

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 an Initial Study and Mitigated Negative Declaration (IS-MND).
2. **PAYMENTS BY COUNTY.** The 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 **\$58,807.50**
3. **TERM OF AGREEMENT.** The term of this Agreement is from upon execution to March 31, 2025, 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 the 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 the 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 the County, or defect in a design furnished by the 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 the 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 the 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 A.M. Best’s Key Rating Guide or a company of equal financial stability that is approved by the County’s Purchasing Agent.

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, and \$2,000,000 in the aggregate.

(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.)

Automobile Liability Coverage: Must include 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 \$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.

(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.)

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.

(Note: Professional liability insurance coverage is required if the contractor is providing a professional service regulated by the state. Examples of service providers regulated by the state are insurance agents, professional architects and engineers, doctors, certified public accountants, lawyers, etc. However, other professional contractors, such as computer or software designers, technology services, and service providers such as claims administrators, should also have professional liability. If in doubt, consult with your risk or contract manager.)

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor.

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 any 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.

Additional Insured Status: The County of Monterey, its officers, officials, employees, and volunteers are to be covered as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage shall be provided in the form of an endorsement to the CONTRACTOR's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38, and CG 20 37 if a later edition is used).

Primary Coverage: For any claims related to this contract, the CONTRACTOR's insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Waiver of Subrogation: CONTRACTOR hereby grants to the County a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the County by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

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 always 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 the County's Contract Administrator and the County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, the

County shall notify the 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 the 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 the 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 the 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 the 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, the 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 the 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 the 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:

FOR COUNTY:	FOR CONTRACTOR:
Kathy Nielsen, Management Analyst II Name and Title	Megan Jones, Principal Name and Title
1441 Schilling Place, South 2 nd Floor Salinas, CA 93901 Address	80 Garden Court, Suite 240 Monterey, CA 93940 Address
(831) 755-4832 194-HCD-Contracts@countyofmonterey.gov Phone/Email	(831) 333-0310 mjones@rinconconsultants.com Phone/Email

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 of 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 the 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.
- 16.16 Independent Contractor Compliance with Government Code Section 1097.6(c). This section applies to those situations when a contractor/consultant is awarded a Contract for a preliminary phase of a project, with future phases to be bid separately. This section does not apply to those situations when a Contract is awarded for multiple phases of a project under a single contract/proposal. When applicable, and as described below, contractor/consultant's duties and services under this agreement shall not include preparing or assisting the public entity with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The public entity entering this agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor/consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be

limited to conceptual, preliminary, or initial plans or specifications. Contractor/consultant shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this agreement.

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 INTENTIONALLY LEFT BLANK*****

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

RINCON CONSULTANTS, INC.*

By: N/A
Contracts/Purchasing Officer

Signed by:
By: Jennifer Haddow
(Signature of Chief, President, or Vice President) *

Date: _____

Jennifer Haddow, Vice President
Name and Title

Signed by:
By: Craig Spencer
Department Head (if applicable)

Date: 9/30/2024

Date: 10/22/2024

DocuSigned by:
By: Richard Daulton
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Approved as to Form
Office of the County Counsel¹
Susan K. Blicht, County Counsel

Signed by:
By: Reed Gallogly
Deputy County Counsel

Richard Daulton, Secretary
Name and Title

Date: 10/2/2024

Date: 9/30/2024

Approved as to Fiscal Provisions²

DocuSigned by:
By: Patricia Ruiz
Auditor-Controller

Date: PR

Approved as to Liability Provisions
Office of the County Counsel-Risk Management³

By: N/A
David Bolton, Risk Manager

Date: _____

County Board of Supervisors' Agreement Number: _____

*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 the 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.

¹ Approval by County Counsel is required for all Professional Service Agreements over \$100,000.

² Approval by Auditor-Controller is required for all Professional Service Agreements.

³ Approval by Risk Manager is required only if changes are made in paragraphs 8 or 9.

THIS PAGE 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:

A.1.1 CONTRACTOR shall schedule a brief conference call with the County to discuss the project description and approach to environmental evaluation, including existing conditions and appropriate baseline analysis.

A.1.2 CONTRACTOR shall prepare an Administrative Draft IS-MND for review by HCD, using the County’s preferred format. Updated and/or additional reports may be submitted by the County as needed. Items will be addressed on the environmental checklist in sufficient detail to determine the levels of significance and rely on existing technical reports prepared for the project to include:

- Biological Resources
Biological Resources Report, Omni Resources Project, Corral de Tierra (Denise Duffy & Associates, Inc., October 2023)
- Cultural Resources
 - Preliminary Archaeological Reconnaissance (Archaeological Consulting, May 2001)
 - Archaeological Report Waiver request
- Geology and Soils
Geotechnical Report (Grice Engineering, Inc., April 2023)
- Hazards and Hazardous Materials
UST Program: Former Exxon, 1 Corral de Tierra Road (7 Corral del Tierra Road), Salinas, Monterey County – Case Closure Transmittal (Case No. 3695)
- Land Use and Planning
 - Corral de Tierra Fueling Station Project [Variance Justification Letter] (Rutan & Tucker, LLP, September 2023)
 - Corral de Tierra Fueling Station Project: Consistency with B-8 Overlay Zoning District (Rutan & Tucker, LLP, April 2024)
- Transportation
 - Corral de Tierra Fueling Station Transportation Analysis Report (Hexagon Transportation Consultants, Inc. [Hexagon], February 2024)
 - Revised Comments on Corral de Tierra Fueling Station (California Department of Transportation, February 2024)
 - Response to Monterey County Housing and Community Development Review Comments on the Corral de Tierra Fueling Station Transportation Analysis Report (Hexagon Transportation Consultants, Inc., April 2024)

EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS

- Utilities and Service Systems
 - Corral de Tierra Fueling Station Annual Water Use Calculation (Whitson Engineers, August 2023)
 - Corral de Tierra Gas Station – Estimated Existing Annual Water Use Calculation (Whitson Engineers, December 2023)
 - Hydrogeologic Report (forthcoming)
 - Initial Water Use/Nitrate Impact Questionnaire for Development in Monterey County (Eric Phelps, October 2023)
 - Preliminary Stormwater Control Plan for Corral de Tierra Fueling Station (Whitson Engineers, September 2023)

CONTRACTOR assumes that the County has reviewed and accepted all technical reports and letters for consistency with County standards. These reports will be incorporated into the IS-MND but not formally peer reviewed.

CONTRACTOR shall include key issues such as Aesthetics, Transportation, and Water Supply in addition to the preparation of air quality and greenhouse gas modeling.

- **Aesthetics.** The project site is located at the intersection of Corral de Tierra Road and State Route (SR) 68. SR 68 in this location is an officially designated State Scenic Highway and recognized locally as a scenic corridor. Although a service station was located on the site historically, the current condition is a vacant and graded lot with limited landscaping. The site is surrounded by open space to the north, east, and south, and commercial and residential to the west. As the site is in a non-urbanized area, the aesthetics analysis will consider whether the project would substantially degrade the existing visual character or quality of public views of the site and surroundings. This section will also consider whether the project would have a substantial adverse effect on a scenic vista, substantially damage scenic resources within a state scenic highway, or create a new source of substantial light or glare. The analyses will be based on existing site photographs and field observations from County staff, site plans provided by the applicant (including proposed elevations, conceptual landscape plan, and electrical photometric plan), as well as desktop analysis.
- **Air Quality.** The air quality analysis will include discussions of construction impacts, long-term operational impacts, and consistency with the Monterey Bay Air Resources District’s (MBARD) CEQA Air Quality Guidelines. The evaluation of construction-related impacts will include an assessment of dust impacts, as the project site is currently undeveloped, as well as emissions associated with heavy construction equipment. A majority of the project’s long-term emissions would be associated with trips to and from the project site. Construction and operational emissions will be estimated using the most recent version of the California Emissions Estimator Model (CalEEMod). In addition, the potential for odor impacts will be discussed. Where necessary, the IS-MND will identify measures required to mitigate air quality impacts.

EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS

Optional Task: Operational Health Risk Assessment

The proposed 12 fueling pumps would represent a potential health risk impact to nearby residences within approximately 225 feet to the southwest of the project site. Per MBARD requirements, new or modified sources under MBARD Rule 1000 and Rule 1003 may be required to prepare a health risk assessment (HRA) prior to the issuance of a permit. If an HRA is required by MBARD, CONTRACTOR can prepare an operational HRA for the proposed gasoline dispensing facility as an optional task. The HRA would include air dispersion and health risk modeling conducted in accordance with the California Air Resources Board and California Air Pollution Control Officers Association (1997) Gasoline Service Station Industrywide Risk Assessment Technical Guidance and the modeling parameters.

Emissions of reactive organic gases (ROG) and toxic air contaminants associated with loading, breathing, refueling, and spillage at the gas station will be estimated using emission factors. CONTRACTOR will conduct dispersion modeling using the most recent version of the United States Environmental Protection Agency's air dispersion model, the AMS/EPA Regulatory Model (AERMOD), which will include both emission and meteorological inputs. CONTRACTOR would estimate chronic and carcinogenic health risks using the Hotspots Analysis and Reporting Program Version 2 (HARP 2) available from the California Air Resources Board or in-house spreadsheets. The results, in terms of incremental cancer and non-carcinogenic risks, would be compared with MBARD threshold values. If health risk is determined to exceed MBARD thresholds, CONTRACTOR would recommend project design or mitigation measures to reduce impacts to the degree feasible.

If this optional task is authorized, CONTRACTOR would provide the results of the HRA in the Air Quality section of the IS-MND with supporting data in an appendix.

- **Biological Resources.** The project site has been previously disturbed and contains ruderal habitat. However, the site is adjacent to non-native annual grassland and project construction could impact special status wildlife species. This analysis will incorporate the Biological Resources Report (Denise Duffy & Associates, Inc., October 2023) prepared for the site. The CONTRACTOR's senior biologist will review the existing reports for informational purposes only to extract the necessary data for completion of the IS-MND.

This scope does not include a peer review to address any potential inadequacies identified by CONTRACTOR in the previous studies. Should any additional efforts be needed (e.g., additional records search data, field survey), CONTRACTOR will provide a scope and budget augmentation request to complete any such efforts.

- **Cultural Resources.** A Preliminary Archaeological Reconnaissance report was completed for the project site by Archaeological Consulting in May 2001. The Project Applicant submitted an Archaeological Report Waiver request, citing the prior report and past site disturbance. According to the California State Historic

EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS

Preservation Office requirements, archaeological reports should be recent and typically not older than five years to be considered reliable. This is because site conditions, methodologies, and regulatory frameworks can change significantly over time. Even if a site has been disturbed, a current assessment is necessary to identify any remaining or newly exposed resources and to ensure compliance with the latest preservation standards and regulations. Given the age of the prior report, CONTRACTOR recommends that an updated Archaeological Report, including updated records search and site survey, be provided by the applicant. If requested by the County, CONTRACTOR can prepare this updated report in-house for an additional scope and fee.

Assuming an updated report is provided, a CONTRACTOR senior archaeologist meeting the Secretary of Interior Professional Qualification Standards will review the report for informational purposes only to extract the necessary data for completion of the IS-MND. This scope does not include a peer review to address any potential inadequacies identified by CONTRACTOR. If an updated report is not provided, CONTRACTOR will incorporate a mitigation measure to require preparation of an updated report prior to construction.

- **Greenhouse Gas Emissions.** The GHG emissions analysis will include an evaluation of cumulative climate change impacts, as they relate to the project's potential emissions of GHGs. CONTRACTOR will evaluate the project's consistency with state GHG reduction targets. Construction and operational GHG emissions, including emissions generated by mobile sources, will be estimated using CalEEMod. The GHG analysis will include a qualitative discussion related to conformance with measures and strategies of the Association of Monterey Bay Area Governments' 2045 Metropolitan Transportation Plan/Sustainable Communities Strategy and the California Air Resources Board's 2022 Scoping Plan.
- **Hazards and Hazardous Materials.** The site was previously developed with a gas station, which has since been removed. The site was subject to site remediation requirements from leaking underground storage tanks (Regional Water Quality Control Board [RWQCB], Case No. 3695). On March 24, 2020, RWQCB issued letters indicating Case Closure confirming completion of site investigation and corrective action for the underground storage tanks formerly located at the site. This analysis will incorporate information from case closure letters, describe existing regulations that would apply to redevelopment of the site with a new gas station, and identify mitigation measures, as required.
- **Land Use and Planning.** This section will assess whether the project has the potential to conflict with relevant environmental policies of the Monterey County General Plan or Toro Area Plan, including those pertaining to scenic resources and water. The analysis will also consider consistency with the B-8 zoning district, which restricts development and/or intensification of land use in areas where, due to measurable public facility constraints (including those related to water supply), additional development could be detrimental to the health, safety, and welfare of

EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS

the residents of the area. This analysis will be coordinated with the analysis of water supply, as described under *Water Supply* below.

- **Noise.** This section of the IS-MND will assess potential short-term and long-term noise impacts of the project. The noise analysis will be conducted in accordance with County of Monterey guidelines, standards, and ordinances. CONTRACTOR will characterize the existing ambient noise using data and information in the General Plan or other sources. No ambient noise measurements are proposed. CONTRACTOR will conduct an analysis of construction activities to assess noise and vibration levels at nearby sensitive receivers (single family residences within approximately 225 feet to the southwest of the project site), based on standard equipment types and operations for similar development projects. The analysis will also consider noise from haul trips associated with soil import and export. Vibration levels will be evaluated based on peak particle velocity against architectural damage criteria. The project's contribution to traffic noise increases will be estimated. Traffic data will be based on the Transportation Analysis Report prepared for the project (Hexagon, February 2024). The project's operational noise sources (mechanical equipment and other onsite activity) will be estimated at the nearest sensitive receivers. If necessary, appropriate mitigation measures will be identified, which may include sound barriers or other mitigation options to reduce noise levels to County standards.
- **Transportation.** CONTRACTOR will provide a CEQA-compliant transportation impact analysis based on the Vehicle Miles Traveled discussion provided in the Transportation Analysis Report prepared by Hexagon (February 2024). In addition, the transportation discussion in the IS-MND will discuss relevant project information regarding emergency access and potential hazards due to design features of the project. This may include conflicts with the planned SR 68 corridor improvement project, which envisions a roundabout at the intersection of Corral de Tierra Road and SR 68. To the extent relevant for CEQA thresholds of significance, this section will discuss whether the potential future roundabout would conflict with the proposed service station such that it could create a hazard. This analysis will be based on input from County staff and comments from Caltrans, if available. CONTRACTOR will not formally consult with Caltrans nor complete engineering level analysis of potential design conflicts.
- **Water Supply.** Water supply in the project area is sourced from local groundwater resources. This analysis will assess the local groundwater supply availability in comparison to the project's anticipated water demands, as well as the water demands of previous uses of the project site, based upon project information provided by the Project Applicant (Annual Water Use Calculations [Whitson Engineers, August 2023] and Estimated Existing Annual Water Use Calculations [Whitson Engineers, December 2023]). This analysis will also be informed by a forthcoming Hydrogeologic Report, and by relevant Groundwater Sustainability Plans including for the Monterey Subbasin of the Salinas Valley Groundwater Basin, which underlies the project site. The analysis will address overdraft conditions and seawater intrusion with respect to potential effects of project-related

EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS

water demands. A conclusion will be provided regarding the long-term water supply availability and reliability for the proposed project.

If additional issue areas are identified as requiring further analysis or if the level of effort required for the above key issues must increase to support a legally defensible analysis, a scope amendment may be required.

A.1.3 Project Management. This task includes management and coordination through the duration of the project, including coordination with the County and internal project team; project oversight; budget and schedule management; and project accounting including billing and accounts receivable efforts.

A.1.4 Assumptions. The scope incorporates the following:

- A site visit, agency consultation, or permitting assistance is not included in this scope.
- Applicant-provided materials, including project plans and applicant-prepared technical analyses, will be generally adequate for incorporation into the environmental analysis, such that no further analysis of these topics or field review of the project site will need to be completed by CONTRACTOR staff. This scope of work does not include formal peer review.
- Monterey County will conduct government-to-government tribal noticing under AB 52, the results of which will be made available for use in preparation of the Tribal Cultural Resources section of the IS-MND.
- CONTRACTOR will prepare an administrative draft only; CONTRACTOR will not address County comments on the deliverable.
- The County will be responsible for publishing the IS-MND and filing the NOD, preparing responses to comments, including payment of applicable filing fees.
- Attendance at public hearings will not be needed.
- The County will assume responsibility for the approved IS-MND and will solely defend the document if legal challenges are presented.
- Only digital copies will be submitted. Deliverables will not be formatted to comply with Section 508 accessibility requirements. However, accessible documents and/or printed copies can be provided for an additional fee.

A.1.5 Schedule. CONTRACTOR shall submit the Administrative Draft IS-MND within eight (8) weeks of written authorization, assuming any outstanding technical studies are received at least three (3) weeks prior to submittal.

B. PAYMENT PROVISIONS

B.1 COMPENSATION/PAYMENT

County shall pay an amount not to exceed \$68,921.00 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:

EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS

Cost Estimate		
	Hours	Budget
Task 1: Kickoff Meeting	4.00	895.00
	<u>4.00</u>	<u>895.00</u>
Task 2: Administrative Draft IS-MND	184.50	37,882.50
Aesthetics	9.00	1,743.00
Air Quality	26.00	5,276.00
Biological Resources	8.50	1,766.50
Cultural Resources	8.50	1,828.50
Greenhouse Gas Emissions	17.00	3,415.00
Hazards and Hazardous Materials	9.50	2,250.50
Land Use and Planning	6.50	1,329.50
Noise	23.00	5,385.00
Transportation	6.50	1,165.50
Water Supply	18.00	4,245.00
Other Issue Areas	45.00	8,391.00
GIS Services	7.00	1,087.00
Task 3: Project Management	27.00	5,312.50
	<u>27.00</u>	<u>5,312.50</u>
Project Total	<u>215.50</u>	<u>44,090.00</u>
Optional Task: Health Risk Assessment (HRA)	8,104.00	

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 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@countyofmonterey.gov:

County of Monterey
 Housing and Community Development (HCD) – Finance
 1441 Schilling Place, South 2nd 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@countyofmonterey.gov:

EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS

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.

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.

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.

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