

County of Santa Barbara
GENERAL SERVICES DEPARTMENT - FACILITIES SERVICES DIVISION
PROFESSIONAL SERVICES AGREEMENT
for
Engineering Services

This AGREEMENT, made this _____ day of _____, 2006, by and between the County of Santa Barbara, a Public Agency (hereinafter referred to as COUNTY) and Ehlen, Spiess & Haight, Inc. (hereinafter referred to as ENGINEER) duly licensed by the laws of the State of California to practice Engineering in the State of California and for the following project:

The qualified ENGINEER shall perform Engineering services for FEMA 1505-44-18, Santa Maria Court Seismic Retrofitting located on the Cook-Miller Campus in Santa Maria, California (hereinafter referenced as Project). County Project No. T04007-8553.

The services shall include:

1. Schematic Design
2. Design Development
3. Construction Documents
4. Cost Estimates
5. Bid and Award

The services listed above are to be performed as detailed in Attachment A of this AGREEMENT.

The estimated initial construction budget for this Project will be **\$341,850** which includes \$51,150 for ADA upgrades.



Project Description: This is a one and two story, wood-frame structure. The primary effort required in this facility is the positive connection between the roof framing/diaphragm members and the wall framing/shear wall members. The lateral forces will be transferred to the foundation through additional interior shear walls and reinforced exterior shear walls. The installation of these positive connections could occur from the exterior with minimal disruption to the user. The interior work will be targeted for

minimal disruption.

WITNESSETH:

That for and in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 1. RESPONSIBILITIES OF ENGINEER:

The ENGINEER will provide the services for the COUNTY Project as described herein and under Attachment A, "Scope of Services." Attachment A is attached hereto and incorporated herein by reference as though here fully set forth.

ARTICLE 2. RESPONSIBILITIES OF THE COUNTY:

The COUNTY shall cooperate with the ENGINEER on all phases of the work covered by this AGREEMENT and will make available to him, as his needs indicate, all existing plans, specifications, maps, photographs, reports and other data in possession of the COUNTY covering the Project/site as selected. The COUNTY'S responsibilities shall also include the following items.

- A. The COUNTY will provide information regarding requirements for the Project, including a Project program and a construction budget. The program will set forth the COUNTY'S design objectives, constraints, and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems, and site requirements.
- B. The COUNTY will review with the ENGINEER, the COUNTY'S lines of authority, decision processes, and other procedures regarding the Project. To provide a single reliable source of decisions on the Project, the COUNTY'S designated representative who is authorized to act in the COUNTY'S behalf with respect to this Project is **Robert Ooley, AIA County Architect or his designee**. The ENGINEER will accept directives from the COUNTY'S designated representative, only and not from other COUNTY employees.
- C. The COUNTY will furnish an accurate land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and floor elevations pertaining to existing buildings, other improvements, and trees; and information in the COUNTY'S possession concerning available service and utility lines both public and private.
- D. The COUNTY will bear the expense of providing soils data when such data is deemed necessary by the ENGINEER, including test

logs, soil classifications, soil bearing values, and other data necessary to define subsoil conditions and recommendations, interpretations, and opinions regarding such soils data from the responsible soils engineer.

OR

The COUNTY will furnish soils data when such data is deemed necessary by the ENGINEER, including test logs, soil classifications, soil bearing values, and other data necessary to define subsoil conditions and recommendations, interpretations, and opinions regarding such soil data from the responsible soils engineer.

- E. The COUNTY will contract and furnish a Construction Cost Estimate for review by the ENGINEER.
- F. The COUNTY will furnish structural, mechanical, chemical, soils, and other laboratory tests, inspections, and reports as required by law or the contract documents.
- G. The services, information, surveys, and reports required in Items A through E above shall be furnished at the COUNTY'S expense.
- H. The COUNTY will provide the necessary forms or models of the COUNTY'S standard construction documents, such as advertisement for bids, information for bidders, bid form, bonds, AGREEMENT (construction contract), and the general and special provisions of the construction contract.
- I. The COUNTY will provide a Project schedule at the beginning of the Project showing any fixed dates or durations applicable to the project (such as funding deadlines, review periods, anticipated periods of Project suspension, and construction deadlines) and shall update this schedule as additional dates and durations become known.

ARTICLE 3. FEE AND PROVISION FOR PAYMENT:

- A. Fee: The COUNTY will pay the ENGINEER a not-to-exceed fee equal to but not greater than FIFTY-THREE THOUSAND FOUR-HUNDRED DOLLARS (\$53,400) for work contracted in this AGREEMENT and invoiced monthly. Any additional applicable hourly rate billings as authorized in Article 4 shall be based on the information contained in Attachment A.
- B. Reimbursements: The ENGINEER shall be reimbursed only for indirect and reimbursable expenses specifically identified and listed with a cost in Attachment A.
- C. Records: The ENGINEER shall keep records concerning payment items on a generally recognized accounting basis and make such records available to the COUNTY for audit or inspection. Reasonable records of financial activity shall be maintained for a period of five (5) years following completion of the work assigned. Such records shall be available for COUNTY inspection or audit by COUNTY employees or independent agents during reasonable business hours.
- D. Payments: COUNTY shall process once each month and pay ENGINEER'S invoices within thirty (30) days.

ARTICLE 4. PAYMENT FOR EXTRA WORK, CHANGES, OR EXPENSES:

Compensation for extra work, changes, or expenses shall be in addition to the amount set forth in Article 3 above. Actual cost shall be based upon hourly rates and other information as set forth in Attachment A. In no case shall extra work be processed without first obtaining the written approval of the COUNTY in advance of such extra work.

ARTICLE 5. CONSTRUCTION COST:

- A. Definitions:
 - 1. **Construction Budget**: Means the COUNTY'S statement of funds available for the cost of construction work. The construction budget does not include the compensation of the ENGINEER and the ENGINEER'S consultants, the cost of the land, rights of way, or other costs which are the responsibility of the COUNTY as provided in Article 2.
 - 2. **Estimated Project Construction Cost**: Means the estimate for the entire Project's current cost of construction. It includes the major categories of work with such significant subdivisions of

cost as may be indicated by the construction specifications categories, and the type, size, and complexity of the Project.

3. **Designated Cost Index:** Means Engineering News Record Construction Cost Index.
4. **Approved Estimate:** Means the latest estimated Project construction cost approved in writing by the COUNTY, as adjusted to the designated cost index.
5. **Project Construction Cost:** Means the construction cost of the Project based on actual bids.

B. Responsibility for Construction Cost:

The estimated PROJECT construction cost, prepared and submitted by the ENGINEER, becomes effective only following approval by the Santa Barbara County Board of Supervisors, at which time it becomes known as the "construction budget". The Engineering News Record (ENR) construction cost index is recognized as the official cost index, and the ENGINEER is to use this index in the preparation of construction cost submittals, with appropriate adjustments calculated on current costs in COUNTY, based on the date of estimate.

An independent cost estimate will be conducted through the COUNTY for all major capital projects subject to the Board of Supervisors' design approval. This requirement states that the cost estimator is to have no current connection with the ENGINEER or with any other consultant on the PROJECT, nor is the estimator to be an employee of the COUNTY.

ARTICLE 6. CODE COMPLIANCE:

- A. California Code of Regulations. It is the responsibility of the ENGINEER to assure that the design and construction rules and regulations of the State of California are followed. The following titles of the California Code of Regulations contain requirements applicable to COUNTY design and construction work. The COUNTY and ENGINEER shall jointly prepare a code analysis of the Project. The report shall provide a complete listing of all applicable codes, ordinances, and regulations; and a description of the fire and life safety design criteria for the Project.

1. **Title 8**, Industrial Relations (including Cal-OSHA and Electrical Safety Orders).

2. **Title 17**, Public Health (including Non-Structural Equipment).
 3. **Title 19**, Public Safety (State Fire Marshal and Life Safety, including Uniform Fire Code and Fire Protection Handbook).
 4. **Title 21**, Public Works (Structural Design).
 5. **Title 22**, Public Health.
 6. **Title 24**, Building Standards (including seismic design of hospitals, Article 5, Section T-25-1094, Energy Insulation Standards, and Part 3, Basic Electrical Regulations General Order #128).
- B. Working Drawings. The 2001 California Building Code (CBC), will be used to design/check the working drawings for this Project. In the case of historic buildings, those working drawings will be designed/checked using the California Historic Building Code.
- C. COUNTY Construction Work. Construction work on COUNTY projects shall comply with the most recent State-adopted CBC, the most recent State-adopted edition of the National Fire Protection Association (NFPA) 101 Life Safety Code and Fire Protection Code and the latest State-adopted Health and Safety Code.
- D. Persons With Disabilities. All facilities must be accessible to, and usable by, persons with disabilities. Construction will comply with current standards established by the Division of the State Architect, Access Compliance Section.

ARTICLE 7. AGENCY REVIEWS.

Liaison with local agencies will be handled only by the COUNTY and its designated representatives. The COUNTY will submit applications for agency approval for all projects, and will arrange all meetings with these agencies. ENGINEER or their staff should not discuss COUNTY projects with representatives of government agencies or public utilities unless a representative of the COUNTY is present or they have been given specific instructions on matters to be conducted.

- A. Specific Agency Review. Review and approval of drawings by the following agencies is required at both the design development and working drawing levels, unless otherwise noted:
1. COUNTY Building Department
 2. State Office of Emergency Service/FEMA

As a basic service, the ENGINEER will be responsible for making any changes required by the agencies listed above, or any other agency having authority over the PROJECT, in order to obtain approval of the contract documents and/or drawings.

- B. Independent Review. An independent structural and code compliance review of plans will be submitted by the COUNTY to the local Building Official. All communications with the Building Official are subject to limitations as described above for public agency approvals.

ARTICLE 8. TERMINATION, SUSPENSION, OR ABANDONMENT OF AGREEMENT:

- A. Either party hereto shall have the right to terminate this AGREEMENT upon giving a thirty (30) day written notice of such termination to the other party. In the event of the termination of this PROJECT in its entirety, notwithstanding any other fee provision of this AGREEMENT, the COUNTY, based upon work accomplished by the ENGINEER prior to notice of such termination, shall determine the amount of fee to be paid to the ENGINEER for his service based upon provisions in Attachment A, together with reimbursement then due, less all payments previously made by the COUNTY to the ENGINEER under this AGREEMENT, and less any damages suffered or expected to be suffered by the COUNTY due to the ENGINEER'S breach or failure to perform. Such findings of the COUNTY shall be final and conclusive as to the amount of such fee.
- B. In the event of termination of any portion of this PROJECT, the ENGINEER shall be entitled to the reasonable value of his services involved in the termination, as determined by the COUNTY, upon a finding which shall be final and conclusive as to the amount of fee due and owing. In ascertaining the amount of compensation hereunder, consideration shall be given to both completed work and work in process but shall not exceed the fee as set forth in this AGREEMENT. All work, charts, plans, records, and other documents pertaining to the PROJECT which are in the possession of the ENGINEER shall be delivered promptly to the COUNTY upon termination of this AGREEMENT.

ARTICLE 9. TERM:

The term of this AGREEMENT shall commence on the date indicated by Board of Supervisors execution. This AGREEMENT shall terminate upon the completion of services but not earlier than December 31, 2007.

ARTICLE 10. CONFLICTS OF INTEREST:

No member, official, or employee of the COUNTY during his tenure, or for one year thereafter, shall have any interest, direct or indirect, in this AGREEMENT or the proceeds thereof.

ARTICLE 11. OWNERSHIP OF DATA, DRAWINGS, AND OTHER DOCUMENTS:

- A. Ownership: The ownership of all data collected for use by the ENGINEER under this AGREEMENT, together with working papers, drawings, and other material necessary for a complete understanding of the plans/Project and necessary for their practical use/implementation shall be vested in the COUNTY. Ownership of original data, drawings, documents, reports, etc., shall be vested in the COUNTY. Vesting of ownership, as described in this paragraph, shall occur immediately upon production of said documents and materials, whether complete or incomplete.
- B. Copies: The ENGINEER may retain a copy of all work for his own use. The ENGINEER shall provide to the COUNTY three (3) copies (unless otherwise noted in this AGREEMENT) of all work for each phase as outlined in Attachment A and at nine-five percent (95%) completion to the COUNTY as part of this AGREEMENT. At completion of the Project, or upon written request by the COUNTY, all ENGINEER data, drawings, documents, reports, etc., relative to the Project shall be delivered to the COUNTY as part of this AGREEMENT.
- C. Use of Documents: COUNTY shall thereupon assume the right and privilege to utilize for any purpose whatsoever any completed or incomplete data, drawings, specifications, estimates, reports, etc., or other contract documents which were prepared by the ENGINEER under this AGREEMENT regardless of continuation or suspension of the project or the services of the ENGINEER. In the event the COUNTY elects to reuse documents on another project without employing the services of the ENGINEER who prepared these documents, the COUNTY agrees to hold the ENGINEER and his consultants harmless from all claims resulting from their use.

ARTICLE 12. RECORDS, AUDIT, AND REVIEW:

- A. The ENGINEER shall keep accurate written records of all expenses incurred by it and of monies received by it and of all studies, statistics, and reports made or issued by the ENGINEER in performing the work. The ENGINEER shall also keep accurate employment records and other records necessary to enable the COUNTY to review the ENGINEER'S billings for the performance of

this AGREEMENT. At the COUNTY'S request, the ENGINEER shall furnish the COUNTY with a copy of any records maintained by the ENGINEER pursuant to the terms of this AGREEMENT. The ENGINEER shall maintain all such records for at least one (1) year after the date on which this AGREEMENT terminates.

- B. The COUNTY shall have the right to audit and review all documents and records produced and maintained by the ENGINEER pursuant to the terms of this AGREEMENT. Any such audit and review may be conducted at any time during the ENGINEER'S regular business hours.

ARTICLE 13. COVENANT AGAINST CONTINGENT FEES:

- A. Warrant: The ENGINEER warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the AGREEMENT, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the ENGINEER, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award of making of this AGREEMENT. For breach or violation of this warranty, the COUNTY shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage fee, gift, or contingency.
- B. Current or Future Interest: The ENGINEER maintains no AGREEMENT, employment, or position which would be in conflict with the duties to be performed for the COUNTY under this AGREEMENT. The ENGINEER further agrees that, during the term of this AGREEMENT, the ENGINEER will not obtain, engage in, or undertake any interest, obligation, or duty which would be in conflict with, or interfere with, the services or duties to be performed under the provisions of this AGREEMENT.

ARTICLE 14. CONTRACT PERSONNEL:

The work to be done pursuant to this AGREEMENT shall be managed by: Mr. John Spiess, S.E., Principal, and such other personnel in the employ or under the supervision of the ENGINEER who shall be approved by the COUNTY. The COUNTY official who shall be vested with the right of approval of such additional personnel or outside contracting parties shall be the Director of General Services or the designated representative. The COUNTY reserves the right to reject any of the ENGINEER'S personnel or proposed outside consultants and the COUNTY reserves the right to request that acceptable replacement personnel be assigned to the Project.

To the extent deemed necessary by the ENGINEER, the ENGINEER shall employ, mechanical, electrical, structural, and civil engineers licensed as such by the State of California and such other consultants necessary for the provision of services under this AGREEMENT. The ENGINEER shall submit, for approval by the COUNTY, names of consultants for each professional element of service of the Project. The ENGINEER shall have the right to change consultants with COUNTY approval. The ENGINEER is as responsible for the performance of consultants as if it rendered such performance itself.

performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event ENGINEER is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if ENGINEER has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and ENGINEER submits a written statement to the COUNTY stating that fact.

2. **General and Automobile Liability Insurance:** The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of ENGINEER and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the ENGINEER in the indemnity and hold harmless provisions of the Indemnification Section of this Agreement between COUNTY and ENGINEER. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of ENGINEER pursuant to ENGINEER's activities hereunder. ENGINEERS shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY shall be named Additional Insured status on any policy. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."

If the policy providing liability coverage is on a 'claims-made' form, the ENGINEER is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or

policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

3. **Professional Liability Insurance.** Professional liability insurance shall include coverage for the activities of ENGINEER's professional staff with a combined single limit of not less than \$1,000,000 per occurrence or claim and \$1,000,000 in the aggregate. Said policy or policies shall provide that COUNTY shall be given thirty (30) days written notice prior to cancellation, expiration of the policy, or reduction in coverage. If the policy providing professional liability coverage is a on 'claims-made' form, the ENGINEER is required to maintain such coverage for a minimum of three (3) years (ten years [10] for Construction Defect Claims) following completion of the performance or attempted performance of the provisions of this agreement.
- B. ENGINEER shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the ENGINEER may be held responsible for payment of damages resulting from ENGINEER'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.
- C. The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. ENGINEER agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

ARTICLE 17. STATUS:

The ENGINEER shall, during the entire term of this AGREEMENT, be construed to be an independent contractor, and in no event shall any of

its personnel or sub-contractors be construed to be an employee of the COUNTY. The ENGINEER, its personnel, and/or its subcontractors shall not assert any position inconsistent with the provisions of this paragraph in any proceeding before any court, board, or tribunal. The provisions of this paragraph may be specifically enforced.

ARTICLE 18. NON-DISCRIMINATION:

The ENGINEER shall comply with the provisions of Presidential Executive Order No. 11246 of September 24, 1965, and all other orders, regulations, and laws governing non-discrimination in employment, including in particular, Section 122(a) of the State and Local Fiscal Assistance Act of 1972 and including but not limited to the provisions of Article XIII of Chapter 2 of the Santa Barbara County Code, prohibiting unlawful discrimination in employment practices by contractors with the COUNTY, which is hereby referred to and incorporated herein by reference as if fully set forth.

ARTICLE 19. MODIFICATION OF AGREEMENT:

This AGREEMENT may be modified only by a written amendment signed by both parties.

ACCEPTED AND AGREED this ____ day of _____ 2006.

COUNTY OF SANTA BARBARA:

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By _____
Chair, Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:
STEPHEN S. STARK
COUNTY COUNSEL

APPROVED AS TO FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By _____
Deputy

By _____
Deputy

APPROVED:

By _____
Paddy Langlands
Assistant Director, General Services

By _____
Ray Aromatorio, ARM, AIC
Risk Program Administrator

EHLEN, SPIESS & HAIGHT, INC.

By _____
John Spiess, S.E.
Tax ID No.: 77-0378865
License No. S2844