*

- **Deliverables:** Administrative Draft Cultural Resources Assessment, comments, Final Cultural Resources Assessment
- **County Responsibilities:** Comments

TASK 4. ADMINISTRATIVE DRAFT IS/MND

DD&A will prepare the Administrative Draft IS/MND for the project pursuant to CEQA Guidelines §§ 15063 and will include the following:

- A brief description of the Project, including its location;
- An identification of the environmental setting in the vicinity of the project site, as it exists before commencement of the Project, from both a local and regional perspective;
- An identification of the environmental effects of the Project using an environmental checklist, including brief narratives supporting conclusions identified in the checklist. The explanations may reference another source of information through citation to the document by page or pages where the information may be found;
- Recommended feasible mitigation measures, as necessary;
- Determination of consistency with local plans and zoning; and,
- A listing of report preparers and bibliography.

The Administrative Draft IS/MND will be based on project-specific information developed as part of the technical analyses described above, as well as existing baseline information contained in the County's General Plan, Zoning Code, and other supporting technical documentation. As part of the IS/MND, DD&A's NRD will incorporate the findings of the biological survey conducted as part of Task 3 above into the Biological Resources section of the IS/MND. A separate biological

report will not be prepared. The analysis contained in the Biological Resources section of the IS/MND and will address the following:

- A description of the existing biological resources on and surrounding the site, including sensitive habitats, and potential habitat for special-status species;
- DD&A biologists will conduct site reconnaissance, review appropriate biotic databases, map habitat types, and identify known or anticipated special-status species present in the project site;
- An analysis of the direct and indirect impacts of the Project, including tree or vegetation removal and impacts to habitat and wildlife; and,
- Identification of mitigation for any significant biological impacts.

The Administrative Draft IS/MND will be submitted to County staff for review and comment. *This task assumes that DD&A will submit one (1) electronic copy of the IS/MND to the project team. Written comments will be incorporated into the public review Draft IS/MND as discussed below. DD&A will be available for one (1) conference call and/or meeting to address comments, if determined necessary.*

- **Deliverables:** Administrative Draft IS/MND
- **County Responsibilities:** Comments

TASK 5. DRAFT IS/MND, NOTICING, & DISTRIBUTION

Based on comments received on the Administrative Draft IS/MND, DD&A will revise the IS/MND to incorporate comments, as appropriate. DD&A will subsequently submit a Screen-Check Draft IS/MND for review prior to public circulation. Upon receipt of the final comments, DD&A will incorporate any final revisions/comments and prepare the public-review Draft IS/MND for distribution. DD&A will also prepare a distribution list in consultation with County staff. Upon completion of the Draft IS/MND, DD&A will: (1) distribute the IS/MND for public review; (2) prepare all necessary notices, including a Notice of Intent (NOI) and Notice of Completion (NOC), and transmittals (including the State Office of Planning and Research transmittal); and (3) will post and distribute such notices and documents. *This task assumes that only minor comments will be provided on the Screen-Check Draft IS/MND. If a substantial number of comments are submitted, additional staff hours will be billed on a T&M basis with authorization from the County. Please note that this task assumes electronic copies only; if hard copies are required this will be billed on a T&M basis.*

- **Deliverables:** Screen-Check Draft IS/MND, Electronic Copy of Draft IS/MND, NOI, NOC, and Distribution List
- **County Responsibilities:** Comments

TASK 6. FINAL IS/MND, RESPONSE TO COMMENTS, AND MITIGATION MONITORING AND REPORTING PROGRAM

Upon conclusion of the public review period, DD&A will prepare the Final IS/MND, which will consist of written responses to comments received on the Draft IS/MND and Mitigation Monitoring and Reporting Program (MMRP). All public comments will be codified and responses

will be provided in the form of a Final IS/MND. The Final IS/MND will consist of the following elements: 1) revisions to the IS/MND text, as necessary; 2) a list of individuals and agencies commenting on the IS/MND; 3) copies of letters received on the IS/MND; and, 4) written responses to comments received during the public review period. The MMRP, which will also be included in the Final IS/MND, will identify the impacts addressed, compliance and monitoring actions to be performed, and responsible party and timing of compliance and monitoring activities. *Please note that this task assumes electronic copies only. DD&A will be available to prepare hardcopies, which will be billed on a T&M basis.*

- **Deliverables:** Admin Draft Final IS/MND, Screen-Check Final IS/MND, Final IS/MND, MMRP
- **County Responsibilities:** Comments

TASK 7. NOTICE OF DETERMINATION (NOD)

CEQA Section 15094 requires that a lead agency file a Notice of Determination (NOD) within five (5) working days after deciding to carry out or approve a project. As part of this task DD&A will prepare, file, and distribute the NOD to the State Clearinghouse and County Clerk. This task assumes that the County will provide payment for the appropriate filing fees. It is recommended that the NOD be filed the next business day after project approval.

- **Deliverables:** Admin Draft NOD, NOD
- **County Responsibilities:** Comments, Signed NOD

TASK 8. PROJECT MANAGEMENT

DD&A will provide project management services throughout the duration of the Project to ensure that key project deliverables are completed on schedule and within the contract amount. DD&A will routinely coordinate with County staff to provide progress reports as part of this task. DD&A will attend to all aspects of managing the Project, including scheduling resources, handling team communication, sub-consultant management, and responding to requests for information.

- **Deliverables:** Status Reports, Invoices, Etc.
- **County Responsibilities:** N/A

TASK 9. MEETING ATTENDANCE

As part of this task, DD&A will be available to participate in meetings and/or conference calls with County staff, and other project team members, as determined necessary. These meetings will be scheduled on an as- needed basis and are in addition to those meetings identified above. *This task assumes that the DD&A Project Manager and key team members will be available for an additional three (3) conference calls beyond those identified above. If requested, DD&A can be available to attend one (1) project hearings, which would be billed on a T&M basis upon authorization by the County.*

- **Deliverables:** Agendas, Meeting Notes, etc.
- **County Responsibilities:** N/A

END OF ATTACHMENT A.

ATTACHMENT B
Payment Schedule

B-1. BILLING

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

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

B-2. PAYMENT

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

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (check one)

- A total lump sum payment of \$ _____, or
- A total sum not to exceed \$26,904.00.

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

- There are no additional terms of compensation.
- The following specific terms of compensation shall apply: (Specify)

1. CONTRACTOR shall be paid on an hourly basis in accordance with the hourly rates set forth in Attachment B-1, attached hereto and incorporated herein, for services rendered pursuant to the terms and conditions of this Agreement and pursuant to any special compensation terms specified in this Attachment B. The Maximum Compensation payable under this Agreement shall not exceed \$26,904.00. CONTRACTOR shall not be entitled to payment or reimbursement for any tasks or services performed except as specified herein. CONTRACTOR shall have no claim against COUNTY for payment of any compensation or reimbursement, of any kind whatsoever, for any service provided by CONTRACTOR after the expiration or other termination of this Agreement. CONTRACTOR shall not be paid any amount in excess of the Maximum Compensation amount set forth above, and CONTRACTOR agrees that COUNTY has no obligation, whatsoever, to compensate or reimburse CONTRACTOR for any expenses, direct or indirect costs, expenditures, or charges of any nature by CONTRACTOR that exceed the Maximum Compensation amount set forth above. Should CONTRACTOR receive any such payment it shall immediately notify COUNTY and shall immediately repay all such funds to COUNTY. This provision shall survive the expiration or other termination of this Agreement.
2. COUNTY shall make payment of all undisputed amounts within thirty (30) days of receipt of CONTRACTOR'S invoice. COUNTY shall be obligated to pay only for services properly invoiced in accordance with this Attachment B.
3. Invoices shall be prepared and submitted with Task Work Tracking. Invoices shall be submitted with the following back-up:
 - a. Task Cost Accounting – itemized by assigned staff and hourly rate
 - b. Task Progress Reports – itemized by subtask work; budget vs. actual

END OF ATTACHMENT B.

ATTACHMENT B-1
Schedule of Fees
240 Cole Road Initial Study

	Task Description	DD&A Labor Costs	Senior Project Manager	Sr. Environmental Planner/Scientist	Associate Planner/Scientist	Assistant Planner or Scientist	GIS Specialist II	Graphics	Admin	Total Expenses and Admin	BASIN Research Associates	Expenses	Admin Fee (10%)	Task Totals
			\$ 158	\$ 147	\$ 105	\$ 94	\$ 100	\$ 77	\$ 61					
1.0	Project Initiation/Data Collection	\$ 1,528	4		2	6			2	\$72		\$65	\$ 7	\$ 1,600
2.0	Project Description	\$ 1,810	2	4		8		2		\$28		\$25	\$ 3	\$ 1,838
3.0	<i>Technical Studies & Biological Survey (OPTIONAL)</i>	\$ 2,996	2	8		16				\$6,397	\$5,730	\$85	\$ 582	\$ 9,393
4.0	Administrative Draft IS/MND	\$ 6,170	4	10	6	32		4	2	\$94		\$85	\$ 9	\$ 6,264
5.0	Draft IS/MND, Noticing, & Distribution	\$ 1,760	2	2		8		2	4	\$55		\$50	\$ 5	\$ 1,815
6.0	Final IS/MND, Response to Comments, and Mitigation Monitoring and Reporting Program	\$ 2,342	4	2	4	8			4	\$55		\$50	\$ 5	\$ 2,397
7.0	Notice of Determination (NOD)	\$ 874				8			2	\$28		\$25	\$ 3	\$ 902
8.0	Project Management	\$ 1,324	6			4				\$0			\$ -	\$ 1,324
9.0	Meeting Attendance	\$ 1,302	4	2		4				\$72		\$65	\$ 7	\$ 1,374
	Total Budget without Optional Task 3	\$ 17,110	26	20	12	78	0	8	14	\$ 402	\$ -	\$ 365	\$ 37	\$ 17,512
	Total Budget with Optional Task 3	\$ 20,106	28	28	12	94	0	8	14	\$ 6,798	\$ 5,730	\$ 450	\$ 618	\$ 26,904

Note(s):

- 1) This cost estimate assumes that two (2) days of fieldwork will be required to complete the biological resources field evaluation. This task is identified as "Optional."
- 2) This cost estimate assumes that public comments will be limited; if a substantial amount of public comments are received during the CEQA review period, a budget amendment may be warranted.
- 3) For preliminary budgeting purposes, this scope/budget assumes that the Applicant will be responsible for the preparation of all underlying technical analysis.

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.