

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 Environmental Science Associates with an address at 550 Kearney Street, Suite 800, San Francisco, CA 94108 (hereafter CONTRACTOR or ESA) 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

Alex Tuttle at phone number 805-568-2072 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Selena Whitney at phone number 805-914-1540 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: Alex Tuttle
County of Santa Barbara
Planning and Development
123 East Anapamu Street
Santa Barbara, CA 93101
(805) 568-2030 (FAX)

To CONTRACTOR: Selena Whitney
Environmental Science Associates
550 Kearney St, Ste 800
San Francisco, CA 94108
(805) 914-1540

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 October 31, 2023 and end performance upon completion, but no later than June 30, 2026 unless otherwise directed by COUNTY or unless earlier terminated. This Agreement cancels, nullifies, and supersedes Purchase Order No. CN6619 (as previously amended by CO7809) which included a term of October 31, 2023 through June, 30, 2025.

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 of care observed by a competent practitioner of the same profession in which CONTRACTOR is engaged under similar circumstances. All work product of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a manner consistent with the standards of quality normally observed by a person practicing in CONTRACTOR's profession under similar circumstances. CONTRACTOR shall correct or revise any errors or omissions falling below the foregoing standards of care, 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 prepared or created by CONTRACTOR in the performance of services under this Agreement upon production, whether or not completed: all data collected, work product, 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, and excluding Pre-Existing Intellectual Property (defined below), 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; provided, COUNTY acknowledges that its alteration of CONTRACTOR's work product without the consent of CONTRACTOR, or use of the work product for any purpose other than the work described in this Agreement is at COUNTY's sole risk and without liability to CONTRACTOR. 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.

Nothing in this Section shall be deemed to give COUNTY an ownership interest in, or copyright to, any standard details, drawings, source code, specifications or other intellectual property rights of CONTRACTOR that were in existence prior to the effective date of this Agreement ("Pre-Existing Intellectual Property"); provided however that CONTRACTOR grants to COUNTY a limited, non-exclusive, royalty-free license to use such Pre-Existing Intellectual Property in accordance with this Agreement to the extent included in any work product.

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.

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.

As required by the California Energy Commission (CEC) grant funding that supports this Agreement, notwithstanding the above, CONTRACTOR will keep separate, complete, and correct accounting of the costs involved in completing the Agreement. CONTRACTOR agrees that the CEC, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. CONTRACTOR agrees to maintain such records for possible audit for a minimum of three (3) years after the Agreement ends in any way. CONTRACTOR agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, CONTRACTOR agrees to include a similar right of the CEC, the Bureau of State Audits, or their designated representative, to audit records and interview staff in any subcontract related to performance of this Agreement. These rights and responsibilities are in addition to and not restrictive of those in Section 38 (Access to Sites and Records).

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.

In addition, as required by the CEC grant funding that supports this Agreement, during the performance of this Agreement, CONTRACTOR will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, or denial of family care leave. CONTRACTOR will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. The Recipient and its subcontractors will give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

CONTRACTOR shall include this nondiscrimination and compliance provisions of this section in all subcontracts to perform work under this Agreement.

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 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 including but not limited Section 14 (Records, Audits, and Reviews), Section 38 (Access to Sites and Records), and Exhibit C indemnification provisions.

32. PRECEDENCE

In the event of conflict between the provisions contained in the numbered sections of this Agreement, the provisions contained in the Exhibits, or the provisions contained in CONTRACTOR's proposal, the provisions of the numbered sections of this Agreement shall prevail, next the provisions of the Exhibits, and last the CONTRACTOR's proposal.

33. SUBCONTRACTORS

CONTRACTOR is authorized to subcontract with subcontractors identified in this Agreement, in Contractor's Proposal, dated October 18, 2023, or any Statement of Work so long as the subcontractor is expressly identified. CONTRACTOR shall be fully responsible for all services performed by its subcontractor. CONTRACTOR shall secure from its subcontractor(s) all rights for SBCAG 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 Agreement amount) may be authorized by Planning and Development Director, or designee in writing, and will not constitute an amendment to the Agreement.

36. DRUG-FREE WORKPLACE CERTIFICATION

As required by the CEC grant funding that supports this Agreement, by signing this Agreement, CONTRACTOR certifies under penalty of perjury under the laws of the State of California that it will comply and will ensure its subcontractors will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.). In addition to any other rights and remedies available to the CEC or the COUNTY, failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and CONTRACTOR may be ineligible for any future state or COUNTY awards if the CEC or COUNTY determines that any of the following has occurred: (1) CONTRACTOR has made false certification, or (2) violates the certification by failing to carry out the requirements of the Act.

37. PUBLIC WORKS

As required by the CEC grant funding that supports this Agreement, by signing this Agreement, CONTRACTOR is responsible for complying with all applicable laws, which can include public works requirements under the Labor Code. CONTRACTOR acknowledges acceptance of Agreement funds may trigger Public Works laws (Labor Code

Section 1720 et seq.), a requirement of which is to pay prevailing wages, applying to its project. If the project is public works then it is subject to compliance monitoring and enforcement by the Department of Industrial Relations. By signing this Agreement, CONTRACTOR certifies that it shall comply with all applicable Public Works laws and requirements.

38. ACCESS TO SITES AND RECORDS

As required by the CEC grant funding that supports this Agreement, CONTRACTOR shall provide during the Agreement and for at least 3 years after the Agreement ends in any way to the CEC or its representatives reasonable access to all project sites and to all records related to this Agreement. These rights and responsibilities are in addition to and not restrictive of those in Section 14 (Records, Audit, and Review).

39. DUE DILIGENCE

As required by the CEC grant funding that supports this Agreement, CONTRACTOR must take timely actions that, taken collectively, move this project to completion. The CAM will periodically evaluate the project schedule for completion of Scope of Work tasks. If the COUNTY or CEC Commission Agreement Manager (CAM) determines that: (1) CONTRACTOR is not diligently completing the tasks in the Scope of Work; or (2) the time remaining in this Agreement is insufficient to complete all project tasks by the Agreement end date, the COUNTY or CAM may recommend that this Agreement be amended or terminated, and the COUNTY may amend or terminate this Agreement without prejudice to any of its other remedies.

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Agreement for Services of Independent Contractor between the **County of Santa Barbara and Environmental Science Associates.**

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: _____
Deputy Clerk


COUNTY OF SANTA BARBARA:

By: _____
Chair, Board of Supervisors

Date: _____


RECOMMENDED FOR APPROVAL:

Planning & Development Department

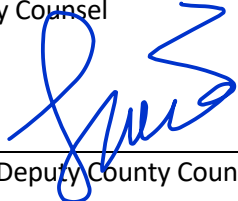
By:  Lisa Plowman
Department Head
Lisa Plowman
Director of Planning & Development

CONTRACTOR:

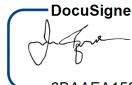
Environmental Science Associates

By:  Janna Scott
Authorized Representative
Name: Janna Scott
Title: Director

APPROVED AS TO FORM:

Rachel Van Mullem
County Counsel

By: _____
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA
Auditor-Controller

By: _____
Deputy

APPROVED AS TO FORM:

Risk Management

By: _____
Risk Management

EXHIBIT A

STATEMENT OF WORK

CONTRACTOR will provide the tasks and deliverables described in Section D of the ESA Proposal to Prepare Comprehensive Plan Amendments to Allow Utility Scale Solar Development Project Proposal, prepared for the County of Santa Barbara dated October 18, 2023, as attached hereto and incorporated herein by reference (Attachment A-1).

CONTRACTOR will prepare draft amendments to the County's planning documents to allow and facilitate community-scale and utility-scale solar development (hereafter "utility-scale solar") as a permitted use within the zoning designations set forth by the Board of Supervisors. CONTRACTOR will prepare amendments to the following planning documents:

- County Land Use and Development Code (LUDC);
- Montecito LUDC;
- Article II, Coastal Zoning Ordinance;
- County Comprehensive Plan Land Use Element;
- Coastal Land Use Plan;
- Gaviota Coast Plan and potentially other Community Plans; and
- Williamson Act Uniform Rules.

CONTRACTOR will also support COUNTY'S public outreach efforts. Amendments will include a streamlined tiered permitting system and appropriate development standards that minimize impacts.

CONTRACTOR will prepare Programmatic Environmental Impact Report (PEIR) in compliance with CEQA and the State CEQA Guidelines. The PEIR will consist of a programmatic analysis of the Comprehensive Plan, zoning ordinance, and Uniform Rules amendments that will streamline future environmental review and application processing for utility-scale solar projects. The abovementioned amendments to planning documents will comprise the Project Description for the subsequent PEIR. CONTRACTOR will also attend COUNTY'S decision-maker hearings to provide technical support. CONTRACTOR will also prepare up to two rounds of revisions to the planning documents draft amendments that may result from direction from decision-makers.

CONTRACTOR may not substitute other persons listed in Section C of Attachment A-1 without the prior written approval of COUNTY's Designated Representative.

Suspension for Convenience. COUNTY may, without cause, order CONTRACTOR in writing to suspend, delay, or interrupt the services under this Agreement in whole or in part for up to 60 days. COUNTY shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this Agreement.

Attachment A-1: ESA Proposal to Prepare Comprehensive Plan Amendments to Allow Utility Scale Solar Development Project Proposal, prepared for the County of Santa Barbara dated October 18, 2023.

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EXHIBIT B

PAYMENT ARRANGEMENTS

Periodic Compensation and Periodic Compensation at Selected Milestones (with attached Schedule of Fees)

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total Agreement amount, including cost reimbursements, up to but not to exceed **\$502,985** including contingency funds and inclusive of \$150,149.00 that was previously under Purchase Order CN6619 but otherwise cancels, nullifies, and supersedes CN6619. The CONTRACTOR must obtain written permission from the COUNTY DESIGNATED REPRESENTATIVE before initiating any work using contingency funds (\$14,650) and before moving funds between tasks.

- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **Attachment B1** (Schedule of Fees). Invoices submitted for payment that are based upon **Attachment B1** must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in **EXHIBIT A**.

- C. Monthly, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed under Tasks 1, 2, 3a, and 4 over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory and within the cost basis of **Attachment B1** shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.

- D. For Task 3b-3e, Environmental Document preparation, upon completion of the work for each milestone and/or delivery to COUNTY of item(s) specified below, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed in accomplishing each milestone. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and/or item(s) delivered and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.

Percentage of Total Contract Amount	Milestone Description	Maximum Amount Chargeable
15%, to be billed monthly	Task 3a: Project Management/Coordination Meetings	\$41,596
7%	Task 3b: Initial Study/Notice of Preparation	\$19,986
23%	Task 3c.1: Introduction, Project Description, Methodology, and Concept Alternatives	\$65,630

	Descriptions	
35%	Task 3c.2: Remainder of Administrative Draft EIR	\$98,446
4%	Task 3d.1: Screencheck Draft Program EIR	\$12,556
1%	Task 3d.2: Proof Check Draft Program EIR	\$4,210
2%	Task 3d.3: Public Review Draft Program EIR	\$4,880
10%	Task 3e.1: Screencheck Final Program EIR	\$28,516
2%	Task 3e.2: Final Program EIR and MMRP	\$6,919
TOTAL		\$282,739

The final milestone payment above shall not be made until all Task 3 services have been completed and item(s) as specified in **EXHIBIT A** have been delivered and found to be satisfactory.

- E. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

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Attachment B1: Schedule of Fees

Job Title	Rate
Principal Consultant 5	\$ 321 per hour
Managing Consultant 6	\$ 300 per hour
Principal Consultant 3	\$265 per hour
Senior Principal Consultant 1	\$255 per hour
Principal Consultant 2	\$238 per hour
Principal Consultant 2	\$238 per hour
Managing Consultant 3	\$234 per hour
Managing Consultant 3	\$234 per hour
Senior Consultant 4	\$212 per hour
Associate Consultant 6	\$203 per hour
Senior Consultant 3	\$192 per hour
Senior Consultant 3	\$192 per hour
Associate Consultant 5	\$190 per hour
Associate Consultant 4	\$177 per hour
Associate Consultant 4	\$177 per hour
Consultant 6	\$169 per hour
Associate Consultant 3	\$164 per hour
Associate Consultant 3	\$164 per hour
Senior Consultant 1	\$155 per hour
Consultant 3	\$129 per hour
WSP Subconsultant	\$302.40 per hour
Mileage	0.67 per mile or the current IRS standard mileage rate: https://www.irs.gov/tax-professionals/standard-mileage-rates
Printing	See below Printing/Reproduction Rate Table

Printing/Reproduction Rates

If a weekly or monthly rate is not provided, equipment usage is billed at a daily rate.

ITEM	RATE/PAGE	SAMPLE PRICING
Black & White – 8.5 x 11	\$0.15	
Black & White – 11 x 17	\$0.30	
Color – 8.5 x 11	\$0.50	
Color – 11 x 17	\$0.80	
B&W – Plotter (Toner – ECO Quality)	\$0.50/sf	24x36 B/W CAD drawing would cost \$3 per sheet
B&W – Plotter (Toner – Presentation Quality)	\$1.25/sf	24x36 B/W CAD drawing would cost \$7.50 per sheet
Color – Plotter (Inkjet – ECO Quality)	\$2.50/sf	24x36 Color Drawing would cost \$15 per sheet
Color – Plotter (Inkjet – Presentation Quality)	\$5.00/sf	24x36 Color Drawing would cost \$30 per sheet
CD	\$10.00	
Digital Photography	\$20.00 (up to 50 images)	
All Other Items (including bindings and covers)	At cost plus 10%	

EXHIBIT C

Indemnification and Insurance Requirements (For Professional Contracts)

INDEMNIFICATION

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 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 that it has no employees)***
4. **Professional Liability:** (Errors and Omissions) Insurance appropriate to the CONTRACTOR'S profession, with limit 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 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 forms if later revisions used).
2. **Primary Coverage** – For any claims related to this contract, the CONTRACTOR'S insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, 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 provide 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** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
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.

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Attachment 2 - Board Contract 090524

Final Audit Report

2024-09-05

Created:	2024-09-05
By:	Annakaren Larriva (alarriva@esassoc.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA45iUJrHIUIDowom87UBQ0r9FS2QUSTiX

"Attachment 2 - Board Contract 090524" History

 Document digitally presigned by Lisa Plowman (lplowman@co.santa-barbara.ca.us)


2024-09-05 - 6:59:19 PM GMT- IP address: 71.150.87.8

 Document created by Annakaren Larriva (alarriva@esassoc.com)


2024-09-05 - 7:50:40 PM GMT- IP address: 71.150.87.8

 Document emailed to Janna Scott (jscott@esassoc.com) for signature

2024-09-05 - 7:51:30 PM GMT

 Email viewed by Janna Scott (jscott@esassoc.com)

2024-09-05 - 7:52:08 PM GMT- IP address: 216.205.115.162

 Document e-signed by Janna Scott (jscott@esassoc.com)

Signature Date: 2024-09-05 - 7:52:24 PM GMT - Time Source: server- IP address: 216.205.115.145

 Agreement completed.

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