

Attachment B

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**AMENDMENT NO. 4
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
RINCON CONSULTANTS, INC.**

THIS AMENDMENT NO. 4 to the Professional Services Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Rincon Consultants, Inc. (hereinafter, "CONTRACTOR") is hereby entered into between the County and the CONTRACTOR (collectively, the "Parties") and effective as of the last date opposite the respective signatures below.

WHEREAS, CONTRACTOR entered into a Professional Services Agreement with County on April 17, 2013 (hereinafter, "Agreement") to provide an Environmental Impact Report (EIR) for the California Flats Solar Project (hereinafter, "Project") through December 31, 2014 for an amount not to exceed \$282,075.75; and

WHEREAS, Agreement was amended by the Parties on April 9, 2014 (hereinafter, "Amendment No. 1", including Exhibit A-1 – Scope of Services/Payment Provisions) to extend the term for three (3) additional months through March 31, 2015 and to increase the amount by \$68,350.00 which resulted in a total not to exceed amount of \$350,425.75; and

WHEREAS, Agreement was amended by the Parties on February 4, 2015 (hereinafter, "Amendment No. 2", including Exhibit A-2 – Scope of Services/Payment Provisions) to extend the term for six (6) additional months through September 30, 2015 and to increase the amount by \$76,315.50 which resulted in a total not to exceed amount of \$426,741.25; and

WHEREAS, Agreement was amended by the Parties on September 30, 2015 (hereinafter, "Amendment No. 3", including Exhibit A-3 – Scope of Services/Payment Provisions) to extend the term for thirty-nine (39) additional months through December 31, 2018 and to increase the amount by \$424,876.05 which resulted in a total not to exceed amount of \$851,617.30; and

WHEREAS, the Parties identified a need to complete additional third-party compliance monitoring for the Project; and

WHEREAS, the Parties desire to expand existing tasks associated with Task 10.2, Draft Mitigation Monitoring and Reporting Program (MMRP), of the Agreement to allow for the additional third-party compliance monitoring for completion of the Project; and

WHEREAS, additional time and funding are necessary; and

WHEREAS, the Parties wish to further amend this Agreement to extend the term for six (6) additional months to June 30, 2019 and to increase the amount by \$296,480.60 for a total not to exceed amount of \$1,148,097.90 to allow CONTRACTOR to continue to provide services identified in this Agreement and as amended by this Amendment No. 4.

NOW, THEREFORE, the Parties agree to amend this Agreement as follows:

1. Amend the first sentence of Paragraph 1, "Services to be Provided", to read as follows:

The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibits A, A-1, A-2, A-3 and A-4** in conformity with the terms of this Agreement.

2. Amend Paragraph 2, "Payments by County", to read as follows:

County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibits A, A-1, A-2, A-3 and A-4**, 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 \$1,148,097.90.

3. Amend the first sentence of Paragraph 3, "Term of Agreement", to read as follows:

The term of this Agreement is from March 13, 2013 to June 30, 2019, unless sooner terminated pursuant to the terms of this Agreement.

4. Amend Paragraph 4, "Additional Provisions/Exhibits", by adding "Exhibit A-4, Scope of Services/Payment Provisions".

5. The "Project Schedule" referenced in the Agreement, Exhibit A -- Scope of Services/Payment Provisions, is hereby amended to allow for completion of additional tasks associated with Task 10.2, Draft MMRP, for the Project as set forth in Exhibit A-4, Scope of Services/Payment Provisions.

6. All other terms and conditions of this Agreement remain unchanged and in full force.

7. This Amendment No. 4 and all previous amendments shall be attached to this Agreement and incorporated therein as if fully set forth in this Agreement.

8. The recitals to this Amendment No. 4 are incorporated into this Agreement and this Amendment No. 4.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 4 to this Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*

By: _____
Carl P. Holm, AICP
RMA Director and Chief of Planning

Rincon Consultants, Inc.
Contractor's Business Name

Date: _____

By: _____
(Signature of Chair, President or Vice President)
John F. Dreher, Jr.
Its: _____
Vice President
(Print Name and Title)

Date: _____
4/19/17

**Approved as to Form and Legality
Office of the County Counsel**

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

By: _____
Brian P. Briggs
Deputy County Counsel

Its: _____
Richard Daulton, SECRETARY
(Print Name and Title)

Date: _____
5-8-17

Date: _____
4/12/17

Approved as to Fiscal Provisions

By: _____
Auditor/Controller

Date: _____
4/27/17

Approved as to Indemnity and Insurance Provisions

By: _____
Risk Management

Date: _____

*INSTRUCTIONS: IF CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the 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.

EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS

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

PROJECT UNDERSTANDING

CONTRACTOR shall continue to provide environmental compliance support services for the California Flats Solar Project (Project). CONTRACTOR conducted work under an existing scope and cost estimate that was based on preliminary assumptions about the construction schedule and duration of full-time and part-time third party compliance monitoring required for the Project. As a result of construction schedule delays and extensions, and numerous non-compliance issues in the early phases of construction, CONTRACTOR's full-time third party compliance monitoring was significantly expanded beyond what was assumed in the initial scope. This additional compliance monitoring was necessary to ensure Construction contractor compliance with conditions of the Mitigation Monitoring and Reporting Plan (MMRP) within the Final Environmental Impact Report (FEIR). In addition to changes to the extent and duration of required monitoring, the number and content of the documents submitted in support of compensatory mitigation compliance exceeded what was originally anticipated, required multiple revisions, and included additional revisions following the California Department of Fish and Wildlife (CDFW) review, resulting in an increase to the document review budget for this task.

Exhibit A-3, Scope of Services/Payment Provisions, of this Agreement assumed that Task 10.2.d, On-site Compliance Monitoring under Stage II: Access Road and Northern Photovoltaic (PV) Construction, the third party Compliance Monitor would be able to decrease the number of days onsite from five (5) days per week after the first month of construction to three (3) days per week for the next ten (10) weeks, and then down to twice per week through the end of 2016. A total of ninety-two (92) monitoring days throughout 2016 were assumed in Exhibit A-3, Scope of Services/Payment Provisions, of the Agreement. This level of monitoring was based on an assumption that the Project Applicant and Construction Contractor would meet all Project conditions, and the Project would be in good standing regarding environmental compliance at the end of the first month of construction. As a result of multiple non-compliance issues during the first several months of construction activity, County requested CONTRACTOR to continue full-time third party compliance monitoring to ensure proper oversight of Project activities. As of September 30, 2016, CONTRACTOR had completed a total of one hundred sixty-nine (169) monitoring days. Over the past two (2) months, CONTRACTOR has implemented a number of measures to ensure better compliance, including creation of a full-time, Project Applicant-provided, on-site Compliance Manager, and additional biological and cultural monitors. Based on a significant reduction in non-compliance issues and effective self-management of on-site compliance by the Project Applicant and the Project Applicant's contractors, CONTRACTOR third party monitoring was reduced from full-time monitoring to three (3) days per week in November, and to two (2) days per week at the end of December 2016.

Project Applicant has not provided County with an updated long term construction forecast; however, based on information from on-site construction leads, CONTRACTOR estimates that the construction of Phase I is expected to continue through May 2017. This delay will likely result in additional time and materials for on-site compliance monitoring (Task 10.2.d) which will exceed the available funding included in both the authorized Agreement and the authorized Project Contingency budget of the Agreement.

EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS

This Exhibit A-4, Scope of Services/Payment Provisions, of the Agreement requests an increase to the budget for the current overrun under Phase I monitoring through September 30, 2016, the anticipated monitoring required to complete Phase I through May 2017, the overrun on Task 10.2.a, Technical Document Review for Access Road and Northern PV Construction, document review for additional work required to review the status of the compensatory mitigation submissions, and anticipated additional Phase II monitoring through 2018.

As of September 30, 2016, CONTRACTOR exceeded the original assumed seventy-eight (78) monitoring days by ninety-one (91) days (a total of one hundred sixty-nine (169) monitoring days completed through September 30, 2016). CONTRACTOR assumes that the remaining compliance monitoring for the Project shall require ninety-nine (99) days of monitoring from October 1, 2016 through May 31, 2017 (anticipated completion date for Phase I), resulting in a total of two hundred sixty-eight (268) monitoring days for Phase I of the Project. The Project Contingency Budget Authorization Request recently approved by the County provided funding for one hundred twelve (112) additional monitoring days. The original seventy-eight (78) and recently approved one hundred twelve (112) monitoring days provides for one hundred ninety (190) monitoring days; therefore, the tasks outlined in this Exhibit A-4 shall provide six hundred twenty-four (624) hours to perform the remaining seventy-eight (78) anticipated days of monitoring for Phase I. In addition, based on the experience from compliance oversight on Phase I, CONTRACTOR assumes an additional one hundred fifty (150) monitoring days shall be required to complete compliance oversight monitoring for Phase II.

In anticipation of a similar level of effort for monitoring during Phase II construction activity, CONTRACTOR shall increase the originally contracted monitoring time from one hundred (100) days to two hundred fifty (250) days (an increase of one hundred fifty (150) monitoring days), and an additional one hundred eighty (180) hours of compliance management and oversight under this task.

The proposed increase in scope and cost for all the work described above includes an associated increase in Project Management time of one hundred twenty-four (124) hours.

A. SCOPE OF SERVICES

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

TASK 10.2 DRAFT MITIGATION MONITORING AND REPORTING PROGRAM

Task 10.2.a Technical Document Review for Access Road and Northern PV Construction Compliance Review

CONTRACTOR shall complete the compensatory mitigation portion of Task 10.2.a, estimated to require an additional eight (8) hours for Senior Principal at \$210 per hour, twenty (20) hours for Senior Staff II at \$130 per hour, forty (40) hours for Senior Staff III at \$120 per hour and forty (40) hours for Professional Staff III at \$95 per hour for a total estimated amount not to exceed \$12,880.00.

Task 10.2.d On-Site Compliance Monitoring

EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS

Phase I Compliance Monitoring

CONTRACTOR shall complete task 10.2.d for compliance monitoring and direct expenses, at an estimated amount not to exceed \$63,412.00. To complete this task, CONTRACTOR assumes that one (1) full-time Professional Staff I (Compliance Monitor) shall be required for six hundred twenty-four (624) hours (seventy-eight (78) days at eight (8) hours per day) of construction activity. Travel expenses for the Compliance Monitor to travel to the Project site from San Luis Obispo totals \$10,612.00. The budget for this task also includes twenty-four (24) hours for one (1) full-time Senior Staff III.

Task 10.2.g Southern PV Construction Phase Compliance Monitoring and Compliance Tracking

Phase II Compliance Monitoring

CONTRACTOR shall complete task 10.2.g for compliance monitoring and compliance management/tracking including direct expenses at an estimated amount not to exceed \$136,250.00. To complete this task, CONTRACTOR assumes that one (1) full-time Professional Staff I (Compliance Monitor) shall be required for 1,200 hours (one hundred fifty (150) days at eight (8) hours per day) of construction activity. Travel expenses for the Compliance Monitor to travel to the Project site from San Luis Obispo total \$20,250.00. The budget for this task also includes forty (40) hours for Senior Staff II, sixty (60) hours for Senior Staff III and eighty (80) hours for Professional Staff III.

Task 10.2.h Program Management and Administration Project Management

CONTRACTOR shall complete task 10.2.h for Project Management at an estimated amount not to exceed \$15,520.00. To complete this task, CONTRACTOR assumes that one (1) full-time Senior Staff III shall be required for sixty (60) hours and one (1) full-time Senior Staff II shall be required for sixty-four (64) hours.

B. PAYMENT PROVISIONS

CONTRACTOR's cost to provide the Scope of Services outlined above shall not to exceed the amount of \$228,062.00 as shown in the following Cost Estimate.

County shall pay an increased amount of \$296,480.60 (\$228,062.00 for Base Budget and \$68,418.60 for Project Contingency) for a total amount not to exceed \$1,148,097.90 (\$846,610.00 for Base Budget and \$301,487.90 for Project Contingency) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Services. CONTRACTOR's compensation for services rendered shall be based on the attached Cost Estimate.

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

Services detailed in Exhibit A-4 of this Agreement shall be provided as noted. Any additional services cannot be provided until the additional work is presented to County and with County and Project Applicant approval, amended into this Agreement. Once the amendment to the Agreement is fully executed, CONTRACTOR shall be authorized to proceed with the additional services.

EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS

B. PAYMENT PROVISIONS (continued)

Invoices for services/work products/deliverables under this Agreement shall be submitted when the services/work product/deliverable is complete, shall identify the document or work product/deliverable being delivered or monthly (by the tenth day of the month) and shall include the following:

1. Invoice Coversheet

Rincon Consultants, Inc.
California Flats Solar Project Environmental Impact Report

Date: _____

Invoice No. _____

Original Agreement Term: March 13, 2013 – December 31, 2014

Original Agreement Amount: \$282,075.75 (\$208,945.00 Base Budget plus \$73,130.75 Project Contingency)

Amendment No. 1: \$68,350.00 (\$38,350.00 Base Budget plus \$30,000.00 Project Contingency)
Extend Term to March 31, 2015

Amendment No. 2: \$76,315.50 (\$56,530.00 Base Budget plus \$19,785.50 Project Contingency)
Extend Term to September 30, 2015

Amendment No. 3: \$424,876.05 (\$314,723.00 Base Budget plus \$110,153.05 Project Contingency)
Extend Term to December 31, 2018

Amendment No. 4: \$296,480.60 (\$228,062.00 Base Budget plus \$68,418.60 Project Contingency)
Extend Term to June 30, 2019

This Invoice:

10. Administrative FEIR Draft IS-MND

10.2 Draft MMRP

STAGE I: ACCESS ROAD AND NORTHERN PV CONSTRUCTION

10.2.a Technical Document Review for Access Road and Northern PV Construction

\$12,880.00 Compliance Review

STAGE II: ACCESS ROAD AND NORTHERN PV CONSTRUCTION MONITORING

10.2.d On-Site Compliance Monitoring

\$52,800.00 Phase I Compliance Monitoring

STAGE IV: SOUTHERN PV CONSTRUCTION MONITORING

10.2.g Southern PV Construction Phase Compliance Monitoring and Compliance Tracking

\$116,000.00 Phase II Compliance Monitoring

EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS

PROGRAM MANAGEMENT

10.2.h *Program Management and Administration*
\$15,520.00 *Project Management*

DIRECT EXPENSES

\$10,612.00 *Task 10.2.d – Compliance Monitoring*
\$20,250.00 *Task 10.2.g – Phase II Compliance Monitoring*

Grand Total:

\$228,062.00

Remaining Balance \$ _____

Approved as to Work/Payment: _____
Delinda Robinson, Senior Planner Date _____

Invoices under this Agreement shall be submitted promptly when work product is complete and in accordance with Paragraph 6, Payment Conditions, of the Agreement. All invoices shall reference the Project name and an original hardcopy shall be sent to the following:

County of Monterey
Resource Management Agency (RMA) - Finance Division
168 West Alisal Street, 2nd Floor
Salinas, California 93901

Any questions pertaining to invoices under this Agreement shall be directed to the RMA -- Finance Division at (831) 755-4800.

2. Invoice Detail

Each invoice for work products/deliverables shall indicate one hundred percent (100%) completion of the task and include the invoice amount in association with the actual work products/deliverables performed and shall be within the "Not to Exceed" budget amount allocated for said work products/deliverables.

Each invoice for services performed shall indicate the hours worked by task and by staff member, with the corresponding billing rates. Payment of these services will be based on the documentation provided by the CONTRACTOR and shall be within the "Not to Exceed" budget amount allocated for the service or services performed.

Subconsultant services must be invoiced based on the Subconsultant fee and the allowable overhead cost.

The Project Planner may request documentation of the number of hours worked by task and by staff member, with the corresponding billing rates and/or the subconsultant costs. The information will be used to complete the file and to ensure proper payment for work products/deliverables/services.

EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS

3. *Transfer from Project Contingency Account*

Transfer of funding from the Project Contingency Account (contingency increased in the amount \$68,418.60 for a total amount not to exceed \$301,487.90) requires the prior written approval of the RMA Director and the Project Applicant.

A recommendation for such a transfer shall be presented in writing by CONTRACTOR to the Project Planner, with a duplicate original delivered to the Contract Administrator, at the earliest possible date. The recommendation shall include:

- The dollar amount;
- The anticipated date the funded work would begin;
- The duration of the work;
- The entity (CONTRACTOR or subconsultant) to whom the funds would be transferred/allocated; and
- The justification for the expenditure.

Within five (5) working days of receipt of the recommendation, the Project Planner and Contract Administrator will have contacted CONTRACTOR to discuss its recommendation and will have made a recommendation to the RMA Director, or in the Director's absence, designee. Within ten (10) working days thereafter, the RMA Director or designee will approve, deny, or approve a revised version of the recommendation received from CONTRACTOR, and will send a written decision to the Project Applicant, and CONTRACTOR.

Unless the recommended transfer is denied by the RMA Director or designee, the RMA Director or designee will ask the Project Applicant to make a decision within five (5) working days regarding the recommended transfer from the Project Contingency Account. If necessary, reasonable efforts will be made to reach a compromise.

Upon receipt of the Project Applicant's written approval by the RMA Director or designee, the funding transfer will be made. At the same time, a letter authorizing the work funded by the approved transfer will be sent to CONTRACTOR.

4. *Other Provisions*

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

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

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.