

## AMENDMENT TO CONTRACT

# 1

The County of San Benito ("COUNTY") and Hayashi and Wayland Accounting and Consulting LLP ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

### 1. Existing Contract.

#### a. Initial Contract.

COUNTY and CONTRACTOR acknowledge that the parties entered into a contract, dated August 18, 2015.

#### b. Prior Amendments. (Check one.)

☒ [ X ] The initial contract previously has not been amended.

☐ [ ] The initial contract previously has been amended. The date(s) of prior amendments are as follows:

#### c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit 1 and made a part of this amended contract.

### 2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

#### a. Term of the Contract. (Check one.)

☒ [ X ] The term of the original contract is not modified.

☐ [ ] The term of the original contract (Exhibit 1) is extended from the current expiration date of \_\_\_\_\_, to a new expiration date of \_\_\_\_\_.

#### b. Scope of Services. (Check one.)

☐ [ ] The services specified in the original contract (Exhibit 1) are not modified.

☒ [ X ] The services specified in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☐ [ ] The services specified in the original contract are modified only as specified below:

☒ [ X ] The services specified in the original contract are deleted in their entirety and replaced with the following services:

#### New Scope of Services:

(Insert new services.)

( Please see Attachment A to this Amendment to Contract #1. )

**c. Payment Terms. (Check one.)**

- ☐ The payment terms in the original contract (Exhibit 1) are not modified.  
☐ The payment terms in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☐ The payment terms are modified only as specified below:

**Modified Payment Terms:**

☒ The payment terms are deleted in their entirety and replaced with the following payment terms:

**New Payment Terms:**

( Please see Attachment B to this Amendment to Contract #1. )

**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 the original agreement (Exhibit 1) and this amendment.  
☐ 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 the original 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\_\_\_\_\_

for services rendered pursuant to the terms and conditions of the original contract (Exhibit 1) and this amendment, and pursuant to any special compensation terms specified in paragraph B-4.

**B-4. SPECIAL COMPENSATION TERMS:** (Check one.)

- ☐ There are no additional terms of compensation.  
☐ The following specific terms of compensation shall apply:

**d. Other Terms.** (Check one.)

- ☐ There are no other terms of the original contract that are modified.  
☒ Other terms of the original contract are modified only as specified below:

**Other Modified or New Terms:**

(Insert other modified or new terms.)

(Please see Attachment D to this Amendment to Contract #1.)

Should there be any conflicting provisions between Attachment C (County's General Terms) and Attachment D (Letter from Consultant), the County's General Terms shall prevail.

**3. Other Terms.**

All other terms and conditions of the original contract (Exhibit 1) which are not changed by this amendment shall remain the same.

**CONTRACTOR:**

Hayashi and Wayland Accounting and Consulting LLP

  
By: Mike Nolan, CPA / Partner

11-2-2018  
Date

**COUNTY:**

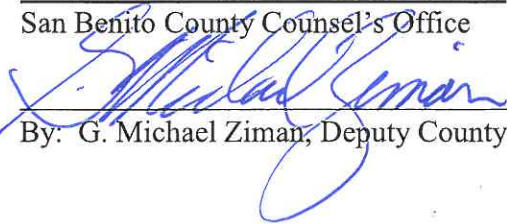
San Benito County Board of Supervisors

\_\_\_\_\_  
By: Anthony Botelho, Chair

\_\_\_\_\_  
Date

**APPROVED AS TO LEGAL FORM:**

San Benito County Counsel's Office

  
By: G. Michael Ziman, Deputy County Counsel

November 8, 2018  
Date

**ATTACHMENT A**  
**Scope of Services**  
**(Amendment to Contract #1)**

**A. Development Impact Fee Fund Services**

1. Research, analyze and provide recommendations regarding the operational effectiveness and compliance with the California Mitigation Fee Act of the County's impact fee program. Specific efforts should be to review relevant County ordinances, responsibilities and authority of various departments, fiscal controls, tracking systems and procedures, reporting, etc. Provide a report of findings and recommendations for operational improvements of the program.
2. Research, reconcile and analyze Impact Fee accounts and funds for compliance with regulations of the California Mitigation Fee Act (Gov. Code 66000). Prepare a report regarding the collection and use of fees for each of the last five (5) fiscal years (FY2013-14, FY2014-15, FY2015-16, FY2016-17, FY2017-18). The report should include the following information:
  - A brief description of the type of fee in each account or fund;
  - The amount of the fee;
  - The beginning and ending balance of the account or fund;
  - The amount of the fees collected and the interest earned;
  - An identification of each public improvement on which fees were expended and the amount of each expenditure;
  - An identification of the approximate date by which the construction of the public improvement began;
  - A description of any inter-fund transfer or loan and the public improvement on which the transferred funds were expended;
  - The amount of refunds made and any allocations of unexpended fees that were not refunded. (Gov. Code § 66006(b)(1).)
3. Research, collect, reconcile and analyze all data and information to assist with the development of a 5-year report of findings regarding funds remaining in each development fee account in compliance with Gov. Code Section 66001 (d).

**B. Road Fund Services**

1. Research, reconcile, analyze and prepare a report regarding revenues and expenditures in the Road Fund for the last five (5) fiscal years (FY2013-14, FY2014-15, FY2015-16, FY2016-17, FY2017-18).
2. Research, analyze and report findings regarding any obligation or restriction for use of revenues and the actual use of the funds. Specific effort should be focused on reconciling the use of funds with the intended purpose or project as well as compliance with grant or other federal and state regulations or requirements.
3. Research, analyze and provide recommendations regarding the operational effectiveness and compliance with state and federal regulations of the Road

program. Specific efforts should be to review fiscal controls, computerized tracking systems and procedures, reporting, etc. Provide a report of findings and recommendations for operational improvements of the program.

### **C. CSA & CFD Fund Services**

1. Research, reconcile, analyze and prepare a report regarding revenues and expenditures for each CSA and CFD in Fund 270 for the last five (5) fiscal years (FY2013-14, FY2014-15, FY2015-16, FY2016-17, FY2017-18). Specific effort should be focused on reconciling the use of funds with the stated services to be provided in each CSA or CFD.
2. Research, analyze and provide recommendations regarding the operational effectiveness and compliance with state regulations of CSAs and CFDs. Specific efforts should be to review fiscal controls, computerized tracking systems and procedures, reporting, etc. Provide a report of findings and recommendations for operational improvements of the program.

### **D. Delivery Schedule**

The Respondent shall submit a work plan to accomplish the scope of each review. The work plan should include time estimates for each significant segment of the work, and the level of staff to be assigned.

The Respondent shall deliver an agreed upon procedures report to San Benito County. If needed, the Respondent will make themselves available to report their findings to the San Benito County Board of Supervisors.

**ATTACHMENT B**  
**Payment Schedule**  
**( Amendment to Contract #1 )**

**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 \$ 128,000.00

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. Total payments of \$30,580.00 have been made to date against the original contract amount of \$128,000.00. This leaves a balance of \$97,420.00 available to be expended on services described in Attachment A of this Amendment #1 to the original contract.

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

☐ There are no additional terms of compensation.

☒ The following specific terms of compensation shall apply: (Specify)

The following fee schedule shall replace any previous fee schedule. Fees for the services described above are based on the time required by the individuals assigned to the engagement, plus any direct expenses (e.g. mileage, travel time) and are not contingent on the outcome of the work. The following is a list of the contractor's current hourly billing rates:

| Staffing Level   | Fees Range per Hour |
|------------------|---------------------|
| Partner          | \$340               |
| Director         | \$275 - \$325       |
| Senior Manager   | \$210 - \$270       |
| Manager          | \$170 - \$210       |
| Supervisor       | \$140 - \$155       |
| Senior Associate | \$115 - \$145       |
| Associate        | \$105 - \$115       |
| Admin Support    | \$105               |

**END OF ATTACHMENT B.**



Attachment D  
(Amendment to Contract #1)

**Engagement Services**

Our engagement will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Because the procedures included in the attachment to this letter do not constitute an audit made in accordance with generally accepted auditing standards, we will not express an opinion on any of the specific elements, accounts or items referred to in our report or on the financial statements of San Benito County taken as a whole.

At the conclusion of our engagement, we will submit a report in letter form outlining the procedures performed and our findings resulting from the procedures performed.

Our report will contain a statement that it is intended solely for the use of RMA and San Benito County and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes. Should you desire that others be added to our report as specified parties, please contact us as it will be necessary to obtain their agreement with respect to the sufficiency of the procedures for their purpose.

Our report will also contain a paragraph pointing out that if we had performed additional procedures or if we had conducted an audit in accordance with generally accepted auditing standards, matters in addition to any findings that may result from the procedures performed might have come to our attention and been reported to you.

The procedures that we will perform are not designed and cannot be relied upon to disclose errors, fraud or illegal acts, should any exist. However, we will inform the appropriate level of management of any material errors that come to our attention and any fraud or illegal acts that come to our attention, unless they are clearly inconsequential.

Furthermore, the procedures were not designed to provide assurance on internal control or identify significant deficiencies or material weaknesses. However, we will communicate to management and those charged with governance any significant deficiencies or material weaknesses that become known to us during the course of the engagement.

**San Benito County Resource Management's Responsibilities**

The sufficiency of the procedures included in the attachment is solely the responsibility of RMA and San Benito County. We make no representation regarding the sufficiency of the procedures described above, either for the purpose for which these services have been requested or for any other purpose. Management is responsible for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of the information provided that is free from material misstatement, whether due to fraud or error.

In addition, management is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the entity involving management, employees who have significant roles in internal control, and others where the fraud could have a material effect on the financial statements. Management is also responsible for informing us of its knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, analysts, regulators, or others.

Attachment D  
(Amendment to Contract #1)

**Records and Assistance**

If circumstances arise relating to the condition of RMA's records, the availability of appropriate evidence or indications of a significant risk of material misstatement of the financial statements because of error, fraudulent financial reporting or misappropriation of assets that, in our professional judgment, prevent us from completing the engagement or forming an opinion, we retain the unilateral right to take any course of action permitted by professional standards, including declining to express an opinion or issue a report, or withdrawing from the engagement.

During the course of our engagement, we may accumulate records containing data that should be reflected in RMA's books and records. RMA will determine that all such data, if necessary, will be so reflected. Accordingly, RMA will not expect us to maintain copies of such records in our possession.

The assistance to be supplied by RMA personnel, including the preparation of schedules and analyses of accounts, will be discussed and coordinated with Scott Lines, Administrative Services Manager. The timely and accurate completion of this work is an essential condition to our completion of our services and issuance of our report.

When an engagement has been suspended at the request of management or those charged with governance and work on that engagement has not recommenced within 180 days of the request to suspend our work, Hayashi/Wayland may, at its sole discretion, terminate this arrangement letter without further obligation to San Benito County Resource Management Agency. Resumption of work following termination may be subject to our client acceptance procedures and, if resumed, will necessitate additional procedures not contemplated in this arrangement letter. Accordingly, the scope, timing and fee arrangement discussed in this arrangement letter will no longer apply. In order for Hayashi/Wayland to recommence work, a new arrangement letter would need to be mutually agreed upon and executed.

In the event we are requested or authorized by San Benito County Resource Management Agency or are required by government regulation, subpoena or other legal process to produce our documents or our personnel as witnesses with respect to our engagements for San Benito County Resource Management Agency, San Benito County Resource Management Agency will, so long as we are not a party to the proceeding in which the information is sought, reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such requests.

From time to time and depending upon the circumstances, we may use third-party service providers to assist us in providing professional services to you. In such circumstances, it may be necessary for us to disclose confidential client information to them. We enter into confidentiality agreements with all third-party service providers, and we are satisfied that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others.

**EXHIBIT 1**  
**TO AMENDMENT # 1**

**ORIGINAL**  
**CONTRACT**

(Please attach the initial contract and any prior amendments, from the most recent to the initial contract, in reverse chronological order.)

## CONTRACT

The COUNTY OF SAN BENITO ("COUNTY") and Hayashi & Wayland Accounting and Consulting, LLP ("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 August 18, 2015, and end on June 30, 2016, with an automatic renewal for an additional one-year period of time, upon the same terms and conditions, unless sooner terminated as specified herein. The contract may be automatically renewed in this manner up to three (3) times.

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: As required by CA law.

6. Termination.

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

7. Specific Terms and Conditions (check one)

- ☒ There are no additional provisions to this contract.
- ☐ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.
- ☐ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment E. Attachment E is made a part of this contract.

8. Information about Contract Administrators.

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for COUNTY:

Name: Joe Horwedel

Title: Public Works Director

Address: 2301 Technology Parkway

Hollister, California 95023

Telephone No.: 831.636.4170

Fax No.: 831.636.4176

Contract Administrator for CONTRACTOR:

Name: Mike Nolan, CPA

Title: Partner

Address: 1188 Padre Drive, Suite 101

Salinas, CA 93901

Telephone No.: 831.759-6300

Fax No.: 831-759-6380

SIGNATURES

APPROVED BY COUNTY:

Margie Barrios

Margie Barrios

Chair, San Benito County Board of Supervisors

Date: 8/18/15

APPROVED BY CONTRACTOR:

Michael B. Nolan

Mike Nolan, CPA

Partner

Date: August 13, 2015

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office

Shirley L. Murphy

By: Shirley L. Murphy, Deputy County Counsel

Date: Aug. 13, 2015

**ATTACHMENT A**  
**Scope of Services**

At the direction of the County's Contract Administrator (CA), provide Certified Public Accountant services to County Public Works Department as defined.

1. Review and Prepare Year-End Account Balance Reconciliation's
2. Prepare the schedules of Expenditures of Federal Awards
3. Assist with preparation and review of other support needed for year-end close in preparation of external audit.

**SCHEDULE**

- 20 hours to 35 hours per week during the period of August 18, 2015 through September 6, 2015 in efforts to reconcile, consolidate and prepare schedules of expenditures for Fiscal Year 2014-2015 closing.
- Quarterly close processing for the remainder of the current fiscal year.
- Contract not to exceed a total of 160 hours for the fiscal year ending June 30.

**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 \$ 32,000.00 per year,

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. In the event the contract is automatically renewed for the maximum three (3) years, the total contract sum will be in an amount not to exceed \$128,000.00.

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

☐ There are no additional terms of compensation.

☒ The following specific terms of compensation shall apply: (Specify)

- Contractor shall bill County for services provided on a time and materials basis, according to the rate schedule set forth below, subject to an increase at the beginning of each of the contract renewal periods in an amount not to exceed four percent (4%); however, although Contractor's hourly rates will increase, the annual compensation during each contract renewal period shall not exceed \$32,000.00. Contractor will bill for services performed, based upon the experience level required for the services provided and of the employees providing the services, plus the cost of direct, out-of-pocket expenses.

| Professional Service Fees Per Hour |               |
|------------------------------------|---------------|
| Partner                            | \$325         |
| Director                           | \$265 - \$295 |
| Senior Manager                     | \$190 - \$250 |
| Manager                            | \$175 - \$185 |
| Supervisor                         | \$130 - \$160 |
| Senior Associate                   | \$110 - \$129 |
| Associate                          | \$95 - \$100  |
| Administrative Support             | \$65 - \$100  |

- The following individuals are anticipated to provide primary services under this contract:

- Rae Gularte, Senior Manager \$250.00 per hour, will provide the majority of the services
- Mike Nolan, Partner \$325.00 per hour, will provide support, as needed

**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.**

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