



County of Santa Barbara: General Services
Capital Division

PROFESSIONAL SERVICES AGREEMENT

Between

THE COUNTY OF SANTA BARBARA

And

EARTH SYSTEMS PACIFIC

for

Geotechnical and Special Inspection Services

FOR

CONSTRUCTION

of the

Emergency Operations Center & Regional Fire Communications Center
4408 Cathedral Oak Rd., Santa Barbara, CA 93110

PROJECT NUMBER: 19005

December 3, 2024

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PROFESSIONAL SERVICES AGREEMENT
FOR
GEOTECHNICAL AND SPECIAL INSPECTION SERVICES

This is an agreement between **THE COUNTY OF SANTA BARBARA** ("Owner" or "County") and **Earth Systems Pacific**, a California corporation ("Consultant" or "CONTRACTOR" and, together with County, collectively, the "Parties" and each individually a "Party").

PART 1 - RECITALS

- 1.01 WHEREAS**, this Professional Services Agreement ("PSA" or "Agreement") sets forth the terms and conditions pursuant to which Consultant, as a Professional, will provide professional services to Owner in connection with Owner's Emergency Operations Center & Regional Fire Communication Center ("Project"); and
- 1.02 WHEREAS**, Consultant represents that Consultant is a Professional having the requisite qualifications and licenses and agrees to perform the Services (defined below).

NOW, THEREFORE, Owner and Consultant agree as follows:

PART 2 - PROJECT AUTHORIZATION, TERM AND MAXIMUM COMPENSATION

2.01 Agreement For Services

- A. This PSA sets forth the terms and conditions pursuant to which Consultant, as a Professional, will provide services to the County as set forth herein ("Services").

2.02 Maximum Compensation

- A. The maximum aggregate amount payable by the County hereunder shall not exceed seventy-nine thousand one hundred twenty-five dollars (\$79,125.00) ("Maximum Compensation Limit" or "MCL"). If Consultant performs services or incurs expenses beyond the Maximum Compensation Limit, Consultant does so at Consultant's sole risk and expense.

2.03 Term

- A. This PSA is effective as of first the date it is duly executed by both of the parties hereto, and shall remain in effect for a period of 2 months thereafter, unless earlier terminated in accordance with the provisions of this Agreement ("Term").

2.04 Scope

1. The Scope of Work attached hereto as Exhibit A and incorporated herein by reference ("SOW") sets forth the extent of the Services and Deliverables that may be authorized by the Owner's Project Manager ("OPM") hereunder, and the hourly rates for such Services; provided, however, that the OPM is not authorized to increase the MCL, extend the Term, or authorize the performance of Services hereunder after the Term. For purposes of this Agreement, the OPM shall be [Fernando Orta].

PART 3 - OWNER'S RESPONSIBILITIES

3.01 Owner-Provided Information

- A. If required and where available, Owner may provide any of the following for Consultant's use in connection with the Services:



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- (i) Specialized studies of existing site conditions, including the presence of hazardous materials, soil, air, water, pollution, etc.
- B. Consultant must make a written recommendation to the Owner regarding the completeness or sufficiency of any survey or specialized study provided to Consultant, or the need for any study or survey that the Consultant believes is required for the Project that is not included within Consultant's Services.

3.02 Approval & Permit Fees

- A. Owner will pay all fees required by any jurisdiction having authority over the Project for filing and checking of any item of Service prepared by Consultant, and such fees necessary to secure approvals and permits for the Project from any Governmental Agency.

PART 4 - PROJECT SCOPE OF WORK (SOW)

4.01 Changes in Scope

- A. If Owner causes a change in the Service(s) or Deliverable(s) that Consultant believes to be material, Consultant must, within fourteen (14) calendar Days of the event that caused such change, notify Owner in writing that Consultant contends Owner has caused a material change in the Service(s) or Deliverable(s). If written notice is not given to Owner within such 14-day period, such change shall be deemed immaterial, and Consultant shall not be entitled to additional compensation for such change. If the Director of the County's General Services Department ("Director"), or his Assistant Director designee, concurs that there has been a material change in Service(s) or Deliverable(s) required by Owner hereunder, payment to Consultant may be adjusted pursuant to a Change Order for Supplemental Services duly executed by both of the parties hereto in accordance with Parts 10.01.A.3, and 10.03, below; provided, however, that Consultant shall not be entitled to any Supplemental Services Amount unless and until memorialized in a duly executed Change Order, and in no event shall the aggregate amount of payments to Consultant hereunder exceed the MCL.
- B. If Consultant contends that there is a material increase in the Service(s) or Deliverable(s) required to complete the Services and requests additional compensation hereunder for the performance of such Supplemental Services, and such increase is not in any way attributable to acts or omissions of, or on behalf of, Consultant or any Subconsultant, including, but not limited to, faulty or inaccurate calculations or estimations made by or on behalf of Consultant, and the Director, or his Assistant Director designee, concurs that there has been a material change in Service(s) or Deliverable(s) required by Owner hereunder, payment to Consultant hereunder may be adjusted pursuant to a Change Order for Supplemental Services duly executed by both of the parties hereto in accordance with Parts 10.01.A.3 and 10.03, below; provided, however, that Consultant shall not be entitled to any Supplemental Services Amount other than to the extent memorialized in a duly executed Change Order prior to the performance of services set forth therein, and in no event shall the aggregate amount of payments to Consultant hereunder, including, but not limited to, pursuant to Change Orders, exceed the MCL. OPM may request, and Consultant, pursuant to such request, shall provide, assistance in re-allocating the remaining available funds available hereunder. Such assistance must, if requested by OPM, also include a determination of any other Supplemental Services necessary to complete the Project.
- C. If any of the Services or Deliverables are no longer required to complete the Project, Consultant shall immediately notify OPM accordingly, and, if Owner agrees, the SOW shall be amended accordingly pursuant to a Change Order, and the amount payable to Consultant hereunder may be reduced accordingly.

PART 5 - CONSULTANT'S RESPONSIBILITIES, SERVICES, AND DELIVERABLES



5.01 Consultant as Independent Contractor

- A. Consultant is performing all Services as an independent contractor, and not as an agent or employee of County. The expertise and experience of Consultant are material considerations for County’s execution of this Agreement. Consultant shall not assign, delegate, or transfer, directly or indirectly, whether by operation of law or otherwise, this PSA or any of Consultant’s rights or obligations hereunder, without the prior written consent of County, and any attempt to so assign, delegate, or transfer this Agreement, or any rights, duties or obligations arising hereunder, shall be void and of no effect.

5.02 Consultant’s Use of Subconsultants

- A. Consultant may only use the subconsultants set forth in Exhibit B, attached hereto and incorporated herein by reference (“Subconsultants”), in performing the Services under this Agreement. Consultant shall be responsible for all Services performed, and all Deliverables provided, by each Subconsultant, and for all compensation and benefits due to Subconsultants, if any. County assumes no responsibility whatsoever concerning such Subconsultant compensation or benefits. No changes to the Subconsultants identified in Exhibit B may be made without the prior written approval of the Assistant Director of the County’s General Services Department (“Assistant Director”).

5.03 Consultant’s General Responsibilities

The following General Responsibilities shall apply to all Services under this Agreement.

- A. Standard of Care
 - 1. Consultant shall perform all Services in accordance with those standards of care that are generally recognized as being used by competent persons in Consultant’s profession and area of specialty in the State of California.
 - 2. At all times during the Term, Consultant shall perform all Services in compliance with all applicable federal, state, and local codes, statutes, laws, regulations and ordinances (“Applicable Laws”).
 - 3. Consultant shall use its professional judgment and expertise to verify interpretations of Applicable Laws from the appropriate Government Agency(ies) and authorities having jurisdiction over the Project. Such efforts shall be undertaken in accordance with the acceptable standard of care for this type of Project.
- B. Funding by Governmental Agencies
 - 1. If applicable to this PSA, when a Project is to be constructed, wholly or in part, with funds from Federal, State, or other outside funding sources, Consultant shall comply with all requirements of such Federal, State, or outside funding sources, including, but not limited to, requirements set forth in the Construction Documents.
- C. HCAI (formally known as OSHPD) Jurisdiction
 - 1. If applicable to this PSA, when a Project is within the jurisdiction of the State of California, Department of Health Access and Information (“HCAI”), Consultant’s Instruments of Service must meet all HCAI requirements.
- D. Sequence of Consultant’s Services
 - 1. Consultant shall perform Services hereunder in accordance with the SOW.
- E. Submittal of Deliverables
 - 1. Each submittal shall include a declaration statement, signed by a principal of Consultant, that Consultant coordinated, supervised, and is responsible for the Services performed by and on behalf of Consultant and all Subconsultants, that such submittal is accurate and



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complete, and that all prior County review comments have been incorporated and coordinated.

2. Consultant shall furnish to Owner, in form and format suitable for reproduction, original reproducible files and other Instruments of Service, and computer flash drives containing each submittal in the following electronic formats: Microsoft PC compatible operating system, AutoCAD 2004 or newer, Microsoft Office 2003 or newer.

F. Printing & Reproduction

1. Consultant shall pay for all printing and reproduction cost incurred in the performance of the Services.
2. Owner will print coordination check documents to be used by the Owner beyond the number of copies identified in the SOW at Owner's expense.
3. If applicable to this PSA, Owner will print Bid Documents for distribution to Bidders at Owner's expense.

G. Meetings

1. Required meetings are as specifically identified in the SOW.
2. Unless otherwise requested by the OPM, Consultant shall prepare agendas for and take minutes of all meetings conducted/attended by Consultant. This includes meetings that are chaired by the OPM.
3. The Consultant's fee for attendance at and preparation of minutes for all meetings specifically identified in the SOW will be considered included in the MCL.

H. Consultant's Staff and Subconsultants

1. Consultant's staff and Subconsultants are identified in Exhibit B, "Consultant's Staff and Subconsultants," and are subject to the requirements set forth therein.
2. Changes to Consultant's staff and Subconsultants are subject to Owner's prior written approval as an amendment to the PSA duly executed by the Assistant Director.

5.04 Basic Services & Deliverables: See Exhibit A

PART 6 - CONSULTANT'S SCHEDULE

6.01 Schedule

- A. Consultant shall schedule and promptly perform all Services and Deliverables in coordination with the County.
- B. Consultant shall perform all Services and provide all Deliverables during the Term and in accordance with the project schedule set forth in this Agreement. Time is of the essence in this Agreement.
- C. Consultant shall provide and maintain Project staffing levels as necessary to perform the Services within the time provided in the project schedule set forth in this Agreement.

PART 7 - INDEMNIFICATION & INSURANCE

7.01 Exhibit D Indemnification and Insurance Requirements

- A. Consultant shall comply with all indemnification and insurance requirements set forth in Exhibit D, attached hereto and incorporated herein by reference.



PART 8 - REPRESENTATION BY COUNSEL

- A. Both parties to this PSA were represented by counsel in the negotiation and execution of this PSA.
- B. The parties hereto are aware of the provisions set forth in California Civil Code §1717 and intend this paragraph of the PSA to meet said statutory requirements so that the reference to attorneys' fees in Part 7, "Indemnification & Insurance" applies only in the indemnification context in Part 7, "Indemnification & Insurance."

PART 9 - HAZARDOUS MATERIALS

9.01 Responsibility for Hazardous Materials

- A. Owner acknowledges that Consultant has no special knowledge or expertise regarding asbestos or other hazardous materials.
- B. Unless otherwise provided in this PSA, or unless Owner has provided documented information to Consultant regarding the presence or potential presence of such hazardous materials Consultant and its Subconsultants have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or any other toxic substance.

PART 10 - COMPENSATION & PAYMENT

10.01 Compensation

- A. Payments will be made as set forth herein
 - 1. Maximum Compensation Limit
 - a. The Maximum Compensation Limit ("MCL") includes the maximum aggregate amount of compensation payable to Consultant hereunder, including for all authorized Services and authorized Reimbursable expenses. Total payment by Owner shall not exceed the MCL specified in Exhibit C, attached hereto and incorporated herein by reference, and Consultant is fully responsible for provision of all Services and Deliverables, compensation for which shall not exceed the MCL.
 - 2. Consultant's Hourly Rate Schedule
 - a. Consultant's Hourly Rate Schedule is set forth in the SOW.
 - b. Modifications to Consultant's Hourly Rate Schedule shall not be allowed.
 - c. Non-Fixed fee Services provided by Subconsultants are subject to the OAR's prior written approval, and are to be identified in this PSA.
 - 3. Changes; Change Orders
 - a. Changes to the SOW may only be authorized during the Term and pursuant to written Change Order(s) duly executed by the Assistant Director. If Consultant contends that Consultant cannot timely perform all of the Services and provide all of the Deliverables set forth in the SOW, then Consultant shall immediately inform the OPM regarding same, and, upon the OPM's request, assist the OPM in re-allocating the remaining MCL among the unfinished Services in order to accomplish as much of the SOW as possible within the MCL.
 - 4. Prevailing Wages



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- a. Consultant acknowledges that work performed on the Project site to support the Services under this PSA constitutes a public work within the meaning of California Labor Code Section 1720, and that the requirements of Section 1771, et. seq. apply to such public work. Consultant has included (and shall include) consideration for this obligation in calculating compensation and cost estimates under this PSA.
5. Errors and Omissions
- a. Consultant must correct all errors and omissions arising out of any acts or omissions of or on behalf of Consultant and/or Subconsultants without cost to Owner.
 - b. Owner has the right to pursue claims for any errors and omissions of or on behalf of Consultant and/or Subconsultant(s).

10.02 Reimbursable Expenses

- A. All reimbursable expenses, including travel, mileage, copying, printing, etc. should be included in the MCL and not billed separately.

10.03 Supplementary Services & Deliverables

- A. County has established a Supplemental Services Allowance (“SSA”) for the performance of services not included within the SOW but authorized pursuant to duly executed Change Orders in accordance with Part 10.01.A.3, above.

10.04 Payment

- A. Payment Requests
 - 1. Owner will endeavor to make payments within thirty (30) Days after the OPM’s approval of the Consultant’s correct Payment Request.
- B. Invoices
 - 1. Consultant may submit a Payment Request not more than once each month.
- C. Progress Payments
 - 1. Owner may, at its discretion, adjust any progress payment so that it corresponds with the percentage of completion as reasonably determined by Owner.

10.05 Release of All Claims

- A. Prior to final payment under any Project Agreement, Consultant must execute and deliver to Owner a release of all claims arising under the Project Agreement, other than such claims, if any, as may be specifically excepted from the release for the reasons and in the amounts stated in the release.

10.06 Timely Billings

- A. Consultant agrees to submit invoices to Owner on a timely basis and not later than ninety (90) Days after:
 - 1. Services are performed; or
 - 2. Billings are otherwise due pursuant to the terms of the PSA.
- B. Owner has no liability for payment of, and has sole discretion to pay or decline payment of, any billings submitted after the expiration of such ninety (90) day period, or for Services performed after the Term.

10.07 Consultant's Accounting Records

- A. Accounting System & Records Retention



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1. Consultant must maintain an accounting system in accordance with current standards of accounting and financial reporting for the purpose of supporting payments for Services authorized under this PSA. Consultant must retain such records for three (3) years after expiration or termination of this PSA, or until all claims, if any, have been disposed of, whichever period is longer.
- B. Owner's Auditing Rights
1. Upon service of a written Notice to Consultant, Owner, and persons authorized by Owner, have the right at any reasonable time and place to examine, audit, and make copies of books, records, documents, accounting procedures and practices relating to the performance or administration of this PSA, or affecting any changes or modifications to this PSA.
- C. Applicability to Subcontracts
1. Consultant must incorporate the above-stated accounting and audit requirements into all subcontracts, including, but not limited to, contracts with Subconsultants, exceeding Ten Thousand Dollars (\$10,000) in value in connection with this PSA, including any modification(s) thereof.

PART 11 - TERM & TERMINATION

11.01 Owner's Rights

- A. Termination for Convenience
1. Owner may, by written notice to Consultant, terminate all or part of this PSA at any time for Owner's convenience. Upon receipt of such notice, Consultant must immediately cease all work as specified in the notice.
 2. If this PSA is so terminated, Consultant will be compensated as set forth below.
- B. Termination for Breach
1. If Consultant violates any of the covenants or agreements of this PSA, or if Consultant fails to fulfill in a timely and proper manner its obligations pursuant to this PSA, and does not cure such failure or violation within thirty (30) days, or such shorter period as the Owner may determine is necessary and appropriate, after receipt of written notice from the County's OPM specifying such failure or violation, whether subject to cure, and, if subject to cure, the time and manner of cure, Owner may terminate this PSA.
 2. Owner will provide Consultant with written notice as to the effective date of termination, and Consultant is not entitled to compensation for Services or expenses beyond the specified termination date.
 3. If, after notice of termination for breach of this PSA, it is determined that Consultant did not breach this PSA, the termination will be deemed to have been made for Owner's convenience, and Consultant will receive payment due to Consultant for Services performed prior to such termination for convenience in accordance with Section 11.02, below.
- C. Suspension for Convenience
1. OPM may, without cause, order Consultant in writing to suspend, delay, or interrupt the Services under this PSA in whole or in part for up to 90 days. COUNTY shall incur no liability for suspension under this provision, and such suspension shall not constitute a breach in this Agreement.
- D. The rights and remedies provided herein to Owner are in addition to any other rights and remedies provided by law in this PSA.



11.02 Consultant's Compensation Upon Termination

- A. In the event of Owner's termination of this PSA, Consultant will receive compensation as follows:
 - 1. For fully performed and accepted items of Service, and authorized Reimbursable Expenses pursuant to this PSA, compensation will be in the amount specified in the PSA for that item of Service or expense.
 - 2. For items of Service on which Owner has issued an Authorization to Proceed but which have not been fully completed and accepted, Consultant will be compensated for its Services accepted by Owner in an amount which bears the same ratio to the total fee otherwise payable for the performance of that Service as the Services performed bear to the total Services necessary for the full performance of that Service.
- B. In no event will the total compensation paid for any item of Service exceed the value specified in this PSA for such item of Service.

11.03 Delivery of Documents

- A. Upon any termination of this PSA, Consultant shall furnish Owner all documents and Instruments of Service prepared pursuant to this PSA, whether complete or incomplete. Consultant may retain a copy for its records if so provided by Owner in such notice of termination.

PART 12 - DISPUTE RESOLUTION

12.01 Consultant's Questions & Concerns

- A. Questions regarding the terms, conditions and Services of this PSA will be decided by the County's Director of General Services, who will furnish the decisions to Consultant in writing within thirty (30) Days after receiving a written request from Consultant.

12.02 Dispute Resolution During Construction

- A. Alternate Dispute Resolution (ADR)
 - 1. Owner may, but shall not be required, to use ADR techniques including Partnering and Mediation during Design.
- B. Consultant and its Subconsultants shall participate in all ADR efforts as directed by Owner.
- C. In the event that Owner elects to utilize such ADR, the cost of such Partnering training facilities and facilitator will be borne equally by the parties hereto.

12.03 Negotiations Before and During Mediation

- A. Negotiations to resolve disputes before and during Mediation are initiated for settlement purposes only and are not binding unless otherwise agreed by Owner and Consultant.

12.04 Mediation

- A. Voluntary Mediation
 - 1. In the event a dispute or issue is not resolved by negotiation, Owner and Consultant may agree to attempt to resolve the matter by Mediation.
 - 2. Said Mediation is voluntary, non-binding, and intended to provide an opportunity for the parties hereto to evaluate each other's cases and arrive at a mutually agreeable solution.
 - 3. These provisions relating to voluntary Mediation shall not be construed or interpreted as mandatory arbitration.
- B. Initiation of Mediation



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1. Any party hereto may initiate Mediation by notifying the other party hereto in writing.
- C. Request for Mediation
1. A Request for Mediation must contain a brief statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those who will represent them, if any, in the Mediation.
 2. Within ten (10) days of a Party's receipt of a Request for Mediation, the Party in receipt of such Request for Mediation shall provide to the requesting Party a written response indicating whether the receiving Party is willing to participate in voluntary, non-binding mediation with respect to such dispute or claim.
- D. Selection of Mediator
1. Within fourteen (14) days of a Party's written response to a Request for Mediation indicating that such Party is willing to participate in mediation with respect to the dispute or claim at issue, the Parties will confer to select an appropriate mediator agreeable to all Parties.
 2. If the Parties cannot agree on a mediator, they may accept a mediator appointed by a recognized association such as the American Arbitration Association.
- E. Qualifications of a Mediator:
1. Any mediator selected hereunder ("Mediator") must have expertise in the area of the dispute and be knowledgeable in the Mediation process.
 2. No person shall serve as a Mediator in any dispute in which that person has any financial or personal interest in the result of the Mediation.
 3. Before accepting an appointment, the prospective Mediator must disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, the Parties will confer and decide whether to select another Mediator.
- F. Vacancies
1. If any Mediator becomes unwilling or unable to serve, another Mediator will be selected unless the Parties agree otherwise.
- G. Representation
1. Any Party may be represented in the Mediation by person(s) of their choice who must have full authority to negotiate.
 2. The names and addresses of such representative(s) must be communicated in writing to all Parties and to the Mediator.
- H. Time and Place of Mediation
1. The Mediator will set the time of each Mediation session.
 2. The Mediation will be held at a convenient location agreeable to the Mediator and the Parties, as determined by the Mediator.
 3. All reasonable efforts will be made by the Parties and the Mediator to schedule the first session within sixty (60) Days after selection of the Mediator.
- I. Identification of Matters in Dispute
1. Unless a longer period of time is required by the Mediator, at least ten (10) days before the first scheduled Mediation session, each Party must provide the Mediator a brief memorandum setting forth such Party's position with regard to the issues identified in the Request for Mediation, and any other pertinent issues that such Party believes need to be



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resolved. At the discretion of the Mediator, or otherwise agreed by the Parties, the Parties may mutually exchange such memoranda.

2. At the first Mediation session, the Parties will be expected to produce all information reasonably required for the Mediator to understand the issue(s) presented. The Mediator may require each Party to supplement such information.

J. Authority of Mediator

1. The Mediator does not have authority to impose a settlement on the Parties, but will attempt to assist the Parties in reaching a satisfactory resolution of their dispute.
2. The Mediator is authorized to conduct joint and separate meetings with the Parties, and to make oral and written recommendations for settlement.
3. Whenever necessary, the Mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the Parties agree in writing in advance to such outside expert advice, to assume the expenses of obtaining such expert advice, and whether the arrangements for obtaining such expert advice will be made by the Mediator or one or more of the Parties.
4. The Mediator is authorized to end the Mediation whenever, in the Mediator's judgment, further Mediation efforts would not contribute to a resolution of the dispute between the Parties.

K. Privacy

1. Mediation sessions are private.
2. The Parties and their representatives may attend Mediation sessions.
3. Other persons may attend Mediation sessions only with the prior written consent of each of the Parties, and with the consent of the Mediator.

L. Confidentiality

1. The Mediator will not divulge confidential information disclosed to a Mediator by the Parties or by witnesses in the course of the Mediation.
2. All records, reports, or other documents received by a Mediator while serving as Mediator, are confidential.
3. The Mediator must not be compelled to divulge such records or to testify in regard to the Mediation in any adversary proceeding or judicial forum.
4. The Parties shall maintain the confidentiality of the Mediation and shall not rely on, or introduce as evidence in any arbitration, judicial or other proceedings:
 - a. Views expressed or suggestions made by the other Party with respect to a possible settlement of the dispute;
 - b. Statements made by the other Party in the course of the Mediation proceedings;
 - c. Proposals made or views expressed by the Mediator;
 - d. Whether the other Party had or had not indicated willingness to accept a proposal for settlement made by the Mediator.

M. No Stenographic Record

1. There shall be no stenographic record of the Mediation.

N. Termination of Mediation

1. The Mediation shall be terminated:



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- a. By the execution of a Settlement Agreement by the Parties with respect to the issues subject to the Mediation;
 - b. By a written declaration of the Mediator to the effect that further efforts at Mediation are no longer worthwhile; or
 - c. By a written declaration of one or more of the Parties to the effect that the Mediation proceedings are terminated.
- O. Exclusion of Liability
1. No Mediator shall be a necessary party in judicial proceedings related to the Mediation.
- P. Interpretation and Application of These Mediation Provisions
1. The Mediator will interpret and apply these Mediation provisions insofar as they relate to the Mediator's duties and responsibility.
- Q. Expenses
1. The expenses of witnesses for each Party must be paid by the Party producing such witnesses.
 2. All other expenses of the Mediation, including required traveling and other expenses of the Mediator, and the expenses of any witness called by the Mediator, and the cost of any proofs or expert advice produced at the direct request of the Mediator, will be apportioned equally between the Parties, or otherwise, as the Mediator finds appropriate, or as may otherwise be agreed by the Parties; provided, however, that a Party shall not be responsible for any such Mediation expense to which such Party did not consent in advance in writing.

12.05 Compensation for Participation in Mediation

- A. Consultant is not entitled to compensation for time spent in or for negotiations or Mediation to resolve questions or disputes between Consultant and Owner arising out of this PSA.

PART 13 - MISCELLANEOUS PROVISIONS

13.01 Capitalization and Formatting

- A. Terms capitalized in this PSA include those that are:
 1. Specifically defined; or
 2. Titles of Parts or paragraphs; or
 3. Titles of reports or Deliverables; or
 4. Titles of other documents.
- B. Unless otherwise indicated, **highlighted**, **emboldened**, *italicized*, or underlined text is not indented to imply special significance but serves merely as an aid to the reader to distinguish or quickly reference selected text.
- C. Text shown with Strike Through font is meant to, and does, exclude such text from the PSA. It is shown as such merely for the convenience of the Owner.
- D. The captions of the Parts and paragraphs are for convenience only and will not be deemed relevant in resolving any question of interpretation or construction of any such Part or paragraph.

13.02 [Intentionally Omitted]

**13.03 Waiver**

- A. In the event any provision of this PSA is held to be invalid and unenforceable by a court of competent jurisdiction, the remaining provisions shall nevertheless continue to be valid and binding on the Parties.
- B. One or more waivers by either Party of any provision, term, condition or covenant shall not constitute a waiver of any subsequent breach.

13.04 Timely Approvals

- A. Whenever the approval of Owner or Consultant is required pursuant to this PSA, such approval shall not be unreasonably withheld or delayed.

13.05 Ownership & Use of Instruments of Service

- A. Owner shall be the owner of the following items incidental to this Agreement upon creation, 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. Consultant shall not release any of such items to any other person except after prior written approval of Owner.
- B. Unless otherwise specified herein, Consultant hereby assigns to Owner 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 Consultant pursuant to this PSA (collectively referred to as "Copyrightable Work and Inventions"). Owner 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. Consultant 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. Consultant 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. Consultant at its own expense shall defend, indemnify, and hold harmless Owner against any claim that any Copyrightable Works and Inventions or other items provided by Consultant hereunder infringe upon intellectual or other proprietary rights of a third party, and Consultant shall pay all damages, costs, settlement amounts, and fees that may be incurred by Owner in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this PSA.
- C. Consultant is not entitled to any fees for Owner's use of Instruments of Service unless Owner enters into an agreement with Consultant for Services in connection therewith.

13.06 Reliance

- A. Unless otherwise indicated, Consultant may rely on the accuracy and technical quality of documents provided by Owner or the Owner's authorized consultants.

13.07 Taxes

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



13.08 Conflicts of Interest

- A. Consultant covenants that Consultant 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 PSA. Consultant further covenants that in the performance of this PSA, no person having any such interest shall be employed or otherwise engaged by Consultant or any Subconsultant. Consultant must promptly disclose to Owner, in writing, any potential conflict of interest. Owner retains the right to waive a conflict of interest disclosed by Consultant if Owner determines it to be immaterial, and such waiver is only effective if provided by Owner to Consultant in writing.

13.09 No Publicity or Endorsement

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

13.10 Non-Discrimination

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

13.11 Execution in Counterparts

- A. This PSA may be executed electronically and 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.

13.12 Governing Law

- A. This PSA 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.

PART 14 - NOTICES

- A. All notices will be deemed to have been given when made in writing and delivered or mailed to the representatives of Owner and Consultant at their respective addresses as shown in Exhibit E, "Notices."

PART 15 - LIMITS OF AGREEMENT

- A. This PSA constitutes the entire and integrated agreement between Owner and Consultant with respect to the subject matter hereof, and supersede all prior negotiations, representations, or agreements, either written or oral, preceding this PSA with respect to the subject matter hereof.
- B. This PSA may be amended only by written agreement approved by the County Board of Supervisors and signed by the Chair of the County Board of Supervisors and Consultant, except as otherwise expressly authorized herein.



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- C. 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 by a court of competent jurisdiction, 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 PSA shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- D. No remedy herein conferred upon or reserved to Owner 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.

PART 16 - EXHIBITS

- A. The following listed Exhibits referred to herein are incorporated in this PSA as though set forth in full. In the event of conflict between provisions contained in the numbered Parts 1 through 16 of this Agreement and the provisions contained in the Exhibits, the provisions of the numbered Parts 1 through 16 of this Agreement shall prevail over those in the Exhibits, other than the provisions of Exhibit D, which shall control and prevail over all other provisions of this Agreement.
 - 1. Exhibit A, "Consultant's Scope of Work & Hourly Rates"
 - 2. Exhibit B, "Consultant's Staff & Subconsultants"
 - 3. Exhibit C, "Consultant's Compensation"
 - 4. Exhibit D, "Indemnification and Insurance Requirements"
 - 5. Exhibit E, "Notices"



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IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the first date executed by all of the parties hereto.

County of Santa Barbara

By: _____
STEVE LAVAGNINO, CHAIR
BOARD OF SUPERVISORS

ATTEST:
MONA MIYASATO,
COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

CONSULTANT:
Earth Systems Pacific

By: _____
Deputy

DocuSigned by:
Anthony P. Mazzei
By: _____
Authorized Representative

Name: Anthony P. Mazzei
Title: Sr. Vice President, Managing Principal
Address: 5917 Olivas Park Drive, Suite F
City/State/Zip: Ventura, CA 93003

APPROVED AS TO FORM:
RACHEL VAN MULLEM
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
BETSY SCHAFFER, CPA, CPFO
AUDITOR-CONTROLLER

Signed by:
Lauren Wideman
By: _____
Deputy County Counsel

DocuSigned by:
Betsy Schaffer
By: _____
Deputy

APPROVED AS TO FORM:
GREGORY MILLIGAN
RISK MANAGER

RECOMMENDED FOR APPROVAL:
KIRK LAGERQUIST, DIRECTOR
GENERAL SERVICES DEPARTMENT

Signed by:
Greg Milligan
By: _____
Risk Manager

DocuSigned by:
Kirk Lagerquist
By: _____
Department Head

END OF AGREEMENT

EXHIBIT A

SCOPE OF WORK

The following rates, which include all overhead, administrative costs, and profit, shall apply to Change Orders:

CONSULTANT: Earth Systems Pacific

SCOPE OF WORK:

Special Inspection and Material Testing and Inspection Services Scope of Work:

1. Provide geotechnical engineering and materials testing and inspection services during the construction phase of the Project.
2. Observation and testing during rough grading
 - Observe rough grading operations and perform compaction testing
 - Observe caisson/pier operations and perform inspection as necessary
 - Laboratory testing provided as necessary to determine maximum density and optimum moisture of soils used during grading, and determine the expansion index of bearing soils at completion of grading
3. Foundation observation and premoistening verification
 - Observe foundation excavations to verify bearing conditions
 - Re-visit site to test premoistening of bearing soils, as required and provide reports documenting the findings
4. Compaction testing in water line and storm drain trench backfills
 - Perform compaction testing to determine in-situ compaction within water lines and storm drain trench backfills
5. Reinforcing steel placement inspection
 - Reinforcing steel placement will be inspected to verify compliance with Project plans
6. Concrete inspection and sampling at site
 - Provide special inspection during concrete placement and will sample concrete at the site
 - Take cylinders to be transported to the lab after initial curing at the site; break cylinders and provide results
 - Compressive strength tests are performed at specified intervals
7. Torque testing of high strength bolts
 - Provide torque testing to verify torque tension capacity as required
8. Anchor installation, inspection and testing
 - Observe anchor installations and perform pull tests as required
9. Project management and consultation
 - Includes preparation of field reports for each aspect of testing and inspection

END EXHIBIT A

EXHIBIT B

CONSULTANT'S STAFF & SUBCONSULTANTS

- A. Consultant declares that the Principal-in-Charge on behalf of Consultant shall be Anthony P. Mazzei, Sr. Vice President, Managing Principal. Consultant declares that Consultant's Project Manager shall be Lance Young.
- B. Consultant must obtain Owner's prior written approval of any other subconsultants or subcontractors. Upon Owner's request, Consultant shall provide copies of all Subconsultant contract agreements to Owner.
- C. None of the Staff or Subconsultants shall be replaced without the Assistant Director's prior written approval pursuant to an amendment to this PSA. If Consultant's Project Manager or any other designated key staff person or Subconsultant fails to perform to the satisfaction of Owner, upon written notice from Owner's Project Manager, Consultant shall, within fifteen (15) calendar days, remove such person from the Project and provide a qualified replacement acceptable to OPM, and subject to OPM's prior written approval.

END EXHIBIT B



County of Santa Barbara: General Services
Capital Division

EXHIBIT C

CONSULTANT'S COMPENSATION

1. COMPENSATION SUMMARY

| | | |
|----|---|--------------------|
| a. | Consultant's Fixed Fee for the Services described in the SOW, above, shall be: | |
| | Services for Project Completion | \$57,407.73 |
| | | |
| | | |
| | | |
| | | |
| | | |
| | SUBTOTAL: Fixed Fee for Services | 57,407.73 |
| | | |
| b. | Allowance for Reimbursable Expenses pursuant to Part 10.02 1 | \$0 |
| | | |
| c. | Allowance for Supplementary Services (PSA Part 10.03) that may be authorized by the Owner in writing pursuant to issuance of a Supplementary Services Order or Change Order. | \$21,717.27 |
| 2. | MAXIMUM COMPENSATION LIMIT (a+b+c) | \$79,125.00 |

3. PROGRESS PAYMENTS

- a. For **FIXED FEE** portion, Progress Payments will be on the basis of completion of Project Milestones.

- b. Only invoices identifying personnel listed in Exhibit B, above, will be accepted by Owner for payment.
- c. Consultant must submit appropriate documentation and information to support each invoice, including a narrative description of Services performed during such billing period; completed milestones and deliverables.

END EXHIBIT C

EXHIBIT D

Indemnification and Insurance Requirements (For Design Professional Contracts that also Include Non-Design Services)

INDEMNIFICATION

A. Indemnification pertaining to Design Professional Services:

CONTRACTOR agrees to fully indemnify and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, suits damages, costs, expenses, judgments and/or liabilities that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONTRACTOR and its employees, subcontractors, or agents in the performance of services under this Agreement. The indemnity includes the cost to defend COUNTY to the extent of the CONTRACTOR'S proportionate percentage of fault. Should one (or more) defendants be unable to pay its share of the defense costs due to bankruptcy or dissolution of the business, CONTRACTOR shall meet and confer with other parties regarding unpaid defense costs and CONTRACTOR shall pay COUNTY'S cost of defense to the fullest extent permitted by law.

B. Indemnification pertaining to other than Design Professional Services:

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. CONTRACTOR'S indemnification obligation applies to COUNTY'S active as well as passive negligence but does not apply to COUNTY'S sole negligence or willful misconduct.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

CONTRACTOR shall procure and maintain 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 and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1. Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONTRACTOR'S has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. **(Not required if CONTRACTOR provides written verification it has no employees)**
4. **Professional Liability** (Errors and Omissions) Insurance appropriate to the CONTRACTOR'S profession, with limit of no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown above, the COUNTY requires and shall be entitled to the broader coverage for and/or the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR'S insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10. CG 20 26, Cg 20 33 or CG 20 38; and CG 20 37 if a later revisions used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR'S insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the

retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or COUNTY.

6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR'S obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

EXHIBIT E

NOTICES

1. All notices are deemed to have been given when made in writing and delivered or mailed to the representatives of Owner and Consultant at their respective addresses as follows:

a. Owner:

County of Santa Barbara
Capital Division
260 N. San Antonio Creek Rd. – Casa Nueva
Santa Barbara, CA 93110

Attention: John Green, Assistant Director, General Services Department
(805) 568-3096 / jlgreen@countyofsb.org

b. Consultant:

Earth Systems Pacific
5917 Olivas Park Drive, Suite F
Ventura, CA 93003

Attention: Anthony P. Mazzei, Sr. Vice President, Managing Principal

END EXHIBIT E