

Ascent Environmental, Inc.

FOURTH AMENDMENT TO AGREEMENT FOR SERVICES #236-S1710

THIS FOURTH AMENDMENT to that Agreement for Services #236-S1710 made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Ascent Environmental, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 455 Capitol Mall, Suite 300, Sacramento, California 95814 (hereinafter referred to as "Consultant");

R E C I T A L S

WHEREAS, Consultant has been engaged by County to assist its Planning and Building Department by providing on-call planning and environmental services for specific plan projects, development projects, and environmental planning services pursuant to Agreement for Services #236-S1710, dated October 6, 2016, First Amendment to Agreement for Services #236-S1710, dated April 25, 2017, Second Amendment to Agreement for Services #236-S1710, dated September 24, 2019, and Third Amendment to Agreement for Services #236-S1710, dated June 30, 2020, incorporated herein and made by reference a part hereof (hereinafter referred to as "Agreement");

WHEREAS, the parties hereto desire to amend the Agreement to increase the not-to-exceed compensation amount of the Agreement by \$800,000, for a total not-to-exceed amount of \$1,600,000, update the invoice recipient, and revise the rates for services rendered, amending **ARTICLE III, Compensation for Services**, and adding **Amended Exhibit B-1**;

WHEREAS, the parties hereto desire to amend the Agreement to update County notice recipients, amending **ARTICLE XVI, Notice to Parties**; and

WHEREAS, the parties hereto desire to fully-replace specific Articles and add new Articles to include updated contract provisions;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, County and Consultant mutually agree to amend the terms of the Agreement in this Fourth Amendment to Agreement on the following terms and conditions:

- I. **ARTICLE III, Compensation for Services**, of the Agreement is amended in its entirety to read as follow:

ARTICLE III

Compensation for Services: For services provided herein, including any deliverables that may be identified in the individual Work Orders issued pursuant to this Agreement, County agrees to pay Consultant upon the satisfactory completion and County's acceptance of work, in arrears. Payment shall be made within forty-five (45) days following County's receipt and approval of itemized invoices identifying the services rendered.

For the period beginning October 6, 2016, the effective date of the Agreement, and continuing through the day before the effective date of the Second Amendment to the Agreement, for the services provided herein, the billing rates shall be in accordance with Exhibit B, marked "Rate Schedule," incorporated herein and made by reference a part hereof. The hourly rates listed on the Rate Schedule may be adjusted to a maximum of five percent (5%) increase per year which shall require written approval and acceptance by County's Contract Administrator prior to the new rates becoming effective. Any rate increases authorized by County's Contract Administrator shall not increase the not-to-exceed amount of the Agreement.

For the period beginning September 24, 2019, the effective date of the Second Amendment, and continuing through the day before the effective date of the Fourth Amendment to the Agreement, for the services provided herein, the billing rates shall be in accordance with Amended Exhibit B, marked "Amended Rate Schedule," incorporated herein and made by reference a part hereof.

For the period beginning on the effective date of the Fourth Amendment to the Agreement and continuing through the remaining term of the Agreement, for the services provided herein, the billing rates shall be in accordance with Amended Exhibit B-1, marked "Amended Rate Schedule," incorporated herein and made by reference a part hereof.

Notwithstanding any other provision of this Agreement to the contrary, payments to Consultant for travel, lodging, per diem, and mileage expenses, if applicable, for Consultant's claims for reimbursement shall not exceed the rates to be paid to County employees under the current Board of Supervisor's Travel Policy in effect at the time the expenses are incurred. Any individual travel expense exceeding one hundred dollars (\$100) and any work requiring overnight stay must be approved in advance by the Contract Administrator or designee. Consultant is responsible for canceling hotel rooms before the cancellation period ends and should record the cancellation number in case of disputes. Consultant shall not be reimbursed for "no-show" hotel charges unless there are unavoidable reasons for not cancelling the room and the Contract Administrator or designee has determined that the reasons are valid.

For the period beginning October 6, 2016, the effective date of the Agreement, and continuing through the day before the effective date of the Second Amendment, the billing rates for other direct costs including special

reproductions, delivery charges, postage, parking, and other outside services authorized herein, for services rendered, shall be in accordance with Exhibit B. Any invoices that include other direct costs shall be accompanied by backup documentation to substantiate Consultant's costs for the services being billed on those invoices.

For the period beginning September 24, 2019, the effective date of the Second Amendment, and continuing through the day before the effective date of the Fourth Amendment to the Agreement, the billing rates for other direct costs including special reproductions, delivery charges, postage, parking, and other outside services authorized herein, for services rendered, shall be in accordance with Amended Exhibit B. Any invoices that include other direct costs shall be accompanied by backup documentation to substantiate Consultant's costs for the services being billed on those invoices.

For the period beginning on the effective date of the Fourth Amendment to the Agreement and continuing through the remaining term of the Agreement, the billing rates for other direct costs including special reproductions, delivery charges, postage, parking, and other outside services authorized herein, for services rendered, shall be in accordance with Amended Exhibit B-1. Any invoices that include other direct costs shall be accompanied by backup documentation to substantiate Consultant's costs for the services being billed on those invoices.

The total amount of this Agreement, as amended, shall not exceed \$1,600,000, inclusive of all expenses, costs, taxes, Work Orders and amended Work Orders, and all work of subconsultants, if any are authorized. It is understood and agreed that there is no guarantee that this amount will be authorized under this Agreement through Work Orders.

Itemized invoices shall follow the format specified by County and shall reference this Agreement and the County-supplied Work Order number both on their faces and on any enclosures or backup documentation. Consultant shall attach copies of any progress reports required under the provisions of ARTICLE VI, Progress Reports, herein, that relate to the services being billed, as backup documentation to any invoices submitted for payment under the terms of this Agreement. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices. Consultant shall bill County for only one (1) Work Order per invoice. Invoices shall be mailed to County at the following address:

County of El Dorado
Planning and Building Department
2850 Fairlane Court
Placerville, California 95667

Attn.: Kevin Willard
Administrative Technician

or to such other location as County directs.

In the event that Consultant fails to deliver, in the format specified, the deliverables and progress reports required by this Agreement or in the individual Work Orders issued pursuant to this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the required deliverables or progress reports are received, or proceed as set forth below in ARTICLE XV, Default, Termination, and Cancellation, herein.

II. **ARTICLE XVI, Notice to Parties**, of the Agreement is amended in its entirety to read as follows:

ARTICLE XVI

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
Planning and Building Department
2850 Fairlane Court
Placerville, California 95667

Attn.: Rommel Pabalinas
Planning Manager

With a copy to:

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Michele Weimer
Procurement and Contracts
Manager

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Ascent Environmental, Inc.
455 Capitol Mall, Suite 300
Sacramento, California 95814

Attn.: Patrick Angell, Principal

or to such other location as Consultant directs.

III. The following Articles of the Agreement are fully-replaced in their entirety to read as follows:

ARTICLE IX

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Consultant, and Consultant may perform similar work or services for others. However, Consultant shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Consultant's responsibilities or hinder Consultant's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

ARTICLE XII

Independent Contractor: The parties intend that an independent consultant relationship will be created by this contract. Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, agents, affiliates, and subconsultants, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Consultant. Those persons will be entirely and exclusively under the direction, supervision, and control of Consultant.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Consultant performs the work or services for accomplishing the results. Consultant understands and agrees that Consultant lacks the authority to bind County or incur any obligations on behalf of County.

Consultant, including any subconsultant or employees of Consultant, shall not receive, nor be eligible for, any benefits County provides for its employees,

including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Consultant shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Consultant. Consultant shall not be subject to the work schedules or vacation periods that apply to County employees.

Consultant shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Consultant provides for its employees.

Consultant acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

ARTICLE XV

Default, Termination, and Cancellation:

- A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:
1. The alleged default and the applicable Agreement provision.
 2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

1. If County terminates this Agreement, in whole or in part, for default: County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Consultant shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Consultant, the excess costs to procure from an alternate source.

2. County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.
3. County may require Consultant to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
 2. A representation or warranty made by Consultant in this Agreement proves to have been false or misleading in any respect.
 3. Consultant fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
 4. A violation of ARTICLE XXII, Conflict of Interest.
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event Consultant ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement or any Work Order issued pursuant to this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Consultant, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Work Order or the total amount of the Agreement, as applicable. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

ARTICLE XVIII

Indemnity: To the fullest extent permitted by law, Consultant shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including reasonable attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the negligent acts or omissions of Consultant or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XXII

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Consultant and performing work for County and who are considered to be a "consultant" within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are considered to be a "consultant" within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Consultant covenants that during the term of this Agreement neither it, or any officer or employee of Consultant, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Consultant becomes aware of a conflict of interest related to this Agreement, Consultant shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by

giving written notice of termination specified in ARTICLE XV, Default, Termination, and Cancellation.

ARTICLE XXIII

Nondiscrimination:

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and Title 2, California Code of Regulations, Section 11102.

IV. The following Articles of the Agreement are added to read as follows:

ARTICLE XXXVI

Force Majeure: Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

ARTICLE XXXVII

Waiver: No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

Except as herein amended, all other parts and sections of Agreement for Services #236-S1710 shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment to Agreement for Services #236-S1710 on the dates indicated below.

--COUNTY OF EL DORADO--

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

--ASCENT ENVIRONMENTAL, INC.--

By: *Patrick Angell*
Patrick Angell (Sep 15, 2021 10:39 PDT)

Dated: 09/15/2021

Patrick Angell
Principal
"Consultant"



**ASCENT ENVIRONMENTAL, INC.
AMENDED EXHIBIT B-1
AMENDED RATE SCHEDULE**

Labor Classification	Billing Rate
Principal, Director	\$200 to \$340
Senior Environmental Manager, Senior Planner/Scientist/Biologist	\$170 to \$240
Environmental Manager, Project Planner/Scientist/Biologist	\$125 to \$190
Staff Planner, Environmental Planner, Staff Scientist/Staff Biologist	\$110 to \$150
Graphics/GIS	\$95 to \$135
Document Production/Word Processor/ Administrative Assistant	\$95 to \$125
Project Assistant	\$75 to \$115
Direct Costs	Rates
Reproduction: 8½" by 11"	\$0.07/page (black and white); \$0.26/page (color)
Reproduction: 11" by 17"	\$0.14/page B&W; \$0.52/page color
Reproduction: Plotter	\$5/square foot
Reproduction: CDs	\$10/disc
Automobile Mileage	In accordance with ARTICLE III
Noise Meter	\$100/half day, \$150/day, \$200/day plus overnight, \$500/week
GPS Unit	\$100/half day, \$150/day, \$200/day plus overnight, \$500/week
Lodging and/or Per Diem	In accordance with ARTICLE III
Other Direct Costs	As incurred
Subcontractors	As incurred*

*A project-support management cost of ten (10) percent will be applied to subcontractor costs.

Lump-Sum Price. Work is authorized based on a lump sum price. Monthly invoices will be issued based on the percentage of progress toward completion of the work.

Price Allocation to Tasks or Staff. If the proposed cost presentation allocates funding to specific tasks or staff, Consultant may reallocate budget during the course of work, as long as the total contract price is not exceeded.