

REPORT TO CITY COUNCIL

DATE: NOVEMBER 9, 2022

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: NATHAN HAMBURGER, CITY MANAGER

BY: DENICE THOMAS, COMMUNITY DEVELOPMENT DIRECTOR
JESSICA CLEAVENGER, PRINCIPAL PLANNER

SUBJECT: AGREEMENT BETWEEN THE CITY AND WARMINGTON RESIDENTIAL FOR THE PAYMENT OF COSTS ASSOCIATED WITH THE PREPARATION OF ENVIRONMENTAL DOCUMENTATION BY RINCON CONSULTANTS, INC. RELATED TO THE DOROTHY PLACE MULTI-FAMILY RESIDENTIAL DEVELOPMENT PROJECT

The purpose of this item is to seek approval of an Agreement between the City and Warmington Residential to receive payment from Warmington Residential for the costs associated with the preparation of an Initial Study/Mitigated Negative Declaration (IS/MND), pursuant to the California Environmental Quality Act (CEQA), by Rincon Consultants, Inc. The agreement amount totals \$81,990.20, which includes the consultant's cost of preparing the IS/MND in the amount of \$68,326.00, with an additional \$13,665.20 to cover City costs to manage the preparation of the IS/MND, including preparing legal notices, mailings, and consultant coordination. Both Agreements are to be considered by the City Council at the November 9, 2022, meeting and are attached to this report.

Warmington Residential has submitted an application for the Dorothy Place Multi-Family Residential Development to build 60 multi-family residential units on a vacant lot located at 28000 Dorothy Drive, at the end of the western segment of the Dorothy Drive cul-de-sac. City staff has determined that an IS/MND is necessary for this project. Rincon Consultants, Inc. has submitted to the City a proposed scope of work to prepare the IS/MND, and staff finds the proposal acceptable. Rincon Consultants, Inc. has prepared environmental documents in the past and staff has been pleased with the firm's quality of past work and timely product deliveries. As such, staff respectfully requests approval of both agreements.

Both agreements have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff respectfully requests the City Council approve the Agreement for Payment of Costs with Warmington Residential in the amount of \$81,990.20 and the Agreement for Consultant Services with the environmental consultant Rincon Consultants, Inc.

Attachments: Agreements with 1) Warmington Residential and 2) Rincon Consultants, Inc.

AGREEMENT FOR CONSULTANT SERVICES
WITH THE CITY OF AGOURA HILLS

NAME OF CONSULTANT: Rincon Consultants, Inc.
RESPONSIBLE PRINCIPAL OF CONSULTANT: Attn: Deanna Hansen
CONSULTANT'S ADDRESS: 180 North Ashwood Avenue
Ventura, CA 93003
CITY'S ADDRESS: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301
Attn: City Manager
PREPARED BY: Jessica Cleavenger
COMMENCEMENT DATE: November 9, 2022
TERMINATION DATE: November 9, 2023
CONSIDERATION: Not to Exceed: \$68,326.00 /yr

ADDITIONAL SERVICES *(Describe Services, Amount, and Approval):*

Date: _____ Amount: \$ _____ Authorized By: _____
(Not to Exceed 10% of Contract Price) City Manager

**AGREEMENT FOR CONSULTANT SERVICES BETWEEN
THE CITY OF AGOURA HILLS AND RINCON
CONSULTANTS, INC.**

THIS AGREEMENT is made and effective as of November 9, 2022, between the City of Agoura Hills, a municipal corporation ("City") and Rincon Consultants, Inc. ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on November 9, 2022, and shall remain and continue in effect until tasks described herein are completed, but in no event later than November 9, 2023, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

Consultant shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. PERFORMANCE

In meeting its obligations under this Agreement, Consultant shall at all times faithfully and competently perform all tasks described herein in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

4. PAYMENT

A. The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B other than the payment rates and schedule of payment are null and void. This amount shall not exceed Sixty Eight Thousand Three Hundred Twenty Six Dollars and Zero Cents (\$68,326.00) ("Contract Price") for the initial Term of the Agreement unless additional payment is approved as provided in this Agreement.

The City Manager may approve additional work up to ten percent (10%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

B. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the

amounts and in the manner as agreed to by the City Council and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

C. Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. For all reimbursements authorized by this Agreement, Consultant shall provide receipts on all reimbursable expenses in excess of Fifty Dollars (\$50) in such form as approved by the Director of Finance.

5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

A. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

B. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section entitled "**PAYMENT**" herein.

6. DEFAULT OF CONSULTANT

A. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

B. If the City Manager or his delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement."

7. OWNERSHIP OF DOCUMENTS

A. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

8. INDEMNIFICATION

Consultant shall defend, indemnify, and hold the City, its officials, officers, employees, agents and independent consultants serving in the role of City officials, and volunteers (collectively "Indemnitees") free and harmless from any and all claims, demands, causes of action, proceedings, costs, expenses, liabilities, losses, damages or injuries, in law or equity, to property or persons, including wrongful death (collectively "Claims"), in any manner arising out of or incident to any acts or omissions of Consultant, its officials, officers, employees, agents or sub-consultants in connection with the performance of this Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses, except for such Claims arising out of the sole negligence or willful misconduct of the Indemnitees. With respect to any and all such Claims, Consultant shall defend Indemnitees at Consultant's own cost, expense, and risk and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. Consultant shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant or Indemnitees. All duties of Consultant under this Section shall survive termination of this Agreement.

9. INSURANCE REQUIREMENTS

Prior to commencement of work, Consultant shall procure, provide, and maintain, at Consultant's own expense, 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 by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88, or equivalent.

2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92, or equivalent, covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage for all activities of the Consultant arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rental vehicles.

3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.

4) Professional Liability coverage: One million (\$1,000,000) per claim and in aggregate.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers;

or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Vendor maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

E. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City, its officers, officials, employees and volunteers are to be covered and named as additional insureds in respect to: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City. Consultant agrees to oblige its insurance agent or broker and insurers to provide City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

G. Verification of Coverage. **Consultant shall furnish the City with original endorsements, specifically naming the City of Agoura Hills, its officers, officials, employees and volunteers as additional insured, effecting coverage required by this clause.** The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms acceptable to the City. Insurance certificates and endorsements must be received and approved by City's Risk Manager prior to commencement of performance. Current insurance certificates and endorsements shall be kept on file with the City at all times during the term of this agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

H. Mailing Instructions. Insurance documents shall be mailed with the signed Agreement to the attention of the staff person indicated on the cover sheet of this Agreement, to the City of Agoura Hills, 30001 Ladyface Court, Agoura Hills, CA 91301. Executed Agreement(s) cannot be released nor may any work commence on a project until the signed Agreement and appropriate insurance documents are on file with the City Clerk.

10. INDEPENDENT CONSULTANT

A. Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services and tasks under this Agreement on behalf of Consultant shall not be City employees and shall at all times be under Consultant's exclusive direction and control. Consultant and all of Consultant's personnel shall possess the qualifications, permits, and licenses required by state and local law to perform the services and tasks under this Agreement, including, without limitation, a City business license as required by the Agoura Hills Municipal Code. Consultant shall determine the means, methods, and details by which Consultant's personnel will perform the services and tasks. Consultant shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the services and tasks, and compliance with the customary professional standards. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents.

B. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of City. Consultant and Consultant's personnel shall not supervise any of City's employees; and City's employees shall not supervise Consultant's personnel. Consultant's personnel shall not wear or display any City uniform, badge, identification number, or other information identifying such individual as a City employee; and Consultant's personnel shall not use any City e-mail address or City telephone number in the performance of any of the services and tasks under this Agreement. Consultant shall acquire and maintain at its sole cost and expense such vehicles, equipment, and supplies as Consultant's personnel require to perform any of the services and tasks required by this Agreement. Consultant shall perform all services and tasks off of City premises at

locations of Consultant's choice, except as otherwise may from time to time be necessary in order for Consultant's personnel to receive projects from City, review plans on file at City, pick up or deliver any work product related to Consultant's performance of any services and tasks under this Agreement, or as may be necessary to inspect or visit City locations and/or private property to perform the services and tasks. City may make a computer available to Consultant from time to time for Consultant's personnel to obtain information about, or to check on, the status of projects pertaining to the services and tasks performed under this Agreement. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

C. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services and tasks hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services and tasks hereunder. Consultant shall be responsible for and pay all salaries, wages, benefits and other amounts due to Consultant's personnel in connection with their performance of the services and tasks under this Agreement, and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to, Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Notwithstanding any other agency, state, or federal policy, rule, regulation, statute, or ordinance to the contrary, Consultant and any of its officers, employees, agents, and subcontractors providing any of the services and tasks under this Agreement shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit, or any incident of employment by City, including, but not limited to, eligibility to enroll in, or reinstate to membership in, the California Public Employees Retirement System ("PERS") as a City employee, and entitlement to any contribution to be paid by City for employer contributions or employee contributions for PERS benefits.

D. Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from, caused by, or relating to Consultant's personnel practices, or to the extent arising from, caused by, or relating to the violation of any of the provisions of this Section. In addition to all other remedies available under law, City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section. This duty of indemnification is in addition to Consultant's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

11. PERS COMPLIANCE AND INDEMNIFICATION

A. General Requirements. The parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Consultant agrees that, in

providing its employees and any other personnel to City to perform the services and tasks under this Agreement, Consultant shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code Section 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without limitation to the foregoing, Consultant shall assure compliance with regard to personnel who have active or inactive membership in PERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations.

B. Indemnification. Consultant shall defend (with legal counsel approved by City, whose approval shall not be unreasonably withheld), indemnify, and hold harmless City, and its City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from, caused by, or relating to Consultant's violation of any provisions of this Section. This duty of indemnification is in addition to Consultant's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

12. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

13. RELEASE OF INFORMATION

A. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or sub-consultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review

any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by: (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301
Attention: City Manager

To Consultant: Rincon Consultants, Inc.
180 North Ashwood Avenue
Ventura, CA 93003
Attn: Deanna Hansen

15. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

16. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

17. GOVERNING LAW

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Agoura Hills. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

18. PROHIBITED INTEREST

No officer, or employee of the City of Agoura Hills shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's sub-consultants for this project, during his/her tenure or for one year thereafter. The Consultant hereby warrants and represents to the City that no officer or employee of the City of Agoura Hills has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Consultant or Consultant's sub-consultants on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

19. EXHIBITS

Exhibits A and B constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. AMENDMENT OF AGREEMENT

This Agreement may be amended only by a writing signed by both parties. The City Manager is authorized to sign an amendment to this Agreement on the City Council's behalf and without the City Council's prior approval to make the following non-substantive modifications to the Agreement: (a) name changes; (b) extensions of time that do not result in monetary changes; (c) non-monetary changes in the scope of work; and (d) termination of the Agreement.

22. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF AGOURA HILLS

Deborah Klein Lopez,
Mayor

ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk
Date Approved by City Council: _____

APPROVED AS TO FORM:

Candice K. Lee,
City Attorney

CONSULTANT

Rincon Consultants, Inc.
180 North Ashwood Avenue
Ventura, CA 93003

By:



Name: Richard Daulton
Title: Vice President/Corp. Secretary

By: _____

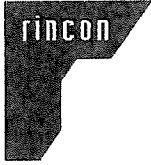
Name:
Title:

[Signatures of Two Corporate Officers Required]

EXHIBIT A

TASKS TO BE PERFORMED

The specific elements (scope of work) of this service include:



May 6, 2022 [Revised]
Project Number: 22-12843

Jessica Cleavenger, Senior Planner
Planning Division
City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301
Via email: JCleavenger@agourahillscity.org

Subject: Proposal to Prepare a California Environmental Quality Analysis (CEQA) Initial Study and Appropriate Environmental Documentation for the Dorothy Place Project

Dear Ms. Cleavenger:

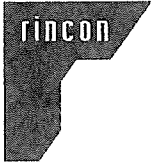
Rincon Consultants, Inc. (Rincon) is pleased to submit this proposal to assist the City of Agoura Hills (City) with the preparation of an Initial Study and appropriate environmental documentation related to the development of a residential project (hereafter referred to as "project" or "proposed project"). Rincon has assembled a team of experienced professionals to provide professional consulting services for the City. Leading the team will be Deanna Hansen serving as Principal and Ryan Luckert serving as Project Manager.

For the purposes of this scope of work, and due to the nature of the proposed project, this proposal assumes the Initial Study (IS) will likely lead to the preparation of a Mitigated Negative Declaration (MND) in compliance with the California Environmental Quality Act (CEQA) for the proposed project. If, however, during the preparation of the Initial Study and supporting technical analysis, it is determined there are potential for significant unavoidable impacts to occur as a result of project implementation, we will immediately notify the City to discuss the findings.

The City has requested a scope of services for CEQA document to support the entitlement process for the construction of 60 for sale residential condominium homes. The proposed condominium homes are designed as two-story duplexes, fourplexes, and fiveplexes. There will be nine duplexes, three fourplexes, and six fiveplexes. The average square footage of each unit is roughly 1,620 square-feet. There will be two access points into the community, with one along Agoura Road and one along Dorothy Drive. The main entrance and exit point will be along Dorothy Drive, since this will provide the most convenient access to and from U.S. 101.

Scope of Work

As described above, we anticipate that an IS-MND will be the appropriate CEQA document for this type of project; however, if the analysis conducted as part of the IS-MND identifies one or more environmental impacts that will or may be significant and unavoidable, we will contact you immediately to discuss an appropriate course of action.



Rincon's proposal for a work program for an IS-MND follows:

Task 1 Project Mobilization and Kickoff Meeting

The Rincon team will hold a coordination meeting with the City and Applicant to: (a) tailor the planning process to address specific needs and goals of the City; and (b) confirm the scope of technical study work, deliverables, and schedule. The scope and schedule, including public notification components and additional tasks, will be refined based on our discussions. Working schedules will be finalized, and details for scheduled tasks will be discussed. Rincon will prepare an agenda and identify any outstanding document and information needs and will prepare and circulate a summary identifying action items after the kickoff meeting. Project initiation also includes internal project setup and initial coordination of the project team.

Task 2 Technical Assessments

It is assumed, except for the below technical assessments, that the City or Applicant has prepared and will deliver all other necessary technical assessments to Rincon in order to help finalize a draft environmental document.

Subtask 2.1 Cultural Resources

Assembly Bill 52 and Senate Bill 18 Letter Assistance Package

Under AB 52 (California Government Code Section 21080.3.1 (a)) and SB 18 (California Government Code Sections 65352.3 and 65352.4), the City of Agoura Hills, as the CEQA lead agency, is required to begin consultation with California Native American Tribes that are traditionally and culturally affiliated with the project site, prior to the release of a negative declaration, MND, or environmental impact report. Rincon will request an AB 52 and SB 18 consultation list from the NAHC and will assist the City of Agoura Hills with consultation under AB 52 and SB 18 by providing the City with draft outreach letters, checklists, and detailed instructions to help ensure meaningful consultation with interested Native American groups.

Typically, NAHC list requests are fulfilled within 10-14 business days. After receipt of initial outreach letters, Native American Tribes have 30 days to reply with a request for consultation under AB 52 and 90 days under SB 18; the 30 days wait period for AB 52 is subsumed in the wait period for SB 18.

This task will assist the City in general consultation with Native American Tribes beyond the initial letter notifications required by AB 52 (California Government Code Section 21080.3.1 (a)) and SB 18 (California Government Code Sections 65352.3 and 65352.4). Rincon will aid the City in language use, methodology, emails, and formal letter replies, and in-person communication between the City and all interested Tribal groups. Rincon will aid in the drafting of 28 formal letters, 28 follow-up emails, and facilitate a total for four of meetings: two meetings to coordinate internally with the City and up to two meetings with consulting Tribes. Virtual meetings can be substituted for in-person meetings. Additionally, Rincon will aid the City in creating a collaborative methodology for the project that will include Native American opinions and concerns from the beginning of the consultation process. Methodology construction will include up to four drafts with two rounds of collective comments and edits, and one final version with one round of collective comments and edits. Rincon will maintain an administrative record of



consultation, and will create a table documenting these efforts, attached to copies of all example letters and all replies.

Assumptions

We have made the following assumptions in developing the proposed scope of work:

- Assumes no more than 12 tribal groups will respond with interest to consult under SB 18 and/or AB 52.
- This task will be completed on a time and materials basis. If requests from tribes exceed the allotted cost estimate, a contract amendment will be required.
- This assistance does not include an assessment of impacts to Tribal Cultural Resources for a CEQA document.
- Rincon assumes the City of Agoura Hills will officially transmit the initial outreach letters to all applicable Tribes.

Subtask 2.2 Air Quality and GHG Emissions

Air Quality

Rincon will prepare an air quality analysis consistent with the methodologies and significance thresholds outlined by the South Coast Air Quality Management District (SCAQMD). The project's construction and operational criteria pollutants emissions will be estimated using the California Emissions Estimator Model (CalEEMod). In addition, the proposed project's compliance with applicable air quality plans will be analyzed. If significant impacts would occur, appropriate mitigation measures would be proposed.

Greenhouse Gas Emissions (GHG)

Rincon will prepare a GHG analysis consistent with methodologies and significance thresholds by the SCAQMD. The project's construction and operational GHG emissions will be estimated using CalEEMod. The analysis will consider the project's consistency with applicable GHG regulations, plans, and policies. The project's construction and operational criteria pollutants emissions will also be analyzed using CalEEMod, similar to GHG emissions. In addition, the proposed project's compliance with applicable air quality plans will be analyzed. If significant impacts would occur, appropriate mitigation measures would be proposed.

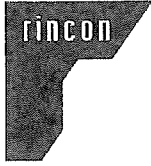
Subtask 2.3 Operational Health Risk Assessment (HRA)

The project involves construction of residences adjacent to Highway 101. Given the proximity to a heavily traveled freeway, it is anticipated that a freeway HRA will be requested for this project by the City. Therefore, Rincon will prepare a freeway HRA to evaluate the potential health risk associated with freeway pollutant emissions at proposed residences on the development site. The HRA will be completed using standard methodologies recommended by the United States Environmental Protection Agency (USEPA, *Risk Assessment Guidance for Superfund, Human Health Evaluation Manual*), the California Department of Toxic Substances Control (*Supplemental Guidance for Human Health Multimedia Risk Assessments of Hazardous Waste Sites and Permitted Facilities*), the California Office of



Environmental Health Hazard Assessment (*Air Toxics Hotspots Program Guidance for Preparation of Health Risk Assessments*), and, as appropriate, the SCAQMD (*Risk Assessment Procedures for Rules 1401, 1401.1, and 212*). Specifically, the freeway HRA will include the following tasks:

- Site discrete receptors on the project site based on the location of proposed residences and any outdoor use areas using readily available aerial imagery and the most recent project site plans.
- Calculate freeway emissions using the EMFAC model and traffic counts contained in either the project-specific traffic study or published California Department of Transportation (Caltrans) traffic data for freeway mainlines and ramps. Truck traffic counts will be based on Caltrans' most recent published truck data.
- Model dispersion of toxic air contaminants to the project site through the use of Hotspots Analysis and Reporting Program Version 2 (HARP 2) software developed by the California Air Resource Board and the most recent version of the USEPA's air dispersion model, the AMS/EPA Regulatory Model (AERMOD). Appropriate meteorological and topographic data will be obtained for use in the dispersion modeling portions of the HARP 2 model.
- Calculate carcinogenic and non-carcinogenic (chronic and acute) health risk at receptors on the project site based on the outputs of the air dispersion modeling. Chronic and carcinogenic health risk calculations will be based on the USEPA's guidance on the use of early life exposure adjustment factors and standardized dose algorithms using Rincon's in-house risk calculation spreadsheets.
- Compare health risk on the project site to SCAQMD health risk significance criteria. If significant impacts are identified, develop appropriate mitigation measures or recommended project design features to reduce such impacts to the degree feasible.
- Prepare a standalone HRA study that will contain the following information: (1) a brief project description; (2) an explanation of study methodology including emissions calculations, air dispersion modeling, and health risk calculations; (3) a discussion of the existing air quality and regulatory framework with respect to toxic air contaminants; (4) a summary of impacts; and (5) identification of mitigation measures, as necessary.



Assumptions

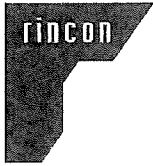
- Site and grading plans and elevations will be provided in portable document format (PDF) and AutoCAD (DWG or DXF) format.
- Traffic data will be based on a project-specific traffic report, standard Institute of Transportation Engineers trip generation rates and available traffic data from the City, the Southern California Association of Governments, or Caltrans.

Task 3 Administrative Draft IS-MND

Rincon will prepare an internal review (Administrative) Draft IS-MND. The Administrative Draft IS-MND will address all of the items on the CEQA environmental checklist. To the maximum extent feasible, existing background reports, technical studies and other available databases will be used and impacts will be quantified and compared to quantitative significance thresholds. Additionally, Rincon will prepare any required technical analysis to support the IS-MND (detailed below). Rincon will submit an electronic copy of the Administrative Draft IS-MND for City review in PDF and/or Word format. Issue areas requiring particular attention in the IS-MND include Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, GHG Emissions, Hydrology and Water Quality, Noise, Tribal Cultural Resources, and Traffic. The following describes our general approach to all CEQA checklist items.

Our general approach to analyzing each issue is described below:

- **Aesthetics, Light, and Glare.** Long-term visual impacts (i.e., visual character and views from adjacent areas) resulting from the project will be reviewed based on a visual survey of the site and surrounding area. We have assumed that the Applicant will provide elevations, simulations, and other visual tools to illustrate the project.
- **Agriculture and Forestry Resources.** The IS-MND will confirm that there would be no effect on farmland or forestland and that the project would not convert such lands to another use.
- **Air Quality/Greenhouse Gas Emissions.** The air quality and GHG analysis will be based on the air quality and GHG emissions modeling results described under Subtask 2.2.
- **Biological Resources.** The biological resources analysis for the IS-MND will be informed by a generalized peer review of the Applicant-prepared biological resources study. The IS-MND analysis will describe the methods and results of the biological resources investigation provided to Rincon.
- **Cultural Resources.** The cultural resources analysis for the IS-MND will be informed by a generalized peer review of the Applicant-prepared study, which will identify potential impacts to historic and prehistoric resources and human remains and will include mitigation measures, as needed.
- **Geology and Soils.** Based on readily available sources (such as the City's Safety Element, the peer review of the Applicant-prepared geological/soils reports, and any additional geotechnical reports prepared for the site), this analysis will identify existing regional and site-specific geology and soils constraints (such as liquefaction, compressible soils, and subsidence).
- **Hazards and Hazardous Materials.** Rincon will review online historical aerial photographs and readily available databases such as the State Water Resources Control Board GeoTracker and Department of Toxic Substances Control Envirostor databases to identify known release sites and

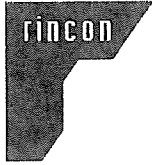


potential environmental concern sites. If significant impacts are identified, mitigation measures will be developed to avoid or minimize project impacts to the greatest extent feasible.

- **Land Use and Planning.** This discussion will analyze the relationship of the proposed project and associated entitlements to applicable planning policies and ordinances, including the City's General Plan and Development Code and the Southern California Association of Government's Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS). Rincon's Planning team will review any discrepancies between existing by right policies and potential discrepancies with the proposed project.
- **Noise.** The Noise section will be conducted in accordance with City of Agoura Hills guidelines, standards, and ordinances. The section will consider both temporary construction and long-term operational noise from the project, as provided to Rincon from the City.
- **Population/Housing.** The analysis will document the fact that the proposed use would not result in substantial growth inducement or residential displacement.
- **Public Services.** The project's effects related to the provision of services, including fire, law enforcement, and recreational services, will be evaluated. Data sources will include readily available documents, such as the City's General Plan.
- **Recreation.** The analysis will address that the project would not have direct impacts to local recreation facilities or indirect impacts associated with the deterioration of parks due to increased demand for recreational facilities. Data sources will include the City's General Plan and General Plan EIR.
- **Transportation/Traffic.** The IS-MND will address impacts to the local and regional circulation system, alternative transportation modes, and traffic hazards, using the Applicant provided traffic study.
- **Tribal Cultural Resources.** Rincon will assist the City with commencing the required AB 52 consultation, as described under Subtask 2.1, above. The results of tribal consultation will be described in the IS-MND, and any mitigation measures required or requested by consulting tribes will be incorporated. If a General Plan Amendment is required Rincon will also provide the City with support on SB 18.
- **Utilities and Service Systems.** Impacts to existing infrastructure, including water, wastewater, solid waste, and electricity/natural gas facilities will be evaluated. Water and energy demand and wastewater and solid waste generation will be quantified using standard rates for proposed uses and compared to current and future system capacity.
- **Wildfire.** Based on readily available sources (such as the City's Safety Element and CALFIRE maps), Rincon will discuss wildfire risk at the project site and how risks will be minimized through project features.
- **Mandatory Findings of Significance.** This section will address cumulative effects, impacts to biological or cultural resources, and impacts to human beings.

Task 4 Public Review Draft IS-MND

Rincon will respond to one round of consolidated comments from the City and prepare the Public Review Draft IS-MND. We will provide two hybrid-bound or CD copies of the Public Review Draft IS-MND.



Rincon will assist the City in preparing prepare the Notice of Intent (NOI) to adopt an IS-MND and with the City's consent will mail to responsible agencies. The City will be responsible publishing the NOI in a local newspaper. We will provide one electronic (PDF) copy of the Public Review Draft IS-MND for posting on the City's website. The City will be responsible for CEQA noticing to adjacent parcel owners or posting at the site, and Rincon will file the NOI with the County Clerk and State Clearinghouse.

Task 5 Response to Comments and Final IS-MND

Upon receipt of public comments on the Public Review Draft IS-MND, Rincon will prepare draft responses to comments for City review. This scope of work assumes that up to five comment letters containing comments on the content of the CEQA document will be received. letters containing comments on the content of the CEQA document will be received. This includes three lengthy (over five pages) and/or substantive letters, which can be adequately responded to. These assumptions are based on our prior experience with similar IS-MND's and our understanding of the litigious nature of CEQA review in the City and surrounding areas. Comment letters that solely express support or opposition to the project would not count against the ten-letter estimate. The actual level of effort required to respond will depend on the length, detail, and sophistication of the comments, in addition to the number of letters received. We reserve the right to reevaluate the effort level and request a scope amendment upon close of the public comment period.

Upon finalization of the Response to Comments, Rincon will prepare the Administrative Final IS-MND for City review. The Final IS-MND will incorporate any changes in underline and strikeout font required in response to comments received on the Draft IS-MND and will include the Mitigation Monitoring and Reporting Program (MMRP). Rincon will also file the Notice of Determination (NOD) for the Final IS-MND, as described further below.

Mitigation Monitoring and Reporting Program

Rincon will prepare a MMRP incorporating all mitigation measures to be adopted as part of the Final IS-MND. The MMRP will be in table format and will describe monitoring and reporting responsibilities, general or specific standards to be used to determine compliance with mitigation measures, timeline for implementation of the mitigation measures, and the inclusion of additional information that may be required by the City.

Notice of Determination

Once the City decides to approve a project and the IS-MND has been adopted, Rincon shall file a NOD with the State Clearinghouse (CEQA Guidelines Section 15075) and with the County Clerk. We assume that the City will be responsible for payment of the applicable administrative or California Department of Fish and Wildlife (CDFW) filing fees, if needed. We will provide up to two hybrid copies of the Final IS-MND.

Task 6 Public Hearings

This task assumes Rincon will attend up to two public hearings on the project to answer questions regarding the CEQA analysis. We can attend additional hearings in accordance with our standard fee schedule and have included a few hours to help assist the City in our proposed scope of costs.



Task 7 Project Management

Rincon's Project Manager will be responsible for general day-to-day project management tasks, including team management, coordination and communication with the City and Applicant, and monthly invoicing with progress reports. As part of this assignment, Rincon's Project Manager will conduct check-in calls bi-weekly with the City and Applicant to review project status, milestones, and project needs and concerns.

Schedule

Rincon will complete the environmental review process based on the following schedule:

- The Administrative Draft IS-MND to be submitted for internal review by the City within 11 to 12 weeks of the notice to proceed, provided the project includes a stable project description that does not change from the notice to proceed. This timeline assumes that the stable project description and all relevant construction information will be provided by the notice to proceed. Delays in providing construction information and relevant project description details may result in delayed delivery of the Administrative Draft IS-MND.
- Public Review Draft IS-MND to be submitted within two weeks of receipt of City comments on the Administrative Draft IS-MND.
- Administrative Final IS-MND and MMRP to be submitted to the City within one week of the close of the comment period for the Public Review Draft IS-MND (30-days).
- Final IS-MND and MMRP to be submitted within one week of receipt of City comments on the Administrative Final Draft IS-MND.

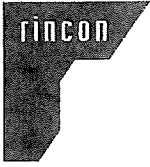
Based on these timeframes and assuming two-week turnaround of internal review work products, we believe that the environmental review process can be completed within six to seven months, including the optional HRA analysis. This also assumes no changes in the project description or other unforeseen delays.

Cost

Our proposed budget for the work program described above is \$57,587 prior to authorization of the optional HRA task. With the optional task, the total cost scope for the complete IS-MND package would be \$68,326. The table below shows the breakdown of costs by task. Rincon assumes that the City will circulate the Public Review Draft IS-MND to responsible agencies and manage all other CEQA required noticing, including noticing for the NOI in the newspaper.

All work will be performed in accordance with the work scope outlined above and with the terms and conditions of a mutually agreeable contract. Costs have been allocated to tasks, based upon Rincon's proposed approach. During the work, Rincon may re-allocate costs among tasks and/or direct costs, as circumstances warrant, so long as the adjustments maintain the total price within the total authorized contract amount.

We appreciate the opportunity to assist with this assignment and are prepared to begin work immediately upon receipt of notice to proceed. This proposal is valid for a period of 30 days and is fully negotiable to meet the needs of the City at this site. Thank you for considering Rincon Consultants for



this assignment. Please do not hesitate to contact us if you have questions about this proposal or need additional information.

Sincerely,
Rincon Consultants, Inc.

A handwritten signature in black ink, appearing to read "Ryan Luckert".

Ryan Luckert
Supervising Planner

A handwritten signature in black ink, appearing to read "Deanna Hansen".

Deanna Hansen
Principal/Vice President

Attachments

Cost Estimate

EXHIBIT B
PAYMENT RATES AND SCHEDULE



RINCON CONSULTANTS, INC.
22-12843 28000 Dorothy Place
Cost Estimate

	Rate	Hours	Labor Budget	Direct Expenses	Total Budget
Task 1: Project Initiation and Kickoff Meeting		32.00	6,323.00	0.00	6,323.00
Task 2: Technical Assessments		60.00	10,149.00	500.00	10,649.00
Task 3: Administrative Draft IS-MND		124.00	21,224.00	0.00	21,224.00
Task 4: Public Review Draft IS-MND		37.00	6,591.00	0.00	6,591.00
Task 5: Responses to Comments and Final IS-MND		26.00	4,674.00	0.00	4,674.00
Task 6: Public Hearings		8.00	2,032.00	0.00	2,032.00
Task 7: Project Management		34.00	6,594.00	0.00	6,594.00
Optional HRA Tasks		0.00	0.00	10,239.00	10,239.00
Project Total		321.00	57,587.00	10,739.00	68,326.00

Direct Expenses Summary

	Amount
Record Search	500.00
Consultant (General)	10,239.00
Direct Expenses Subtotal	10,739.00

AGREEMENT BETWEEN APPLICANT AND THE CITY OF AGOURA HILLS
FOR PAYMENT OF COSTS IN CONNECTION WITH THE PREPARATION OF
ENVIRONMENTAL DOCUMENTATION

NAME OF APPLICANT:	Warmington Residential Joe Offelie
APPLICANT'S ADDRESS:	3090 Pullman Street Costa Mesa, CA 92626
CITY'S ADDRESS:	City of Agoura Hills 30001 Ladyface Court Agoura Hills, CA 91301 Attention: City Manager
COMMENCEMENT DATE:	November 9, 2022
TERMINATION DATE:	November 9, 2023
CONSIDERATION:	\$81,999.20

**AGREEMENT FOR PAYMENT OF COSTS BETWEEN
THE CITY OF AGOURA HILLS AND WARMINGTON RESIDENTIAL
IN CONNECTION WITH THE PREPARATION OF
ENVIRONMENTAL DOCUMENTATION**

THIS AGREEMENT is made this November 9, 2022 by and between the City of Agoura Hills, a general law city and municipal corporation (hereinafter "City"), and Joe Ofelie for Warmington Residential. (hereinafter "Applicant"), who agree as follows:

1. Applicant requests that California Environmental Quality Act documentation ("environmental documentation") be prepared for and under the direction of City, but at Applicant's expense, for consideration in connection with preparation of an Initial Study (IS)/Mitigated Negative Declaration (MND) for the development of a multi-family residential development proposed at 28000 Dorothy Drive, Agoura Hills, AIN: 2061-013-001, -002, -003, -004, -005, -024, -025, -036, -039, and -040.

2. Costs for preparation of the environmental documentation will be as follows:

a. Costs incurred pursuant to an agreement between Rincon Consultants, Inc. (hereinafter "Consultant") and City for preparation of the environmental documentation, the scope of work of which is attached hereto as Exhibit A. Consultant's estimate of the maximum cost of Consultant's services in the preparation of the environmental documentation is Sixty Eight Thousand Three Hundred Twenty Six Dollars and Zero Cents (\$68,326.00) ("Consultant's Cost").

b. Staff time for research, writing, reviewing and processing, calculated by the number of hours spent times the current hourly rate of the employee or contractor, plus general overhead costs. This amount is estimated to be 20 percent of Consultant's Cost, i.e. Thirteen Thousand Six Hundred Sixty Five Dollars and Twenty Cents (\$13,665.20) ("Administrative Cost").

c. Additional consultant and administrative costs not included within the estimates in subsections (a) or (b) of this Section. To the extent such additional costs arise out of (1) new information supplied to the City regarding the project or its environmental impacts following commencement of the draft environmental document; (2) incomplete or inaccurate information supplied to the City by Applicant or Applicant's agents; or (3) revisions to the environmental document made necessary, in the City's judgment, by changes to the Applicant's project ("Additional Cost").

3. Applicant hereby agrees to pay City in full for all costs and expenses incurred by City for preparation of the environmental documentation. Concurrently with execution of this Agreement, Applicant shall pay City the full amount of Eighty One Thousand Nine Hundred and Ninety Nine Dollars and Twenty Cents (\$81,999.20) (Consultant's Cost plus Administrative Cost) to defray the costs of preparation of the

environmental documentation and agrees to pay such Additional Costs or other additional sums as may be billed by City for preparation of the environmental documentation within fifteen (15) days from the date of any invoice, or prior to consideration of the Project by the City Planning Commission or City Council, whichever first occurs.

4. Any excess of the amount deposited over the actual cost incurred in connection with preparation of the environmental documentation shall be refunded by City to Applicant within fifteen (15) days from the date the Notice of Determination for the Project is filed with the County Clerk.

5. In the event Applicant abandons the Project and upon written request from Applicant directed to City's Community Development Director, City will terminate or suspend performance of work by Consultant under the contract between City and Consultant. Applicant shall pay City for all costs incurred by City pursuant to its contract with Consultant and for all administrative and actual costs incurred by City.

6. Applicant shall not communicate with or discuss any matters relating to the preparation of environmental documentation with Consultant without prior approval from City's Community Development Director or his or her duly authorized representative. Applicant shall address all questions regarding scheduling, content or distribution of the environmental documentation, or any related matters, to City staff, and not to Consultant. In no case may Applicant direct Consultant as to how to undertake or prepare Consultant's work product. The purpose of this provision is to ensure that the environmental documentation is objective and is prepared on behalf of City, and not a document prepared for purposes of advocating approval of the Project.

7. Applicant hereby acknowledges and agrees as follows:

a. City has sole discretion to select which of its employees are assigned to work on Applicant's applications;

a. City has sole discretion to determine which persons City will hire as employees and contractors to work on the Applicant's applications;

c. City has sole discretion to direct the work and evaluate the performance of the employees and contractors whom the City hires to work on Applicant's applications and City retains the right to terminate or replace at any time any employee or contractor who is assigned to work on Applicant's applications;

d. City has sole discretion to determine the amount of compensation paid to employees and contractors hired by City to work on environmental documentation.

8. City and Applicant hereby acknowledge and agree that processing of Applicant's application is not contingent on the hiring of any specific contractor or

consultant.

9. City and Applicant hereby acknowledge and agree that the Applicant's duty to reimburse the City is not contingent upon the City's approval or disapproval of the Project or upon the result of any action of the City. Applicant acknowledges and understands that this Agreement in no way obligates the City to approve any entitlements or environmental documentation for the Project. The City and its elected and appointed officials retain sole discretion to either approve or deny any of the environmental documents or entitlements that are subject to or related to this Agreement and needed to effectuate the Project. Furthermore, the Applicant acknowledges that the City makes no promise, representation or warranty, express or implied, as to the timing of City's processing of the Project.

10. Conflict of Interest. Applicant makes the following warranties for the 12-month period preceding the submission of its application for the Project. Applicant warrants that it has not entered into any arrangement to pay financial consideration to, and has not made any payment to the Consultant, or any of the Consultant's agents or employees. Applicant further warrants that it has not entered into any arrangement to pay financial consideration to, and has not made any payment to, any City official, agent or employee ("City Official") that would create a legally cognizable conflict of interest as defined in the Political Reform Act (California Government Code Sections 87100 *et seq.*). Furthermore, during the existence of City's contract with the Consultant, Applicant shall not enter into or cause any other person to enter into any financial relationship on behalf of or for the benefit of Applicant with (i) the Consultant or (ii) any City Official. During such period, Applicant shall not propose or cause any other person to propose to enter into any future financial relationship on behalf of or for the benefit of Applicant with (i) the Consultant or (ii) any City Official. If Applicant cannot provide such warranty because Applicant has entered into an arrangement to pay financial consideration to, or made payment to, a City Official that would create a legally cognizable conflict of interest, Applicant shall then be obligated to disclose such information to the Community Development Director in writing within five (5) days of the execution of this Agreement.

11. Entire Agreement. This Agreement constitutes the entire agreement between the parties thereto with respect to the subject matter of this Agreement. City and Applicant acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement.

12. Amendment. This Agreement, including any exhibits hereto if applicable, may only be amended by a written document signed by the parties thereto.

13. Interpretation. This Agreement is deemed to have been prepared by all parties hereto, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such ambiguity or uncertainty exists, shall be interpreted according to the applicable rules of contracts under the laws of the State of California.

14. Attorney's Fees. In the event that City is required to initiate litigation to

enforce this agreement or collect any sum due hereunder, the City shall be entitled to recover its reasonable attorneys' fees and costs of suit should the City prevail.

15. Assignment. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, successors, and assigns of the parties. Notwithstanding the foregoing, any reimbursement rights hereunder shall remain with Applicant unless Applicant specifically assigns those rights to a successor by a written assignment delivered to City. Applicant may assign its rights and transfer its obligations under this Agreement only with City's prior written consent, which shall not be unreasonably withheld or delayed. Immediately upon the granting of such consent and City's receipt of a duly executed assignment and assumption agreement by Applicant and Assignee in accordance with the requirements of this Agreement, Applicant shall be released from all liability and obligations hereunder.

16. No Agency, Joint Venture or Partnership. City and Applicant hereby renounce the existence of any form of agency, relationship, joint venture, or partnership between City and Applicant and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating such a relationship between City and Applicant.

17. Governing Law. This Agreement shall be governed by the laws of the State of California and the exclusive venue for all disputes arising hereunder shall be the Superior Court for the County of Los Angeles.

18. Effect of Waiver. No Waiver of any provision of this Agreement shall be considered a waiver of any provision or any subsequent breach of the same or any other provision including the time for performance of any such provisions. The exercise by a party of any remedy provided in this Agreement or at law shall not prevent that party from any other remedy provided in this Agreement or at law.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

20. Authority to Execute Agreement. The person or persons executing this Agreement on behalf of Applicant warrants and represents that he or she has the authority to execute this Agreement on behalf of Applicant and has the authority to bind Applicant to the performance of its obligations hereunder.

21. Notice and Payments. All written notices and payments to be given or made under this Agreement shall be transmitted by personal delivery or by mail. Notices or payments given or made by mail shall be addressed as follows:

IF TO THE CITY:

IF TO THE CITY:

City of Agoura Hills
Community Development Department
30001 Ladyface Court
Agoura Hills, CA 91301
Attn: City Manager

IF TO THE APPLICANT:

Warmington Residential
3090 Pullman Street
Costa Mesa, CA 92626
Attn: Joe Oftelie

When so addressed, notices or payments shall be deemed given or made upon deposit in the United States Mail, postage prepaid. In all other instances, notices or payments shall be deemed given or made at the time of actual delivery. Changes may be made in the names of persons to whom notices or payments are to be given or made, or in the addresses to which notices or payments are to be given or made, by the giving of notice pursuant to this section.

[Signatures provided on the following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY OF AGOURA HILLS:

By: _____
Nathan Hamburger,
City Manager

ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk

APPROVED AS TO FORM:

Candice K. Lee
City Attorney

APPLICANT:

By:  _____
Name: Joe Oftelie
Title: Vice President