

CONTRACT FOR CONSULTANT'S SERVICES

Contract With Applicant

APPLICANT: Vineyard Rock Products/Russel Enz
PROJECT: Enz Quarry Minor Reclamation Plan Amendment
COUNTY FILE NO.: Quarry ID No. 91-35-0021

The County of San Benito ("County") and Vineyard Rock Products ("Applicant") 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 shall end upon completion of the specified services, unless sooner terminated as specified herein.

2. PROJECT IDENTIFICATION

Applicant applied for County's approval of reclamation plan amendment pertaining to Enz Quarry Mine (Quarry ID No. 91-35-0021) ("Project") in connection with the property located near 1781 Limekiln Road (APN 026-110-0030), in Hollister, California. County has determined that certain consultant services are required in connection with County's consideration of the Project.

3. DUTIES OF COUNTY

- (a) County shall engage the services of a fully-qualified professional ("Consultant") for the evaluation and processing of the application, as more fully set forth in Attachment A ("Consultant's Scope of Services") to this contract. Attachment A is made a part of this contract. County shall select Consultant pursuant to County's contracting procedures and practices.
- (b) The Consultant services and any resulting work product shall be prepared in full compliance with federal, state and local law including, but not limited to, the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.), the State CEQA Guidelines (Cal. Code of Regulations, tit. 14, div. 6, chap. 3 (commencing with §15000)), the San Benito County Implementing Procedures for CEQA, the Surface Mining and Reclamation Act (SMARA) (Public Resources Code section 2710 et seq.), SMARA Regulations (Cal. Code of Regulations, tit. 14, div. 2, chap. 8, subchap. 1 (commencing with §3500)), the County's Surface Mining Operations and Reclamation Ordinance (San Benito County Code of Ordinances, tit. 19, chap. 19.13), and all other applicable State and Federal regulations pertaining to the operation of surface mining operations.

4. DUTIES OF APPLICANT

- (a) Applicant shall cooperate fully with County and Consultant to provide information and other assistance necessary for preparation of technical reports in a timely and objective manner. Applicant understands that any unreasonable delay in meeting County's requests shall constitute grounds for tolling the

contractual and statutory time limits for completion and adoption of the Project and/or related environmental documents or, alternatively, shall constitute grounds for disapproval of the Project.

- (b) Applicant understands that the contract between County and Consultant is a separate contractual agreement not subject to Applicant's review or approval. Applicant further understands that periodic progress payments made by County to Consultant pursuant to that separate contractual agreement are not subject to Applicant's review or approval.

5. COMPENSATION

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

6. 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.

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 and conditions mutually agreed to and listed in Attachment D to this contract. Attachment D is made a part of this contract.

8. TERMINATION

The number of days of advance written notice required for termination of this contract is 5 days.

9. CONTRACT ADMINISTRATORS

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

County's Contract Administrator:

Harry Mavrogenes
Director, Resource Management Agency
2301 Technology Parkway
Hollister, CA 95023
(408) 636-4170
(408) 636-4176 (fax)

Applicant's Contract Administrator:

Russel Enz
Vineyard Rock Products
1781 Limekiln Road
Hollister, CA 95023
(831) 637-3956

SIGNATURES ON NEXT PAGE

SIGNATURES

APPROVED BY COUNTY:

APPROVED BY APPLICANT:

Jaime De La Cruz, Chair
San Benito County Board of Supervisors



Russel Enz, Owner
Vineyard Rock Products

Date: _____

Date: _____

APPROVED AS TO LEGAL FORM:
San Benito County Counsel's Office

By: Shirley L. Murphy
Shirley L. Murphy, Deputy County Counsel

Date: June 11, 2020

ATTACHMENT A Consultant's Scope of Services

CONSULTANT'S SCOPE OF SERVICES: Consultant shall provide County with the following services pertaining to the Enz Quarry Minor Reclamation Plan Amendment:

The County processed a reclamation plan amendment approved by the County Planning Commission for Enz Quarry in May of 2017. The Applicant would like to make a minor modification to the design drawings to maintain the mining depth consistent with the prior designed approved by the County in November, 2003. This will require the same procedural step and coordination with the DMR as for the prior reclamation plan amendment.

The following tasks will be completed for this project:

Task 1: Communication, Coordination, and Meetings:

Coordinate with the County's Resource Management Agency (County RMA) staff, Applicant, and other interested parties as necessary to support application and analyses. Coordination activities include:

- Regular dialog with County RMA staff and the Applicant via telephone calls and email;
- Participation in coordination meetings, teleconferences, and hearings;
- Attendance at two (2) meetings at the County offices to discuss and coordinate peer review activities, beginning with an initial coordination meeting.

For each meeting and teleconference, the Consultant will prepare meeting agendas, coordinate invitations, and assist with general meeting preparation and facilitation as necessary. Additional Consultant members including technical specialist, will participate as necessary via conference calls.

Task 2: Application Review and Assistance:

A. Reclamation Plan Amendment

Activities include:

- Assistance in preparation of amended reclamation plan text;
- Work with the Applicant to review and assist in needed details for engineered drawings for reclamation;
- Up to two (2) in-person meetings on-site or at County offices, as needed;
- Implementation of updates to the current reclamation proposal, including changes to the area of mining.

B. County Application Forms

Assist in completing application forms that appropriately describe the limited natures of the project (for use permit and CEQA purposes). This will involve drafting administrative draft application forms and associated graphics and

attachments. Coordinate with County RMA staff and Applicant staff to ensure data accurately reflects the proposed activities and meets the County's expectations for completion of appropriate environmental review. Once input is provided, Consultant will update and finalize applications for final review and submittal by Applicant.

Task 3: Environmental Review:

The reclamation plan amendment is a discretionary action and subject to CEQA. The limited nature of the modification to the depth of mining is within the scope of prior approvals. Therefore, Consultant will prepare a negative declaration or exemption, which is expected to be the appropriate compliance document.

Task 4: Process Coordination:

Activities include:

- Coordination with County RMA staff;
- Coordination with Division of Mines and Reclamation (DMR) for input on the reclamation plan amendment;
- Notification to DMR regarding process as required under the Surface Mining and Reclamation Act (SMARA);
- Implementation of comments from responsible and commenting agencies

Task 5: Staff Report Preparation/Attendance:

Activities include:

- Support of County RMA staff in preparation of a staff report summarizing the project and the environmental review process;
- Support at public hearings as necessary
- Preparation of a draft staff report for County RMA staff review;
- Preparation for and attendance at two (2) hearings.

Task 6: Post Decision Task:

Consultant will assist in preparing the needed documents and implementing the required actions following the decision of the County Planning Commission. For example, Consultant will prepare the notice of exemption and final responses to DMR, file the necessary documents with the County Clerk, and prepare and produce final documents for distribution, including the final reclamation plan amendment and conditions of approval to DMR. Activities include production of hardcopy and /or electronic reports for the Applicant, County, and DMR.

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 one month in arrears.

B-2. PAYMENT

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

B-3. COMPENSATION

(a) Applicant shall place on deposit with County the sum of \$20,000.00, which sum represents a portion of Consultant's budgeted costs for the services described in Attachment A to this contract.

(i) In the event that the actual Consultant costs are less than Applicant's deposit, County shall refund the difference to Applicant.

(ii) In the event that actual Consultant costs are more than Applicant's deposit, Applicant shall remit the additional amount to County within five (5) days of County's written notification thereof.

(b) Applicant shall also remit to County the application fees applicable to the Project, pursuant to the County's adopted fee schedule set forth in chapter 5.01 of the San Benito County Code. Said fee may not be refunded, in whole or in part, in the event this contract is terminated.

B-4. DISTRIBUTION OF FUNDS TO CONSULTANT

County shall distribute funds collected and held on deposit under paragraph B-3(a) above to Consultant, upon adequate documentation of actual Consultant costs.

B-5. SPECIAL COMPENSATION TERMS (check one)

There are no additional terms of compensation.

The following specific terms of compensation shall apply: (specify).

The fee shall be subject to the following budget. The anticipated total budget for this contract is \$75,820.00, but is subject to adjustment, according to the provisions of paragraph B-3 above.

| AR Wilson OPA Solar Project | |
|---|----------------------|
| Task: | Not-to-exceed |
| Task 1: Communication, Coordination, and Meetings | \$15,560.00 |
| Task 2: Application Review and Assistance | \$21,960.00 |
| Task 3: Environmental Review | \$4,140.00 |
| Task4: Process Coordination | \$10,900.00 |
| Task 5: Staff Report Preparation/ Attendance | \$12,360.00 |
| Task 6: Post Decision Tasks | \$10,900.00 |
| Total | \$75,820.00 |

END OF ATTACHMENT B

ATTACHMENT C
General Terms and Conditions

C-1. INDEMNIFICATION

Applicant and County each agree to indemnify, defend, and save harmless the other party and the other party's officers, agents, 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 claim. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers, agents, and employees.

C-2. TERMINATION

- (a) Either Applicant or County may terminate this contract, with cause, upon giving five (5) days written notice to the other party. Such notice shall set forth the effective date of the termination. Notice shall be effective as specified in paragraph C-6 of this attachment, Attachment C.
- (b) Either party may issue an oral stop work order to temporarily halt work in anticipation of written notice of termination. The party issuing the oral stop work order must provide written notice of termination within two (2) working days of the oral notice, as specified in paragraph C-6 of this attachment, Attachment C. Failure to provide written notice of termination shall result in nullification of the oral notice.
- (c) In the event of termination, Applicant remains obligated to County for all Consultant costs incurred up to the effective date of the termination.
- (d) "Cause" includes, without limitation, any breach of contract or Applicant's withdrawal of the Project for which the environmental review is conducted.

C-3. ENTIRE AGREEMENT

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. Any alterations to or variations of the terms of this contract shall be invalid unless made in writing and signed by both parties.

C-4. AMENDMENT OF CONTRACT

In the event that a change to the scope of services outlined in Attachment A to this contract is required, the party first identifying such a need shall immediately notify the other party in writing, as specified in paragraph C-6 of this attachment, Attachment C, of the need to amend this contract. Representatives of both parties shall meet and confer within two (2) working days of receipt of such notice. Any change in the scope of services mutually agreed to by both parties may result in a change in compensation terms specified in Attachment B to this contract. Any amendment of this contract resulting from such mutual agreement of the parties' representatives shall be in writing, signed by all parties.

C-5. 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 parties' employees specified, in writing, by the contract administrators. 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. Likewise, a party shall promptly give written notice to the other party of any change of the contract administrator's address or facsimile number.

C-6. NOTICES

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrators personally or by regular mail or 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 (5) days after the date the notice is deposited in the United States mail, with first-class postage fully prepaid, addressed to the party's contract administrator at the address specified in paragraph 8 of this contract or as specified in a written notice of change of address that was given to the other party's contract administrator; 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 or as specified in a written notice of change of facsimile number that was given to the other party's contract administrator, provided that an original of such notice is also deposited in the United States mail, as indicated in subparagraph (b) above, on the same day as the facsimile transmission is made.

C-7. BANKRUPTCY

Applicant shall immediately notify County in the event that Applicant 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. Where such proceedings are not withdrawn or discharged within thirty (30) days, County may at its option terminate this contract.

C-8. PROHIBITION AGAINST ASSIGNMENT

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated or subcontracted by Applicant without County's prior written consent, and any attempted assignment, subcontracting or delegation without such consent shall be void.

C-9. 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-10. 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, and to this end the provisions of this contract are declared to be severable.

C-11. TIME IS OF THE ESSENCE

Time is of the essence in the performance of this contract.

C-12. MATERIALITY

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

C-13. 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 Applicant'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-14. AUTHORITY AND CAPACITY

Applicant and Applicant's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

C-15. 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 Applicant. Applicant and all of Applicant's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

C-16. 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-17. 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-18. 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-19. 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