

CONTRACT FOR CONSULTANT'S SERVICES
Preparation Of An Environmental Initial Study Report and Permit Processing Services
Contract With Consultant

APPLICANT: John Wynn and Nader Javid
PROJECT: Assisted Living Facility Use Permit and Grading Permit 3586 Airline Highway
COUNTY FILE NO.: PLN 180004

The County of San Benito ("County") and EMC Planning Group, Inc. ("Consultant") enter into this contract for services as described herein. In consideration of the mutual promises set forth herein, the parties hereto agree as follows:

1. DURATION OF CONTRACT

This contract shall commence upon execution of this contract by all parties and written notice from the County to the Consultant to proceed with the services specified in the contract. This contract shall end June 30, 2020 unless sooner terminated as specified herein.

2. SCOPE OF SERVICES

Consultant shall perform the services specified in Attachment A to this contract for County's benefit. Attachment A is made a part of this contract.

3. COMPENSATION

In consideration for Consultant's performance, County shall pay Consultant according to the terms specified in Attachment B to this contract. 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 terms and conditions mutually agreed to and listed in Attachment C to this contract. Attachment C is made a part of this contract.

5. 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 and conditions mutually agreed to and listed in Attachment D to this contract. 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.

6. INSURANCE LIMITS

Consultant shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C to this contract:

- (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

7. TERMINATION

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

8. CONTRACT ADMINISTRATORS

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

County's Contract Administrator:

Ray Espinosa
San Benito County
Chief Administrative Officer
481 4th Street
Hollister, CA 95023
(831) 636-4000
(831) 633-4010 (fax)

Consultant's Contract Administrator:

Teri Wissler Adam
EMC Planning Group, Inc.
Vice President and Senior Principal
301 Lighthouse Ave., Suite C
Monterey, CA 93940
(831) 649-1799
(831) 649-3899 (fax)

9. PROJECT MANAGER

Consultant hereby designates the following person as EIR Project Manager:

Name: Ms. Teri Wissler Adam
Title: Vice President and Senior Principal

Consultant hereby designates the following person as Principal-in-Charge:

Name: Teri Wissler Adam
Title: Vice President and Senior Principal

SIGNATURES

APPROVED BY COUNTY:

Name: Mark Medina
Title: Chair, San Benito County Board of Supervisors
Date: _____

APPROVED AS TO LEGAL FORM:

San Benito County Counsel

By: G. Michael Ziman, Deputy County Counsel

Date: _____

APPROVED BY CONSULTANT:

Name: Teri Wissler Adam
Title: Vice President and Senior Principal
Date: _____

ATTACHMENT A

Scope of Services

Upon approval of this contract, Consultant, for County's benefit shall provide the following services for the Initial Study of the Assisted Living Project located at 3586 Airline Highway (PLN180004 Use and Grading Permit):

Project Description

The proposed project is an assisted-care facility with 155 rooms and 180 beds in two three-story buildings with a combined interior area of approximately 136,367 square feet. Grading to accommodate the building site, driveways, and drainage infrastructure would consist of approximately 18,700 cubic yards cut and 7,100 cubic yards fill. Sunnyslope County Water District (SSCWD) has indicated they have capacity to serve the project's water demand and sewer treatment needs.

The proposed project requires a use permit and grading permit from the County of San Benito, who will be the lead agency for CEQA compliance.

Project Site Setting

The seven-acre project site is located at 3586 Airline Highway, southeast of Hollister in unincorporated San Benito County. There is an existing residence on the site, which is roughly 200 feet from a seasonal creek that runs along the lower end of a 12- to 20-percent slope.

Access to the project site and existing residence is via an existing private drive connecting the project site to Airline Highway (State Route 25). This driveway also provides access to a rural residential lot and the Sunnyslope County Water District main office immediately north of the project site. Other surrounding land uses include the Cielo Vista neighborhood to the northeast, the Ridgemark neighborhood with residences and golf course to the south, proposed commercial uses to the southeast, and the Quail Hollow and Oak Creek neighborhoods to the west.

The project site general plan designation is Residential Mixed (RM); therefore, the site may be considered eligible for "an unincorporated village or neighborhood atmosphere composed primarily of residential land uses" with up to 20 dwelling units per acre and "with some commercial uses serving the residences." The designation allows areas of unincorporated urban uses where public infrastructure and utilities exist that are necessary to support increased density, largely in or near areas that are already developed, with the intensity of development to be directly proportional to the availability of these services. The general plan also contains policies supportive toward health care services and development of assisted living communities.

The project site is also subject to the Residential Multiple (RM) zoning designation, which, in addition to its permitting of multifamily dwellings, also allows uses such as assisted

care facilities when they are “deemed essential or desirable to the public convenience or welfare, and are in harmony with the various elements or objectives of the general plan.”

Scope of Work

The scope of work includes preparation of an initial study, a mitigation monitoring and reporting program, and a draft resolution with appropriate findings and evidence for adoption of a mitigated negative declaration by the San Benito County Planning Commission. The specific tasks to complete this scope of work are provided below.

Task 1 Project Management

- Prepare project files and general project administration.
- Manage the CEQA process for the county.
- Provide CEQA consultation to the county.
- Manage subconsultants.
- Confer, as needed, with county staff.

Task 2 Research & Development

- Meet/consult with county staff to discuss the following: project description, environmental documentations prepared for projects in the immediate vicinity, public controversy regarding the project, if any, and the project schedule. Project description items to be discussed include details regarding the kind of assisted-living project proposed, and whether any off-site improvements are necessary to implement the project.
- Gather and analyze data: review relevant project reports including the geotechnical report, the traffic report, and the biological resources report; project application materials, project plans and related materials; the county general plan and general plan EIR; and environmental documents prepared for projects in the vicinity including, but not limited to, The Bluffs at Ridgemark EIR prepared for a proposed residential subdivision to the south of the project site along Southside Road.
- Conduct a site investigation to document existing conditions on the project site and in the project area. The site investigation will be conducted by a Consultant biologist, archaeologist, and project manager.
- Request and obtain sufficient documentation from the County and/or the Sunnyslope County Water District that the wastewater collections system has adequate capacity to transmit the project wastewater to the treatment plant, or if additional off-site infrastructure improvements are necessary.

Task 3 Technical and Policy Analysis

Transportation and Circulation

- Conduct a peer review of the applicant-submitted traffic analysis by Pinnacle Traffic Engineering. Two rounds of review are budgeted. Sub-consultant will conduct this review.

Biological Resources

- The project site is located on a rural residential parcel in unincorporated San Benito County. Although vegetation has been disturbed throughout the site, portions of the site support nonnative grassland habitats, trees, and a narrow intermittent stream crosses through the project site. The project site is located within the dispersal range of three special-status species known to occur within the adjacent Ridgemark Subdivision and Golf Club and Resort development: California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), and western spadefoot toad (*Spea hammondi*). Bryan Mori and Associates, a local herpetologist with extensive experience in San Benito County, is conducting surveys and analysis of the potential for these species to occur on the subject property on behalf of the applicant. This report will be peer reviewed and used in the initial study. In addition to those listed above, additional state- and federally-listed species known to occur within the project vicinity include San Joaquin spearscale (*Extriplex joaquinana*), prairie falcon (*Falco mexicanus*), California horned lark (*Eremophila alpestris actia*), western pond turtle (*Emys marmorata*), burrowing owl (*Athene cunicularia*), San Joaquin kit fox (*Vulpes macrotis mutica*), protected bats, and nesting raptors.

The following tasks would assess potential habitat present at and within the vicinity of the project site, provide information regarding the various endangered species and wetland/ waterway permit requirements, peer review and include information obtained from Bryan Mori and Associates, recommend mitigation measures for the protection of biological resources, and prepare a biological resources section of an initial study:

- a. Compile and review all available project information, including aerial photographs, topographic maps, plan maps indicating the areas of potential effect (i.e., tree removal, development envelopes, etc.), and project descriptions. This task also includes project administration, such as communication with the client and/or landowner to schedule a site visit, questions surrounding past uses of the land, obtaining the most recent information from Bryan Mori and Associates, etc.
- b. Conduct a background data search to determine biological resources known to occur in the vicinity of the project area. These data will be obtained from the Inventory of Rare and Endangered Vascular Plants of California (California Native Plant Society), the California Department of Fish and Wildlife (CDFW) Natural Diversity Data Base (CNDDB), lists from CDFW and U. S. Fish and Wildlife Service, the National Wetlands Inventory, and biological inventories conducted on adjacent properties, if available.
- c. Conduct a reconnaissance-level field survey of the project area in order to (1) identify and map the principal plant communities, (2) assess the potential for special-status species and their habitats, wildlife movement corridors, potential jurisdictional wetlands or waters, protected trees, and other significant biological resources that may occur in the project area, and (3) identify and map any observed locations of special-status species and/or sensitive habitats occurring in the project area.

- d. Prepare the biological resources section of an initial study describing existing habitats and plant and animal species found in the project area, and the occurrence of and/or potential for special-status species and their habitats. Information obtained from Bryan Mori and Associates regarding California tiger salamander, California red-legged frog, and western spadefoot toad will be reviewed and included in the biological analysis. Maps will be prepared illustrating habitat types and the location(s) of special-status species occurring in the project area, if necessary. Potential impacts to biological resources will be identified, and mitigation measures will be provided to minimize potential impacts to the extent possible.

General Plan Consistency Analysis

- Conduct an analysis of the proposed project's consistency with relevant general plan policies. This analysis will be prepared in table format and will be used to discuss the questions in the Land Use and Planning section of the initial study. The table will be included in the initial study as an appendix.

Air Quality and Greenhouse Gas Emissions Analysis

- Evaluate air quality and greenhouse gas emissions using the California Emissions Estimator Model (CalEEMod). Consultant will conduct this evaluation.
 - a. Air Quality: The project site is located within the jurisdiction of the Monterey Bay Air Resources District. The air district's CEQA guidelines include criteria air pollutant thresholds to determine if the proposed project would result in a significant air quality impact. The criteria air pollutant emissions generated by the proposed project during construction and operation will be quantified using CalEEMod and compared to the air district thresholds. If impacts are considered significant, mitigation measures will be presented. The model methodology, assumptions, and results will be presented in a technical memorandum, which will be included in the appendices.
 - b. Greenhouse Gas Emissions: To date, the air district has not adopted CEQA guidance for analysis of greenhouse gas (GHG) effects of land use projects (e.g. numerical thresholds of significance), nor has it prepared a qualified GHG reduction plan for use/reference by local agencies. Therefore, a threshold of significance will be developed. The threshold of significance will be service population-based and will reflect current state legislation and recent CEQA case law, including the "Newhall" case. The threshold will be based on the 2030 statewide emissions reduction target of 40 percent below 1990 levels defined in SB 32, projected statewide employment and population (service population) in the proposed project buildout year, and on emissions volumes from the land use sectors included in the 1990 California GHG emissions inventory. GHG emissions generated from project construction activities and annual project operations will be quantified using CalEEMod. GHG emissions volumes will be calculated based on the development types and development capacity assumed for the proposed project. CalEEMod will also be used to estimate the baseline GHG emissions from

the existing uses on the site. Where project-specific data is not available for input into CalEEMod, the default values in CalEEMod will be used. The net annual GHG emissions will be calculated based on project construction activities, annual project operations, and baseline emissions. Next, the service population associated with the proposed project (number of projected residents and employees) will be calculated. The service population based project emissions will be compared to the threshold of significance to determine impact significance. If impacts are considered significant, mitigation measures will be presented. The model methodology, assumptions, and results will be presented in a technical memorandum, which will be included in the appendices.

Cultural Resources

- Conduct a peer review of the applicant-submitted cultural resource report. One round of review is budgeted. Consultant will conduct this review

Noise

- Conduct an acoustical analysis to identify the proposed project's noise impacts. Sub-consultant will conduct this analysis. This task will include the following:
 - a. Conduct a project site inspection and noise monitoring to evaluate the acoustical characteristics of the site and document existing ambient noise levels within the project site and in the project vicinity. Identify existing sources of community noise that may affect the project site and nearby noise-sensitive land uses.
 - b. Evaluate potential noise impacts from the project including 1) noise levels from existing noise sources as they may affect proposed project, and 2) noise levels resulting from development of the project as they may affect existing noise-sensitive uses in the project area. This will include a traffic noise analysis based upon traffic data prepared by Pinnacle Traffic Engineering and a discussion of construction noise and vibration. This task will include consideration of exterior and interior noise exposure.
 - c. Prepare recommendations for noise mitigation as may be required to reduce significant noise impacts to less-than-significant. Significance will be based on County noise standards and the CEQA Guidelines criteria. Identify any significant project-related noise or vibration impacts that cannot be reasonably mitigated.
 - d. Prepare a technical report summarizing the methods, data, findings and recommendations for noise mitigation of the study.

Task 4 Prepare Draft Initial Study

- Prepare the draft initial study and provide one (1) electronic copy to the County for review and comment.

Task 5 Prepare Final Initial Study

- Revise initial study based upon comments from County staff and provide one (1) electronic copy to the County for public circulation with a mitigated negative declaration.

Task 6 Prepare a Mitigation Monitoring and Reporting Program

- Prepare a draft mitigation monitoring and reporting program and provide one (1) electronic copy for review and comment by County staff.
- Prepare a final mitigation monitoring and reporting program and provide one (1) electronic copy for use by County staff.

Task 7 Prepare Draft Planning Commission Resolution to Adopt the Mitigated Negative Declaration

- Prepare a draft Planning Commission resolution to adopt the mitigated negative declaration, with appropriate findings and evidence. The resolution will be prepared in the County's format.

Task 8 Attend Public Hearing

- The project manager will attend one public hearing for adoption of the mitigated negative declaration to answer questions on the initial study.

Schedule:

Task	Number of Weeks
Notice to Proceed	
Research and Development	1 Week
Technical and Policy Analysis	4 Weeks
Draft Initial Study	2 Weeks
County Staff Review	2 Weeks
Final Initial Study	1 Week
Distribution and 30-day Public Review Period	5 Weeks
Draft Mitigation Monitoring and Reporting Program	1 Week
County Staff Review	1 Week
Final Mitigation Monitoring and Reporting Program	1 Week
Draft Planning Commission Resolution	1 Week
Total	19 Weeks

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, on the basis specified in paragraph B-4 below.

☐ One month in arrears, on the basis specified in paragraphs B-4 and B-5 below.

B-2. PAYMENT

County shall make payment to Consultant at the address specified in paragraph 8 of this contract or to such other location as Consultant designates in writing, net thirty (30) days from the invoice date.

B-3. COMPENSATION

County shall pay to Consultant a total sum not to exceed \$49,746.50 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. PROGRESS PAYMENTS

County shall make periodic progress payments to Consultant in accordance with the following schedule:

(a) The Consultant will invoice progress payment amounts based on the not to exceed task amounts listed below:

Tasks	Task Description	Amount
Task 1	Project Management	\$3,130.00
Task 2	Research and Development	\$5,750.00
Task 3	Technical and Policy Analysis	\$20,874.00
Task 4	Draft Initial Study	\$11,990.00
Task 5	Final Initial Study	\$4,060.00
Task 6	Mitigation Monitoring and Reporting Program	\$940.00
Task 7	Draft Planning Commission Resolution to Adopt	\$595.00
Task 8	Public Hearing Attendance	\$1,500.00
Additional Costs	Production Costs, Travel Costs, Postal/Deliverables, NWIC Record Search and CNDDDB, 10% Administrative Overhead	\$907.50

(b) The payments shall be applied to the contract price as set forth in paragraph B-3 above.

B-5. SPECIAL COMPENSATION TERMS (*check one*)

☒ There are no additional terms of compensation.

☐ The following specific terms of compensation shall apply: (*see attached*).

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.

ATTACHMENT D
Communications Protocol
for the preparation of
Assisted Living Facility Initial Study

PURPOSE

The purpose of this Communications Protocol, for the preparation of the County's Initial Study funded by John Wynn and Nader Javid for the Assisted Living Facility Use Permit and Grading Permit located at 3586 Airline Highway, is to establish roles, responsibilities and ground rules for communication between the primary parties. To be clear, this is a County led project to prepare County documents. The RMA is the central point of all communications so that there will be a complete and transparent public administrative record.

The fundamental intent of this Communications Protocol is to establish an "arms-length" policy between John Wynn and Nader Javid or their representatives, and the various consultants under contract to the County either directly or indirectly as sub-consultants. The consultants are solely under contract as the County's consultants. The consultants are to take direction on the project only from the County.

PARTIES AND ROLES

County RMA
Consultants (EMC Planning Group) to the County
John Wynn and Nader Javid
John Wynn and Nader Javid Representatives
Other Parties

County - This is a County managed, directed and led project for the preparation of County documents, i.e., Initial Study and related supporting materials. It is the County's responsibility as a public agency to ensure a fair, objective and transparent process and to maintain a complete public administrative record. The County also must ensure stakeholders are provided opportunities to participate in the process. The County and RMA staff in particular is the central point of contact and communication between all parties. County staff is to be included in all communication regarding this project. There is to be no direct communication between the consultants and other interested parties without County's knowledge and pre-approval. Any conference calls are to be pre-arranged to include County staff on the line. The County's primary contact will be Michael Kelly as the Project Manager with Taven Kinison Brown as the secondary point of contact.

All County Consultants – The consultants with County contracts are working on behalf of the County. Even though John Wynn and Nader Javid have funded the project via the reimbursement agreement, the consultants are not working for John Wynn and Nader

Javid or the property owners. Consultants are not to take any direction or guidance from John Wynn and Nader Javid or their representatives. Consultants are not to have any communication or contact with John Wynn and Nader Javid or their representatives without inclusion or advance knowledge and pre-approval of County staff. If any consultant needs information from John Wynn and Nader Javid, or to arrange a meeting or site visit, etc., the meeting or information request is to be made to RMA staff (Michael or Taven) with a copy to John Wynn and Nader Javid or their representatives. Any conference calls are to be pre-arranged to include County staff on the line. The County has instructed the consultants to report to the County any attempts by John Wynn and Nader Javid or their representatives to influence or direct consultant work without the County's knowledge.

John Wynn and Nader Javid's Representatives - There is not to be any direct communications between any John Wynn and Nader Javid Representatives and the County consultants regarding this project. Any need to communicate about the project on behalf John Wynn and Nader Javid is to be made through County staff. The consultants may be copied in e-mails or other communication that is directed to County Staff. Any conference calls are to be pre-arranged to include County staff on the line. If John Wynn and Nader Javid's Representatives are attorneys, the San Benito County Counsel's office is to be included in the communication, to the attention of *G. Michael Ziman, Deputy County Counsel*.

Other Parties - This communication protocol also is to apply to all communications with other County Departments and County Counsel.

CONSEQUENCES

Any discovery or finding by the County that there have been communications contrary to the above stated protocols may delay the project and/or may result in the replacement of the County's consultant(s).

END OF ATTACHMENT D.