

# Attachment 1

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ATTACHMENT 1

FUNDING AGREEMENT  
River View at Las Palmas, LLC

**FUNDING AGREEMENT  
FOR  
RIVER VIEW AT LAS PALMAS  
SUBSEQUENT ENVIROMENTAL IMPACT REPORT**

**THIS FUNDING AGREEMENT** (“AGREEMENT”) is made and entered into by and between the County of Monterey, a political subdivision of the State of California (“County”) and River View at Las Palmas, LLC (“PROJECT APPLICANT”) (collectively, the “Parties”) and effective as of the last date opposite the respective signatures below and with reference to the following facts and circumstances:

**RECITALS**

- A. PROJECT APPLICANT has applied to the County for consideration of a 30-lot residential subdivision and Las Palmas Specific Plan Amendment (“Project”), PLN150372. To support the environmental analysis, the County has required the PROJECT APPLICANT to fund the preparation of revisions to the alternatives section of the Subsequent Environmental Impact Report (SEIR) for the River View at Las Palmas Assisted Living Senior Facility Project.
- B. A fundamental premise of this AGREEMENT is that nothing is to be construed as a representation, promise, or commitment on the part of County to give special treatment to, or exercise its discretion favorably for, the Project, in exchange for PROJECT APPLICANT’s obligation to fund the cost of retaining CONTRACTOR.
- C. County and PROJECT APPLICANT make this AGREEMENT with full knowledge of the requirements of state and local law, including, but not limited to, the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 et seq., hereafter “CEQA”) and State CEQA Guidelines (14 California Code of Regulations Section 15000 et seq., hereafter “Guidelines”) and the Monterey County Code.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, PROJECT APPLICANT AND COUNTY AGREE AS FOLLOWS:**

- 1. Deposits to Fund Services and County Fee for Contract Administration  
PROJECT APPLICANT shall deposit an amount equal to the base budget amount of the CONTRACTOR’s proposal for preparation of a Revised SEIR and the County Administration fees. This totals \$32,219.75 and includes:

CONTRACTOR’s Base Budget	\$29,261.00
County Project Management/Contract Administration	<u>2,958.75</u>
	<b>\$32,219.75</b>

PROJECT APPLICANT shall deposit \$32,219.75 with the County of Monterey Housing and Community Development Department (HCD) upon approval of this AGREEMENT by the County of Monterey Board of Supervisors acting on behalf of the County.

PROJECT APPLICANT’s deposit of \$32,219.75 with the County shall be a condition precedent to County’s obligation under this AGREEMENT.

2. Project Contingency

An additional fifteen percent (15%) of CONTRACTOR’s Base Budget shall be included in the AGREEMENT between the County and PROJECT APPLICANT to cover contingencies. This fifteen percent (15%) Project Contingency totals \$4,389.15 and is subject to the procedures set forth in this AGREEMENT.

3. Maximum Budget Under AGREEMENT

The maximum amount which may be charged to PROJECT APPLICANT under this AGREEMENT is \$36,608.90.

CONTRACTOR’s Base Budget	\$29,261.00
Project Contingency	4,389.15
County Contract Administration Fee (non-refundable)	2,958.75
<b>Maximum Charge Under Agreement</b>	<b>\$36,608.90</b>

4. Engagement of CONTRACTOR

CONTRACTOR shall be responsible only to the County, and nothing in this AGREEMENT imposes any obligation on the County or CONTRACTOR to PROJECT APPLICANT other than to devote the time and attention to assisting with the processing of the Project. CONTRACTOR’s contact with PROJECT APPLICANT shall only be through the County. PROJECT APPLICANT, its agents, employees, consultants, representatives, or partners shall not contact CONTRACTOR directly in any manner unless at a public hearing, meeting, or workshop for the PROJECT.

5. Payment(s) to CONTRACTOR by County

a. CONTRACTOR

CONTRACTOR’s invoices shall be paid from the Base Budget funds deposited by PROJECT APPLICANT and shall be paid in accordance with the terms of Section B of Exhibit “A” of this AGREEMENT.

Should this AGREEMENT be terminated prior to June 30, 2024, any unearned balance of the Base Budget deposited by PROJECT APPLICANT shall be returned to PROJECT APPLICANT within sixty (60) days of receipt of notice of termination by the County.

b. County Contract Administration Fee

The County Project Management/Contract Administration Fee of \$2,958.75 shall be paid by PROJECT APPLICANT upon approval of this Agreement by the County of Monterey. These fees are nonrefundable.

c. Project Contingency

An additional fifteen percent (15%) of CONTRACTOR's Base Budget, in an amount not to exceed \$4,389.15, covers potential contingencies, and transfer of any Project Contingency funds into the Base Budget shall require the approval of both the County and the PROJECT APPLICANT. Within five (5) working days of receipt of a request from the County, PROJECT APPLICANT shall approve or disapprove the Request for Transfer from Project Contingency and, if approved, at the same time submit a check to the County for the amount requested.

If PROJECT APPLICANT takes more than five (5) working days to respond to a Request for Transfer from Project Contingency, additional costs may accrue to CONTRACTOR, which may result in another Request for Transfer from Project Contingency.

6. Relationship to Other Charges

PROJECT APPLICANT and the County agree that the expenditures associated with this AGREEMENT are in addition to the standard development application fees approved by the County.

7. No Promise or Representation

The Parties agree that nothing in the AGREEMENT is to be construed as a representation, promise, or commitment on the part of the County to give special treatment to, or exercise its discretion favorably for the Project, it being understood that PROJECT APPLICANT's funding obligation under AGREEMENT is undertaken without regard to the County's actions regarding the Project.

8. Term

AGREEMENT shall become effective upon execution, and continue through June 30, 2024, unless terminated pursuant to Paragraph 9 of the AGREEMENT.

9. Termination

AGREEMENT shall terminate on June 30, 2024 but may be terminated earlier by PROJECT APPLICANT or the County by giving thirty (30) days' written notice to the other. Upon such termination, PROJECT APPLICANT shall immediately pay any outstanding invoices, as well as pay for any work performed by CONTRACTOR through effective date of termination.

10. Entire Agreement

AGREEMENT and its attachments constitute the entire AGREEMENT between the Parties respecting the matters set forth herein. The Parties each represent that neither has relied on any promise, inducement, representation, or other statement made in connection with AGREEMENT that is not expressly contained herein.

11. Negotiated Agreement. It is agreed and understood by the Parties that the AGREEMENT has been arrived at through negotiations and that neither is deemed the party which prepared AGREEMENT within the meaning of Civil Code Section 1654.

12. Assignment. Neither the County nor PROJECT APPLICANT shall have the right to assign its respective rights and obligations hereunder without the written consent of the other party. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.
13. Amendment. This AGREEMENT may be amended, modified, or supplemented only in writing by both Parties.
14. Contracting Officer. The contracting officer of the County, and the only entity authorized by law to make or amend AGREEMENT on behalf of the County, is the County of Monterey Board of Supervisors or a County employee whom they have specifically authorized.
15. Waiver. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term contained in this AGREEMENT shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in any other instance or a waiver of any other condition or breach of any other term.
16. Governing Law. AGREEMENT shall be construed, interpreted, and applied in accordance with the laws of the State of California applicable to commercial contracts entered into and to be performed wholly in California.
17. Construction. The language in all parts of the AGREEMENT shall be construed, in all cases, according to its fair meaning. The Parties acknowledge that each party has reviewed AGREEMENT and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of AGREEMENT.
18. Relationship of Parties. The Parties agree that this AGREEMENT establishes only a funding arrangement between the Parties and that the Parties are not joint venturers or partners.
19. Indemnification. PROJECT APPLICANT agrees to defend, indemnify, and hold the County harmless in any action brought by any third party in which the authority of the County to enter into AGREEMENT or the validity of AGREEMENT is challenged.
20. Counterparts. This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same AGREEMENT.
21. Notices. Notice to the Parties in connection with AGREEMENT shall be given personally or by regular mail addressed as follows:

TO COUNTY: Erik V. Lundquist, AICP, Director  
County of Monterey  
Housing and Community Development  
1441 Schilling Place, South 2<sup>nd</sup> Floor  
Salinas, CA 93901  
(831) 755-5025  
[lundquiste@co.monterey.ca.us](mailto:lundquiste@co.monterey.ca.us)

TO PROJECT  
APPLICANT: River View at Las Palmas, LLC  
c/o Andrea Zulberti and Gary Shingu  
3771 Rio Road, STE 112  
Carmel, CA 93923  
(650) 804-6800  
[andrezulberti@gmail.com](mailto:andrezulberti@gmail.com) and [gshingu@gmail.com](mailto:gshingu@gmail.com)

Notice shall be deemed effective at the time of personal delivery or seventy-two (72) hours after mailing.

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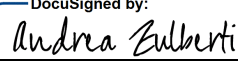
IN WITNESS WHEREOF, the Parties have executed this AGREEMENT as of the last day and year written below.

**COUNTY OF MONTEREY**

**PROJECT APPLICANT\***

River View at Las Palmas, LLC

By: \_\_\_\_\_  
Craig W. Spencer  
Working out of class as Director of  
Housing and Community Development

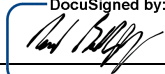
By:   
\_\_\_\_\_  
B3977509039A4 (Manager)

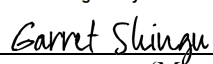
Date: \_\_\_\_\_

Andrea M. Zulberti, Managing Member  
\_\_\_\_\_  
(Print Name and Title)

**Approved as to Form  
Office of the County Counsel  
Leslie J. Girard, County Counsel**

Date: 5/24/2023  
\_\_\_\_\_

By:   
\_\_\_\_\_  
5C29050B5BAC4 (Deputy County Counsel)  
Reed Gallogly  
Deputy County Counsel


By:   
\_\_\_\_\_  
52006A5158B44 (Manager)  
Garret Shingu

Date: 5/24/2023  
\_\_\_\_\_

Garret Shingu, Member  
\_\_\_\_\_  
(Print Name and Title)

**Approved as to Fiscal Provisions**

Date: 5/24/2023  
\_\_\_\_\_

By:   
\_\_\_\_\_  
2617DD077D66498 (Auditor-Controller)  
Auditor-Controller

Date: 5/24/2023  
\_\_\_\_\_

**Approved as to Indemnity and Insurance Provisions  
Office of the County Counsel-Risk Management**

By: \_\_\_\_\_  
N/A  
Risk Manager

Date: \_\_\_\_\_

\*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

# **EXHIBIT A**

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
RINCON CONSULTANTS, INC.  
AND THE COUNTY OF MONTEREY  
TO PROVIDE  
REVISIONS TO THE ALTERNATIVES ANALYSIS  
FOR THE  
RIVER VIEW AT LAS PALMAS  
ASSISTED LIVING SENIOR FACILITY**

## **COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES WITH SURVEYORS, ARCHITECTS, ENGINEERS & DESIGN PROFESSIONALS**

This Professional Services Agreement ("Agreement") is made by and between the County of Monterey, a political subdivision of the State of California ("County") and: Rincon Consultants, Inc. ("CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

**1. SERVICES TO BE PROVIDED.** The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows:

Provide preparation of a partially revised subsequent Environmental Impact Report and preparation of staff reports for the Planning Commission and Board of Supervisors for the River View at Las Palmas Assisted Living Senior Facility Project.

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**2. PAYMENTS BY COUNTY.** County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$29,261.

**3. TERM OF AGREEMENT.** The term of this Agreement is from upon execution to June 30, 2024, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

**4. ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

**Exhibit A     Scope of Services/Payment Provisions**

**5. PERFORMANCE STANDARDS.**

5.01. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.

5.02. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

**6. PAYMENT CONDITIONS.**

- 6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to the County. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than thirty (30) days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the County may require. The Contract Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within thirty (30) days of receiving the certified invoice.
- 6.02. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

**7. TERMINATION.**

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. “Good cause” includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

**8. INDEMNIFICATION.**

- 8.01 For purposes of the following indemnification provisions (“Indemnification Agreement”), “design professional” has the same meaning as set forth in California Civil Code section 2782.8. If any term, provision, or application of this Indemnification Agreement is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Indemnification Agreement and such other terms and provisions shall continue in full force and effect. If there is any conflict between the terms, provisions or application of this Indemnification Agreement and the provisions of California Civil Code sections 2782 or 2782.8, the broadest indemnity protection for County under this Indemnity Agreement that is permitted by law shall be provided by CONTRACTOR.
- 8.02 Indemnification for Design Professional Services Claims: CONTRACTOR shall indemnify, defend and hold harmless County, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this Agreement, excepting only liability

arising from the sole negligence, active negligence or willful misconduct of County, or defect in a design furnished by County, but in no event shall the amount of such CONTRACTOR's liability exceed such CONTRACTOR's proportionate percentage of fault as determined by a court, arbitrator or mediator, or as set out in a settlement agreement. In the event one (1) or more defendants to any action involving such claim or claims against County is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, such CONTRACTOR shall meet and confer with the other parties to such action regarding unpaid defense costs.

- 8.03 Indemnification for All Other Claims or Loss: For any claim, loss, injury, damage, expense or liability other than claims arising out of CONTRACTOR's performance of design professional services under this Agreement, CONTRACTOR shall indemnify, defend and hold harmless the County, its governing board, directors, officers, employees, and agents against any claim for loss, injury, damage, expense or liability resulting from or alleging injury to or death of any person or loss of use of or damage to property, arising from or related to the performance of services under this Agreement by CONTRACTOR, its employees, subcontractors or agents, excepting only liability arising from the sole negligence, active negligence or willful misconduct of the County, or defect in a design furnished by County.

## 9. INSURANCE.

- 9.01 Evidence of Coverage: Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor, upon request, shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Division, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the CONTRACTOR.

- 9.02 Qualifying Insurers: All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached; subject to approval).

**Requestor must check the appropriate Automobile Insurance Threshold:**

Requestor must check the appropriate box.

- Agreement Under \$100,000 Business Automobile Liability Insurance: Covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.
- Agreement Over \$100,000 Business Automobile Liability Insurance: Covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit or Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

*(Note: Any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

- Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three (3) years following the expiration or earlier termination of this Agreement.

- Modification (Justification attached; subject to approval).

9.04 Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three (3) years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty (30) days in advance of each endorsed reduction in coverage or limit, cancelation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR's insurance. The required endorsement form for Commercial General Liability Additional Insured is **ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000)**. The required endorsement form for Automobile Additional Insured endorsement is **ISO Form CA 20 48 02 99**.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's Contract Administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

## 10. RECORDS AND CONFIDENTIALITY.

- 10.01 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement unless the County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to

services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three (3) years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three- (3-) year period, then CONTRACTOR shall retain said records until such action is resolved.

10.04 Access to and Audit of Records. The County shall have the right to examine, monitor, and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three (3) years after final payment under the Agreement.

10.05 Royalties and Inventions. County shall have a royalty-free, exclusive, and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

**11. NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, or any other characteristic set forth in California Government code § 12940(a), either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

**12. COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

**13. COMPLIANCE WITH APPLICABLE LAWS.**

13.01 CONTRACTOR shall keep itself informed of and in compliance with all federal, state, and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement as well as any privacy laws including, if applicable, Health Insurance portability and Accountability Act (HIPAA). CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.



13.02 CONTRACTOR shall report immediately to County’s Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.

13.03 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations, and guidelines that are in force at the time such documentation is prepared.

**14. INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers’ compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR’s performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability, which County may incur because of CONTRACTOR’s failure to pay such taxes.

**15. NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR’s Contract Administrators at the addresses listed below:

<b>FOR COUNTY:</b>	<b>FOR CONTRACTOR:</b>
<hr/> Kathy Nielsen, Management Analyst II Name and Title <hr/> Housing & Community Development 1441 Schilling Place, South 2 <sup>nd</sup> Floor Salinas, CA 93901-4527 Address <hr/> (831) 755-4832 <a href="mailto:194-HCD-Contracts@co.monterey.ca.us">194-HCD-Contracts@co.monterey.ca.us</a> Phone <hr/>	<hr/> Aileen Mahoney, Project Manager Name and Title <hr/> Rincon Consultants, Inc. 2511 Garden Road, Suite C-250 Monterey, CA 93940 Address <hr/> (916) 706-1374 <a href="mailto:amahoney@rinconconsultants.com">amahoney@rinconconsultants.com</a> Phone <hr/>

**16. MISCELLANEOUS PROVISIONS.**

16.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.

16.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

- 16.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 16.04 Contractor. The term “CONTRACTOR” as used in this Agreement includes CONTRACTOR’s officers, agents, and employees acting on CONTRACTOR’s behalf in the performance of this Agreement.
- 16.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 16.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 16.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 16.08 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 16.09 Time is of the Essence. Time is of the essence in each and all the provisions of this Agreement.
- 16.10 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 16.11 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 16.12 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 16.13 Authority. Any individual executing this Agreement on behalf of the County, or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 16.14 Integration. This Agreement, including the exhibits, represents the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.

16.15 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

**17. CONSENT TO USE OF ELECTRONIC SIGNATURES.**

17.01 The parties to this Agreement consent to the use of electronic signatures via DocuSign to execute this Agreement. The parties understand and agree that the legality of electronic signatures is governed by state and federal law, 15 USC section 7001 *et seq.*; California Government Code section 16.5; and, California Civil Code section 1633.1 *et seq.* Pursuant to said state and federal law as may be amended from time to time, the parties to this Agreement hereby authenticate and execute this Agreement, and any and all Exhibits to this Agreement, with their respective electronic signatures, including any and all scanned signatures in portable document format (PDF).

17.02 Counterparts. The parties to this Agreement understand and agree that this Agreement can be executed in two (2) or more counterparts and transmitted electronically via facsimile transmission or by delivery of a scanned counterpart in PDF via email transmittal.

17.03 Form: Delivery by E-Mail or Facsimile. Executed counterparts of this Agreement may be delivered by facsimile transmission or by delivery of a scanned counterpart in PDF by e-mail transmittal, in either case with delivery confirmed. On such confirmed delivery, the signatures in the facsimile or PDF data file shall be deemed to have the same force and effect as if the manually signed counterpart or counterparts had been delivered to the other party in person.

\*\*\*THIS SECTION LEFT BLANK INTENTIONALLY\*\*\*



## EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS

**To Agreement by and between  
County of Monterey, hereinafter referred to as “County”  
and  
Rincon Consultants, Inc., hereinafter referred to as “CONTRACTOR”**

### A. SCOPE OF SERVICES

**A.1** CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work as set forth below:

#### **TASK 1 – Administrative Draft Partially Revised SEIR**

- 1.1 CONTRACTOR shall revise Section 17.0, Alternatives, of the Public Draft Subsequent Environmental Impact Report (SEIR) to include consideration of new Alternative 3b, 30-Lot Subdivision.
- 1.2 CONTRACTOR shall add detail to the analysis of all alternatives in Section 17 to provide a more quantitative discussion of potential impacts.
- 1.3 CONTRACTOR shall identify mitigation measures necessary for each alternative.
- 1.4 CONTRACTOR shall strengthen the existing alternatives analysis with additional details, including a more quantitative discussion of potential impacts and clearly identify air quality and greenhouse gas emissions for each alternative.
- 1.5 CONTRACTOR shall focus only on environmental issues areas covered in detail in the Draft SEIR to include aesthetics, air quality, biological resources, greenhouse gas emissions, transportation, and water supply.
- 1.6 CONTRACTOR shall incorporate traffic analysis results and subsequent memorandum provided by Keith Higgins in January 2022 and March 2022. An analysis of vehicle miles traveled will not be provided as the Draft SEIR used Level of Service (LOS) as the traffic analysis metric.
- 1.7 CONTRACTOR’s Partially Revised SEIR will contain a cover page, table of contents, revised Alternatives chapter, and a revised References chapter using underline/strikeout to show revisions, if new references are added to the Alternatives chapter.
- 1.8 CONTRACTOR shall append revisions to the published SEIR with no additional changes to the published SEIR required.

#### **TASK 2 – Second Administrative Draft Partially Revised SEIR**

- 2.1 CONTRACTOR shall respond to one (1) round of consolidated County comments on the Administrative Draft Partially Revised SEIR.
- 2.2 CONTRACTOR shall submit a Second Administrative Draft Partially Revised SEIR for County review.
- 2.3 CONTRACTOR assumes County Counsel review will not require substantial changes to the technical analysis, and County comments can be addressed in a total of 14 staff hours.
- 2.4 CONTRACTOR shall submit document in Microsoft Word with revisions shown as track changes.

## **EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS**

### **TASK 3 – Final Partially Revised SEIR**

- 3.1 County has determined that recirculation is not necessary; therefore, no public review period would be required.
- 3.2 CONTRACTOR shall conduct final revisions and prepare the Draft Partially Revised SEIR after County review of the Second Administrative Draft Partially Revised SEIR.
- 3.3 CONTRACTOR assumes comments at this stage will be minor typographical or formatting edits. Any new or substantive comments may require scope amendment.
- 3.4 CONTRACTOR shall provide a clean PDF screen check document for final County review.
- 3.5 CONTRACTOR shall provide the Draft Partially Revised SEIR in digital (Adobe PDF) format. Formatting the document consistent with the Americans with Disability Act (ADA) requirements is not included.
- 3.6 CONTRACTOR's Partially Revised SEIR will contain a cover page, table of contents, revised Alternatives chapter, and a revised References chapter using underline/strikeout to show revisions.

### **TASK 4 – Preparation of Staff Reports and Resolutions**

- 4.1 CONTRACTOR shall prepare a draft staff report and resolution for the County of Monterey Planning Commission and subsequent draft staff report and resolution for the Board of Supervisors.
- 4.2 CONTRACTOR shall review all project plans and related reports, coordinate with County staff, and one (1) round of revisions for comments received on the draft reports and resolutions but does not include attendance at in-person or telephone conference meetings.
- 4.3 CONTRACTOR's scope includes preparation of CEQA Findings or a Statement of Overriding Considerations.
- 4.4 CONTRACTOR assumes that the Planning Commission and the Board of Supervisors' reports will be substantially similar.

### **TASK 5 – Project Management**

- 5.1 CONTRACTOR shall provide management and coordination through the duration of the project, including project oversight, budget and schedule management, and project accounting including billing and accounts receivable efforts.
- 5.2 CONTRACTOR shall coordinate with County staff; however, this does not include attendance at in-person or telephone conference meetings, or extensive coordination with the Draft SEIR preparers or other third parties (i.e., public service providers, utility providers, the Project Applicant).

## EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS

### A.2 PROPOSED SCHEDULE

Task	Duration	Time Elapsed
Task 1 – Administrative Draft Partially Revised SEIR	4 weeks	4 weeks
County Review	3 weeks	7 weeks
Task 2 – Second Administrative Draft Partially Revised SEIR	2 weeks	9 weeks
County Review	2 weeks	11 weeks
Task 3 – Final Draft Partially Revised SEIR	1 week	12 weeks
Task 4 – Preparation of Staff Reports and Resolutions	2 weeks (for each hearing)	TBD

### B. PAYMENT PROVISIONS

#### B.1 COMPENSATION/PAYMENT

County shall pay an amount not to exceed \$29,261 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

#### **River View Partially Revised SEIR** **Cost Estimate - Updated 5/5/2023**

	Rate	Hours	Total Budget
<b>Task 1: Administrative Draft Partially Revised SEIR</b>		59.00	11,209.00
Principal I	285.00	5.00	1,425.00
Senior Planner I	218.00	8.00	1,744.00
Planner IV	194.00	20.00	3,880.00
Planner II	160.00	26.00	4,160.00
<b>Task 2: Second Administrative Draft Partially Revised SEIR</b>		19.00	3,763.00
Principal I	285.00	3.00	855.00
Senior Planner I	218.00	6.00	1,308.00
Planner II	160.00	10.00	1,600.00
<b>Task 3: Final Partially Revised SEIR</b>		8.00	1,487.00
Principal I	285.00	1.00	285.00
Senior Planner I	218.00	4.00	872.00
Production Specialist I	110.00	3.00	330.00
<b>Task 4: Staff Reports and Resolutions</b>		39.00	9,220.00
Principal I	285.00	6.00	1,710.00
Supervisor Planner I	250.00	20.00	5,000.00
Senior Planner I	218.00	10.00	2,180.00
Production Specialist I	110.00	3.00	330.00
<b>Task 5: Project Management</b>		20.00	3,582.00
Principal I	285.00	4.00	1,140.00
Senior Planner I	218.00	7.00	1,526.00
Project Accountant	115.00	2.00	230.00
Admin Assistant/Billing Specialist	98.00	7.00	686.00
<b>Project Total</b>		<b>145.00</b>	<b>29,261.00</b>

## EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS

There shall be no travel reimbursement allowed during this Agreement.

CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in excess of those charged any other client for the same services performed by the same individuals.

### B.2 CONTRACTOR'S BILLING PROCEDURES

Invoices under this Agreement shall be submitted monthly and promptly, and in accordance with Paragraph 6, "Payment Conditions," of the Agreement. All invoices shall reference the Multiyear Agreement (MYA) number, Project name, and/or services, and associated Delivery Order number, and an original hardcopy shall be sent to the following address or via email to [194-HCD-Finance@co.monterey.ca.us](mailto:194-HCD-Finance@co.monterey.ca.us):

County of Monterey  
Housing and Community Development (HCD) – Finance  
1441 Schilling Place, South 2<sup>nd</sup> Floor  
Salinas, California 93901-4527

Any questions pertaining to invoices under this Agreement should be directed to HCD Finance at (831) 755-4800 or via email to [194-HCD-Finance@co.monterey.ca.us](mailto:194-HCD-Finance@co.monterey.ca.us):

The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

County may, in its sole discretion, terminate this Agreement or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services to be provided under this Agreement shall be made by the County.

The County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

**DISALLOWED COSTS:** CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.