

Attachment 1

Draft Funding Agreement
with 101 Red Barn, LLC

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**FUNDING AGREEMENT
FOR THE
RED BARN GENERAL DEVELOPMENT PLAN
BIOLOGICAL AND ENVIRONMENTAL REVIEW**

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 101 Red Barn, 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 applied to the County for approval of use permit amendments (PLN140602) for the Red Barn Project (“PROJECT”). Appeal grounds reviewed by the County and the APPLICANT indicated the need for biological and environmental review services (“services”) for the PROJECT before returning to a *de novo* decision. PLN140602 is second amendment to ZA-3117 and an amendment to ZA-3629 which allowed approximately 156,840 square feet (sq. ft.) vending and outdoor sales (flea market) area and 306,000 sq. ft. of parking area. These amendments grant an additional 34,500 sq. ft. of outdoor vending area, approximately 18,140 sq. ft. vehicle access, a 720 sq. ft. office structure southwest of the Red Barn and an additional 51,446 sq. ft. parking area northeast of the Red Barn to abate Code Enforcement Case Nos. 20CE00297 and 22CE00422; Amend an adopted General Development Plan to expand the existing open-air sales (flea market) and to add new uses including social gatherings and corporate events within the Red Barn structure and in adjacent areas and allowing construction of on-site storage (shipping containers or similar) for vendors to rent; project includes installation of an onsite wastewater treatment system; approve an after-the-fact Use Permit for grading on slopes in excess of 25 percent to partially abate Code Enforcement Case No. 22CE00422
- B. The Parties have agreed that it is necessary and desirable that County engage SWCA, Inc. (“CONTRACTOR”), to provide biological and environmental review services associated with processing the application for the PROJECT and perform related work. CONTRACTOR shall perform the Scope of Work specified in the Professional Services Agreement (“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. The Parties hereby agree that County shall engage CONTRACTOR to provide the services set forth in Exhibit “1” of this AGREEMENT.
- 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 the 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.
- F. The Parties 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., “CEQA”) and the State CEQA Guidelines (California Code of Regulations Title 14, Section 15000 et seq., “Guidelines”) and the Monterey County Code.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

1. Deposits to Fund PSA and County Fee for Contract Administration. PROJECT APPLICANT shall deposit an amount equal to the base amount of the PSA between the County and CONTRACTOR for preparation of the EIR and the County Administration fees. This totals \$16,995.85 and includes:

CONTRACTOR’s Base Budget	\$14,779.00
County Project Management/Contract Administration	2,216.85
Total Deposit	\$16,995.85

PROJECT APPLICANT shall deposit \$16,995.85 with the County upon approval of this AGREEMENT by the County of Monterey Board of Supervisors acting on behalf of the County to reimburse County, currently scheduled for August 5, 2025.

2. Fifteen Percent (15%) Project Contingency. An additional fifteen percent (15%) of CONTRACTOR’s Base Budget shall be included in the AGREEMENT between the County and CONTRACTOR to cover contingencies. This fifteen percent (15%) Project Contingency totals \$2,216.85 and is subject to the procedures set forth in this AGREEMENT.
3. Maximum Budget Under AGREEMENT. The amount which may be charged to PROJECT APPLICANT under this AGREEMENT is \$19,212.70.

CONTRACTOR’s Base Budget	\$14,779.00
Project Management/Contract Administration Fee	2,216.85
Contingency Fee	2,216.85
Maximum Charge Under Agreement	\$19,212.70

4. Within thirty (30) days after the end of each quarter, the County shall provide quarterly progress reports to the PROJECT APPLICANT showing CONTRACTOR’s charges from the prior quarter associated with completion of task(s) as specified in “Exhibit A” of the PSA (Scope of Work/Payment Provisions for the Project). Any Base Budget funds remaining at completion of CONTRACTOR’s services shall be returned to the PROJECT APPLICANT.
5. Engagement of CONTRACTOR. This AGREEMENT is based on the County engaging CONTRACTOR in accordance with the PSA between the County and CONTRACTOR attached as Exhibit 1 and directing CONTRACTOR to diligently expedite services performed under the

PSA with the intent to meet the Schedule (as defined in Section 6). 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 assist with the processing of the Project. The County shall provide direction and guidance to the CONTRACTOR. CONTRACTOR's contact(s) 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.

6. Payment(s) to CONTRACTOR and County.

a. CONTRACTOR

CONTRACTOR's invoices shall be paid from Base Budget funds deposited by PROJECT APPLICANT and shall be paid in accordance with the terms of Section II of Exhibit "A" of the PSA with CONTRACTOR, included in Exhibit "1" of this AGREEMENT.

Within sixty (60) days after the completion of services under the PSA or earlier termination of this AGREEMENT in accordance with the terms hereunder, any unearned balance of the Base Budget deposited by PROJECT APPLICANT to fund the PSA's Base Budget amount shall be returned to PROJECT APPLICANT.

b. County Contract Administration Fee

The County Project Management and Contract Administration Fee of \$2,216.85 shall be paid by PROJECT APPLICANT upon approval of this Agreement by the County of Monterey Board of Supervisors. This fee is non-refundable.

c. Project Contingency

An additional fifteen percent (15%) of CONTRACTOR's Base Budget, in an amount not to exceed \$2,216.85, covers potential contingencies, and transfer of any Project Contingency funds into the Base Budget shall require the approval of both the County and 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.

d. Land Use Application Fees (Environmental Review)

The PROJECT APPLICANT agrees that PROJECT APPLICANT will separately pay fees to cover all County staff costs associated with the PROJECT in accordance with the current County of Monterey application policies. The fee will be based on actual hours, measured by actual time spent on an application in quarter-hour (.25) increments. 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 August 5, 2025. All outstanding amounts must be paid prior to the County finalizing the application.

7. 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.
8. No Promise or Representation. The Parties agree that nothing in 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.
9. Term. AGREEMENT shall become effective the date the Board of Supervisors approves this AGREEMENT, and continue through December 31, 2025, unless terminated pursuant to Paragraph 9 of AGREEMENT.
10. Termination. AGREEMENT shall terminate on December 31, 2025, 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, and County will return any unused deposit in accordance with Section 6(a) of the AGREEMENT.
11. 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.
12. 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.
13. 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.
14. Amendment. This AGREEMENT may be amended, modified or supplemented only in writing by both the Parties.
15. 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.

16. 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.
17. Governing Law. This 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.
18. 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.
19. Conflict with Professional Services Agreement between CONTRACTOR and the County. In the event of a conflict between the provisions of AGREEMENT and the PSA between the County and CONTRACTOR, the provisions of AGREEMENT shall govern.
20. 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.
21. 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 this AGREEMENT or the validity of AGREEMENT is challenged.
22. 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.
23. Notices. Notice to the Parties in connection with AGREEMENT shall be given personally or by regular mail addressed as follows:

TO COUNTY: Shandy Carroll, Management Analyst III
County of Monterey
Housing and Community Development
1441 Schilling Place, South 2nd Floor
Salinas, California 93901
carrolls@countyofmonterey.gov

TO PROJECT
APPLICANT:

Salvador Jiminez, Jr.
101 Red Barn, LLC
900 South Main Street
Salinas, CA 93901

WITH A COPY TO:

TO PROJECT
APPLICANT'S
REPRESENTATIVES:

Dale Ellis
Anthony Lombardo & Associates, Inc.
144 W. Gabilan Street
Salinas, California 93901
dale@alombardolaw.com

TO PROJECT
CONTACT:

Joel Panzer
Maureen Wruck Planning Consultant, LLC
21 West Alisal Street, Suite 111
Salinas, CA 93901
joel@mwruck.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 FUNDING AGREEMENT as of the last day and year written below.

COUNTY OF MONTEREY


PROJECT APPLICANT

By: N/A
Contracts/Purchasing Officer

Date: _____

By: _____
Craig W. Spencer, Director

Date: _____

By: 101 RED BARN, LLC
Signed by:

EB27986E72D0134
(Signature of Chair, President or Vice President)*

Salvador Jimenez, Jr., Member
Name and Title

Date: 6/25/2025

Approved as to Form

County Counsel

Susan K. Blich, County Counsel

By: Reed Gallogly
Signed by:
EB27986E72D0134
Reed Gallogly, Deputy County Counsel

Date: 7/1/2025

Approved as to Fiscal Provisions

By: Patricia Ruiz
DocuSigned by:
E79EF64E574E4161
Patricia Ruiz, Auditor/Controller

Date: 7/1/2025

Reviewed as to Liability Provisions

Office of the County Counsel-Risk Management

By: N/A
David Bolton, 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 (California Corporations Code §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 either 1) any member, or 2) two (2) managers (Corporations Code, §17703.01, subds. (a) and (d)). 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 on behalf of the partnership (California Code, §§16301 and 15904.02). If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign.

¹ Approval by the Office of the County Counsel is required.

² Approval by Auditor-Controller is required.

³ Review by Risk Management is necessary only if changes are made in the Indemnification or Insurance paragraphs.

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Attachment 1

Draft Professional Services Agreement with
SWCA, Inc.

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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 SWCA, 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 biological and environmental review services
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 **\$14,779**.
3. **TERM OF AGREEMENT.** The term of this Agreement is from **execution to December 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 general liability 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 scheduled, , 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 workers' compensation 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 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, agents, and volunteers are to be covered as additional insureds on the auto liability policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONTRACTOR. Auto liability coverage shall be provided in the form of an endorsement to the CONTRACTOR's insurance.

The County of Monterey, its officers, officials, employees, agents, 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, agents, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents, 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.

Workers' Compensation Waiver of Subrogation: The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against County, its officers, officials, employees, agents, or volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by CONTRACTOR. Should CONTRACTOR be self-insured for workers' compensation, CONTRACTOR hereby agrees to waive its right of subrogation against County, its officers, officials, employees, agents, or volunteers.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance and endorsements 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.

10.06 Format of Deliverables. For this section, “Deliverables” shall mean all electronic documents CONTRACTOR provides to the County under this Agreement. CONTRACTOR shall ensure all Deliverables comply with the requirements of the Web Content Accessibility Guidelines (“WCAG”) 2.1, pursuant to the Americans with Disabilities Act (“ADA”). CONTRACTOR bears the burden to deliver Deliverables, such as Adobe Acrobat Portable Document Format (“PDF”) and Microsoft Office files, complying with WCAG 2.1. CONTRACTOR shall defend and indemnify the County against any breach of this Section. This Section shall survive the termination of this Agreement. Find more on Accessibility at this State website: <https://webstandards.ca.gov/accessibility/>.

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	Emily Creel, J.D.
Name and Title	Name and Title
1441 Schilling Place, South 2 nd Floor	4111 Broad Street, Suite 210
Salinas, CA 93901	San Luis Obispo, CA 93401
Address	Address
(831) 755-4832	(805) 543-7095
194-HCD-Contracts@countyofmonterey.gov	ecreel@swca.com
Phone/Email	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.

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

COUNTY OF MONTEREY

CONTRACTOR

By: N/A
Contracts/Purchasing Officer

SWCA, INC.
Contractor’s Business Name*

Date:

By: (Signature of Chair, President, or Vice President) *

By: Craig W. Spencer, HCD Director (if applicable)

Brooke Langle, Vice President
Northern & Central California
Name and Title

Date:

Date:

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

By: (Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

By: County Counsel

Dennis Henry, CFO
Name and Title

Date:

Date:

Approved as to Fiscal Provisions²

By: Auditor/Controller

Date:

Reviewed 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 (California Corporations Code §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 (Corporations Code §17703.01, subds. (a) and (d)). 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 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.

¹ Approval by the Office of County Counsel is required.

² Approval by Auditor-Controller is required.

³ Review by Risk Manager is required only if changes are made in the Indemnification or Insurance paragraphs.

EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS

**To Agreement by and between
County of Monterey, hereinafter referred to as “County”
and
SWCA, 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:

CONTRACTOR shall provide biological and environmental review services for the Red Barn Project (PLN140602, “Project”) which is proposed as a:

1. Second amendment to ZA-3117 and amendment to ZA-3629 allowing additional 34,500 sq. ft. of outdoor vending area, approximately 18,140 sq. ft. vehicle access, a 720 sq. ft. office structure southwest of the Red Barn and an additional 51,446 sq. ft. parking area; and
2. Provide for potential new uses in an amended General Development Plan (GDP), including social activities and corporate events within the Red Barn structure and in adjacent areas and allow construction of on-site storage (shipping containers or similar) for vendors to rent; project includes installation of an onsite wastewater treatment system; Approve an after-the-fact Use Permit for grading on slopes in excess of 25 percent to partially abate Code Enforcement Case No. 22CE00422 and incorporate the new wastewater treatment system and flush toilets that were required by ZA Resolution No. 19-018;

TASK 1 – Biological Peer Review and Site-Specific Investigation

CONTRACTOR shall prepare a Biological Resources Memorandum to support the County’s California Environmental Quality Act (CEQA) documentation and appeal response.

1.1. Updated Background Research and Literature Review

- 1.1.1 CONTRACTOR shall conduct background research and literature reviews of existing environmental documentation to identify species known to occur or have potential to occur on and near the parcel and to assess challenges to the decision on PLN140602.
- 1.1.2 CONTRACTOR’s background research will include, at a minimum, queries of the U.S. Fish and Wildlife Service (USFWS) Critical Habitat Mapper and Information for Planning and Conservation (IPaC) databases, California Natural Diversity Database (CNDDB), species lists from the USFWS and California Native Plant Society (CNPS), and existing published data from wildlife corridor studies. This information shall be compiled into species lists and maps for use during field surveys and project evaluations.

EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS

- 1.1.3 CONTRACTOR shall be supplied with any biological reports that pertain to the parcel or neighboring parcels, if available.

1.2 Field Survey

- 1.2.1 CONTRACTOR shall conduct a biological reconnaissance survey on the proposed project area to support the Biological Resources Memorandum.
- 1.2.2 CONTRACTOR shall record the existing conditions in the Biological Study Area (BSA), which will comprise the entire proposed project area and an approximate 100-foot buffer where access is feasible.
- 1.2.3 CONTRACTOR shall conduct habitat assessments for special-status plant and wildlife species, assess sensitive habitats and potential wildlife corridors, and delineate jurisdictional features within 100 feet of the proposed project location, if applicable.
- 1.2.4 CONTRACTOR assumes the survey will not need to be completed during the typical blooming period for special-status plants with potential to occur.
- 1.2.5 CONTRACTOR shall assess the BSA to identify habitat or conditions that may have potential for special-status species plants. The survey will not include protocol-level surveys for any species.
- 1.2.6 CONTRACTOR shall capture photos and Global Positioning System (GPS) data points, lines, and/or polygons of sensitive biological resources observed for incorporation into project maps and technical reports.

1.3 Biological Resources Memorandum

CONTRACTOR shall prepare a Biological Resources Memorandum for submittal to the County. The Memorandum shall include descriptions of survey methodology, results, an analysis of the Project's potential to impact sensitive biological resources, including plant and wildlife species and habitats, sensitive habitat, wildlife corridors, and/or jurisdictional features and any supplemental recommendations.

Supplemental recommendations may include additional mitigation or changes to the proposed project that would reduce potential impacts to biological resources.

TASK 2 – Environmental Compliance Memorandum

- 2.1 CONTRACTOR shall, based upon the results of the environmental analysis and documentation of Task 1, prepare a brief memorandum-style report and cite relevant portions of the CEQA Statute and State CEQA Guidelines, case law, and precedent in relation to the challenges from appellants of the decision on PLN140602.

EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS

- 2.2 CONTRACTOR shall make a professional recommendation as to whether the information documented in the studies above requires recirculation of the 2024 Initial Study/Mitigated Negative Declaration (2024 IS/MND).

CONTRACTOR shall base this determination on whether or not the analysis indicates the need for “substantial revision” of the 2024 IS/MND pursuant to State CEQA Guidelines Section 15073.5.

Assumptions

1. Safe and timely access to the property to conduct field surveys shall be provided.
2. One (1) site visit by CONTRACTOR to collect field data.
3. Protocol level surveys for listed species are not included.
4. Survey will not be conducted during the appropriate blooming period for special-status annual plant species. A change order shall be required if a follow-up botanical survey during the blooming period becomes necessary.
5. Formal wetland delineation report is not included with this Scope of Work.

B. PAYMENT PROVISIONS

B.1 COMPENSATION/PAYMENT

County shall pay an amount not to exceed \$14,779 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:

Task	Description	Cost	Time to Complete*
1.1	Updated background research and literature review	\$ 892	2 Weeks
1.2	Field Survey	\$ 3,910	
1.3	Biological Resources Memorandum	\$ 6,985	
2	Environmental Compliance Memorandum	\$ 2,992	6 Weeks
TOTAL		\$14,779	

**From contract execution*

County and CONTRACTOR agree that CONTRACTOR shall be reimbursed for survey travel expenses during this Agreement. CONTRACTOR shall receive compensation for travel expenses as per the “County Travel Policy.” A copy of the policy is available online at:

<https://www.countyofmonterey.gov/government/departments-a-h/auditor-controller/policies-and-procedures>. To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses to include date and detail of travel.

EXHIBIT A – SCOPE OF WORK/PAYMENT PROVISIONS

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, 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.

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.

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