

Attachment B

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**AMENDMENT NO. 3
TO AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
RINCON CONSULTANTS, INC.**

THIS AMENDMENT NO. 3 to the 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 an Agreement with County on August 16, 2013 (hereinafter, "Agreement") to provide permit application review services (hereinafter, "services") through August 16, 2016 with the option to extend the Agreement for two (2) additional one (1) year period(s), for an amount not to exceed \$100,000 per fiscal year (FY) for a total amount not to exceed \$300,000 for the initial three (3) year term (FY 2013-14, FY 2014-15, and FY 2015-16) in accordance with the terms and conditions of the Agreement; and

WHEREAS, Agreement was amended by the Parties on June 28, 2016 (hereinafter, "Amendment No. 1", including Attachment A-1 – Revised Pricing Sheet, effective August 17, 2016) to extend the term for one (1) additional year through August 16, 2017, to update the Pricing Sheet, and to increase the amount by \$500,000 for the cost of services during that period (FY 2016-17) which resulted in a total not to exceed amount of \$800,000; and

WHEREAS, Agreement was amended by the Parties on July 25, 2017 (hereinafter, "Amendment No. 2") to extend the term for one (1) additional year through August 16, 2018 and to increase the amount by \$300,000 for the cost for services during that period (FY 2017-18) which resulted in a total not to exceed amount of \$1,100,000; and

WHEREAS, provisions of the Agreement require an update; and

WHEREAS, the County has a continued need for services beyond the anticipated five (5) year Agreement term allowed per Request for Qualifications (RFQ) #10382; and

WHEREAS, additional time and funding are necessary to allow County staff to prepare and process a new RFQ; and

WHEREAS, the Parties wish to further amend the Agreement to update the provisions, to extend the term for approximately eleven (11) additional months through June 30, 2019, and to increase the cost for services by \$100,000 for FY 2018-19, for a total not to exceed amount of \$1,200,000 to allow CONTRACTOR to continue to provide services identified in the Agreement and as amended by this Amendment No. 3.

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

1. Amend Paragraph 3.1 under Section 3.0, "Term of Agreement", to read as follows:

The term of the AGREEMENT will be from August 16, 2013 to June 30, 2019.

2. Amend Paragraph 4.1 under Section 4.0, "Compensation and Payments", to read as follows:

It is mutually understood and agreed by both Parties that the CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing sheet attached hereto as Attachments A and A-1. The total amount of this AGREEMENT shall not exceed \$100,000 per fiscal year (FY) for the initial three (3) year term (FY 2013-14, FY 2014-15 and FY 2015-16) of this AGREEMENT. Additionally, the total amount of this AGREEMENT shall not exceed \$500,000 for the first additional one (1) year period extension (FY 2016-17), shall not exceed \$300,000 for the second additional one (1) year period extension (FY 2017-18), and shall not exceed \$100,000 for this approximate eleven (11) month additional extension (FY 2018-19) beyond the initial term for a total AGREEMENT amount not to exceed \$1,200,000.

3. Amend Paragraph 6.2, Indemnification for Design Professional Services Claims, under Section 6.0, "Design Professional Indemnification", to read as follows:

CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or willful misconduct of COUNTY, or defect in a design furnished by COUNTY, but in no event shall the amount of such CONTRACTOR's liability exceed such CONTRACTOR's proportionate percentage of fault as determined by a court, arbitrator or mediator, or as set out in a settlement agreement. In the event one (1) or more defendants to any action involving such claim or claims against COUNTY is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, such CONTRACTOR shall meet and confer with the other parties to such action regarding unpaid defense costs.

4. Amend Paragraph 8.3 of Section 8.0, "Records and Confidentiality", to add the following:

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.

5. Amend Section 8.0, "Records and Confidentiality", to add the following:

8.5 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 records, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this AGREEMENT. CONTRACTOR shall not publish any such material without the prior written approval of COUNTY.

6. Replace Paragraph 10.2 and Paragraph 10.3 of Section 10.0, "Overriding Contractor Performance Requirements", with the following:

10.2 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.

7. Add Section 20.0, "Miscellaneous Provisions", to read as follows:

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

20.2 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.

20.3 Successors and Assigns. This AGREEMENT and the rights, privileges, duties, and obligations of 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.

20.4 Headings. The headings are for convenience only and shall not be used to interpret the terms of this AGREEMENT.

20.5 Non-exclusive AGREEMENT. This AGREEMENT is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

20.6 Construction of AGREEMENT. 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.

- 20.7 Counterparts. This AGREEMENT may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same AGREEMENT.
- 20.8 Authority. Any individual executing this AGREEMENT on behalf of 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.
- 20.9 Integration. This AGREEMENT, including the exhibits, represents the entire AGREEMENT between 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 County and the CONTRACTOR as of the effective date of this AGREEMENT, which is the date that the County signs the AGREEMENT.
- 20.10 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.
8. All other terms and conditions of the Agreement remain unchanged and in full force.
9. This Amendment No. 3 and all previous amendments shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
10. The recitals to this Amendment No. 3 are incorporated into the Agreement and this Amendment No. 3.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 3 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*

By: _____

Contracts/Purchasing Officer

Date: _____

Approved as to Form and Legality
Office of the County Counsel-Risk Management
Charles J. McKee, County Counsel-Risk Manager

By: _____

Brian P. Briggs
Deputy County Counsel

Date: _____

Approved as to Fiscal Provisions

By: _____

Auditor/Controller

Date: _____

Approved as to Indemnity and Insurance Provisions
Office of the County Counsel-Risk Management
Charles J. McKee, County Counsel-Risk Manager

By: _____

Name: _____

Title: _____

Date: _____

Rincon Consultants, Inc.

Contractor's Business Name

By: _____

(Signature of Chair, President or Vice President)

Its: _____

(Print Name and Title) **PRESIDENT**

Date: _____

By: _____

(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)

Its: _____

(Print Name and Title) **SECRETARY**

Date: _____

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

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