

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 209 East Victoria Street, Suite B, Santa Barbara, CA 93101(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

Charlie Elbert at phone number (805) 568-3123 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 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:

Charlie Elbert, Project Manager
Public Works Department
123 E. Anapamu Street
Santa Barbara, CA 93101

To CONTRACTOR:

Rincon Consultants, Inc.
209 East Victoria Street, Suite B
Santa Barbara, California 93010

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. This contract shall go into effect on January 18, 2017, contingent upon approval by COUNTY, and CONTRACTOR shall commence work after notification to proceed by COUNTY'S Contract Administrator. The contract shall end on January 18, 2018, unless extended by contract amendment or unless earlier terminated.

B. CONTRACTOR is advised that any recommendation for contract award is not binding on COUNTY until the contract is fully executed and approved by COUNTY.

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.

6. FEDERAL AND STATE PREVAILING WAGE RATES

A. 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 contract 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>.

7. 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.

8. 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 venture, 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.

9. 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.

10. SUBCONTRACTING

A. Nothing contained in this contract 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 contract shall be subcontracted without written authorization by COUNTY's Contract Administrator, 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 contract shall contain all the provisions stipulated in this contract to be applicable to subcontractors.

E. Any substitution of subcontractor(s) must be approved in writing by COUNTY's Contract Administrator prior to the start of work by the subcontractor(s).

11. EQUIPMENT PURCHASES

A. Prior authorization in writing, by COUNTY's Contract Administrator 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 Contract Administrator; 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 contract 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 contract, or if the contract 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.

12. DEBARMENT AND SUSPENSION

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.

13. 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.

14. 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 contract, or any ensuing COUNTY construction project. CONTRACTOR shall also list current clients who may have a financial interest in the outcome of this contract, 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 contract.

C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Section.

15. 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.

16. 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.

17. 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.

18. RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONTRACTOR, subcontractors, and COUNTY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONTRACTOR and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts shall contain this provision.

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.

19. AUDIT REVIEW PROCEDURES

A. Any dispute concerning a question of fact arising under an interim or post audit of this contract 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 contract.

20. INDEMNIFICATION AND INSURANCE

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

21. 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:

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 Contract, 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 Contract 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.

3. The CONTRACTOR shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

4. The CONTRACTOR, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

22. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

CONTRACTOR warrants that this contract 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 contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

23. 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.

24. 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 contract 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).

25. 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.

26. 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.

27. 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.

28. TERMINATION

A. COUNTY reserves the right to terminate this contract for convenience upon thirty (30) calendar days written notice to CONTRACTOR with the reasons for termination stated in the 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.

B. COUNTY may terminate this contract with CONTRACTOR should CONTRACTOR fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If COUNTY terminates this contract with CONTRACTOR, COUNTY shall pay CONTRACTOR the sum due to CONTRACTOR under this contract prior to termination, unless the cost of completion to COUNTY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONTRACTOR under this contract and the balance, if any, shall be paid to CONTRACTOR upon demand.

C. 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.

D. The maximum amount for which the COUNTY shall be liable if this contract is terminated is \$39,360.30 dollars.

E. 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. 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.

29. 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.

30. 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.

31. 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.

32. TIME IS OF THE ESSENCE

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

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and Rincon Consultants, Inc.

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:

By: _____
Deputy Clerk

By: _____
Joan Hartmann, Chair,
Board of Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:

Public Works

CONTRACTOR:

Rincon Consultants, Inc.

By: _____
Director of Public Works

By:  _____
Authorized Representative

Name: Richard Davison

Title: Principal

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

APPROVED AS TO ACCOUNTING FORM:

Theodore A. Fallati, CPA
Auditor-Controller

By: _____
Deputy County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

Ray Aromatorio
Risk Management

By: _____
Risk Management

EXHIBIT A

STATEMENT OF WORK

Richard Daulton shall be the individual(s) personally responsible for providing all services hereunder. CONTRACTOR may not substitute other persons without the prior written approval of COUNTY's designated representative.

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 __ days. COUNTY shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this Agreement.

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EXHIBIT B

PAYMENT ARRANGEMENTS Specific Rates of Compensation

- A. CONTRACTOR will be reimbursed for hours worked at the hourly rates specified in CONTRACTOR's Cost Proposal, Attachment Exhibit 10-H. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.
- B. In addition, CONTRACTOR will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.
- C. Specific projects will be assigned to CONTRACTOR through issuance of Task Orders.
- D. After a project to be performed under this contract is identified by COUNTY, COUNTY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a COUNTY Project Coordinator. The draft Task Order will be delivered to CONTRACTOR for review. CONTRACTOR shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both COUNTY and CONTRACTOR.
- E. Task Orders shall be negotiated for specific rates of compensation, which must be based on the labor and other rates set forth in CONTRACTOR's Cost Proposal.
- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- G. 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 Contract Administrator before exceeding such estimate.
- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONTRACTOR shall not commence performance of work or services until this contract has been approved by COUNTY, and notification to proceed has been issued by COUNTY's Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this contract.
- J. A Task Order is of no force or effect until returned to COUNTY and signed by an authorized representative of COUNTY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by COUNTY.
- K. CONTRACTOR will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COUNTY'S Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work

performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONTRACTOR is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number, project title and Task Order number. Credits due COUNTY that include any equipment purchased under the provisions of Section 11 Equipment Purchase of this contract, must be reimbursed by CONTRACTOR prior to the expiration or termination of this contract. Invoices shall be mailed to COUNTY's Contract Administrator at the following address:

- a. Charlie Elbert, Project Manager
 - b. Public Works Department, 123 E. Anapamu St., Santa Barbara, CA 931010
- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Contract.
- M. The total amount payable by COUNTY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- N. If the CONTRACTOR fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.
- P. The total amount payable by COUNTY for all Task Orders resulting from this contract shall not exceed \$39,360.30. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.
- Q. All subcontracts shall contain the above provisions.



Rincon Consultants, Inc.

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December 21, 2016
Job No. 13-01370

Mr. Walter Rubalcava, Project Manager
County of Santa Barbara
Department of Public Works
Transportation Division
123 East Anapamu Street
Santa Barbara, California 93101

Subject: Proposal for Archaeological Testing and Evaluation of CA-SBA-39 located within the Hollister Avenue-State Street Improvement Project APE, Santa Barbara County, California

Dear Mr. Rubalcava:

Rincon Consultants, Inc. (Rincon) is pleased to submit this proposal to provide additional cultural resources services in support of the County of Santa Barbara, Hollister Avenue- State Street Improvement Project in Santa Barbara County, California (project). In the course of providing cultural resources services for the project, Rincon encountered a previously recorded cultural resource: CA-SBA-39. Because site CA-SBA-39 cannot be feasibly avoided by the project, the recovery, evaluation, and documentation of this find is required to determine if the resource is eligible for listing in the National Register of Historic Places (NRHP) and help to ensure the project remains in compliance with Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108). Site CA-SBA-39 has previously been recommended as eligible for the NRHP. The following describes the find and provides a scope of work and budget for completion of these mitigation tasks.

CA-SBA-39 was identified by D.B. Rogers in 1924 and recorded by Jon Erlandson in 1978 using Rogers' notes. The site was recorded as a shell midden habitation site known as Kaswa' by the Chumash and as Cieneguitas by the Spanish. The site was occupied by the Chumash at contact until 1886 and has been described as the last major post-Mission Chumash settlement. After the Santa Barbara Mission was founded, Kaswa' was one of the few villages that were allowed to persist and an adobe chapel and several small adobe residences were built at the village. Six previous studies have been conducted at CA-SBA-39. Craig (1978) conducted a pedestrian survey of the site but concluded that only a secondary, disturbed deposit was visible. Santoro and Toren (1992) found no evidence of the site during a pedestrian survey, but did recognize intact deposits of the site at 1.3m (4.3 feet) below



ground surface during construction monitoring. Peak and Associates (1992a and 1992b) excavated a series of STPs that were negative for cultural deposits. However, they were excavated only to 60 cm (24 inches). Peak and Associates concluded that it was highly likely that intact portions of the site underlie layers of fill. In 1993, Peak and Associates observed the excavation of backhoe trenches. Four of the five trenches contained cultural deposits. Finally, SWCA (2006) conducted a pedestrian survey that included a portion of the site. SWCA found no surficial evidence of SBA-39 during their investigation.

On December 2, 2015, Rincon Archaeologist K. Ross Way conducted a pedestrian survey of the project study area and identified archaeological deposits associated with previously recorded site CA-SBA-39 within the Union Pacific Railroad (UPRR) right-of-way (ROW). The survey identified a scatter of several artifacts, including a piece of blue-green chert, glass fragments, blue-on-white transfer ware, terra cotta tile fragments, and several pieces of marine shell. The identified artifacts were found in a very dark midden soil distinguishable from the reddish-brown native soils within the UPRR ROW. The midden and artifacts were observed on either side of the northwest-southeast trending railroad tracks within an area roughly corresponding to the mapped boundaries of the CA-SBA-39.

Based on the results of the Phase I study, site CA-SBA-39 may be eligible for the NRHP under Criterion D for its potential to provide pertinent data to the prehistory of the region. To confirm the status of the site and its eligibility for listing, Rincon has recommended Phase II Testing and Site Evaluation be conducted for portions of CA-SBA-39 to determine the extent of subsurface deposits within the project site and to evaluate those portions of the site as contributing elements to the NRHP eligibility of CA-SBA-39.

Testing and evaluation would be limited to portions of the resource that have not been tested previously and that are located within the current project site. Testing and subsequent analysis would be conducted to provide Rincon the necessary data to evaluate the extent of subsurface deposits and whether intact features are present. Testing will allow Rincon to provide a formal NRHP eligibility recommendation. Should the resource be found eligible for the NRHP, additional studies may be required to mitigate impacts to less than significant levels (e.g., Phase III data recovery program).

SCOPE OF WORK

Rincon has prepared this scope of work for the archaeological testing and NRHP eligibility evaluation of prehistoric archaeological site CA-SBA-39.

Task 1. Archaeological Testing Plan/Project Management. Rincon will develop a focused archaeological testing plan to evaluate the prehistoric site for NRHP eligibility. The plan will discuss appropriate research questions and testing methodology for the evaluation of the site for NRHP listing. Rincon assumes this plan will be submitted electronically and approved with minimal comments from Caltrans and the County of Santa Barbara. This subtask also includes project management time associated with the review of the finds and relevant communications.



Task 2. Fieldwork. Upon approval of the testing plan, Rincon will conduct the archaeological testing fieldwork under the direction of Principal Investigator Christopher Duran, M.A., RPA (Registered Professional Archaeologist). The fieldwork will consist of excavation of up to 30 shovel test pits (STPs) with a diameter of approximately 30-50 centimeters (cm) to be spaced between 10 and 15 meters apart to determine the site boundaries and the presence or absence of buried cultural material. If a potentially significant subsurface deposit is identified, as many as two 1 × 1 meter (m) test units (TUs) will be excavated in areas with the highest density of artifacts. Additional fieldwork may include but not be limited to mapping, collection of surface artifacts, documentation through photographs, and locational information collected using a global positioning system (GPS) device. The data obtained from the STPs and TUs and any additional special studies conducted on recovered materials will be used to characterize the nature and extent of the site and provide information to make a NRHP eligibility recommendation. For the purposes of this proposal, Rincon estimates the fieldwork will take two field technicians 10 days (80 hours each) to complete.

Rincon anticipates that the presence of a Native American monitor will be required to observe archaeological testing fieldwork at the site. Rincon estimates 80 hours will be needed for the Native American monitor.

Task 3. Laboratory Analysis. At the completion of fieldwork, Rincon will transport recovered cultural materials to our Carlsbad office and laboratory for temporary storage and analysis. Artifacts will be thoroughly cleaned and prepared for the cataloguing process. Rincon will use a Microsoft Access database to catalogue the recovered artifacts from each site. The database will be used to assign each artifact a unique identifier as well as encode information such as artifact type, weight, material type, color, and size measurements. These data will be used to assess site function and identify a temporal occupation history. Artifact characterization studies such as lithic artifact and faunal analysis will be conducted if artifacts requiring such analysis are recovered. For the purposes of this proposal, we assume these specialized studies will not exceed a total of 16 hours each (lithic and faunal).

Task 4. Special Studies. For the purposes of this proposal, special studies include radiocarbon dating, macrofloral analysis, and microflora analysis. If an intact deposit is identified, a carbon sample will be recovered from the site and submitted for radiocarbon dating by the PaleoResearch Institute (PRI). The results of the radiocarbon analysis will be used to provide important information regarding chronology and cultural development. We know that the site was occupied from at least 1769 to 1886, but it is unclear how long the site was occupied prior to the arrival of the Spanish. If an intact feature is identified, soil samples will be collected from the feature and will be submitted to PRI for macrofloral analysis to assess what plant materials are present in the feature. Special studies may require up to 90 days for completion. Rincon assumes that direct expenses from PRI for the special studies will not exceed \$2,500.

Task 5: Reporting and DPR Forms. Rincon will incorporate the results of the archaeological testing/NRHP eligibility evaluation into a Phase II testing and evaluation of cultural resources report. This report will provide information regarding methods and findings of



fieldwork and artifact analysis, discussion of results, NRHP eligibility evaluation, impact assessment, and further management recommendations. The report will also include maps, tables, figures, and photographs that support the text. Rincon will prepare California Department of Parks and Recreation (DPR) Series 523 forms to update the site record. All DPR forms will be included as an appendix to the Phase II report.

Upon acceptance of the report by Caltrans and the County of Santa Barbara, Rincon will provide a copy of the monitoring report to the Central Coast Information Center (CCIC) at University of California, Santa Barbara (UCSB). Rincon assumes electronic submittal of the monitoring report.

Task 6: Curation. Appropriate artifacts, ecofacts, samples, and project related documents will be prepared for long-term curation and delivered to the University of California Repository for Archaeological and Ethnographic Collections. Curation preparation will include creating acid-free labels and tags and placing artifacts in archival quality bags and boxes. A hard copy of the report will be prepared on acid-free paper and submitted with an electronic copy and the artifacts to the selected curation facility. For the purposes of this proposal we have assumed that up to one box of artifacts will be curated at a direct expense not to exceed \$1000. Should additional artifacts require curation, these additional services would be provided at an additional fee on a time and materials basis.

COST AND SCHEDULE

Cost. Rincon proposes to complete the work scope as described above for a fixed fee of **\$39,176**. A breakdown of these costs is described by task below. Rincon proposes to bill for these services as follows: 25 percent of the total cost following project initiation; 50 percent of the total cost upon completion of fieldwork; and the final 25 percent of the total cost upon submittal of the draft report. Any work not included in the scope of work as described above will be conducted at an additional cost to the client as negotiated, either on a time and materials basis or for a fixed fee.

Task	Estimated Cost
Subtask 1 – Archaeological Testing Plan/Project Management	\$2,510
Subtask 2 – Fieldwork (with Native American Monitor)	\$19,725
Subtask 3 – Laboratory Analysis	\$6,011
Subtask 4 – Special Studies	\$2,945
Subtask 5 - Additional Reporting and DPR Forms	\$6,095
Subtask 6 - Curation	\$1,890
Total*	\$39,176

*This cost estimate includes all labor and direct expenses required to perform the work.

All work would be performed in accordance with the terms and conditions of our existing contract.

Assumptions. The following assumptions were used in developing this cost estimate:



- One electronic copy (PDF or MS Word) of the Phase II Testing Plan will be submitted for review and comment, and one round of edits following one composite set of comments from Caltrans and the County of Santa Barbara
- Field personnel will have full right of entry/access to the project site.
- The County of Santa Barbara will conduct all coordination with other agencies, including the UPRR, and will obtain all necessary permission and permits for Rincon to conduct the Phase II work
- If a railroad flagger is required to conduct the field work, this will be provided at no cost to Rincon
- No special training or security background checks will be required.
- No more than 50 STPs measuring approximately 30-50 cm in diameter will be excavated to a maximum depth of 1.5 m.
- No more than two (2) TUs, each measuring 1 × 1 m, will be excavated to a maximum depth of 1.5 m.
- Fieldwork will be completed in no more than 160 person-hours (eg. two people for ten 8-hour days).
- Native American monitoring services will not exceed 80 hours.
- No more than 300 artifacts and ecofacts will be found during testing of the site
- Direct expenses for special studies will not exceed \$2,500 for this study
- No more than one box of artifacts and ecofacts will require curation, and direct expenses for curation will not exceed \$1,000. One electronic copy (PDF or MS Word) of the Phase II report will be submitted for review and comment. Rincon will submit the final report following two composite sets of comments from Caltrans and the County of Santa Barbara
-

Schedule. Rincon is prepared to initiate this work program immediately upon execution of a mutually agreeable contract. A testing plan will require up to two weeks for completion and will require approval by Caltrans and the County prior to the initiation of testing. Rincon assumes up to 30 days for Caltrans and County review of the testing plan. Testing will require up to ten (10) days for completion. A draft Phase II cultural resources report will be completed within four (4) weeks after completion of field work or any requested special studies, whichever comes later. The final report will be submitted within two weeks of receiving comments. Rincon estimates a project duration of 90-120 calendar days for completion.

Rincon Consultants is pleased to have the opportunity to work with the County of Santa Barbara on this Phase II Cultural Resources program for the Hollister Avenue-State Street Improvement project. If you have any questions about this work program, please do not hesitate to contact us (Kevin Hunt at 760-918-9444 ext. 208 or at khunt@rinconconsultants.com).

Sincerely,
RINCON CONSULTANTS, INC.



Kevin Hunt
Cultural Resources Program Manager

Christopher Duran
Principal Investigator

EXHIBIT 10-H COST PROPOSAL PAGE 1 OF 1
Phase II Archaeological Testing and Evaluation of CA-SBA-39

Note: No mark-up on Other Direct Costs

Consultant Rincon Consultants, Inc. Contract No. SBCty No. 862382 Date 10/7/2016

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Sr. Principal	Richard Daulton	6	\$80.27	\$481.64
Project Manager	Laura Hoffman	12	\$40.87	\$490.44
Registered Professional Archaeologist	Chris Duran	48	\$45.67	\$2,192.31
Assoc. Archaeologist	Meagan Szromba	40	\$21.00	\$840.00
Archaeologist	Ashley Bailey	160	\$27.02	\$4,323.06
Archaeologist	Breana Campbell	8	\$31.25	\$250.00
Native American Monitor	Ben Arrellanas	80	\$30.00	\$2,400.00
Archaeological Field Technician	Brenda Rogers	80	\$23.00	\$1,840.00
GIS Specialist	Marcus Klatt	8	\$33.85	\$270.80
Administrative Assistant	Staff (average salary)	10	\$25.24	\$252.40

LABOR COSTS

a) Subtotal Direct Labor Costs	\$13,340.64
b) Anticipated Salary Increases (NA - none expected within current schedule)	\$0.00
c) TOTAL DIRECT LABOR COSTS [(a) + (b)]	\$13,340.64

FRINGE BENEFITS

d) Fringe Benefits (Rate <u>59.00%</u>)	e) Total Fringe Benefits
	[(c) x (d)] <u>\$7,870.98</u>

INDIRECT COSTS

f) Overhead (Rate: <u>68.31%</u>)	g) Overhead [(c) x (f)]	\$9,112.99
h) General and Administrative (Rate: <u> </u>)	i) Gen & Admin [(c) x (h)]	\$0.00
	j) Total Indirect Costs [(e) + (g) + (i)]	\$16,983.97

FEE (Profit)

q) (Rate: <u>15.00%</u>)	k) TOTAL FIXED PROFIT [(c) + (j)] x (q)]	\$4,548.69
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OTHER DIRECT COSTS (ODC)

Description	Unit(s)	Unit Cost	Total
l) Travel/Mileage Costs (IRS Rate)	800	\$0.54	\$432.00
m) Curation and fees	1	\$1,185.00	\$1,185.00
n) AMS Radiocarbon Dating	2	\$650.00	\$1,300.00
o) Macrofloral analysis	2	\$600.00	\$1,200.00
p) Postage and Delivery (Lump sum)	1	\$135.00	\$135.00
q) Equipment (GPS, Auger, etc. - Lump sum)	1	\$235.00	\$235.00
r)			\$0.00

Total Other Direct Costs \$4,487.00

TOTAL COST **\$39,360.30**

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, its 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.
 - iii. 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.