

Before the Board of Supervisors in and for the County of Monterey, State of California

Agreement No. A-12016

- a. Approve a Funding Agreement with Aera Energy LLC where the Base Budget is \$72,324 with a Contingency of \$10,849 and the County fee is \$3,170, for a total amount not to exceed \$86,343, to allow funding to Monterey County for costs incurred by Rincon Consultants, Inc. for the San Ardo Produced Water Management Project (PLN090403) in South County and to reimburse County for the cost of contract administration, for a term through February 29, 2012; and
b. Authorize the Contracts/Purchasing Officer to execute the Funding Agreement and future amendments to the Agreement where the amendments do not significantly alter the scope of work or change the approved Agreement amount. (PD060202/Rincon Consultants, Inc.).....

Upon motion of Supervisor Salinas, seconded by Supervisor Calcagno, and carried by those members present, the Board hereby;

- a. Approved a Funding Agreement with Aera Energy LLC where the Base Budget is \$72,324 with a Contingency of \$10,849 and the County fee is \$3,170, for a total amount not to exceed \$86,343, to allow funding to Monterey County for costs incurred by Rincon Consultants, Inc. for the San Ardo Produced Water Management Project (PLN090403) in South County and to reimburse County for the cost of contract administration, for a term through February 29, 2012; and
b. Authorized the Contracts/Purchasing Officer to execute the Funding Agreement and future amendments to the Agreement where the amendments do not significantly alter the scope of work or change the approved Agreement amount.

PASSED AND ADOPTED on this 28th day of June, 2011, by the following vote, to wit:

AYES: Supervisors Calcagno, Salinas, and Parker

NOES: None

ABSENT: Supervisors Armenta and Potter

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 75 for the meeting on June 28, 2011.

Dated: June 30, 2011
Revised: July 7, 2011

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By [Signature] Deputy

**FUNDING AGREEMENT
FOR THE
SAN ARDO PRODUCED WATER MANAGEMENT PROJECT**

THIS FUNDING AGREEMENT, hereinafter, "AGREEMENT", is made and entered by and between the County of Monterey, a political subdivision of the State of California, hereinafter, "County", and Aera Energy LLC, hereinafter, "PROJECT APPLICANT", with reference to the following facts and circumstances:

RECITALS

A. PROJECT APPLICANT has applied to County for approval of discretionary entitlements to allow the development of a water reclamation facility to process reclaimed water used in the extraction of oil within the San Ardo oil field, known as the San Ardo Produced Water Management Project, referred to herein as THE PROJECT. This project is currently under review by the County.

B. Due to the magnitude and complexity of THE PROJECT, the Director of the Monterey County Planning Department, hereinafter, "DIRECTOR", and PROJECT APPLICANT have agreed that it is necessary and desirable that COUNTY engage Rincon Consultants, Inc., hereinafter, "CONTRACTOR", to prepare an Initial Study (IS), staff reports, notices and other related and/or required documents for THE PROJECT, and perform related work. CONTRACTOR shall perform the Scope of Work specified in the Professional Services Agreement, hereinafter, "PSA", between County and CONTRACTOR, attached to this AGREEMENT as Exhibit "1", and incorporated herein by reference. County shall manage THE PROJECT work performed by CONTRACTOR.

C. This AGREEMENT is based on County engaging CONTRACTOR to provide the services set forth in Exhibit "1" of this AGREEMENT. The Scope of Work and related budget of the PSA will be amended if it is determined that an Environmental Impact Report (EIR) is necessary.

D. A fundamental premise of this AGREEMENT is that nothing herein 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 cover County's cost of retaining CONTRACTOR and providing County staff to work on THE PROJECT.

E. The subject matter of this AGREEMENT is the PROJECT APPLICANT's funding of the CONTRACTOR's services on THE PROJECT. This AGREEMENT also covers the County fee for contract administration as designated in the Monterey County Land Use Fee Schedule, Resolution #08-132, passed and adopted by the County of Monterey Board of Supervisors on April 22, 2008, attached to this AGREEMENT as Exhibit "2", and incorporated herein by reference.

F. The County department costs associated with processing the project application and preparing THE PROJECT, other than contract administration, will be funded through separate land use application fees to be paid by the PROJECT APPLICANT pursuant to the Monterey County Land Use Fee Schedule, Resolution #08-132, passed and adopted by the County of Monterey Board of Supervisors on April 22, 2008. These land use application fees are separate from and in addition to the funding provided by the PROJECT APPLICANT pursuant to this AGREEMENT.

G. 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 (Public Resources Code Section 21000 et seq., hereinafter, "CEQA") and the State CEQA Guidelines (California Code of Regulations Title 14, Section 15000 et seq., hereinafter, "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 PSA and County Fee for Contract Administration. PROJECT APPLICANT shall deposit an amount equal to the CONTRACTOR's Base Budget and the County's contract administration fee. This amount totals \$75,494.00 and includes:

CONTRACTOR'S Base Budget:	\$72,324.00
County Contract Administration Fee (non-refundable):	\$ 3,170.00

PROJECT APPLICANT shall deposit a total amount of \$75,494.00 with County Planning Department upon approval of this AGREEMENT by the County of Monterey Board of Supervisors acting on behalf of the County, currently scheduled for June 28, 2011.

PROJECT APPLICANT's deposit of \$75,494.00 with County shall be a condition precedent to County's obligation under this AGREEMENT.

2. Fifteen Percent (15%) Project Contingency. An additional fifteen percent to CONTRACTOR's Base Budget shall be included in the PSA between County and CONTRACTOR to cover contingencies. This 15% Project Contingency totals \$10,849.00, and is subject to the procedures in *Section 3, Transfer from Project Contingency Account*, specified in "Exhibit A", *Scope of Services/Payment Provisions, for the San Ardo Produced Water Management Project*, of the PSA.

3. Maximum Budget Under AGREEMENT. The maximum amount which may be charged to PROJECT APPLICANT under this AGREEMENT is \$86,343.00

CONTRACTOR'S Base Budget:	\$ 72,324.00
County contract administration fee:	\$ 3,170.00
Project Contingency:	\$ 10,849.00

Maximum Charge Under AGREEMENT: \$ 86,343.00

4. Within thirty (30) days after the end of each month, County shall provide monthly progress reports to the PROJECT APPLICANT showing CONTRACTOR's charges from the prior month associated with completion of task(s) as specified in "Exhibit A" of the PSA (Scope of Services/Payment Provisions for THE PROJECT). Any funds remaining at completion of CONTRACTOR's services shall be returned to the PROJECT APPLICANT.

5. Engagement of CONTRACTOR. This AGREEMENT is based on County engaging CONTRACTOR in accordance with the PSA between County and CONTRACTOR, attached hereto and incorporated by this reference as Exhibit "1". CONTRACTOR shall be responsible only to County, and nothing in this AGREEMENT imposes any obligation on County or CONTRACTOR to PROJECT APPLICANT other than to devote the time and attention to preparing an Initial Study, staff reports, notices and other related and/or required documents for THE PROJECT. County shall provide direction and guidance to the CONTRACTOR. CONTRACTOR's contact(s) with PROJECT APPLICANT shall only be through 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.

6. Payments to CONTRACTOR and County.

a. CONTRACTOR

CONTRACTOR's invoices shall be paid from funds deposited by PROJECT APPLICANT. Should this AGREEMENT be terminated prior to February 29, 2012, any unearned balance of the \$72,324.00 deposited by PROJECT APPLICANT to fund the PSA's Base Budget amount shall be returned to PROJECT APPLICANT within sixty (60) days of receipt of notice of termination by County.

b. County Contract Administration Fee

The County Contract Administration Fee shall be paid by PROJECT APPLICANT in accordance with the County of Monterey Land Use Fee Schedule, Resolution #08-132, passed and adopted by the County of Monterey Board of Supervisors on April 22, 2008. County Contract Administration Fee shall be non-refundable.

c. Project Contingency

An additional fifteen percent (15%) of CONTRACTOR's Base Budget, in an amount not to exceed \$10,849.00, covers potential contingencies, and transfer of any Project Contingency funds into the Base Budget shall require the approval of both County and PROJECT APPLICANT, pursuant to Section 3, Transfer from Project Contingency Account, of Exhibit "A" of the PSA. Within five (5) working days of receipt of a request from 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.

d. Land Use Application Fees

The PROJECT APPLICANT agrees that PROJECT APPLICANT will separately pay land use application fees to cover County staff costs associated with processing of the project application and preparing THE PROJECT documents in accordance with the County of Monterey Land Use Fee Schedule, Resolution #08-132, passed and adopted by the County of Monterey Board of Supervisors on April 22, 2008. The fee schedule applicable to THE PROJECT is dated July 1, 2010, attached to this AGREEMENT as Exhibit "3", and incorporated herein by reference. PROJECT APPLICANT agrees to pay any remaining amounts due and owing for the required deposit upon approval of this AGREEMENT by the County of Monterey Board of Supervisors acting on behalf of the County, currently scheduled for June 28, 2011.

7. No Promise or Representation. PROJECT APPLICANT and County agree that nothing in AGREEMENT 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, it being understood that PROJECT APPLICANT's funding obligation under AGREEMENT is undertaken without regard to County's actions regarding THE PROJECT.

8. Term. AGREEMENT shall become effective June 28, 2011 and continue through February 29, 2012, unless terminated pursuant to Paragraph 9 or amended pursuant to Paragraph 13 of AGREEMENT.

9. Termination. AGREEMENT shall terminate on February 29, 2012, but may be terminated earlier by PROJECT APPLICANT or 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 PROJECT APPLICANT and County respecting the matters set forth herein. County and PROJECT APPLICANT 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 PROJECT APPLICANT and County that 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 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 County and PROJECT APPLICANT.

14. Contracting Officer. The contracting officer of County, and the only entity authorized by law to make or amend AGREEMENT on behalf of 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 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. Conflict with Professional Services Agreement between CONTRACTOR and County. In the event of a conflict between the provisions of AGREEMENT and the Professional Services Agreement between County and CONTRACTOR, the provisions of AGREEMENT shall govern.

19. 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.

20. Indemnification. PROJECT APPLICANT agrees to defend, indemnify and hold 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.

21. 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.

22. Notices. Notice to the parties in connection with AGREEMENT shall be given personally or by regular mail addressed as follows:

TO COUNTY: Mike Novo, AICP
Director of Planning
County of Monterey Resource Management Agency
Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

TO PROJECT
APPLICANT: Darryl Gunderson
Regulatory Process Advisor
Aera Energy LLC
P. O. Box 11164
Bakersfield, CA 93389-1164

TO PROJECT
APPLICANT'S
REPRESENTATIVE: Maureen Wruck
Maureen Wruck Planning Consultants, LLC
21 West Alisal Street, Suite 111
Salinas, CA 93901

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

IN WITNESS WHEREOF, PROJECT APPLICANT and County have executed AGREEMENT as of the day and year written below.

THE COUNTY OF MONTEREY

By: _____
Director of Planning

Date: _____

PROJECT APPLICANT*

Aera Energy LLC

By: Chris Jeans
(Signature of Chair, President or Vice President)

Its: Chris Jeans, Senior VP + CFO
(Print Name and Title)

Date: 6/16/2011

By: Harold A. Orndorff
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Assistant Treasurer)
Engineering Technology Manager

Its: Harold A. Orndorff, Engineering Technology Manager
(Print Name and Title)

Date: 6/16/2011

Approved as to Form and Legality
Office of the County Counsel

By: Cynthia A. Gordon
Deputy County Counsel

Date: 6-17-11

*INSTRUCTIONS: IF APPLICANT is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth in the Agreement together with the signatures of two specified officers. If APPLICANT is a partnership, the name of the partnership shall be set forth in the Agreement together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. IF APPLICANT is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign this Agreement.

Funding Agreement
Aera Energy LLC
San Ardo Produced Water Management
RMA - Planning Department
Term: June 28, 2011 - February 29, 2012
Not to Exceed: \$86,343.00