



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning &
Development
Department No.: 053
For Agenda Of: February 12, 2019
Placement: Administrative Agenda
Estimated Tme: N/A
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Director(s) Dianne M. Black, Director, Planning and Development, 568-2086
Contact Info: John Zorovich, Deputy Director, Energy, Minerals & Compliance Division, 568-2519

SUBJECT: Authorization of Agreement for Services with Ecology and Environment, Inc. to Complete an Environmental Impact Report and Environmental Impact Statement for the Plains Replacement Pipeline Project located in the 3rd, 4th and 5th Supervisorial Districts

County Counsel Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

- a) Approve and authorize the Chair to execute an Agreement for Services of Independent Contractor (Attachment 1) with Ecology and Environment, Inc. (E&E) and partner MRS Environmental (MRS) to complete an Environmental Impact Report and Environmental Impact Statement for Plains' Replacement Pipeline Project (Project) for the period of February 12, 2019 through June 30, 2021 for a base amount of \$999,927.00 and a total contract amount not to exceed \$1,149,916.00.
- b) Approve and authorize the Director of Planning & Development, or designee, to approve up to a 15 percent contingency cost not to exceed \$149,989.00 for services being performed under the Agreement for a total contract amount not to exceed \$1,149,916.00.
- c) Approve and authorize the Director of Planning and Development, or designee, to make immaterial changes in accordance with Section 35 of the Agreement.

- d) Determine that the above actions are not a “project” and are exempt from CEQA pursuant to Section 15378(b)(5), because they are organizational or administrative activities of governments that will not result in direct or indirect physical changes to the environment.

Summary Text:

The Plains Replacement Pipeline Project (Project) is subject to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) because the Project is proposed to be located on local, State and Federal lands. Plains Pipeline, L.P. (Plains), and the Planning and Development Department (P&D) and the Bureau of Land Management (BLM) agree that an Environmental Impact Report (EIR) is required under Section 15163 of the *Guidelines for Implementation of the California Environmental Quality Act* (CEQA Guidelines) and an Environmental Impact Statement (EIS) is required under the Code of Federal Regulations, Title 40, Chapter 5, Parts 1500-1508.

Appendices 1 and 2 of the attached Agreement for Services include the technical and cost proposals for completing the EIR and EIS. Board authorization of an Agreement is required when the cost of preparing an environmental document will exceed \$100,000.00. The preparation of this EIR and EIS is included in P&D’s current and next fiscal year budgets and therefore, no budget revision is necessary for the contract’s execution.

Background:

Plains is proposing the construction of a new pipeline system to replace the Line 901/903 system which is currently shutdown. The replacement pipeline would be approximately 123.4 miles in length and would span the jurisdictions of SB County, SLO County, Kern County and the BLM. Plains has submitted permit applications to P&D, San Luis Obispo County’s Planning Department (SLO County) and the BLM. Plains did not submit a permit application request to Kern County because Kern County amended their Zoning Ordinance to create development standards and conditions for oil and gas activities within Kern County and certified a corresponding Programmatic EIR for the amendments in 2015. Since the 13 mile segment of the proposed Project within Kern County’s jurisdiction is covered under their Programmatic EIR, they have directed Plains to return for a ministerial permit once SB County and the BLM have taken action on the proposed Project.

The proposed Project includes the in-place abandonment of the existing lines, and the installation and operation of a new 123.4-mile replacement pipeline system within the existing pipeline right-of-way with the exception of three notable deviations. These deviations consist of a reroute to circumvent the City of Buellton and two smaller deviations to bypass sensitive resources along the Gaviota Coast. The proposed Project also includes the construction and installation of: supporting access roads, valve site upgrades, facilities upgrades to the existing pump stations including a new 120,000 barrel crude oil break-out tank at the Sisquoc Pump Station and the construction of one new pump station located in SLO County. The proposed Project also includes a new 3.8 mile natural gas pipeline to supply demand for fuel gas at the expanded Sisquoc Pump Station. Although the natural gas pipeline is a feature of the proposed Project, it will be owned and operated by Southern California Gas Company.

On April 20, 2018, P&D deemed Plains’ application for the proposed Project to be complete for processing. Although CEQA and NEPA both allow for the processing of a joint environmental document, due to federal document limitations and the applicant’s participation in the federal

government's FAST-41 program, the CEQA and NEPA analyses will be completed as two separate documents. After finalizing two separate Memorandums of Understanding with SLO County and the BLM, on November 22, 2018, P&D issued a Request for Proposals (RFP) for a contractor to prepare both the EIR and EIS. Selecting one contractor under a single contract to prepare both documents will allow for better communication throughout document preparation between Lead Agencies, simplify sharing of technical information and reports, and result in a more consistent project analysis between the two documents. By maintaining control of the EIR/EIS contract, SB County will be able to ensure all identified milestones have been satisfactorily completed before release of payments. Additionally, due to FAST-41 requirements, the EIS will likely be completed within a shorter timeframe than the EIR. Holding the contract will allow SB County to manage the completion of the EIR once the EIS process has been completed.

The RFP was released on November 22, 2018 to a total of fifteen consulting firms; four proposals were received. After the County and BLM evaluated the proposals for adequacy with input from SLO County, Plains selected E&E with partner MRS to prepare the EIR and EIS documents. Tasks involved with the preparation of the environmental documents include, but are not limited to, peer review of technical reports, independent field survey of the project site, independent and objective evaluation of potential project-specific and cumulative impacts, project alternatives and identification of mitigation measures to reduce environmental impacts to the extent feasible.

Once your Board approves the execution of the Agreement for Services, P&D will oversee the consultant's completion of the EIR and EIS process in coordination with the BLM as the NEPA Lead Agency.

Fiscal and Facilities:

Costs for consultant preparation and processing of the EIR and EIS will be fully reimbursed by Plains. The cost of completing the EIR and EIS is for an amount not to exceed \$1,149,916.00, which includes a base cost of \$999,927.00 and a 15 percent contingency amount of \$149,989.00. Prior to E&E commencing work to complete the EIR and EIS, Plains will provide a one-time deposit to P&D in the amount of \$1,149,916.00. Any contingency funds used must be identified by the consultant and approved by P&D Director, or designee, prior to the work commencing. E&E has partnered with a local contractor, MRS, to manage the project. MRS has an office located in the City of Santa Barbara.

P&D will invoice Plains for all staff time necessary to administer the Agreement for Services and related planning actions. Funding for this project is budgeted in the Permitting Budget Program on page D-272 of the fiscal year 2018-19 and will be included in the recommended fiscal year 2019-20 budget.

Fiscal Analysis:

Funding Sources	Current FY Cost:	Annualized On-going Cost:	Total One-Time Project Cost
General Fund	\$ -	\$ -	
State	\$ -	\$ -	
Federal	\$ -	\$ -	
Fees	\$ -	\$ -	
Other:			1,149,916.00
Total	\$ -	\$ -	1,149,916.00

Key Contract Risks:

A risk analysis was performed on the proposed contract and was determined to be of high risk due to the contract size, and potentially controversial contract subject. Approximately 17% of the work will be completed by E&E's partner, MRS including project management as well as the preparation of the following sections/resource areas of the EIR and EIS: Air Quality, Greenhouse Gases, Oak Tree Mitigation and Hazards/Risk of Upset. Approximately 3% will be subcontracted to Strategic Research, Inc. for the cultural resources section of the EIR and EIS. E&E did not provide current financial statements and/or tax returns, however the contract amount of \$1,149,916.00 will be covered in full by the applicant in the form of a deposit to the County. Payments to the contractor will be made from the deposited amount upon completion of pre-determined milestones as required by Exhibit B of Attachment 1 and described in Appendix 2 of Attachment 1. Payments will not be made to the contractor until all services for each milestone have been completed, delivered and found to be satisfactory by P&D. This ensures that deposited funds will only be expended upon satisfactory product delivery and performance by E&E. Furthermore, risk is also reduced due to the incorporation of 'termination for convenience' and 'suspension for convenience' clauses in the Agreement for Services (Attachment 1).

Special Instructions:

The Clerk of the Board will forward a copy of the Agreement for Services and Minute Order to P&D, Energy, Minerals & Compliance Division, attention Kathryn Lehr.

Attachments:

Attachment 1: Agreement for Services of Independent Contractor

Attachment 2: Board Contract Summary

Authored by: Kathryn Lehr, Energy, Minerals & Compliance Division Planner

**Attachment 1: Agreement for Services of
Independent Contractor**

ATTACHMENT 1

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Ecology and Environment, Inc. with an address at 368 Pleasant View Drive, Lancaster, NY 14086 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

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

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

1. DESIGNATED REPRESENTATIVE

Kathryn Lehr at phone number (805) 568-3560 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. James Frolich at phone number (415) 398-5326 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

2. NOTICES

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

To COUNTY:	Kathryn Lehr, County of Santa Barbara, Planning & Development Department, 123 E. Anapamu Street, Santa Barbara, CA 93101, Fax (805) 568-2030
To CONTRACTOR:	Colleen Mullaney-Westfall, Vice President, Assistant Secretary, Ecology and Environment, Inc., 368 Pleasant View Drive, Lancaster, NY 14086 (716) 684-8060

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

3. SCOPE OF SERVICES

CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. TERM

CONTRACTOR shall commence performance on February 12, 2019 and end performance upon completion, but no later than June 30, 2021 unless otherwise directed by COUNTY or unless earlier terminated.

5. COMPENSATION OF CONTRACTOR

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

6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that CONTRACTOR (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions hereof. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

7. STANDARD OF PERFORMANCE

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

8. DEBARMENT AND SUSPENSION

CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. TAXES

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

10. CONFLICT OF INTEREST

CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. CONTRACTOR must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

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

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

12. NO PUBLICITY OR ENDORSEMENT

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

Notwithstanding, Consultant shall be permitted to include references to (1) the existence of this Agreement, and (2) the general services performed thereunder in its targeted responses to request for proposals or conflict of interest disclosures; *provided that* no reference or disclosure shall be made concerning confidential data, analysis, business strategies, or other confidential business information.

13. COUNTY PROPERTY AND INFORMATION

All of COUNTY's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's property, and CONTRACTOR shall return any such items whenever requested by

COUNTY and whenever required according to the Termination section of this Agreement. CONTRACTOR may use such items only in connection with providing the services. CONTRACTOR shall not disseminate any COUNTY property, documents, or information without COUNTY's prior written consent.

14. RECORDS, AUDIT, AND REVIEW

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

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

15. INDEMNIFICATION AND INSURANCE

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

16. NONDISCRIMINATION

COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

17. NONEXCLUSIVE AGREEMENT

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

18. NON-ASSIGNMENT

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

19. TERMINATION

- A. By COUNTY. COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for nonappropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.

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

20. **SECTION HEADINGS**

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

21. **SEVERABILITY**

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

22. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

23. TIME IS OF THE ESSENCE

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

24. NO WAIVER OF DEFAULT

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

25. ENTIRE AGREEMENT AND AMENDMENT

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

26. SUCCESSORS AND ASSIGNS

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

27. COMPLIANCE WITH LAW

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

28. CALIFORNIA LAW AND JURISDICTION

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

29. EXECUTION OF COUNTERPARTS

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

30. **AUTHORITY**

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

31. **SURVIVAL**

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

32. **PRECEDENCE**

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

33. **SUBCONTRACTORS**

CONTRACTOR is authorized to subcontract with subcontractors identified in Contractor's Proposal. CONTRACTOR shall be fully responsible for all services performed by its subcontractor. CONTRACTOR shall secure from its subcontractor all rights for COUNTY in this Agreement, including audit rights.

34. **HANDLING OF PROPRIETARY INFORMATION**

CONTRACTOR understands and agrees that certain materials which may be provided by COUNTY may be classified and conspicuously labeled as proprietary confidential information. That material is to be subject to the following special provisions:

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

35. **IMMATERIAL CHANGES**

CONTRACTOR and COUNTY agree that immaterial changes to the Statement of Work (time frame and mutually agreeable Statement of Work changes which will not result in a change to the total contract amount) may be authorized by Planning and Development Director, or designee in writing, and will not constitute an amendment to the Agreement.

36. **NEWS RELEASES/INTERVIEWS**

CONTRACTOR agrees for itself, its agents, employees and subcontractors, it will not communicate with representatives of the communications media concerning the subject matter of this Agreement without prior written approval of the COUNTY Project Coordinator. CONTRACTOR further agrees that all media requests for communication will be referred to COUNTY'S responsible personnel.

Agreement for Services of Independent Contractor between the County of Santa Barbara and Ecology and Environment, Inc.

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

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: Shilad la Guerra
Deputy Clerk

COUNTY OF SANTA BARBARA:

By: [Signature]
Chair, Board of Supervisors
Date: 7-12-19

RECOMMENDED FOR APPROVAL:

Dianne M. Black, Director
Planning & Development

By: Dianne M. Black
Department Head

CONTRACTOR:

Ecology and Environment, Inc.

By: [Signature]
Authorized Representative
Name: Timothy J. Grady
Title: Senior Vice President

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: [Signature]
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

Betsy Schaffer, CPA, CPFO
Auditor-Controller

By: [Signature]
Deputy

APPROVED AS TO FORM:

Risk Management

By: [Signature]
Risk Management

**PLANNING AND DEVELOPMENT
REQUEST FOR USE OF CONTINGENCY FUNDS
CHANGE NO. #1 TO
AGREEMENT BETWEEN COUNTY OF SANTA BARBARA
AND ECOLOGY AND ENVIRONMENT, INC.**

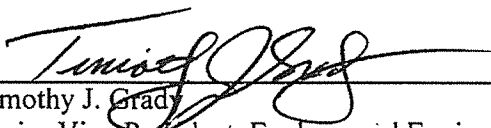
This Agreement (hereinafter referred to as Change No. #1) constitutes a modification to the original agreement between County of Santa Barbara and Ecology and Environment, Inc. (CONSULTANT). Contract No. BC19183, which was entered into on February 12, 2019.

Effective July 12, 2019 the original agreement is modified as follows:

1. The following work is approved to be compensated from the existing contingency (\$149,989):
 - A. **Marine Environmental Risk Impact Assessment.** This task includes the development of a Marine Environmental Risk Impact Assessment which will evaluate the risk and potential impacts to the marine environment as a result of the proposed Project by performing oil spill modelling; examining the modelled extent of the potentially affected marine environment; evaluating potential environmental effects to the marine environment that would be caused by an oil spill; and proposing mitigation measures that would avoid or minimize impacts to the marine environment that may be caused by an oil spill. Completion of the Marine Environmental Risk Impact Assessment task will require over 400 hours of work and cost \$80,200.
 - B. **Additional Biological Coordination and Review.** This task includes an unanticipated additional level of effort related to the Applicant's Biological Resources Assessment (BRA). To-date, a BRA peer-review, two subsequent meetings/calls, a resubmittal and an additional round of review have been conducted. This task will include additional BRA review, three additional meeting/calls and continued interaction with the Applicant's consultant to prepare an adequate BRA for purposes of environmental review. This task will require over 200 additional hours of work and cost \$26,800.
 - C. Upon execution of this agreement, the contingency is reduced by \$107,000. Thus, the remaining balance in contingency will be \$42,989.

CONSULTANT understands and agrees that the release of the contingency granted herein constitutes the total and entire compensation of these changes in the work.

AGREED:



Timothy J. Grady
Senior Vice-President, Ecology and Environment, Inc.

August 6, 2019

Date

Plains Replacement Pipeline Project

Case Nos. 17DVP-00000-00010, 17CUP-00000-00027, 17DRP-00000-00002 and 17CDP-00000-00060

Change Order #1

Contact Number: BC 19183

APPROVED:



Lisa Plowman, Director
Planning and Development Department

9/7/19

Date

cc: Accounting

Attachment A: Ecology and Environment, Inc. Scope of Work – Change Order #1

**PLANNING AND DEVELOPMENT
REQUEST FOR USE OF CONTINGENCY FUNDS
CHANGE NO. #2 TO
AGREEMENT BETWEEN COUNTY OF SANTA BARBARA
AND WSP USA.**

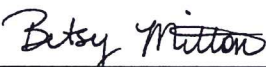
This Agreement (hereinafter referred to as Change No. #2) constitutes a modification to the original agreement between County of Santa Barbara and WSP USA (formerly Ecology and Environment, Inc.)(CONSULTANT). Contract No. BC19183, which was entered into on February 12, 2019.

Effective April 8, 2021 the original agreement is modified as follows:

1. The following work is approved to be compensated from the existing contingency (\$42,989):
 - A. **Additional Cultural Resource Report Review.** This task includes peer review of the Plains final cultural resource report and appendices that were revised by the Applicant in February 2021. Completion of the peer review will require 16 hours of work and cost \$2,288.
 - B. Upon execution of this agreement, the contingency is reduced by \$2,288. Thus, the remaining balance in contingency will be \$40,701.

CONSULTANT understands and agrees that the release of the contingency granted herein constitutes the total and entire compensation of these changes in the work.

AGREED:



Betsy Mitton, CPEA
Assistant Vice President, WSP USA

4/8/2021
Date

APPROVED:



Lisa Plowman, Director
Planning and Development Department

4/8/21
Date

cc: Accounting