

Attachment A

Amendment No. 3 to
Professional Services Agreement A-16117

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**AMENDMENT NO. 3
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
ASCENT ENVIRONMENTAL, INC.**

THIS AMENDMENT NO. 3 to Professional Services Agreement No. A-16117 between the County of Monterey, a political subdivision of the State of California (“County”) and Ascent Environmental, Inc. (“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 Professional Services Agreement No. A-16117 with the County on December 14, 2022 (“Agreement”), to provide assistance with the preparation of an Environmental Impact Report related to the Draft Vacation Rental Ordinances Project through June 30, 2024, for an amount not to exceed \$398,650;

WHEREAS, the Agreement was amended by the Parties on July 19, 2023 (“Amendment No. 1,” including Exhibit A-1 – Scope of Work/Payment Provisions) to expand upon the Scope of Work and increase the Agreement amount from \$398,650 by \$62,200 for a new not to exceed amount of \$460,850 with no change to the term;

WHEREAS, the Agreement was amended by the Parties on August 24, 2023 (“Amendment No. 2,” including Exhibit A-2 – Scope of Work/Payment Provisions) to expand upon the Scope of Work, increase the Agreement amount by \$39,865 for a new not to exceed amount of \$500,715, and extend the term of the Agreement to December 31, 2024;

WHEREAS, the County has a continued need for services;

WHEREAS, additional time and funding are necessary to allow the CONTRACTOR to provide services;

WHEREAS, the CONTRACTOR’s rates require updating;

WHEREAS, the provisions of the Agreement require updating;

WHEREAS, the CONTRACTOR has completed and expended funds for Tasks 1 through 11, leaving funds available in the Contingency task totaling of \$14,085.50;

WHEREAS, the Parties have identified the need to expand the scope of work with the addition of Task 12, Additional/On-Call Services to include future work and as-needed tasks;

WHEREAS, the Parties wish to redistribute the remaining \$14,085.50 to the new Task 12, Additional/On-Call Services; and

WHEREAS, the Parties wish to further amend the Agreement to increase the Agreement amount of \$500,715 by \$20,000 for a new not to exceed amount of \$520,715 and extend the term one (1) year to December 31, 2025, 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 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 through A-3** 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 **Exhibit A-3**, 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 \$520,715.

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

The term of this Agreement is from December 6, 2022 to December 31, 2025, unless sooner terminated pursuant to the terms of this Agreement.

4. Amend Paragraph 4, “Additional Provisions/Exhibits” by adding “Exhibit A-3, Scope of Work/Payment Provisions.”
5. Amend Exhibit A – Scope of Work/Payment Provisions to include Task 12, Additional/On-Call Services as described in Exhibit A-3.

6. Amend the first sentence of Exhibit A, Scope of Work/Payment Provisions, B. Payment Provisions, paragraph B.1, Compensation/Payment, to read as follows:

County shall pay an amount not to exceed \$520,715 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

7. Amend Exhibit A, Scope of Work/Payment Provisions, B. “Payment Provisions,” paragraph B.1, Compensation/Payment, by replacing the most recent task and budget table with the updated table in Exhibit A-3.
8. Amend Exhibit A – Scope of Work/Payment Provisions, B. “Payment Provisions,” paragraph B.2 Contractor’s Billing Procedures, to include the following paragraph:

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.

9. Amend Paragraph 9.04, "Other Insurance Requirements," of Section 9.0, "Insurance requirements, to read as follows:

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.

Additional Insured Status:

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

Waiver of Subrogation:

CONTRACTOR hereby grants to County a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the County by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may

be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

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 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 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. Amend Section 11.0, "Non-Discrimination," to read as follows:

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), 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.

11. Amend Agreement to add Paragraph 15.18, "Independent Contractor Compliance with Government Code Section 1097.6(c)," under Section 15, "Miscellaneous Provisions," as follows:

This section applies to those situations when a CONTRACTOR is awarded an Agreement for a preliminary phase of a project, with future phases to be bid separately. This section does not apply to those situations when an Agreement is awarded for multiple phases of a project under a single Agreement/proposal. When applicable, and as described below,

CONTRACTOR'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'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 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.

12. Amend the Agreement to add Section 16.0, 'Compliance with Applicable Laws' to read as follows:

16.01 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 require by law in the performance of the Services.

16.02 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.

16.03 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.

13. Amend Agreement to add Section 17.0 'Consent to Use of Electronic Signatures' to read as follows:

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 Portable Document Format (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.

14. Except as amended herein, all other terms and conditions of the Agreement, including all Exhibits thereto, remain unchanged by this Amendment No. 3 and shall continue in full force and effect.
15. This Amendment No. 3 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.

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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

ASCENT ENVIRONMENTAL, INC.

By: _____
Contracts/Purchasing Officer

By: ^{DocuSigned by:} Gary Jakobs
(Signature of Chairman, President or Vice President)

Date: _____

Gary Jakobs, CEO

Date: 11/1/2024

**Approved as to Form
Office of the County Counsel
Susan K. Blicht, County Counsel**

By: ^{Signed by:} Honey Walters
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

By: ^{Signed by:} Reed Gallogly
3E69DCB3C1E0C Reed Gallogly
Deputy County Counsel

Honey Walters, Secretary

Date: 11/6/2024

Date: 11/6/2024

Approved as to Fiscal Provisions

By: ^{DocuSigned by:} Jennifer Forsyth
4E7E65787545 Auditor/Controller

Date: 11/6/2024

**Approved as to Indemnity and Insurance Provisions
Office of the County Counsel-Risk Management**

By: _____
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 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) managers. 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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EXHIBIT A-3 – SCOPE OF WORK/PAYMENT PROVISIONS

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

TASK 12: ADDITIONAL/ON-CALL SERVICES

CONTRACTOR shall provide additional/on-call services to assist with requests for information or, at direction of the Board of Supervisors, work with County staff to conduct additional research for modification of the ordinances and provide support in the event of a lawsuit on the Vacation Rental Ordinances.

B. PAYMENT PROVISIONS

B.1 COMPENSATION/PAYMENT

County shall pay an amount not to exceed \$520,715 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	Original	Amend #1	Amend #2	Amend #3	TOTAL
Task 1: Administrative Draft EIR	\$184,550	\$0	\$0	\$0	\$184,550
Task 2: Screencheck Draft EIR	38,220	0	0	0	38,220
Task 3: Public Review Draft EIR	19,580	0	0	0	19,580
Task 4: Administrative Final EIR	37,440	0	0	0	37,440
Task 5: Screencheck Final EIR	14,650	0	0	0	14,650
Task 6: Final EIR	10,650	0	0	0	10,650
Task 7: Notice of Determination	1,430	0	0	0	1,430
Task 8: Findings of Fact & Statement of Overriding Considerations	12,330	0	0	0	12,330
Task 9: Project Management, Meetings and Hearings	57,100	9,930	0	0	67,030
Task 10: Social and Economic Section	0	18,030	7,170	0	25,200
Task 11: Added Alternatives Analysis	0	14,240	4,750	0	18,990
Task 12: As-Needed Services	0	0	0	34,085.50	34,085.50
Contingency	20,000 ¹	20,000 ¹	27,945	-14,085.50	53,859.50
Reimbursable Expenses (reproduction, mileage/travel & postage)	2,700	0	0	0	2,700
TOTAL	\$398,650	\$62,200	\$39,865	\$20,000.00	\$520,715

EXHIBIT A-3 – SCOPE OF WORK/PAYMENT PROVISIONS

**RATE SCHEDULE
Effective until December 31, 2025**

Labor Classification	Billing Rate
Principal, Director	\$225 to \$380
Senior Environmental Manager, Senior Planner/Scientist/Biologist	\$175 to \$260
Environmental Manager, Project Planner/Scientist/Biologist	\$145 to \$215
Staff Planner, Environmental Planner, Staff Scientist/Staff Biologist	\$105 to \$185
Graphics/GIS	\$115 to \$160
Document Production/Word Processor/Administrative Assistant	\$95 to \$150
Project Assistant	\$75 to \$135
Direct Costs	Rates
Reproduction: 8½" by 11"	\$0.07/page (black and white); \$0.26/page (color)
Reproduction: 11" by 17"	\$0.14/page B&W; \$0.52/page color
Reproduction: Plotter	\$5/square foot
Reproduction: CDs	\$10/disc
Automobile Mileage (IRS rate in effect)	\$0.67
Noise Meter	\$100/half day, \$150/day, \$200/day plus overnight, \$500/week
GPS Unit	\$100/half day, \$150/day, \$200/day plus overnight, \$500/week
Bat Detector (Echo Meter Touch for iOS)	\$50/full day, \$200/week
Bat Detector (Song Meter SM4Bat FS)	\$125/full day, \$500/week
Spotting Scope	\$50/day, \$200/week
Lodging and/or Per Diem	Government rates or as negotiated
Other Direct Costs	As incurred
Subcontractors	As incurred*

*A project-support management cost of 10 percent will be applied to subcontractor costs.

Lump-Sum Price. Work is authorized based on a lump sum price. Monthly invoices will be issued based on the percentage of progress toward completion of the work.

Price Allocation to Tasks or Staff. If the proposed cost presentation allocates funding to specific tasks or staff, Ascent may reallocate budget during the course of work, as long as the total contract price is not exceeded.

EXHIBIT A-3 – 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 Multiyear Agreement (MYA) number *6905, Project name and/or 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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