

**FUNDING AGREEMENT  
FOR THE  
TREE RISK ASSESSMENT(S)**

**THIS FUNDING AGREEMENT**, hereinafter, "AGREEMENT", is made and entered by and between the County of Monterey, a political subdivision of the State of California, hereinafter, "County", and Pacific Gas and Electric Company, hereinafter, "PROJECT APPLICANT", with reference to the following facts and circumstances:

**RECITALS**

A. PROJECT APPLICANT has requested that the County provide input, in the form of Tree Risk Assessment(s), hereinafter "Services", on so-called "franchise trees" that PROJECT APPLICANT proposes to either preserve, trim, or remove on Public right-of-way or County property as part of the Gas Transmission Pipeline Safety Program, referred to herein as "PROJECT".

B. Due to the magnitude and complexity of the PROJECT, the Director of the Monterey County Resource Management Agency - Planning, hereinafter, "DIRECTOR", and PROJECT APPLICANT have agreed that it is necessary and desirable that County engage Michael L. Bench, Consulting Arborist, hereinafter, "CONTRACTOR", to provide assistance with the Services for the PROJECT, and perform related work. CONTRACTOR shall perform the Scope of Work specified in the Standard Agreement, hereinafter, "SA", between County and CONTRACTOR, attached to this AGREEMENT as Exhibit "1", and incorporated herein by reference. County shall manage the PROJECT services performed by CONTRACTOR.

C. County and PROJECT APPLICANT 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 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 to work on the PROJECT.

E. The subject matter of this AGREEMENT is the PROJECT APPLICANT's funding of the CONTRACTOR's services on the PROJECT. This AGREEMENT also covers the County fee for contract administration.

F. County and PROJECT APPLICANT make this AGREEMENT with full knowledge of the requirements of state and local law, including, but not limited to the California Environmental Quality Act (Public Resources Code Section 21000 et seq., hereinafter, "CEQA") and the State CEQA Guidelines (California Code of Regulations Title 14, Section 15000 et seq., hereinafter, "Guidelines") and the Monterey County Code.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, PROJECT APPLICANT AND COUNTY AGREE AS FOLLOWS:**

1. Deposits to Fund SA and County Fee for Contract Administration. PROJECT APPLICANT shall deposit an amount equal to the CONTRACTOR's Base Budget and the County's Contract Administration Fee. This amount totals \$28,170.00 and includes:

CONTRACTOR'S Base Budget:	\$25,000.00
County Contract Administration Fee (non-refundable):	\$ 3,170.00

PROJECT APPLICANT shall deposit a total amount of \$28,170.00 with County Resource Management Agency - Planning upon approval of this AGREEMENT by the County of Monterey Board of Supervisors acting on behalf of the County, currently scheduled for January 12, 2016.

PROJECT APPLICANT's deposit of \$28,170.00 with County shall be a condition precedent to County's obligation under this AGREEMENT.

2. Fifteen Percent (15%) Project Contingency. An additional fifteen percent to CONTRACTOR's Base Budget shall be included in the SA between County and CONTRACTOR to cover contingencies. This 15% Project Contingency totals \$3,750.00, and is subject to the procedures in *Section 3, Transfer from Project Contingency Account*, specified in "Exhibit A", *Scope of Services/Payment Provisions, for the PROJECT*, of the SA.

3. Maximum Budget Under AGREEMENT. The maximum amount which may be charged to PROJECT APPLICANT under this AGREEMENT is \$31,920.00.

CONTRACTOR's Base Budget:	\$ 25,000.00
County Contract Administration Fee (non-refundable):	\$ 3,170.00
Project Contingency:	\$ 3,750.00

Maximum Charge Under AGREEMENT: \$ 31,920.00

4. Within thirty (30) days after the end of each quarter, and upon PROJECT APPLICANT's request, 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" (*Scope of Services/Payment Provisions for the PROJECT*) of the SA. 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 County engaging CONTRACTOR in accordance with the SA between County and CONTRACTOR, attached hereto and incorporated by this reference as Exhibit "1". CONTRACTOR shall be responsible only to County, and nothing in this AGREEMENT imposes any obligation on County or CONTRACTOR to PROJECT APPLICANT other than to devote the time and

attention to assisting with the Services for the PROJECT. County shall provide direction and guidance to the CONTRACTOR. CONTRACTOR's contact(s) with PROJECT APPLICANT shall only be through County. PROJECT APPLICANT, its agents, employees, consultants, representatives or partners shall not contact CONTRACTOR directly in any manner unless at a public hearing, meeting, or workshop for the PROJECT.

6. Payments to CONTRACTOR and County.

a. CONTRACTOR

CONTRACTOR's invoices shall be paid from Base Budget funds deposited by PROJECT APPLICANT in the amount of \$25,000.00.

Should this AGREEMENT be terminated prior to June 30, 2016, any unearned balance of the Base Budget deposited by PROJECT APPLICANT to fund the SA's Base Budget amount shall be returned to PROJECT APPLICANT within sixty (60) days of receipt of notice of termination by County.

b. County Contract Administration Fee

The County Contract Administration Fee, in an amount not to exceed \$3,170.00, shall be paid by PROJECT APPLICANT in accordance with this Agreement. County Contract Administration Fee shall be non-refundable.

c. Project Contingency

An additional fifteen percent (15%) of CONTRACTOR's Base Budget, in an amount not to exceed \$3,750.00, covers potential contingencies, and transfer of any Project Contingency funds into the Base Budget shall require the approval of both County and PROJECT APPLICANT, pursuant to Section 3, Transfer from Project Contingency Account, of "Exhibit A" of the SA. Within five (5) working days of receipt of a request from County, PROJECT APPLICANT shall approve or disapprove the Request for Transfer from Project Contingency and, if approved, at the same time submit a check to the County for the amount requested.

If PROJECT APPLICANT takes more than five (5) working days to respond to a Request for Transfer from Project Contingency, additional costs may accrue to CONTRACTOR, which may result in another Request for Transfer from Project Contingency.

7. Term. AGREEMENT shall become effective January 13, 2016 and continue through September 30, 2016, unless terminated pursuant to Paragraph 9 or amended pursuant to Paragraph 13 of AGREEMENT.

8. Termination. AGREEMENT shall terminate on September 30, 2016, but may be terminated earlier by PROJECT APPLICANT or County, by giving thirty (30) days' written notice to the other. Upon such termination, PROJECT APPLICANT shall immediately pay any outstanding invoices, as well as pay for any work performed by CONTRACTOR through effective date of termination.

9. Entire Agreement. AGREEMENT and its attachments constitute the entire agreement between the PROJECT APPLICANT and County respecting the matters set forth herein. County and PROJECT APPLICANT each represent that neither has relied on any promise, inducement, representation, or other statement made in connection with AGREEMENT that is not expressly contained herein.

10. Negotiated Agreement. It is agreed and understood by PROJECT APPLICANT and County that AGREEMENT has been arrived at through negotiations and that neither is deemed the party which prepared AGREEMENT within the meaning of Civil Code Section 1654.

11. Assignment. Neither County nor PROJECT APPLICANT shall have the right to assign its respective rights and obligations hereunder without the written consent of the other party. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

12. Amendment. This AGREEMENT may be amended, modified or supplemented only in writing by both County and PROJECT APPLICANT.

13. Contracting Officer. The contracting officer of County, and the only entity authorized by law to make or amend AGREEMENT on behalf of County, is the County of Monterey Board of Supervisors or a County employee whom they have specifically authorized.

14. 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.

15. Governing Law. AGREEMENT shall be construed, interpreted and applied in accordance with the laws of the State of California applicable to commercial contracts entered into and to be performed wholly in California.

16. 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.

17. Conflict with Standard Agreement between CONTRACTOR and County. In the event of a conflict between the provisions of AGREEMENT and the Standard Agreement between County and CONTRACTOR, the provisions of AGREEMENT shall govern.

18. 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.

19. Indemnification. PROJECT APPLICANT agrees to defend, indemnify and hold County harmless in any action brought by any third party in which the authority of the County to enter into AGREEMENT or the validity of AGREEMENT is challenged.

20. 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.

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

TO COUNTY: Mike Novo, AICP, Director of Planning  
County of Monterey  
Resource Management Agency - Planning  
168 West Alisal Street, 2<sup>nd</sup> Floor  
Salinas, CA 93901

TO PROJECT  
APPLICANT: Michael Pintacura, PG&E Land Consultant  
Pacific Gas and Electric Company  
356 West Alisal Street  
Salinas, CA 93901

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

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

COUNTY OF MONTEREY

By: C.P. Hill  
~~Director of Planning~~  
RMA Director  
Date: 1-25-2016

PROJECT APPLICANT\*  
Pacific Gas and Electric Company

By: [Signature]  
(Signature of Chair, President or Vice President)

Its: Michael Pintocaris, Project Manager/PLI  
(Print Name and Title)

Date: 12/18/15

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

Its: Joc Foster, Government Relations/PLI  
(Print Name and Title)

Date: 12/18/15

Approved as to Form and Legality  
Office of the County Counsel

By: [Signature]  
Deputy County Counsel

Date: 10-21-15

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

# **EXHIBIT 1**

**STANDARD AGREEMENT  
BETWEEN  
MICHAEL L. BENCH, CONSULTING ARBORIST  
AND THE COUNTY OF MONTEREY  
TO PROVIDE  
TREE RISK ASSESSMENT(S) FOR PG&E**

**COUNTY OF MONTEREY STANDARD AGREEMENT  
(NOT TO EXCEED \$100,000)**

This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

Michael L. Bench, Consulting Arborist  
(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

**1.0 GENERAL DESCRIPTION.**

1.01 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 goods and/or services are generally described as follows:

Provide Tree Risk Assessment(s) for trees located in the Public's right-of-way and on County property identified for preservation/trimming/removal by Pacific Gas and Electric Company's Gas Transmission Pipeline Safety Program.

**2.0 PAYMENT PROVISIONS.**

2.01 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 is not to exceed the sum of \$ 28,750.00.

**3.0 TERM OF AGREEMENT.**

3.01 The term of this Agreement is from January 13, 2016 to September 30, 2016, 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.

3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

**4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.**

4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services/Payment Provisions

Exhibit B Workers Compensation Insurance Modification



## 5.0 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.

## 6.0 PAYMENT CONDITIONS.

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 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. 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.

## 7.0 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 County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

## 8.0 INDEMNIFICATION.

- 8.01 Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

## 9.0 INSURANCE REQUIREMENTS.

### 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 Department, 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 the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

### 9.02 Qualifying Insurers:

All coverage's, 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 Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 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.

*(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.)*

**Business Automobile Liability Insurance**, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 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 years following the expiration or earlier termination of this Agreement.

*(Note: any proposed modifications to these 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.)*

#### 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 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 days in advance of any endorsed reduction in coverage or limit, cancellation, 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.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five 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 at all times 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 County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five 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 County, at its sole discretion, to terminate this Agreement immediately.

## 10.0 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 County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to 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 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 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 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 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 County.

## 11.0 NON-DISCRIMINATION.

- 11.01 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, 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.

## 12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

- 12.01 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, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

**13.0 INDEPENDENT CONTRACTOR.**

13.01 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 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 County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

**14.0 NOTICES.**

14.01 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:
Dalia M. Mariscal-Martinez, Management Analyst II	Michael L. Bench, Consulting Arborist/Owner
Name and Title	Name and Title
County of Monterey, Resource Management Agency 168 West Alisal Street, 2nd Floor Salinas, CA 93901	Michael L. Bench, Consulting Arborist 7327 Langley Canyon Road Prunedale, CA 93907
Address	Address
(831) 755-8966	(831) 594-5151
Phone	Phone

**15.0 MISCELLANEOUS PROVISIONS.**

15.01 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 services required to be rendered under this Agreement.

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

- 15.03 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.
- 15.04 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.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 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.
- 15.07 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.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 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.
- 15.13 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.
- 15.14 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.

- 15.15 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.
- 15.16 Integration. This Agreement, including the exhibits, represent 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.
- 15.17 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.

-----*This section left blank intentionally*-----



16.0 SIGNATURE PAGE.

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

COUNTY OF MONTEREY

CONTRACTOR

By: \_\_\_\_\_  
Contracts/Purchasing Officer

Michael L. Bench, Consulting Arborist  
Contractor's Business Name\*

Date: \_\_\_\_\_

By: [Signature]  
Department Head (if applicable)

By: [Signature]  
(Signature of Chair, President, or Vice-President)\*

Date: 1-25-2016

MICHAEL L. BENCH, OWNER  
Name and Title

Approved as to Form<sup>1</sup>

By: [Signature]  
Deputy County Counsel

Date: DECEMBER 17, 2015

Date: 12-21-15

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

Approved as to Fiscal Provisions<sup>2</sup>

By: [Signature]  
Auditor/Controller

Michael L. Bench, Owner  
Name and Title

Date: [Signature]

Date: 12-17-15

APPROVED AS TO INDEMNITY/  
INSURANCE LANGUAGE  
By: \_\_\_\_\_  
Risk Management

Date: By: [Signature]  
1-5-16

\*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.

<sup>1</sup>Approval by County Counsel is required  
<sup>2</sup>Approval by Auditor/Controller is required  
<sup>3</sup>Approval by Risk Management is required only if changes are made in sections 7 or 8

## EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

To Agreement by and between  
County of Monterey, hereinafter referred to as "COUNTY"  
and  
Michael L. Bench, Consulting Arborist, hereinafter referred to as "CONTRACTOR"

### A. SCOPE OF SERVICES

- A.1 CONTRACTOR shall provide services, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

COUNTY has been contacted by Pacific Gas and Electric (PG&E), Project Applicant, regarding tree risk assessments as part of their upcoming community gas safety work in addressing potential risks to their gas transmission pipelines. PG&E proposes tree and vegetation removal on Public property throughout the County. PG&E would like the COUNTY's input on so-called "franchise trees" which PG&E proposes to either preserve, trim, or remove on Public rights-of-way or COUNTY property. Tree Risk Assessment(s) are needed to determine if trees along the gas transmission pipelines should be removed or maintained and to make recommendations to the COUNTY in the form of a written report.

CONTRACTOR shall perform and complete Tree Risk Assessment(s) for trees located within the COUNTY's right-of-way and on COUNTY property that are proposed for preservation, trimming, or removal by PG&E through their process of gas pipeline testing and replacement throughout Monterey County.

CONTRACTOR shall aggregate the Tree Risk Assessment(s) by franchise area as designated by PG&E.

- A.2 CONTRACTOR shall produce the following deliverables by the date indicated below:

After assessment, CONTRACTOR shall provide a written report/assessment to the COUNTY. Written reports may be provided on either the CONTRACTOR's own assessment form or the ISA Tree Hazard Evaluation Form.

The written report/ISA Tree Hazard Evaluation Form and an electronic version of the report, will be provided to the COUNTY at the following address/telephone number by no later than five (5) business days after the completion of each assessment.

Laura Lawrence, R.E.H.S., RMA Service Manager, or Designee  
County of Monterey  
Resource Management Agency – Planning  
168 West Alisal Street, 2<sup>nd</sup> Floor  
Salinas, CA 93901  
(831) 755- 5148

All Tree Risk Assessment(s) must be completed by CONTRACTOR by no later than July 31, 2016.

## EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

### B. PAYMENT PROVISIONS

#### B.1 COMPENSATION/ PAYMENT

COUNTY shall pay an amount not to exceed \$28,750.00 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 following rates or in accordance with the following terms:

Services performed under this Agreement shall be provided on a time and materials basis at the hourly rate listed below.

Minimum of \$150.00 for up to one (1) hour per site visit and thereafter, billed in fifteen (15) minute increments.

Report writing and report preparation (map reviews, map mark-ups, sketches, etc.) will be billed at \$150.00/per hour in fifteen (15) minute increments.

Research time shall not be billed.

Travel time will not be charged for tree assessment sites located between the areas north of the Carmel Highlands to King City.

Travel time will be charged on an hourly basis for tree assessment sites located south of the Carmel Highlands and/or south of King City but costs are only incurred for travel time once CONTRACTOR travels beyond the limits as noted above.

There shall be no other travel reimbursement allowed during this Agreement.

Rates set forth above shall remain firm for the initial term of the Agreement, and thereafter may be adjusted annually by written amendment executed by the COUNTY as provided in Section 6.02 of Paragraph 6.0, Payment Conditions, of the Agreement.

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.

#### B.2 CONTRACTORS BILLING PROCEDURES

Payment may be based upon satisfactory acceptance of each deliverable.

Invoices under this Agreement shall be submitted monthly and promptly, and in accordance with Paragraph 6.0, Payment Conditions, of the Agreement. All invoices shall reference the Project name and associated Purchase Order (PO) number and an original hardcopy shall be sent to the following:

**EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS**

County of Monterey  
Resource Management Agency -- Finance Division  
168 West Alisal Street, 2<sup>nd</sup> Floor  
Salinas, CA 93901

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

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.

**EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS**

**PAYMENT PROVISIONS**

Invoices for work products / deliverables under the AGREEMENT shall be submitted when the work product is complete and shall identify the document or work product being delivered. Invoices for services performed in conjunction with a work product / deliverable may be billed monthly (by the tenth day of the month) and will be considered on a time and materials basis. All invoices shall include the following:

**1. Invoice Coversheet**

*Michael L. Bench, Consulting Arborist*

*Tree Risk Assessment(s) for Trees Located in the Public's Right-of-Way and on County Property Identified for Preservation/Trimming/Removal by Pacific Gas and Electric Company's Transmission Pipeline Safety Program*

Date: \_\_\_\_\_

Invoice No. \_\_\_\_\_

Agreement Term: *January 13, 2016 – September 30, 2016*

Agreement Amount: *\$ 28,750.00 (\$25,000.00 base budget plus \$3,750.00 project contingency)*

*This Invoice:*

<i>Tree Risk Assessment(s) for PG&amp;E:</i>			
<i>Number of Hours</i>	<i>Hourly Rate</i>	<i>Number of Assessment(s) Performed</i>	<i>Total Charge</i>
	<i>\$150.00</i>		
<i>Grand Total:</i>			<i>\$ _____</i>

Remaining Balance \$ \_\_\_\_\_

Approved as to Work/Payment: \_\_\_\_\_  
*Laura M. Lawrence, REHS, RMA Services Manager or Designee*

Date: \_\_\_\_\_

All Invoices Are To Be Sent To:  
County of Monterey Resource Management Agency  
Finance Division  
168 West Alisal Street, 2<sup>nd</sup> Floor, Salinas, CA 93901

## EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

### 2. Invoice Detail

Each invoice for work products / deliverables shall 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.

### 3. Transfer from Project Contingency Account

Transfer of funding from the Project Contingency Account (total contingency of \$3,750.00) requires the prior written approval of the Director of Planning 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 Director of Planning, or in the Director's absence, designee. Within ten (10) working days thereafter, the Director of Planning 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 Director or designee, the Director of Planning 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 Director of Planning 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.

## **EXHIBIT B – WORKER’S COMPENSATION INSURANCE MODIFICATION**

At the time of execution of this Agreement, Contractor (Michael L. Bench, Consulting Arborist) does not have employees and therefore, does not carry a Workers’ Compensation Insurance coverage. Should Contractor hire employees during the term of this Agreement, Contractor shall comply with County’s insurance requirements pertaining to Workers’ Compensation as described in Section 9.03 of this Agreement.