

Attachment B

Amendment No. 1 to
Professional Services Agreement A-15123

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**AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
RINCON CONSULTANTS, INC.**

THIS AMENDMENT NO. 1 to Professional Services Agreement A-15123 between the County of Monterey, a political subdivision of the State of California (“County”) and Rincon Consultants, 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 a Professional Services Agreement with the County on March 17, 2021 (“Agreement”) to prepare an Environmental Impact Report (EIR) for the Charolais Ranch Subdivision Project (“Project”) through March 9, 2026, for an amount not to exceed \$148,858.30;

WHEREAS, the Administrative Draft EIR for the Project requires revisions to the analysis and modeling in the EIR and will need additional rounds of review prior to publication of the Draft EIR;

WHEREAS, the provisions of the Agreement require an update;

WHEREAS, the original Agreement amount of \$148,858.30 requires correction to include the optional tasks in the amount of \$18,550.00 for a corrected original Agreement amount of \$167,408.30;

WHEREAS, additional funds are necessary to expand Task 5 – Second Administrative Draft EIR, Task 7 – Responses to Comments/Administrative Final EIR, Task 8 – Final EIR and MMRP, and Task 10 – Project Management; and

WHEREAS, the Parties wish to further amend the Agreement to expand the Scope of Services/Payment Provisions and increase the Agreement amount of \$167,408.30 by \$36,365.00 for a new not to exceed amount of \$203,773.30 with no change to the term of the Agreement.

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 and A-1** in conformity with the terms of this Agreement.

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2. Amend the second sentence of Paragraph 2, "Payments by County," to read as follows:

The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$203,773.30.

3. Amend Paragraph 9.03, "Insurance Coverage Requirements," of Section 9.0, "Insurance Requirements," to read as follows:

Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Auto Liability Coverage: must include all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit or Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services.

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If professional liability insurance is written on a “claims-made” basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail coverage shall continue for at least three (3) years following the expiration or earlier termination of this Agreement.

(Note: Professional liability insurance coverage is required if the CONTRACTOR is providing a professional service regulated by the state. Examples of service providers regulated by the state are insurance agents, professional architects and engineers, doctors, certified public accountants, lawyers, etc. However, other professional contractors, such as a computer or software designers, technology services, and services providers such as claims administrators, should also have professional liability. If in doubt, consult with your risk or contract manager.)

If the CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the CONTRACTOR.

4. 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).

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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.

5. 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

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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.

6. 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.

7. 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.

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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.

8. 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.

9. In all places within the Agreement, any reference to the County’s email address that includes @co.monterey.ca.us is hereby replaced with @countyofmonterey.gov.
10. Except as amended herein, all other terms and conditions of the Agreement, including all Exhibits thereto, remain in full force and effect.
11. This Amendment No. 1 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.

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EXHIBIT A-1 – SCOPE OF WORK/PAYMENT PROVISIONS

**To Funding Agreement by and between
County of Monterey, hereinafter referred to as “County”
and
Rincon Consultants, 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 5 – Second Administrative Draft EIR:

CONTRACTOR shall provide additional necessary revisions to the working version of the Administrative Draft EIR associated with the changes to standard modeling and analysis methodology that were not included in Exhibit A.

The following summary indicates the anticipated level of effort to address these revisions:

Section 1, Introduction: No substantial revisions.

Section 2, Project Description: No substantial revisions.

Section 3, Environmental Setting: No substantial revisions.

Section 4, Environmental Impact Analysis: No substantial revisions.

- Section 4.1, Aesthetics: Update references to eligible and officially designated scenic highways as needed.
- Section 4.2, Air Quality:
 - Re-model CalEEMod, using the most recent version of the model.
 - Update existing setting data and citations.
 - Update estimated air quality emissions and associated analyses with updated modeling results.
- Section 4.3, Biological Resources: Update special status species lists and ensure all listed species are addressed in the analysis.
- Section 4.4, Cultural and Tribal Cultural Resources:
 - Cultural resource studies are valid for five (5) years; the memorandum prepared for this project was dated August 2021 and does not require updates.
 - No substantial revisions.
- Section 4.5, Energy:
 - Update existing setting data and citations.
 - Update estimated energy usage and associated analyses with updated CalEEMod results.
- Section 4.6, Geology and Soils: Update existing setting data and citations, including California Building Code citations.

EXHIBIT A-1 – SCOPE OF WORK/PAYMENT PROVISIONS

- Section 4.7, Greenhouse Gas Emissions:
 - Update existing setting data and citations, including California Building Code citations.
 - Update estimated greenhouse emissions and associated analyses with updated modeling results.
 - Update GHG thresholds to match the most recent State and local guidance.
- Section 4.8, Hydrology and Water Quality: Update existing setting data and citations, including existing water quality concerns.
- Section 4.9, Land Use and Planning: No substantial revisions.
- Section 4.10, Noise: No substantial revisions.
- Section 4.11, Transportation: No substantial revisions.
- Section 4.12, Utilities and Service Systems: No substantial revisions.
- Section 4.13, Wildfire:
 - Update existing setting and wildfire analysis based on most recent State guidance and best practices.
 - Update citations, including CAL FIRE citations.
- Section 5, Other CEQA Considerations: Update citations, including Department of Finance statistics.
- Section 6, Alternatives: Update as needed to reflect the changes throughout the EIR.
- Section 7, References: Update as needed to reflect the changes throughout the EIR.

TASK 5.1 – Screencheck Draft EIR

- CONTRACTOR shall respond to County Counsel comments on the Second Administrative Draft EIR.
- CONTRACTOR shall address legal comments, which may result in substantive revisions, but will not require new or additional analysis, modeling, or field work.
- CONTRACTOR shall address applicant comments on the project description chapter and mitigation measures, in coordination with County staff. CONTRACTOR assumes that applicant comments will result in minor edits to the project description; major modifications at this stage could require revisions to other sections of the EIR, which would require a separate scope amendment.

Professional Staff Hours (estimated): 40

TASK 7 – Responses to Comments/Administrative Final EIR

CONTRACTOR shall address one additional letter from a CEQA or land use attorney, assuming this letter may be up to 15 pages long and contain up to two attached technical studies or memoranda. CONTRACTOR assumes additional, new analysis would not be required to sufficiently address this comment letter.

Professional Staff Hours (maximum): 45

EXHIBIT A-1 – SCOPE OF WORK/PAYMENT PROVISIONS

TASK 8 – Final EIR and MMRP

CONTRACTOR shall respond to additional County Counsel comments on the Responses to Comments/Administrative Final EIR. Applicant’s review of this deliverable is not anticipated.

TASK 10 – Project Management and Coordination

CONTRACTOR shall provide additional project management labor associated with standard project management tasks including internal team coordination, budget and schedule management, and project oversight.

Assumptions

- CONTRACTOR anticipates no further schedule delays will occur that could result in the need to make similar updates to the citations, methodology, and analysis conducted for the Draft EIR.
- No additional site visits will be necessary to update existing condition descriptions.

B. PAYMENT PROVISIONS

B.1 COMPENSATION/PAYMENT

County shall pay an amount not to exceed \$203,773.30 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:

Cost Summary

Task		Estimated Cost
Task 5	Second Administrative Draft EIR	\$12,718.00
Task 5.1	Screencheck Draft EIR	\$8,728.00
Task 7	Responses to Comments/Administrative Final EIR	\$8,703.00
Task 8	Final EIR and MMRP	\$2,584.00
Task 10	Project Management and Coordination	\$3,632.00
Total		\$36,365.00

There shall be no travel reimbursement allowed during this Agreement.

CONTRACTOR warrants that the costs 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.

EXHIBIT A-1 – SCOPE OF WORK/PAYMENT PROVISIONS

B.2 CONTRACTOR’S BILLING PROCEDURES

Invoices under this Agreement shall be submitted monthly and promptly, and in accordance with Paragraph 6, “Payment Conditions,” of the Agreement. All invoices shall reference the Project name, 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.