

# AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

**THIS AGREEMENT** (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter County) and Rincon Consultants, Inc. with an address at 1530 Monterey Street, Suite D, San Luis Obispo, California 93401 (hereafter Contractor) wherein Contractor agrees to provide and County agrees to accept the services specified herein.

**WHEREAS**, Contractor represents that it is specially trained, skilled, experienced, and competent to perform the special services required by County and County desires to retain the services of Contractor pursuant to the terms, covenants, and conditions herein set forth;

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

## 1. DESIGNATED REPRESENTATIVE

Diana Estorga at phone number 805-803-8763 is the representative of County and will administer this Agreement for and on behalf of County. Richard Daulton at phone number 805-547-0900 is the authorized representative for Contractor. Changes in designated representatives shall be made only after advance written notice to the other party. The designated County representative may also be referred to herein as the "Contract Administrator."

## 2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To County: Diana Estorga, County of Santa Barbara, 620 W. Foster Road, CA, 93455, 805-803-8763, destorg@cosbpw.net

To Contractor: Richard Daulton, Rincon Consultants, Inc., 1530 Monterey Street, Suite D, San Luis Obispo, CA 93401, rdaulton@rinconconsultants.com

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

## 3. SCOPE OF SERVICES

Contractor agrees to provide services to County in accordance with Exhibit A attached hereto and incorporated herein by reference.

## 4. PERFORMANCE PERIOD

- A. Contractor shall commence performance on August 31, 2021 and end performance upon completion, but no later than August 31, 2022 unless otherwise directed by County or unless earlier terminated.
- B. The Director of Public Works, or designee, may extend the period of performance of this Agreement for up to a period of one year by giving written notice of extension to Contractor.

## 5. COMPENSATION OF CONTRACTOR

In full consideration for Contractor's services, Contractor shall be paid for performance under this Agreement in accordance with the terms of Exhibit B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by County and which is delivered to the address given in Clause 2 "NOTICES" above following completion of the increments identified on Exhibit B. Unless otherwise specified on Exhibit B, payment shall be net thirty (30) days from presentation of invoice.

## 6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that Contractor (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to County and not as an officer, agent, servant, employee, joint venturer, partner, or associate of County. Furthermore, County shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its work and function. However, County shall retain the right to administer this Agreement so as to verify that Contractor is



performing its obligations in accordance with the terms and conditions hereof. Contractor understands and acknowledges that it shall not be entitled to any of the benefits of a County employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. Contractor shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Contractor shall be solely responsible and save County harmless from all matters relating to payment of Contractor's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to the County or to this Agreement.

## **7. STANDARD OF PERFORMANCE**

Contractor represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Contractor shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which Contractor is engaged. All products of whatsoever nature, which Contractor delivers to County pursuant to this Agreement, shall be prepared in a manner consistent with the standards normally observed by a person practicing in Contractor's profession. Contractor shall correct or revise any errors or omissions, at County's request without additional compensation. Permits and/or licenses shall be obtained and maintained by Contractor without additional compensation.

## **8. DEBARMENT AND SUSPENSION MANDATORY DISCLOSURE**

- A. Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that Contractor has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Contractor responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.
- D. Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, which certifies that Contractor or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility for participation in any state or local government agency contracts. Contractor certifies that it shall not contract with a subcontractor that is so debarred or suspended.

## **9. TAXES**

Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. County shall not be responsible for paying any taxes on Contractor's behalf, and should County be required to do so by state, federal, or local taxing agencies, Contractor agrees to promptly reimburse County for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

## **10. CONFLICT OF INTEREST**

- A. Contractor shall disclose in writing any financial, business, or other relationship with County that may have an impact upon the outcome of this Agreement, or any ensuing County construction project. Contractor shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing County construction project, which will follow.
- B. Contractor hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.



- C. Any subcontract entered into as a result of this Agreement, shall contain all of the provisions of this Section.
- D. Contractor hereby certifies that neither Contractor, its employees, nor any firm affiliated with Contractor providing services on this project prepared the Plans, Specifications, and Estimate for any construction project included within this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Contractor further certifies that neither Contractor, nor any firm affiliated with Contractor, will bid on any construction subcontracts included within the construction contract. Additionally, Contractor certifies that no person working under this Agreement is also employed by the construction contractor for any project included within this Agreement.
- F. Except for subcontractor whose services are limited to materials testing, no subcontractor who is providing service on this Agreement shall have provided services on the design of any project included within this Agreement.

#### **11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

County shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. Contractor shall not release any of such items to other parties except after prior written approval of County.

Unless otherwise specified in Exhibit A, Contractor hereby assigns to County all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by Contractor pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). County shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. Contractor agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. Contractor warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. Contractor at its own expense shall defend, indemnify, and hold harmless County against any claim that any Copyrightable Works or Inventions or other items provided by Contractor hereunder infringe upon intellectual or other proprietary rights of a third party, and Contractor shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by County in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

#### **12. NO PUBLICITY OR ENDORSEMENT**

Contractor shall not use County's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Contractor shall not use County's name or logo in any manner that would give the appearance that the County is endorsing Contractor. Contractor shall not in any way contract on behalf of or in the name of County. Contractor shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the County or its projects, without obtaining the prior written approval of County.

#### **13. COUNTY PROPERTY AND INFORMATION**

All of County's property, documents, and information provided for Contractor's use in connection with the services shall remain County's property, and Contractor shall return any such items whenever requested by County and whenever required according to the Termination section of this Agreement. Contractor may use such items only in connection with providing the services. Contractor shall not disseminate any County property, documents, or information without County's prior written consent.

#### **14. RECORDS, AUDIT, AND REVIEW**

Contractor shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Contractor's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. County shall have the right to audit and review all such documents and records at any time during Contractor's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), Contractor shall be subject to the examination and audit of the California State



Auditor, at the request of the County or as part of any audit of the County, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). Contractor shall participate in any audits and reviews, whether by County or the State, at no charge to County.

If federal, state or County audit exceptions are made relating to this Agreement, Contractor shall reimburse all costs incurred by federal, state, and/or County governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from County, Contractor shall reimburse the amount of the audit exceptions and any other related costs directly to County as specified by County in the notification.

#### **15. INDEMNIFICATION AND INSURANCE**

Contractor agrees to the indemnification and insurance provisions as set forth in Exhibit C attached hereto and incorporated herein by reference.

#### **16. NONDISCRIMINATION**

- A. County hereby notifies Contractor that County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and Contractor agrees to comply with said ordinance.
- B. **Statement of Compliance California:**
- 1) Contractor's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Contractor has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
  - 2) During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- C. **Federal Assurances:** Contractor shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with the provisions contained in 49 CFR 21 through Appendix C and 23 CFR 710.405(b). During the performance of this Agreement, Contractor, for itself, its assignees and successors in interest agrees as follows:
- 1) **Compliance with Regulations:** Contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by this reference and made a part of this Agreement.
  - 2) **Nondiscrimination:** Contractor or subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as recipient deems appropriate. Contractor, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection or retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the regulations.



- 3) Solicitations for subcontractors, including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by Contractor for work to be performed under the subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age or national origin.
- 4) Information and Reports: Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by COUNTY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to COUNTY, and shall set forth what efforts it has made to obtain the information.
- 5) Sanctions for Noncompliance: In the event of Contractor's noncompliance with the nondiscrimination provisions of this Agreement, COUNTY shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to Contractor under this Agreement until Contractor complies, and/or
  - b. Cancellation, termination or suspension of the Agreement in whole or in part.

**D. Pertinent Non-Discrimination Authorities:** During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- 1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- 2) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- 3) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- 4) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- 5) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- 6) Airport and Airway Improvement Act of 1982, ( 49 USC § 4 71, Section 4 7123 ), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 7) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- 8) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
- 9) The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- 10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- 11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- 12) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## 17. NONEXCLUSIVE AGREEMENT

Contractor understands that this is not an exclusive Agreement and that County shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Contractor as the County desires.



**18. NON-ASSIGNMENT**

Contractor shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of County and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

**19. TERMINATION**

- A. **By County.** County may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, whether for County's convenience, for nonappropriation of funds, or because of the failure of Contractor to fulfill the obligations herein.
- 1) **For Convenience.** County may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, Contractor shall, as directed by County, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on County from such winding down and cessation of services.
  - 2) **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or County governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then County will notify Contractor of such occurrence and County may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, County shall have no obligation to make payments with regard to the remainder of the term.
  - 3) **For Cause.** Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County may, at County's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, Contractor shall immediately discontinue all services affected (unless the notice directs otherwise) and notify County as to the status of its performance. The date of termination shall be the date the notice is received by Contractor, unless the notice directs otherwise.
- B. **By Contractor.** Should County fail to pay Contractor all or any part of the payment set forth in Exhibit B, Contractor may, at Contractor's option terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.
- C. Upon termination, Contractor shall deliver to County all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by Contractor in performing this Agreement, whether completed or in process, except such items as County may, by written permission, permit Contractor to retain. Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to County such financial information as in the judgment of County is necessary to determine the reasonable value of the services rendered by Contractor. In the event of a dispute as to the reasonable value of the services rendered by Contractor, the decision of County shall be final. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.

**20. SECTION HEADINGS**

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

**21. SEVERABILITY**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**22. REMEDIES NOT EXCLUSIVE**

No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to



any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

**23. TIME IS OF THE ESSENCE**

Time is of the essence in this Agreement and each covenant and term is a condition herein.

**24. NO WAIVER OF DEFAULT**

No delay or omission of County to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to County shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of County.

**25. ENTIRE AGREEMENT AND AMENDMENT**

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

**26. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**27. COMPLIANCE WITH LAW**

Contractor shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Contractor in any action or proceeding against Contractor, whether County is a party thereto or not, that Contractor has violated any such ordinance or statute, shall be conclusive of that fact as between Contractor and County.

**28. CALIFORNIA LAW AND JURISDICTION**

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

**29. EXECUTION OF COUNTERPARTS**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

**30. AUTHORITY**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

**31. SURVIVAL**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

**32. PRECEDENCE**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

**33. HANDLING OF PROPRIETARY INFORMATION**

Contractor understands and agrees that certain materials which may be provided by County may be classified



and conspicuously labeled as proprietary confidential information. That material is to be subject to the following special provisions:

- A. All reasonable steps will be taken to prevent disclosure of the material to any person except those personnel of Contractor working on the project who have a need to use the material.
- B. Upon conclusion of Contractor's work, Contractor shall return all copies of the material direct to party providing such material. Contractor shall contact County to obtain the name of the specific party authorized to receive the material.

#### **34. IMMATERIAL AMENDMENTS**

Contractor and County agree that immaterial amendments to this Agreement such as time frame and mutually agreeable work program changes which will not result in a change to the total Agreement amount or to the scope of the Statement of Work may be authorized by the Public Works Director, or designee, in writing, and will not constitute an amendment to the Agreement.

#### **35. NEWS RELEASES/INTERVIEWS**

Contractor agrees for itself, its agents, employees, and subcontractors, it will not communicate with representatives of the communications media concerning the subject matter of this Agreement without prior written approval of the County Agency Contact Person. Contractor further agrees that all media requests for communication will be referred to County's responsible personnel.

#### **36. FEDERAL AND STATE PREVAILING WAGE RATES**

- A. As applicable, Contractor shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.
- D. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code § 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code § 1771.1(a)]; no contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code § 1725.5; and this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

#### **37. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowable cost(s) of individual items.
- B. Contractor also agrees to comply with federal procedures in accordance with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Super or Omni Circular)
- C. Any costs for which payment has been made to Contractor that are determined by subsequent audit to be unallowable under applicable Federal Regulations, are subject to repayment by Contractor to County.
- D. All subcontracts shall contain the above provisions.

#### **38. SUBCONTRACTING**

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between County and any subcontractor(s), and no subcontract shall relieve Contractor of its responsibilities and obligations hereunder. Contractor agrees to be as fully responsible to County for the acts and omissions of its subcontractor(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Contractor. Contractor's obligation to pay its subcontractor(s) is an independent obligation from County's obligation to make payments to the Contractor.
- B. Contractor shall perform the work contemplated with resources available within its own organization and no



portion of the work pertinent to this Agreement shall be subcontracted without written authorization by County's designated representative, except that, which is expressly identified in the approved Cost Proposal.

- C. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to Contractor by County.
- D. Any subcontract entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
- E. Any substitution of subcontractor(s) must be approved in writing by County's designated representative prior to the start of work by the subcontractor(s).

### **39. EQUIPMENT PURCHASES**

- A. Prior authorization in writing, by County's designated representative shall be required before Contractor enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Contractor services. Contractor shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in Contractor's Cost Proposal and exceeding \$5,000 prior authorization by County's designated representative; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this Agreement is subject to the following: "Contractor shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Contractor may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Contractor elects to keep the equipment, fair market value shall be determined at Contractor's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Contractor, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County."

- C. All subcontracts shall contain the above provisions.

### **40. AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by County's Deputy Director - Finance and Administration for Public Works.
- B. Not later than 30 days after issuance of the final audit report, Contractor may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by County will excuse Contractor from full and timely performance, in accordance with the terms of this Agreement.
- D. Contractor and subcontractor Agreements, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an Agreement audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the Agreement, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Contractor's responsibility to ensure federal, County, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The Agreement, cost proposal, and ICR shall be adjusted by Contractor and approved by County to conform to the audit or review recommendations. Contractor agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by County at its sole discretion. Refusal by Contractor to incorporate audit or review recommendations, or to ensure that the federal, County or local governments have access to CPA work papers, will be considered a breach of Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.



E. Contractor's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the Contractor and approved by the County to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the Contractor to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

- 1) During IOAI's review of the ICR audit work papers created by the Contractor's independent CPA, IOAI will work with the CPA and/or Contractor toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, County will reimburse the Contractor at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide and other applicable procedures and guidelines is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
  - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) -the accepted rate will be eighty-five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
- 2) If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require Contractor to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the Contractor's and/or the independent CPA's revisions.
  - 3) If the Contractor fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.
  - 4) Contractor may submit to County final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Agreement has been completed to the satisfaction of County; and, (3) IOAI has issued its final ICR review letter. The CONTRACTOR MUST SUBMIT ITS FINAL INVOICE TO COUNTY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement and all other agreements executed between County and the Contractor, either as a prime or subcontractor, with the same fiscal period ICR.

#### **41. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

Contractor warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

#### **42. PROHIBITION OF EXPENDING COUNTY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

A. Contractor certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by-or-on behalf of Contractor to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.



- 2) If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
  - C. Contractor also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

#### **43. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.**

Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). The Contractor shall promptly disclose, in writing, to the County office, to the Federal Awarding Agency, and to the Regional Office of the Environmental Protection Agency (EPA), whenever, in connection with the award, performance, or closeout of this Agreement or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of the Clean Air Act (42 U.S.C. 7401-7671q.) or the Federal Water Pollution Control Act (33 U.S.C. 1251-1387).

#### **44. PROCUREMENT OF RECOVERED MATERIALS**

Contractor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### **45. SUSPENSION FOR CONVENIENCE**

County may without cause, order Contractor in writing to suspend, delay, or interrupt the services under this Agreement in whole or in part for up to 30 days. County shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this Agreement.

#### **46. DISADVANTAGE BUSINESS ENTERPRISE REQUIREMENTS**

Contractor must submit Local Assistance Procedures Manual Exhibit 9-F, 'Disadvantaged Business Enterprise (DBE) Running Tally of Payments,' no later than the 10<sup>th</sup> day of the following month after submitting an invoice for reimbursement. Form must also be emailed to [Business.Support.Unit@dot.ca.gov](mailto:Business.Support.Unit@dot.ca.gov).

Contractor must submit Local Assistance Procedures Manual Exhibit 17-F, 'Final Report-Utilization of Disadvantage Business Enterprise (DBE) and First-Tier Subcontractor' with the final invoice.



## CONTRACTOR SIGNATURE PAGE

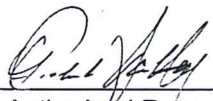
Agreement for services and work to be performed by Contractor between the County and Contractor.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by County.

**CONTRACTOR:**

Richard Daulton  
\_\_\_\_\_  
Rincon Consultants, Inc.  
\_\_\_\_\_  
1530 Monterey Street, Suite D  
\_\_\_\_\_  
San Luis Obispo, CA 93401  
\_\_\_\_\_

904732.  
\_\_\_\_\_  
Business Type: Corporation  
\_\_\_\_\_  
rdaulton@rinconconsultants.com  
\_\_\_\_\_  
805-547-0900 ext. 128  
\_\_\_\_\_

By:   
\_\_\_\_\_  
Authorized Representative

Date: July 20, 2021  
\_\_\_\_\_



## COUNTY SIGNATURE PAGE

Agreement for services and work to be performed by Contractor between the County and Contractor.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by County.

**ATTEST:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

**COUNTY OF SANTA BARBARA:**

Bob Nelson

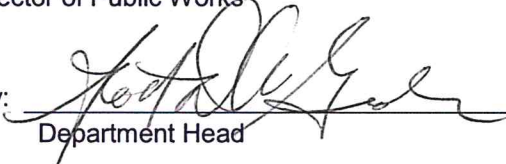
By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chair, Board of Supervisors

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

**RECOMMENDED FOR APPROVAL:**

Scott D. McGolpin  
Director of Public Works

By:   
Department Head

**APPROVED AS TO FORM:**

Ray Aromatorio  
Risk Manager

By:   
D3DB8526E16F47F...  
Deputy

**APPROVED AS TO ACCOUNTING FORM:**

Betsy M. Schaffer, CPA  
Auditor-Controller

By:   
D25019E2AF094BE...  
Deputy

**APPROVED AS TO FORM:**

Rachel Van Mullem  
County Counsel

By:   
61A92FE8AE994D1...  
Deputy County Counsel



## Exhibit A – Statement of Work





**Rincon Consultants, Inc.**

1530 Monterey Street, Suite D  
San Luis Obispo, California 93401

805 547 0900

info@rinconconsultants.com  
www.rinconconsultants.com

July 16, 2021

Project No: 13-01370

Mr. Walter Rubalcava  
County of Santa Barbara  
Department of Public Works  
Transportation Division  
123 East Anapamu Street  
Santa Barbara, California 93101  
Via email: [Wrubalc@cosbpw.net](mailto:Wrubalc@cosbpw.net)

**Subject: Proposal to Complete the Hollister Avenue-State Street Improvements Project EIR-EA**

Dear Mr. Rubalcava:

Rincon's existing contract for completion of the Project Environmental Document (EIR-EA) has expired with tasks remaining to complete. The following scope of work is intended to complete the project EIR-EA.

## Scope of Work

### Task 2.1 Draft EIR-EA

Within twenty (20) working days after receiving Caltrans' final comments on the Administrative Draft EIR-EA, Rincon will produce the Public Draft EIR-EA with Technical Appendices. This scope of work assumes up to two rounds of comments from Caltrans (and no further comments from County staff on the Administrative Draft EIR-EA). Additional rounds of comments/revisions would require additional staff time and budget to address. Upon receiving clearance, Rincon will print and deliver three (3) bound copies of the Draft EIR-EA with technical appendices included as a CD-insert and two (2) electronic copies of the Draft EIR-EA with the files divided into chapters. In addition, Rincon will prepare the Notice of Completion (NOC) and Notice of Availability (NOA) of the Draft EIR-EA for distribution and notice suitable for publication in the Federal Register.

*Deliverables: Rincon will submit three (3) bound copies with technical appendices included as a CD-insert and two (2) electronic copies with the files divided into chapters of the Draft EIR-EA.*

### Task 2.2 Final EIR-EA

**Subtask 2.2.1: Administrative Final EIR-EA, Including Responses to Comments.** During the 45-day public review period Rincon will attend a public environmental comment hearing (refer to Task 2.3). Within ten (10) days of this hearing Rincon will prepare a written summary of comments received at the hearing. Within fifteen (15) working days of the close of the public comment period on the Draft EIR Rincon will produce the Administrative Final EIR-EA. This task will involve modifying, as necessary, the Draft EIR-EA to address public comments received during the environmental comment hearing and public review period. This task assumes up to 64 hours of professional time. We understand that this is a potentially





controversial project and believe that this budget is adequate to address a project of this nature. However, we reserve the right to renegotiate this task should it require additional effort. Following the close of the EIR-EA comment period, Rincon will meet with County staff to reexamine and discuss refinements to the environmental scope of work and budget to address public and agency input.

*Deliverables: Rincon will submit one electronic copy of a written summary of comments on the Draft EIR-EA, and one electronic copy of the proposed Administrative Final EIR-EA with responses to comments for County and Caltrans review.*

**Subtask 2.2.2: Draft Final EIR-EA.** Within fifteen (15) working days of receipt of the County's and Caltrans' final comments on the Administrative Final EIR-EA Rincon will prepare a Draft Final EIR-EA including the Mitigation Monitoring and Reporting Program (MMRP). We assume the County will be responsible for preparing CEQA Findings and a Statement of Overriding Considerations, if required. Rincon assumes that comments will be received from Caltrans staff peer review process and QA/QC staff during this round of review. This scope of work assumes that the County will provide one set of consolidated comments for review, and that Caltrans will provide up to two sets of consolidated comments for review. Additional rounds of comments/revisions would require additional staff time and budget to address.

*Deliverables: Rincon will deliver two (2) electronic copies with the files divided into chapters. Rincon will circulate the Final EIR-EA with Technical Appendices for public review at least 30 days prior to a decision on the project.*

**Subtask 2.2.3: Publication of the Final EIR-EA.** Within fifteen (15) working days after final decision maker action on the project and Draft Final EIR-EA Rincon will deliver three (3) bound copies with technical appendices included as a CD-insert and one electronic copy of the Final EIR-EA with technical appendices. Rincon will assist in filing of the Final EIR-EA, including preparation of the Notice of Determination. This scope of work assumes that the County will be responsible for the associated filing fees.

*Deliverables: Rincon will deliver three (3) bound copies with technical appendices included as a CD-insert and one electronic copy of the Final EIR-EA.*

### Task 2.3 Public Hearings and Meetings

Rincon assumes that meeting attendance will be required throughout the preparation of the EIR-EA. Rincon anticipates the need to accompany County staff to project-related meetings, workshops, and public hearings. This scope anticipates that Rincon's project manager or assistance project manager would be available to attend the following meetings:

- Three (3) PDT meetings or other County staff coordination meetings
- Two (2) public hearings, including:
  - One (1) public environmental comment hearing on the draft environmental document
  - One (1) hearing with the County Board of Supervisors on the project and Final environmental document

At each public hearing, Rincon's project manager will present relevant environmental topics, supplemented with graphic presentations, if necessary. In addition, Rincon environmental topic experts will be available to address specific issues of concern. Our scope of work assumes that one topic expert





will attend each public hearing. We assume all hearings will be noticed and hosted by County staff. At the County's request, we will attend additional hearings or arrange for additional technical experts to attend the public hearings at an additional cost. We will be available to attend additional hearings or meetings at a cost of \$1,500 per meeting or hearing, if desired. At the public hearing on the draft environmental documents, Rincon will provide a written summary of comments received. However, it is recommended that if verbal comments are accepted as formal comments on the environmental documents, that the County provide a stenographer to prepare an official meeting transcript.

*Deliverables: One reproducible electronic copy of the written summary of comments at the public hearing on the draft environmental documents.*

#### Task 2.4 EIR-EA Project Management

Rincon will manage the preparation of the remaining environmental technical studies and environmental document (EIR-EA), coordinate the environmental review process schedule, and provide project updates for the environmental analysis. Rincon's principal in charge or project manager will also review and comment on the meeting minutes and Project Development Team (PDT) agendas (refer to Task 2.3).

### Schedule

Rincon is available to commence this work program immediately upon receipt of comments from Caltrans on the Draft EIR-EA. We understand Caltrans review of the Draft EIR-EA will proceed subsequent to their approval of the cultural resources documentation (HPSR package). Rincon assumes the EIR-EA tasks may be completed within 150 days (five months) from Caltrans completing their review of the Draft EIR-EA and providing any comments/recommendations.

### Cost Estimate

Rincon will provide the cost estimate associated with the above scope of work via separate email. Our fee would not exceed the provided estimate without receipt of prior written authorization.

We appreciate the opportunity to assist you with this project. If you have any questions regarding this proposal please contact Project Manager Chris Bersbach at (805) 547-0900 ext. 124 or [cbersbach@rinconconsultants.com](mailto:cbersbach@rinconconsultants.com).

Sincerely,  
**Rincon Consultants, Inc.**

  
Chris Bersbach  
Senior Planner/Program Manager  
Email: [cbersbach@rinconconsultants.com](mailto:cbersbach@rinconconsultants.com)

  
Richard Daulton, MURP  
Principal/Vice President  
Phone: 805-547-0900 x128  
Email: [rdaulton@rinconconsultants.com](mailto:rdaulton@rinconconsultants.com)

*Contact for Clarification*

*Authorized to contractually obligate and negotiate on behalf of Rincon Consultants, Inc.*



**EXHIBIT 10-H1 COST PROPOSAL** PAGE 1 OF 3  
**ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS**  
(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed  Prime Consultant  Subconsultant  2nd Tier Subconsultant  
 Consultant Rincon Consultants, Inc. Contract No. \_\_\_\_\_ Date 7/19/2021

**DIRECT LABOR**

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Principal II*	Richard Daulton	26	\$112.84	\$2,933.84
Supervisor Planner I*	Melissa Whitmore	16	\$53.48	\$855.68
Supervisor Planner I*	Christopher Bersbach	48	\$52.88	\$2,538.24
Professional IV	Various	48	\$40.08	\$1,923.84
Professional III	Various	42	\$33.65	\$1,413.30
Production Specialist	Various	9	\$28.05	\$252.45
GIS/CADD Specialist	Various	4	\$28.33	\$113.32
Clerical/Administrative	Various	8	\$27.73	\$221.84

**LABOR COSTS**

a) Subtotal Direct Labor Costs \$10,252.51  
 b) Anticipated Salary Increases (see page 2 for calculation) \$0.00  
**c) TOTAL DIRECT LABOR COSTS [(a) + (b)]** \$10,252.51

**INDIRECT COSTS**

d) Fringe Benefits (Rate: 66.20%) e) Total Fringe Benefits [(c) x (d)] \$6,787.16  
 f) Overhead (Rate: 86.95%) g) Overhead [(c) x (f)] \$8,914.56  
 h) General and Administrative (Rate: 0.00%) i) Gen & Admin [(c) x (h)] \$0.00  
**j) Total Indirect Costs [(e) + (g) + (i)]** \$15,701.72

**FIXED FEE**

o) (Rate: 15.00%) **k) TOTAL FIXED PROFIT [(c) + (j) x (o)]** \$3,893.13

**l) CONSULTANT'S OTHER DIRECT COSTS (ODC) - ITEMIZE (Add additional pages if necessary)**

Description of item	Quantity	Unit(s)	Unit Cost	Total
Vehicle mileage	0	mile	\$0.58	\$0.00
Draft EIR-EA Printing/Production				\$480.00
Final EIR-EA Printing/Production				\$480.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00

**l) TOTAL OTHER DIRECT COSTS** \$960.00

**m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)**

Subconsultant 1: \$0.00  
 Subconsultant 2: \$0.00  
 Subconsultant 3: \$0.00

**m) TOTAL SUBCONSULTANT'S COSTS** \$0.00

**N) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l) + (m)]** \$960.00

**TOTAL COST [(c) + (j) + (k) + (n)]** \$30,807.00

**NOTES:**

1. Key personnel must be marked with an asterisk (\*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (\*\*). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
3. Anticipated salary increases calculation (page 2) must accompany.



**EXHIBIT 10-H1 COST PROPOSAL PAGE 2 OF 3**  
**ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS**  
 (CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

Consultant Rincon Consultants, Inc. Contract No. \_\_\_\_\_ Date 7/19/2021

**1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration
\$10,252.51	201	=	\$51.01	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)**

	Avg Hourly Rate		Proposed Escalation	=		
Year 1	\$51.01	+	3%	=	\$52.54	Year 2 Avg Hourly Rate
Year 2	\$52.54	+	3%	=	\$54.11	Year 3 Avg Hourly Rate
Year 3	\$54.11	+	3%	=	\$55.74	Year 4 Avg Hourly Rate
Year 4	\$55.74	+	3%	=	\$57.41	Year 5 Avg Hourly Rate

**3. Calculate estimated hours per year (Multiply estimate % each year by total hours)**

	Estimated % Completed Each Year	*	Total Hours per Cost Proposal	=	Total Hours per Year	
Year 1	100.00%	*	201.0	=	201.0	Estimated Hours Year 1
Year 2		*	201.0	=	0.0	Estimated Hours Year 2
Year 3		*	201.0	=	0.0	Estimated Hours Year 3
Year 4		*	201.0	=	0.0	Estimated Hours Year 4
Year 5		*	201.0	=	0.0	Estimated Hours Year 5
Total	100%		Total	=	201.0	

**4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)**

	Avg Hourly Rate (calculated above)	*	Estimated hours (calculated above)	=	Cost per Year	
Year 1	\$51.01	*	201	=	10252.51	Estimated Hours Year 1
Year 2	\$52.54	*	0	=	0	Estimated Hours Year 2
Year 3	\$54.11	*	0	=	0	Estimated Hours Year 3
Year 4	\$55.74	*	0	=	0	Estimated Hours Year 4
Year 5	\$57.41	*	0	=	0	Estimated Hours Year 5
	Total Direct Labor Cost with Escalation			=	\$10,252.51	
	Direct Labor Subtotal before Escalation			=	\$10,252.51	
	Estimated total of Direct Labor Salary Increase			=	\$0.00	Transfer to Page 1

NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.



EXHIBIT 10-H1 COST PROPOSAL PAGE 3 OF 3

**Certification of Direct Costs:**


I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name:	<u>Lacrisa Davis</u>	Title*:	<u>CFO</u>
Signature:	<u></u>	Date of Certification (mm/dd/yyyy):	<u>7/19/2021</u>
Email:	<u><a href="mailto:lcook@rinconconsultants.com">lcook@rinconconsultants.com</a></u>	Phone Number:	<u>805-644-4455</u>
Address:	<u>180 N. Ashwood Avenue, Ventura CA 93003</u>		

\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Environmental document preparation and completion.
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## Exhibit B – Payment Arrangements Actual Cost-Plus-Fixed Fee

- A. The method of payment for this contract will be based on actual cost plus a fixed fee. County will reimburse Contractor for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Contractor in performance of the work. Contractor will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Contractor's Cost Proposal, unless additional reimbursement is provided for by contract amendment. In no event, will Contractor be reimbursed for overhead costs at a rate that exceeds County's approved overhead rate set forth in the Cost Proposal. In the event, that County determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time or actual costs reimbursable by County shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by contract amendment.
- B. In addition to the allowable incurred costs, County will pay Contractor a fixed fee of \$3,893.13. The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- D. When milestone cost estimates are included in the approved Cost Proposal, Contractor shall obtain prior written approval for a revised milestone cost estimate from the County designated representative before exceeding such cost estimate.
- E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of Contractor's fixed fee will be included in the monthly progress payments. If Contractor fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, County shall have the right to delay payment or terminate this Contract in accordance with the provisions of Section 28 Termination.
- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.
- G. Contractor will be reimbursed, as promptly as fiscal procedures will permit upon receipt by the County designated representative of itemized invoices. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Contractor is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due County including any equipment purchased under the provisions of Section 11 Equipment Purchase of this contract. The final invoice should be submitted within 60 calendar days after completion of Contractor's work. Invoices shall be mailed to the County designated representative at the following address and emailed to:  
  
County of Santa Barbara/Diana Estorga  
620 West Foster Road, Santa Maria, CA 93455  
PWRoadsPayables@cosbpw.net
- H. The total amount payable by County including the fixed fee shall not exceed \$30,807.
- I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by the County designated representative.
- J. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.
- K. All subcontracts shall contain the above provisions.



## Exhibit C – Indemnification and Insurance Requirements (For Professional Contracts)

### INDEMNIFICATION

Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless County and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by County on account of any claim except where such indemnification is prohibited by law. Contractor's indemnification obligation applies to County's active as well as passive negligence but does not apply to County's sole negligence or willful misconduct.

### NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

Contractor shall notify County immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

### INSURANCE

Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

#### A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Contractor's profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the Contractor maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

#### B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL 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 can 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 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.



3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the County.
4. **Waiver of Subrogation Rights** – 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 effect 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.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – Contractor shall furnish the County with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Contractor shall furnish evidence of renewal of coverage throughout the term of the Agreement. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, County has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by County as a material breach of contract.
9. **Subcontractors** – Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
  - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
  - ii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of County.