

LOCAL AGENCY FORMATION COMMISSION
SAN BENITO COUNTY

2301 Technology Parkway
Hollister, CA 95023
Phone: (831) 637-5313

January 21, 2016

TO: Members of the Commission

FROM: Bob Braitman 
Executive Officer

SUBJECT: **Contract with BAE Urban Economics**

Notice: This matter is pertinent to the discussion of Item No. 13 on the Revised Agenda for the January 28 Commission meeting.

The proposed contract between the Commission and BAE Urban Economics is enclosed. Pursuant to this agreement the firm will study costs and revenues for the County and the City of Hollister to provide services based on whether residential development occurs (a) within the limits of the City or (b) within the unincorporated area near the City

It is recommended the Commission approve and authorize the Chair to sign the contract provided funding for payment is provided by the County and the City of Hollister.

Please contact the LAFCO staff if you have any questions.

cc: Bill Avera, City Manager, City of Hollister
Ray Espinosa, County Administrative Officer
Joe Paul Gonzalez, County Clerk, Auditor & Recorder
Roger Grimsley, City Manager, City of San Juan Bautista
Brent Barnes, Director, County Resources Management Agency
Matt Granger, LAFCO Legal Counsel
Barbara Thompson, Assistant County Administrative Officer
Janet Smith-Heimer, President, BAE Urban Economics

CONTRACT

The SAN BENITO LOCAL AGENCY FORMATION COMMISSION ("LAFCO") and BAE Urban Economics ("BAE") enter into this contract which shall be effective on the date stated in Paragraph 1.

1. Duration of Contract.

This contract shall commence on January 28, 2016, and end on August 28, 2016, unless sooner terminated as specified herein.

2. Scope of Services.

BAE, for LAFCO's benefit, shall perform the services specified on Attachment A to this contract, which is made a part of this contract.

3. Compensation for Services.

In consideration for BAE performance, LAFCO shall pay compensation to BAE according to the terms specified in Attachment B, which is made a part of this contract.

4. General Terms and Conditions.

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C, which is made a part of this contract.

5. Insurance Limits.

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive general liability insurance:
 - \$1,000,000.00 per occurrence
 - \$2,000,000.00 aggregate
- (b) Professional liability insurance:
 - \$1,000,000.00 per occurrence
 - \$2,000,000.00 aggregate
- (c) Comprehensive motor vehicle liability insurance:
 - \$500,000.00 aggregate
 - \$250,000.00 per occurrence

6. Termination.

The number of days of advance written notice required for termination by LAFCO of this contract is 15 days.

7. **There are no additional provisions to this contract**

8. **Information about Contract Administrators.**

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for LAFCO:

Name: Bob Braitman
Title: Executive Officer
San Benito LAFCO
Address: 2301 Technology Parkway
Hollister, California 95023

Telephone No: 831-636-4170
Fax No.: 831-636-4176

Contract Administrator for BAE:

Name: Janet Smith-Heimer, MBA
Title: President
BAE Urban Economics
Address: 2600 10th Street, Suite 300
Berkeley, CA 94710

Telephone No.: 510-547-9380
Fax No.

SIGNATURES

APPROVED BY LAFCO:

Name: _____

Chair, LAFCO

Date: _____

APPROVED BY BAE:

Name: _____

Title: _____

Tax I.D. _____

Date: _____

APPROVED AS TO LEGAL FORM:

Matthew Granger, County Counsel
Counsel for San Benito County LAFCO

By: _____

Date: _____

ATTACHMENT "A" SCOPE OF SERVICES

The Scope of Services shall be as outlined in the Request for Proposals and Response to Request for Proposals, dated December 2, 2015 (both of which are attached, and incorporated herein as part of Attachment "A").

bae urban economics

December 2, 2015

Bob Braitman Executive Officer
San Benito Local Agency Formation Commission
2301 Technology Parkway
Hollister, CA 95023

Dear Mr. Braitman:

We are pleased to submit the enclosed proposal to prepare the Fiscal Study Related to Residential Development the Vicinity of the City of Hollister. Our firm is well-suited to conduct this analysis, due to past work experience on these same issues. In 2010, we prepared a similar analysis for San Benito County and the City of Hollister, which sought to incorporate the then-rising costs of service provision to apply to new annexations through an updated Revenue Sharing Agreement. More recently, we conducted a peer review of another consultant's fiscal impact study for the proposed San Juan Oaks project. Through both of these and additional related tasks conducted for San Benito County, we have developed a strong understanding of the challenges facing both the City of Hollister and the County as the area continues to develop, adding substantial residential and commercial service populations with different service demands than the historic rural land uses.

Due to our recent work for the County in 2015, we have reviewed the County budget and formulated an understanding of the challenges related to lower current funding than actual matching between demanded services and those true costs, posing a challenge for upcoming development approvals. We stand ready to support this much-needed update on the fiscal effects of rapid urbanization, so that both the City of Hollister and San Benito County can better align fiscal policies with efforts to manage annexations and provide public services.

Please note that due to page limits, we have not provided information about multiple LAFCo assignments completed by BAE, including work for the Santa Cruz County, Santa Clara County, and San Mateo County LAFCo within the past 3 years. That information is available upon request.

This enclosed proposal is effective for the next 90 days. We look forward to working with you on this study.

Sincerely,



Janet Smith-Heimer, MBA
President

San Francisco
2600 10th St., Suite 300
Berkeley, CA 94710
510.547.9380

Sacramento
803 2nd St., Suite A
Davis, CA 95616
530.750.2195

Los Angeles
706 S. Hill St., Suite 1200
Los Angeles, CA 90014
213.471.2666

Washington DC
1400 I St. NW, Suite 350
Washington, DC 20005
202.588.8945

New York City
49 West 27th St., Suite 10W
New York, NY 10001
212.683.4486

Proposed Scope of Work

Approach

The County of San Benito and the City of Hollister face several important fiscal challenges related to new development. First, as outlined in the RFP for this study, there is an uneven current fiscal impact mitigation situation affecting developers' decisions regarding whether to annex new development projects located within Hollister's Sphere of Influence (SOI). The City charges a per-residential unit mitigation fee to offset its project fiscal deficit, and the County does not¹. The RFP to which this proposal responds, seeks to address this fundamental difference, and the effects it has on developer decisions to apply for annexation versus County development approvals.

In addition, both the City and the County, like many jurisdictions in California, is still recovering from the fiscal and economic effects of the Great Recession. While recovery is strongly underway in the core urbanized Bay Area, San Benito County's home prices have remained more affordable, spurring renewed interest in developing previously-planned large subdivisions. While public service costs have risen due to general economic recovery, tax revenue growth has been more uneven. Moreover, when BAE worked approximately 12 months ago for the County to peer review the San Juan Oaks Specific Plan Fiscal Impact study, it became clear that the County had not yet been able to update its level of service goals that had been lowered to match revenue declines during the Great Recession. To further complicate County fiscal challenges, growth pressures continue to increase, and its most recent General Plan Update (prepared during the recession), did not anticipate the lags and spurts and resulting fiscal pressures that face the County today. BAE is less familiar with Hollister's underlying fiscal situation at present, but we expect that somewhat similar lags in revenues and spurts in demand for services at higher levels is also occurring.

Another challenge underlying forecasts of future fiscal impacts of development relate to the pace of development and assumed values of new real estate projects. In some real estate markets, home sale price for new product is influenced by the market knowledge of whether municipal services will be provided by the nearby city or the more rurally-focused county, especially with respect to police and fire services. Since police services are contracted for by the County from the City, this may be somewhat lessened as a price factor. Other market perceptions, however, may still be at play related to these different scenarios for service provision.

¹ BAE analyzed this situation in 2009, in the context of updating the County/City of Hollister Revenue Sharing Agreement, and recommended a consistent fee methodology, which included a higher mitigation fee to be charged by the County due to its higher costs.

Scope of Work

Task 1: Start-Up Meeting and Tour

This task will include a start-up meet with key County, City and LAFCO representatives to orient BAE to the current context in which the study is taking place. BAE will also tour the subject areas.

Task 2: Collect, Organize, and Review Data and Background Studies

To best analyze the issues outlined in the RFP, BAE recommends a methodology that is based on a 10-year forward projection of revenues and costs under varying scenarios of service provision. In this way, the absorption of residential units, and the associated timing and relevant orders of magnitude of new, anticipated development, can be best incorporated into the analysis.

For this task, BAE will collect the following materials from relevant parties and will organize the information for further analysis:

- Most recent County budget
- Most recent City budget
- Most recent special districts' budgets as applicable
- Most recent Revenue Sharing Agreement between City and County
- Most recent LAFCo assessment of municipal services provision covering subject area
- General Plan land use designations for subject area
- List of known applications and entitled development projects in subject area
- Any level-of-service studies for roads, infrastructure, social services, or other municipal/county services affecting study area
- Any relevant fiscal impact studies submitted to City or County relevant to this study

BAE will organize and analyze the above data from the perspective of types of services needing to be provided to new residents in the subject area. In particular, BAE will analyze both City and County costs (expenses), both current and forecasted (or any levels of service changes known to be upcoming or under consideration), in order to project the total costs per new household to provide all services to its new resident population over the next 10 years.

Task 3: Estimate Total Service Population or Next 10 Years

Based on planned and proposed projects, as well as any others not yet planned/proposed but can be reasonably expected to occur over the next 10 years, BAE will formulate an estimated total service population for the subject area.

Task 4: Interview Finance Directors and Any Relevant Special Districts

This task will help further parse the costs for the subject area, by differentiating costs that would occur within the City of Hollister versus costs to serve the subject area (e.g., SOI). To the extent the subject area represents a future expanded SOI, these costs will also be analyzed from the opposite perspective (e.g, costs to County that could shift due to expanded SOI).

These costs will also be analyzed based on the metric of initial up-front costs (one-time start up costs for a service), ongoing costs, and one-time emergency costs².

To parse these costs in this manner, BAE will interview the City and County Finance Directors and any relevant Special Districts to develop estimates from the existing budgets and other information, related to the issues identified. These interviews will also review assumptions related to average vs. marginal costs per service population.

Task 5: Estimate Service Costs for Two Scenarios (City-Provided and County-Provided)

BAE will utilize the above information to create the “cost” portion of a 10-year model for fiscal impact analysis purposes (see revenue portion below). One scenario will estimate all relevant residential service costs if provided by the City and special districts, and the second scenario will estimate the same costs if provided by the County and special districts.

Task 6: Formulate Revenue Assumptions

This task will require limited market research to estimate property values for purposes of estimating property tax revenues, a key component of fiscal revenues over the 10-year period. BAE will analyze all available new home sales, as well as existing home sales for newer units, to formulate estimates of likely future new home values.

BAE will also develop absorption estimates to time new development (and commensurate need for initial start up and ongoing thereafter) for each year of the 10-year period under analysis.

Task 8: Estimate All Fiscal Revenues under the Two Scenarios (City-provided vs. County-provided)

BAE will estimate all General Fund, special fund, and special district revenues for the new residential population based on above tasks under the two scenarios. This will include all federal and state funds, as well as locally-generated revenues from property taxes (and periodic resales of homes at higher values) sales taxes, user fees, franchise fees, state subventions, and any relevant special district ongoing assessments for operations. This analysis will exclude the existing Revenue Sharing Agreement payments, since this is among the items being analyzed in this study.

Task 9: Prepare Preliminary Draft Fiscal Study

BAE will prepare a Preliminary Draft Fiscal Study, based on the analysis per the above tasks, and comparing the bottom line net fiscal impacts under the two scenarios. The Preliminary

² It should be noted that the RFP did not include one-time capital costs as translated to impact fees, which would require a nexus study to estimate or update. The “one-time start up costs” is per the RFP, and assumed to capture the “initial” operating costs that might be higher than ongoing costs.

Draft Fiscal Study will be provided in MS Word, for review by County, City and LAFCO staffs.

Task 10: Prepare and Present Final Fiscal Study

Based on review and comments per above, BAE will revise the preliminary draft report and prepare a Final Study. This task will also include up to 3 public presentations of the Study (see budget for per-presentation fees).

Task 11: Provide Additional Information as Necessary

BAE will be available to provide additional information as necessary, on a time and materials basis.

Schedule

The following schedule assumes a contract authorization date no later than December 18, 2015, per the RFP, and a completion date to Preliminary Draft Report by February 19, 2016 (a two-month study period). The following shows BAE's estimate of schedule per task, with this two-month study period incorporated:

Task	Completed by:
1: Start-Up Meeting and Tour	12/20/2015
2: Collect, Organize, and Review Data and Background Studies	1/10/2016
3: Estimate Total Service Population or Next 10 Years	1/10/2016
4: Interview Finance Directors and Any Relevant Special Districts	1/15/2016
5: Estimate Service Costs for Two Scenarios	1/20/2016
6: Formulate Revenue Assumptions	1/25/2016
8: Estimate All Fiscal Revenues under the Two Scenarios	2/10/2016
9: Prepare Preliminary Draft Fiscal Study	2/19/2016
10: Prepare and Present Final Fiscal Study	TBD
11: Provide Additional Information as Necessary	TBD

Budget and Fees

BAE will complete the above tasks in accordance with the following budget:

	Smith-Heimer President	Shiver Principal	Hagar Sr. Assoc.	Schreiber Analyst	Total
<i>Hourly Rate</i>	\$ 300	\$ 265	\$ 200	\$ 100	
1: Start-Up Meeting and Tour	5	5	5	0	\$ 3,825
2: Collect Data & Background Studies	2	8	12	12	\$ 6,320
3: Estimate Total Service Population or Next 10 Years	0	10	15	10	\$ 6,650
4: Interview Finance Directors	0	8	5	0	\$ 3,120
5: Estimate Service Costs for Two Scenarios	2	5	20	5	\$ 6,425
6: Formulate Revenue Assumptions	2	10	5	10	\$ 5,250
8: Estimate All Fiscal Revenues	2	20	5	5	\$ 7,400
9: Prepare Preliminary Draft Fiscal Study	2	20	5	0	\$ 6,900
10: Prepare and Present Final Fiscal Study	2	15	10	0	\$ 6,575
11: Provide Additional Information as Necessary	0	5	0	0	\$ 1,325
Subtotal Labor	17	106	82	42	
Subtotal Fee	\$ 5,100	\$ 28,090	\$ 16,400	\$ 4,200	\$ 53,790
Expenses (travel and data purchase)					\$ 700
Total Fee					\$ 54,490

BAE will invoice monthly for the duration of the contract. Note that Task 11 will be billed only as needed, in an hourly rate basis. Additional availability beyond the amount shown will be billed on the same time and materials basis.

EXHIBIT A

NON-COLLUSION DECLARATION
(TO BE EXECUTED BY RESPONDENT AND SUBMITTED WITH THE PROPOSAL)

I, Janet Smith-Heimer, am the
(Name)

President of BAE Urban Economics, Inc.,
(Position/Title) (Company)

the party making the foregoing proposal, and hereby certify that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the respondent has not directly or indirectly induced or solicited any other respondent to put in a false or sham proposal; and has not directly or indirectly colluded, conspired, connived, or agreed with any respondent or anyone else to put in a sham proposal, or for anyone to refrain from submitting a response to this RFP; that the respondent has not in any manner directly or indirectly, sought by agreement, communication, or conference with anyone to fix the responses to this RFP; or to secure any advantage against the public body; that all statements contained in the proposal are true; and, further, that the respondent has not, directly or indirectly divulged information or data relative to its response to this RFP, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham response.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

12-1-2015
(Date)

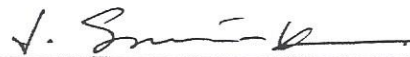

(Signature)

EXHIBIT B

INDEMNIFICATION AGREEMENT
(TO BE EXECUTED BY RESPONDENT AND SUBMITTED WITH THE PROPOSAL)

This agreement is entered into between BAE Urban Economics, Inc. ("RESPONDENT") and the San Benito Local Agency Formation Commission ("LAFCO"). RESPONDENT hereby agrees that to defend, indemnify, and hold harmless LAFCO in any legal challenge arising from action taken by LAFCO relating to selection of RESPONDENT as a successful respondent to this RFP or the potential subsequent award of a contract to RESPONDENT including all claims, actions, proceedings, demands, damages, costs, judgments, attorneys fees, or any other expenses, and shall include, but not limited to, actions to attack, set aside, void, or nullify any decision related to LAFCO's APPROVAL. Either RESPONDENT or LAFCO may terminate this Agreement without cause and at will for any reason whatsoever by giving the other party thirty (30) calendar days written notice of such intent to cancel. Upon termination, LAFCO, in its sole discretion, may deem RESPONDENT'S cancellation of this Agreement as abandonment of their RFP Response. RESPONDENT shall remain responsible for any costs, attorney's fees, and/or other expenses incurred by LAFCO related to the litigation or settlement. The obligations of RESPONDENT identified in the prior sentence shall survive termination of this agreement.

12-1-2015

(Date)



Signature

Janet Smith-Heimer

Printed Name

ATTACHMENT "B"
PAYMENT SCHEDULE

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis on one month in arrears:

B-2. PAYMENT

Payment shall be made by LAFCO to BAE at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

LAFCO shall pay to BAE a total sum not to exceed Fifty-Four Thousand, Four Hundred and Ninety (\$54,490) dollars for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

B-4. SPECIAL COMPENSATION TERMS:

The following specific terms of compensation shall apply:

- A. Billing rates shall be as set forth in the response to request for proposals (Attachment "A").
- B. The LAFCO Executive Officer and BAE shall be authorized to approve and execute an amendment to this contract to incorporate a fiscal study of the City of San Juan Bautista, should the City of San Juan Bautista and the County both agree to such a study, at an additional amount to be determined, but which shall not exceed an additional \$20,000 without further approval of the Commission.

- END ATTACHMENT "B" -

ATTACHMENT C General Terms and Conditions

C-1. INDEMNIFICATION.

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

C-2. GENERAL INSURANCE REQUIREMENTS.

Without limiting CONTRACTOR's duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

- (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
- (b) Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

C-3. INSURANCE COVERAGE REQUIREMENTS.

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
- (b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.

- (c) Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- (d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

C-4. CERTIFICATE OF INSURANCE.

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

C-5. RECORDS TO BE MAINTAINED.

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.

C-6. RETENTION OF RECORDS.

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.

C-7. TITLE TO DOCUMENTS; COPYRIGHT.

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COUNTY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COUNTY is prohibited.

C-8. INDEPENDENT CONTRACTOR.

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COUNTY and not officers or employees of COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to COUNTY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

C-9. CONFLICT OF INTEREST.

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed.

C-10. COMPLIANCE WITH APPLICABLE LAWS.

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

C-11. NONDISCRIMINATION.

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

C-12. BANKRUPTCY.

CONTRACTOR shall immediately notify COUNTY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

C-14. NEGOTIATED CONTRACT.

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

C-15. SEVERABILITY.

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

C-16. ENTIRE CONTRACT.

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

C-17. TIME IS OF THE ESSENCE.

Time is of the essence in the performance of this contract.

C-18. TERMINATION.

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

C-19. NOTICES.

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or

- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

C-21. MATERIALITY.

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

C-22. WAIVER.

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

C-23. AUTHORITY AND CAPACITY.

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

C-24. BINDING ON SUCCESSORS.

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

C-25. CUMULATION OF REMEDIES.

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

C-26. INDEPENDENT ADVICE.

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also

represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

C-27. NO RELIANCE ON REPRESENTATIONS.

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

C-28. REDUCTION OF CONSIDERATION.

CONTRACTOR agrees that COUNTY shall have the right to deduct from any payments specified in Attachment B any amount owed to COUNTY by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to, or after, the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COUNTY exercises the right to reduce the consideration specified in Attachment B, COUNTY, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any off-set and the reason for the reduction.

C-29. COUNTERPARTS.

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

END OF ATTACHMENT C.