



County of Santa Barbara
General Services
Capital Projects Division

MASTER PSA
Version 1.1, October 2012

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Project Specific Data Input Page

Note to PM: You need enter the following information once and it will be inserted where needed elsewhere in the main document and all exhibits.

Name of Consultant: Tartaglia Engineering

Address of Consultant: 7360 El Camino Real, Suite E, Atascadero, CA 93423

Name of Project: Santa Ynez Valley Airport Capital Improvement Project

Project Number: 8734

Maximum PSA Compensation: **In numbers:** \$1,000,000.00

In words: One Million Dollars

Period (Term) of PSA through October 2017

Owner's Project Manager: John Green

Owner's Authorized Representative: Grady Williams

Board of Supervisor Award Date: October 02, 2012



County of Santa Barbara
General Services
Capital Projects Division

PROFESSIONAL SERVICES AGREEMENT

Between

THE COUNTY OF SANTA BARBARA

And

Tartaglia Engineering

For

AIRPORT PLANNING, ENGINEERING, AND CONSULTING SERVICES

For

**SANTA YNEZ VALLEY AIRPORT
AIRPORT CAPITAL IMPROVEMENT PROGRAM PROJECTS**

PROJECT NUMBER: 8734

October 02, 2012



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General Services
Capital Projects Division

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County of Santa Barbara
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PROFESSIONAL SERVICES AGREEMENT

FOR

AIRPORT PLANNING, ENGINEERING, AND CONSULTING SERVICES

This is an agreement between THE COUNTY OF SANTA BARBARA (hereinafter "Owner" or "County") and TARTAGLIA ENGINEERING, 7360 El Camino Real, Suite E, Atascadero, CA 93423 (hereinafter "Consultant").

PART 1 - RECITALS

- 1.01 WHEREAS**, this Professional Services Agreement (hereinafter "PSA") sets forth the terms and conditions pursuant to which Consultant, as a Professional, will provide professional services (hereinafter "Services") for Owner's Santa Ynez Valley Airport; and
- 1.02 WHEREAS**, Consultant was selected by means of the County's consultant selection process, represents itself as a Professional having the requisite qualifications, licenses and agrees to perform such Services; and
- 1.03 WHEREAS**, Consultant will perform such Services pursuant to separate Project Agreements to be negotiated by both parties and issued by Owner's Authorized Representative pursuant to this PSA.

NOW, THEREFORE, Owner and Consultant agree as follows:

PART 2 - PROJECT AUTHORIZATION, TERM AND MAXIMUM COMPENSATION

2.01 Agreement For Services

- A. This Professional Services Agreement is a master agreement that sets forth the terms and conditions pursuant to which Consultant, as a Construction Professional, will provide Airport Planning, Engineering, and Consulting Services to the County. The County will authorize Consultant to perform specific services by separate Project Authorization agreements. Each Project Agreement will set forth: (i) a project description; (ii) scope of services and deliverables; (iii) schedule for performance; (iv) maximum compensation and method of payment and invoicing; (v) authorized subconsultants and employees, if any; and (vii) County's representative Project Manager, who will provide coordination between Consultant and County and communicate relevant approvals and decisions.

2.02 Maximum Compensation

- A. The sum of all Project Agreements issued pursuant to this PSA shall not exceed **One Million Dollars (\$1,000,000.00)**. If Consultant performs services or incurs expenses beyond this Maximum Compensation Limit, Consultant does so at Consultant's sole risk and expense.

2.03 Term

- A. This Agreement is effective upon the date of full execution by both parties, and shall remain in effect for a period of 60 months ("Term"), unless earlier terminated under Section 12 of this Agreement. All Project Agreements must be executed, but Services not necessarily completed, within the Term of this Agreement.



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2.04 Scope

- A. The Services and Deliverables identified in [Part 5, "Consultant's Responsibilities, Services, And Deliverables"](#), of this PSA, establish:
 - 1. The full range of Services and Deliverables the County may authorize for Projects within the scope of this PSA.
 - 2. The extent of the Services and/or Deliverables that may be authorized by the Owners Authorized Representative (OAR) within the scope of this PSA.
- B. The services to be rendered by Consultant shall include all services as described in the Request for Proposal dated November 16, 2011, except to the extent they are inconsistent with the terms of this agreement. Consultant's work shall consist of all such services as are customarily rendered when providing aviation design and engineering services. Environmental documentation in support of NEPA and/or CEQA compliance is not a part of this Agreement.
- C. Any act or event affecting any particular Project Agreement, such as its completion, termination, acceptance, non-acceptance, continuation or modification, shall not affect any other Project Agreement or this PSA unless specifically provided herein or agreed in writing by the parties.

PART 3 - OWNER'S RESPONSIBILITIES

3.01 Owner Provided Information

- A. If required for a Project and specified in the Project Agreement, Owner may provide any of the following for Consultant's use in connection with the Services:
 - (i) Specialized studies of existing site conditions, including the presence of hazardous materials, soil, air, water, pollution, traffic, noise, archaeology, environmental impacts, 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 a 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 AGREEMENTS (PA)

4.01 Preparation and Approval

- A. Owner will prepare each Project Agreement, generally in accordance with the sample which is attached hereto as [Exhibit C](#), "Sample Project Agreement," and its attachments, Exhibit D.
- B. Each Project Agreement will be executed by the Owner's Authorized Representative, and incorporate the terms of this PSA. The OAR is the Manager, Capital Projects Division, General Services Department.



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- C. Owner hereby approves all Project Agreements executed by OAR within the limits of this PSA. OAR does not have the authority to negotiate or authorize payments or scope beyond the Maximum Compensation Limit or scope stated in this PSA.
- D. Commencement of each Project Agreement is contingent on receipt by Consultant of an Authorization to Proceed issued by Owner's Project Manager (OPM). Consultant must not commence work until Consultant receives the written Authorization to Proceed from the OPM.

4.02 Any act or event affecting any particular Project Agreement, such as its completion, termination, acceptance, non-acceptance, continuation or modification, will not affect any other Project Agreement or this PSA unless specifically provided herein or agreed in writing by the parties.

4.03 Changes in Scope

- A. If Owner requests a change in the requirements of a Project Agreement that Consultant contends is material and justifies an increase in compensation, Consultant must within fourteen (14) calendar Days of the Owner's request, advise Owner in writing before proceeding with such change. If written notice is not given to Owner within said fourteen (14) Days, such change will be deemed not material and Consultant will not be entitled to additional compensation for the change in the requirements of the Project Agreement.
- B. If Owner causes a material change in the Service(s) or Deliverable(s), Consultant must within fourteen (14) calendar Days of the event that caused the material change, notify Owner in writing that Consultant contends Owner has caused a material change in their Service(s) or Deliverable(s). After said notification, Consultant must provide such Service or Deliverables as directed by OPM. If OPM concurs that there has been a material change in a Service or Deliverable, payment to Consultant will be adjusted in accordance with [Part 10.01.A.3, "Changes."](#)
- C. If there is a material increase in the scope of Services required to complete a Project Agreement, and such increase is not the fault of or caused by Consultant, or does not result from faulty or inaccurate estimations made by Consultant, OPM may request, and Consultant, pursuant to such request, must provide assistance in re-allocating the remaining available funds relating to the Project Agreement. Such assistance must, if requested by OPM, also include a determination of any other Services necessary to complete the Project.
- D. If there is a material decrease in the scope of Services required to perform a Project Agreement, Consultant agrees to immediately notify OPM and to accept a reasonable reduction in compensation.

4.04 Project Descriptions

- A. Rehabilitate service road including drainage, fencing, & gates.
- B. Rehabilitate pedestrian access between apron and terminal.
- C. Rehabilitate Taxiway and Taxilane F.
- D. Airfield electrical upgrades and runway safety grading.
- E. Runway & taxiway rehabilitation with pavement marking.
- F. Apron rehabilitation with pavement markings.

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

5.01 Consultant as Independent Contractor



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- A. Consultant is performing all Services as an independent contractor and not 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 or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, without the prior written consent of County, and any attempt to so assign 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. Notwithstanding the foregoing, Consultant may use subconsultants in performing the Services under this Agreement. Consultant shall be responsible for directing the work of authorized subconsultants, and for any compensation due to subconsultants. County assumes no responsibility whatsoever concerning such compensation. Consultant may add subconsultants to those identified in exhibit B only with the prior written approval of the OPM.

5.03 Consultant's General Responsibilities

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

- A. Standard of Care
1. Consultant must perform Services in accordance with those standards of care that are generally recognized as being used by competent persons in Consultant's area of specialty in the State of California.
 2. Consultant must perform Services in compliance with all applicable written federal, state and local codes, statutes, laws, regulations and ordinances in force at the time a Project Agreement is awarded.
 3. Consultant must use its professional judgment and expertise to verify interpretations of applicable law, codes, regulations, and ordinances, from the appropriate Government Agency(s) and authorities having jurisdiction over the Project. Such efforts will be undertaken in accordance with the acceptable standard of care for this type of Project.
 4. Consultant must consider all mitigation measures identified in the Project's Environmental Impact Report, Mitigated Negative Declaration or other CEQA documentation in performance of their Services.
- B. Funding by Governmental Agencies
1. When a Project is to be constructed, wholly or in part, with funds from Federal, State, or other outside funding sources, Consultant must comply with the requirements of said Federal, State, or outside funding sources in the Construction Documents.
- C. Adherence to Regulations and Requirements
1. General: Project Agreements awarded under this Agreement shall be designed and constructed to adhere to all applicable codes, industry standards and handbooks. When a conflict exists between the requirements of this document and its referenced documents, this document shall take precedence. When the requirements of FAA documents conflict with other referenced documents, FAA documents shall take precedence. In the event of conflict between any of the other referenced documents, the most stringent requirements shall apply. The Consultant shall notify the OPM when the proposed design conflicts with local code requirements.
- D. OSHPD Jurisdiction



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1. When a Project is within the jurisdiction of the State of California, Office of Statewide Health Planning and Development ("OSHPD"), Consultant's Instruments of Service must meet all OSHPD requirements.
- E. Sequence of Consultant's Services
1. In general, Consultant's Services will proceed sequentially by the Phases described in [Part 5.04, "Basic Services & Deliverables."](#)
 2. Each Project Agreement will establish the Consultant's Milestone Schedule for completion of the Consultant's Services applicable to that Project Agreement.
 3. Commencement of each Project Agreement is contingent on receipt by Consultant of an Authorization to Proceed issued by OPM. Consultant must not commence work until Consultant receives the written Authorization to Proceed from the OPM.
- F. Submittal of Deliverables
1. Each submittal must include a declaration statement, signed by a principal of Consultant's firm, that the work of Consultant and its Subconsultants was coordinated, the submittal is complete, and that all prior review comments have been incorporated and coordinated.
 2. Consultant must furnish to Owner, suitable for reproduction, original reproducible files and other Instruments of Service, and computer disks containing the submittal in the following electronic formats: Microsoft PC compatible operating system, AutoCAD 2004 or newer, Microsoft Office 2003 or newer.
- G. Printing & Reproduction
1. Consultant must pay for all printing and reproduction cost incurred in the performance of its Services.
 2. Owner will print coordination check documents to be used by the Owner at Owner's expense.
 3. Owner will print Bid Documents for distribution to Bidders at Owner's expense.
 4. At Owner's written request, Consultant must print or reproduce selected documents. The Consultant may invoice the Owner for Owner-requested printing as a Reimbursable direct expense.
- H. Meetings
1. Required meetings are as specifically identified in [Part 5.04, "Basic Services & Deliverables"](#), Consultant must attend meetings as needed or required with:
 - a. Owner's officials, staff, commissions and user groups as required for the performance of Consultant's Services pursuant to this PSA and all Project Agreements. This requirement includes meetings with Owner and user groups to complete the stated services. This also includes a kickoff meeting with the Owner's organization.
 - b. Owner-sponsored advisory groups and local officials to present the Project to the public.
 - c. Governmental Agencies having jurisdiction related to the Project or any part of the Project. The Consultant must schedule and participate in preliminary meetings with all Governmental Agencies with Permitting Authority for the Project prior to the start of construction phase and as needed or required thereafter.



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2. Unless otherwise requested by the OPM, Consultant must 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 [Part 5.04, "Basic Services & Deliverables,"](#) will be considered included in the overall fee identified in each Project Agreement.
- I. 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 approval as an amendment to the PSA by the OAR.

5.04 Basic Services & Deliverables

The Consultant shall provide all services in accordance with the requirements as set forth by the County. All work shall comply with pertinent Federal, State, City, and County guidelines, policies, and procedures. All consultant work shall be performed in accordance with the Federal Aviation Administration (FAA) and CalTrans policies and guidelines. The general aviation design engineering services to be performed by the Consultant shall include, but not necessarily be limited to, the following items of work as they would apply to various airport projects; pavement rehabilitation, new construction drainage study, development of taxiway intersections, airfield lighting and signage, and architectural, civil, geotechnical, structural, mechanical, and electrical engineering. In addition, there may be some services outside those normally considered basic as described below. The basic services are usually conducted in, but are not limited to, the four distinct and sequential phases summarized below:

A. Preliminary Phase Services

This phase involves those activities required for defining the scope of a project and establishing preliminary requirements. Some examples of activities within this phase of a project include, but are not limited to:

1. Conferring with the sponsor on project requirements, finances, schedules, early phases of the project, and other pertinent matters and meeting with FAA and other concerned agencies and parties on matters affecting the project.
2. Planning, procuring, and/or preparing necessary surveys, geotechnical engineering investigations, field investigations, and architectural and engineering studies required for preliminary design considerations.
3. Developing design schematics, sketches, environmental and aesthetic considerations, project recommendations, and preliminary layouts and cost estimates.

B. Design Phase Services

1. This phase includes all activities required to undertake and accomplish a full and complete project design. Examples include, but are not limited to, those below:
 - a. Conducting and attending meetings and design conferences to obtain information



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and to coordinate or resolve design matters.

- b. Collecting engineering data and undertaking field investigations; performing geotechnical engineering studies; and performing architectural, engineering, and special environmental studies.
- c. Preparing necessary engineering reports and recommendations.
- d. Preparing detailed plans, specifications, cost estimates, and design/construction schedules.
- e. Preparing construction safety plans.
- f. Printing and providing necessary copies of engineering drawings and contract specifications.

2. Minimum Requirements at Design Development Phase

- a. Drawings: Locate, outline, and identify existing structures on site within a radius of at least three hundred (300) feet measured from the exterior walls of the proposed building. Indicate easements, rights of way, and future roads. Provide Elevations and Sections (Scale: Not less than 1/8" = 1'0"). Include sections as necessary to explain the structure and any unusual features of design.
- b. Cost Estimate: The cost estimate shall be developed from the design documents and general description of the structure.
- c. Outline Specifications: The general description shall include information pertaining to site, structure, and type of construction. Include brief descriptive statements regarding any unusual features of design. The Construction Specifications Institute (CSI) format is to be used in outline fashion.
- d. Upon fifty percent (50%) and ninety percent (90%) completion of design documents, the Consultant shall submit for COUNTY review and comment copies of the design documents and design calculations.

3. Minimum Requirements at Construction Documents Phase

- a. General. Based on the approved design development documents (including the estimated Project construction cost) and upon written authorization to proceed with the preparation of construction documents, the Consultant shall prepare construction documents consisting of drawings and specifications setting forth in detail the requirements for the construction of the entire Project. The construction documents shall be consistent with the approved construction budget and any other standard documents furnished by the COUNTY. The construction documents shall be consistent with the general provisions of the construction contract. A copy of the general provisions can be obtained through the designated representative. Upon fifty percent (50%) and ninety percent (90%) completion of construction documents, the Consultant shall submit for COUNTY review and comment copies of the construction.
- b. Construction Safety Plan



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(1) Consultant shall prepare a Construction Safety plan specific to each AIP project, and meeting the requirements FAA and CalTrans.

c. Requirements for Specifications.

(1) Format. The format should be that recommended by the Construction Specifications Institute (CSI) narrow scope type.

(2) Material/Product Callout. Any specification calling for a designated material or product must indicate the names of two (2) manufacturers and must be followed by the phrase "or equal" with the following exceptions: The product is designated to match existing one in use on a particular facility; or if only one brand or trade name is specified, because it is the only one known, the Consultant should submit a letter so stating to the designated representative with the final draft of the specifications. If approved, the phrase "no known equal" should follow this designated supplier. The County will provide the Consultant a list of approved standard fixtures and other miscellaneous construction items for the project the County uses as standard construction items.

d. Consultant shall prepare and submit for COUNTY approval an estimate of Project construction cost at 90% completion of construction documents.

e. Consultant shall review the COUNTY'S standard bid documents and complete them as necessary to make them specific to the Project. Consultant shall prepare Special Provisions.

f. All final construction document submittals to the COUNTY shall be wet signed by the Consultant. The final one hundred percent (100%) documents shall either incorporate changes requested by the COUNTY as a result of COUNTY review of the ninety percent (90%) construction documents or be accompanied by a written statement as to why such changes were not incorporated. The COUNTY may reject the Consultant's explanation and require the Consultant to make changes to the construction documents as previously requested by the COUNTY.

g. Upon completion of review by the COUNTY of a final one hundred percent (100%) set of construction documents, the Consultant shall provide to the COUNTY one (1) set of reproducible, four (4) sets of prints, and one (1) complete set of the specifications in reproducible form.

C. Bidding and Negotiation Phase Services

1. These activities involve assisting the sponsor in advertising and securing bids, negotiating for services, analyzing bid results, furnishing recommendations on the award of contracts, and preparing contract documents.

2. Minimum Requirements for Bidding Phase

a. Revisions: Between the time the bidding documents are sent to potential bidders and the date that bids for the Project are to be opened, there may arise a need to



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change the bidding documents. For this case, an addendum shall be prepared by Consultant for distribution by the COUNTY. Revisions to the bidding documents shall be made by addendum only. In the event that the Consultant receives telephonic or other requests from potential bidders for information or clarification, all such requests shall be immediately referred to COUNTY for response.

- b. Job Walk and Pre-Bid Conference: The Consultant shall conduct a mandatory Job Walk and Pre-bid Conference for the General Construction Contract. The conference shall be forums for the County and Consultant to explain the project requirements to the bidders, including information concerning schedule requirements, time and cost control requirements, access requirements, the County's administrative requirements and technical information. The Consultant shall prepare minutes from the meeting and include the minutes in an Addendum.
- c. Bid Proposal Review and Recommendations: The Consultant shall receive and evaluate the bids or proposals for responsiveness and price, including alternate prices and unit prices, and shall make recommendations to the County concerning the acceptance or rejection of bids or proposals.
- d. Bids Over Budget: If the lowest responsible base bid exceeds the approved estimate by more than ten percent (10%), the COUNTY may, at its discretion:
 - (1) Require the Consultant, at Consultant's expense, to modify the Project design and the construction documents, subject to approval by COUNTY, in order to reduce the Project construction cost to within the Construction Budget; all modifications required pursuant to this paragraph shall be completed within a reasonable time, but in no case longer than two (2) months, as required by COUNTY; and/or
 - (2) Authorize re-bidding of the Project within a reasonable time.

D. Construction Phase Services

1. This phase includes all basic services rendered after the award of a construction contract, including, but not limited to:
 - a. Providing consultation and advice to the sponsor during all phases of construction.
 - b. Representing the sponsor at preconstruction conferences.
 - c. Inspecting work in progress periodically and providing appropriate reports to the sponsor.
 - d. Reviewing and approving shop and erection drawings submitted by contractors for compliance with design concept/drawings.
 - e. Reviewing, analyzing, and approving laboratory and mill test reports of materials and equipment.
 - f. Preparing and negotiating change orders and supplemental agreements.



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- g. Observing or reviewing performance tests required by specifications.
- h. Determining amounts owed to contractors and assisting sponsors in the preparation of payment requests for amounts reimbursable from grant projects.
- i. Making final inspections and submitting punch-lists and a report of the completed project to the sponsor.
- j. Reviewing contractor's submitted operations and maintenance manuals.

2. Minimum Requirements for Construction Phase Services

- a. Assist COUNTY in claims prevention. Claims prevention shall involve clear communication, prompt conflict resolution, prompt response to contractor's submittals, and the implementation of solid management and administrative practices. When problems arise, the Consultant will work collaboratively to gather information, form alternatives, and guide decisions that result in solutions. The Consultant's field team shall attempt to resolve issues on site. If the Consultant suspects a problem exists that may make the County liable to receive a claim, the Consultant shall gather all key team members to (1) evaluate the risk, (2) explore alternatives for resolving the problem with the contractor, (3) prepare supplemental guidance for issuance to the contractor to clarify contract requirements when directed, and (4) if appropriate, initiate a change order to compensate contractor for changed conditions. The Consultant will be tasked with keeping a "potential claim file" to capture all correspondence, reports, meeting minutes, photos and other documents relevant to the issue.
- b. Dispute/Claim Reports: During the Construction Phase Consultant shall make all reasonable efforts to review and resolve disputes on behalf of the Owner. Consultant shall maintain documentation and records on all relevant decisions and facts relating to disputes on an ongoing basis. Said records shall be maintained in an orderly manner and made available to County personnel upon request. When Contractor files a notice of potential claim or dispute in accordance with the Contract Documents the Consultant shall:
 - (1) Immediately, notify the Contractor the Notice was received,
 - (2) Notify the Owner's Project Manager of the dispute,
 - (3) Assign a dispute tracking number to the dispute and create a dispute file. The following information shall be prepared and continuously updated and maintained in the dispute file by Consultant;
 - (4) Compile any formal data, pertinent data, and records such as daily Contractor reports, progress pay reports, special meeting notes, reports, summaries, etc.,
 - (5) Prepare a summary of the dispute, by issue, clearly stating the Contractor's position on each issue.

If a potential claim is not resolved by the completion of the Project or at the direction of the County's attorney, Consultant shall prepare a formal claims report stating the Consultant's recommendation for resolution of the dispute or claim. The claims report shall be prepared in the County's format and solely to assist the County's Project Manager and County's Attorney.



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- c. **Pre-Construction Conference:** The Consultant shall conduct a pre-construction conference in accordance with the Contractor's General Conditions requirements. The Consultant shall prepare and ensure timely distribution of minutes of this meeting to the County, Contractor, and others.
- d. **Progress Meetings:** The Consultant shall conduct regular construction progress meetings at the project site with the Contractor. The Consultant shall also conduct regular project coordination meetings with Contractor and the County as required to pursue and record progress of the project. The Consultant shall distribute minutes to all attendees and the County. Regularly scheduled meetings shall be limited to weekly coordination meetings unless otherwise defined in a specific Project Agreement, and provide meeting minutes.
- e. **Construction Safety:** The Consultant shall verify that Contractor has on file a safety program meeting the requirements of the Construction Safety Plan prepared by Consultant and incorporated into the Contract Documents. The Consultant shall not be responsible for Contractor's implementation of or compliance with its safety programs, or for initiating, maintaining, monitoring or supervising the implementation of such programs or the procedures and precautions associated therewith. The Consultant shall not be responsible for the adequacy or completeness of Contractor's safety programs, procedures or precautions.
- f. **Record Set of Plans And Specifications:** The Consultant shall maintain onsite a current and independent set of plans and specifications. The Consultant shall update the Record Set daily. All addenda, RFIs, material and equipment selections, change orders, bulletins, and other pertinent information shall be posted to the record set. The record set shall be used to assist the field inspectors in performing their inspection duties and to assist the Consultant in verifying the Contractor's monthly and final as-built submissions for accuracy and completeness.
- g. **Contractor Payment:** The Consultant shall review the payment applications submitted by the Contractor to determine whether the amount requested accurately reflects the progress of that party's work.
- h. **Interpretation of the Contract Documents:** The Consultant will be the interpreter of the requirements of the drawings and specifications. The Consultant shall interpret the requirements of change orders and decide all other questions of design intent in connection with the work. It shall be the responsibility of the Consultant to make interpretations and render opinions in regard to all claims to the COUNTY or designated representative involving questions of interpretation of the intent of the drawings and specifications. Neither the contractor, the designated representative, nor the COUNTY shall be bound by any determination, interpretation, or opinion of the Consultant if it is determined that such is not in accord with the true intent of the contract documents. The party taking issue with the determination, interpretation, or decision of the Consultant shall give the other party or parties, as the case may be, written notice of such fact within ten (10) days after the determination, interpretation, or opinion is rendered by the Consultant. However, it is the intent of this Section that in the actual performance of the work, the contractor and the designated representative



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shall, in the first instance, proceed in accordance with the instruction given by the Consultant unless the COUNTY and the designated representative mutually agree that the contractor and the designated representative shall proceed otherwise.

- i. Review Requests for Information: The Consultant shall establish a log to track the status, topic, and pertinent dates associated with obtaining a response for each RFI. Determine required response suspense date to avoid Contractor delay.
- j. Quality Assurance: As part of the design phase services, assist County with the development of quality control requirements for the Contractor. Review the Contractor's quality control plan for compliance and make recommendations to the County for approval. Monitor the Contractor's adherence to their plan in accordance with Consultant's submitted QA plan. Advise the County if the Contractor is not meeting their quality control obligation. During construction phase, observe and document, with written reports, the status, progress, and quality of work.
- k. Quality Review: The Consultant may recommend the rejection of work and transmit to the County and Contractor a notice of nonconforming work when it is the opinion of the County or Inspector that the Work does not conform to the requirements of the Contract Documents. The Consultant may, with County's written approval, authorize minor variations in the work from the requirements of the Contract Documents that do not involve an adjustment in the contract price or the contract time and which are consistent with the overall intent of the Contract Documents. Except for minor variations as stated herein, the Consultant is not authorized approve or accept any portion of the Work not performed in accordance with the Contract Documents.
- l. Submittal and Shop Drawing Review: The Consultant shall coordinate and manage the submittal and shop drawing review and approval process. This includes tracking the status of all required submittals.
- m. Inspections: Provide daily, or less frequent inspections if authorized by the County, of the work performed by General Contractor. Provide a report for each inspection. Review the work for compliance with the contract documents and report on those activities the Consultant is responsible for monitoring as defined herein. Notify the County immediately of any non-compliant work. Notify contractor of deficiencies and monitor correction.
- n. Testing and Inspection: Advise County on recommended testing programs. Provide and/or oversee special testing and inspection of the work. Coordinate necessary tests with Contractor. Consultant shall review reports and track the repair of non-complaint work. The Consultant may recommend that the County reject work that does not conform to the requirements of the Contract Documents. Verify that General Contractor has coordinated inspections with all agencies having jurisdiction over the project, including both code authorities and other agencies specified by the County. Develop and maintain a system for tracking notices of non-compliance. Witness all systems tests.
- o. Monthly Project Report: The Consultant shall submit a monthly progress report



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to the County, including information on Contractor's work and the general status of the entire project. The Consultant will meet with the County monthly to review this report, which shall include:

- (1) Executive summary
- (2) Narrative of the current project status (work completed this period; status of schedule; anticipated or potential problems; and required actions by County in upcoming month)
- (3) Current versions of all other logs managed by the Consultant
- (4) Financial reports (costs to date, initial contract value, costs committed, exposure, projections to completion)
- (5) Milestone schedule update
- (6) Photographs The Consultant's report shall highlight any significant variance from prior reports for the project and additionally advise the County as to any variances between actual costs and approved budgets.

E. Closeout And Occupancy Phase Services

1. **Punchlist:** Work with the applicable County agencies to develop a punchlist of items necessary for completion. Oversee the Contractors work and track resolution of each punchlist item. Maintain punchlist items on an electronic database and track each item to resolution.
2. **Substantial Completion:** Assist the County in the determination of Substantial Completion of the Work. The Consultant shall, prior to issuing a Certificate of Substantial Completion, prepare a list of deficient work that does not conform to the Contract Documents. This list shall be attached to the Certificate of Substantial Completion.
3. **Operations and Maintenance Manuals.** The Consultant shall receive from the Contractor operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the project. The Consultant shall review the materials for completeness per contract requirements and request additional information as necessary to ensure that County receives all necessary materials. The Consultant shall create a list of all manuals so received, and record their transfer to the County for subsequent training and facility operation by the Consultant, if any, and all others. Consultant shall indicate effective start date of all warranties and guarantees on a summary sheet. Consultant shall also indicate a contact person and telephone number for the General Contractor and appropriate subcontractor for County staff to use when requesting warranty or guaranty service.
4. **Closeout Documents and Spare Parts.** Review adequacy of record drawings and other submittals from the General Contractor for the close-out package. Identify and track the receipt of all closeout documents. To assist County in certifying completion of project, assure all required documentation have been submitted by the Contractor.
5. **Final Completion:** Consultant shall issue a Certificate of Final Completion and shall provide to the County a written recommendation regarding payment to the Contractor, as provided for in the Contract Documents.
6. **Consultant's Closeout Report:** At the conclusion of the project, the Consultant shall prepare final project accounting and closeout reports. The Consultant shall ensure the following are obtained, completed, and/or delivered to the County prior to recommending final payment and release of retention to the Contactor:
 - a. **Certified Notice of Completion**



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- b. Any Remaining Punch List
 - c. Certificate of occupancy
 - d. Final approval (Regulatory Agency, Special inspections, County's inspections)
 - e. Obtain and have appropriate review of the:
 - (1) Project Record Drawings and Specifications "As-Built"
 - (2) Guaranties and warranties
 - (3) Operating and maintenance manuals
7. Warranty Support: Assist County with the management of warranty work. Possible assistance may include receiving work order, checking to see if covered by warranty, contacting Contractor and/or subcontractor supplier and ensuring work is repaired in a timely manner. The COUNTY will schedule an end of warranty review meeting with the designated representative, Consultant, and contractor prior to the end of one year warranty to determine any work requiring correction.

PART 6 - CONSULTANT'S SCHEDULE

6.01 The consultant's submittal dates are contingent upon timeliness of County submitting review comments.

6.01

- A. Consultant shall perform all Services and Deliverables within the time and project schedule shown. Time is of the essence in this Agreement.
- B. Consultant must provide and maintain Project staffing levels as necessary to perform the Services within the time provided in the project schedule

PART 7 - COST CONTROL

7.01 Owner Approved Construction Cost (OACC)

- A. Each Project Agreement will specify the Owner Approved Construction Cost for the Project or Project part covered by that Project Agreement. The Owner Approved Construction Cost shall not be revised without Owner's prior written approval.

7.02 Formatting and Comparing Estimates

- A. All required Statements of Probable Construction Cost by Consultant must be prepared per Owner's direction, in a format or formats approved by Owner's Project Manager. The identical format(s) must be used consistently throughout the Project in order to facilitate tracking the costs of various Project components. In addition, Consultant must provide a cost estimate summary sheet in CSI format for all Construction Document Phase submissions of Statements of Probable Construction Cost.
- B. If the Project involves multiple bid packages, Consultant must prepare separate estimates for each bid package.

PART 8 - INDEMNIFICATION & INSURANCE



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8.01 [Exhibit D](#) Requirements

- A. Indemnification and Insurance requirements are set forth in [Exhibit D](#), "Indemnification & Insurance."

PART 9 - REPRESENTATION BY COUNSEL

- A. The parties 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 10 - HAZARDOUS MATERIALS

10.01 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.

10.02 Hold Harmless Clause

- A. To the fullest extent permitted by law, Owner agrees to bring no claim against Consultant and its Subconsultants and to defend, indemnify, and hold harmless Consultant and its Subconsultants from third party claims relating to the investigation, detection, abatement, replacement, or removal of asbestos or other hazardous material, or relating to sudden or gradual escape or release of hazardous contaminants of any kind into or on the land, the atmosphere, or any water course or body of water, excepting only such claims which arise out of the sole negligence or willful misconduct of Consultant or its Sub-consultants.

PART 11 - COMPENSATION & PAYMENT

11.01 Compensation

- A. Payments will be made as set forth herein
 - 1. Maximum Compensation Limit
 - a. Each Project Agreement will specify a Maximum Compensation Limit (MCL) by Owner to Consultant for that Project Agreement. The MCL includes all authorized Services and authorized Reimbursable expenses. Total payment by Owner pursuant to any Project Agreement will not exceed the MCL specified in the Project Agreement and Consultant is fully responsible for provision of all Services and Deliverables to fully perform a Project Agreement, compensation for which will not exceed the specified MCL.
 - 2. Consultant's Hourly Rate Schedule



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- a. Consultant's Hourly Rate Schedule is set forth in [Exhibit A](#), "Consultant's Hourly Rates."
 - b. Modifications to Consultant's Hourly Rate Schedule to include out-years beyond the rates identified in Exhibit A will be negotiated by the parties using as a benchmark the prevailing increase for similar Consulting Services in the Central Coast area and are subject to approval as an amendment to the PSA by the OAR.
 - a. Non-Fixed fee Services provided by Subconsultants are subject to approval by the OAR and documented in a Project Agreement. Administrative mark-up by Consultant on Subconsultant invoices is not permitted.
 - b. Where the class of persons authorized to provide specific Services is not designated in a Project Agreement, Services must be provided by a qualified person who is in a class that has the lowest rate of payment among those classes that contain persons who are qualified to provide the Services.
3. Changes
- a. If, during the term of a Project Agreement, circumstances constituting a material change in scope as described in [Part 4.01, "Changes In Scope"](#), arise, Consultant will be entitled to compensation therefore, within the Total Payment Limit for that Project Agreement. If such changes mean that the scope of the Project Agreement cannot be completed as originally envisioned, then Consultant must immediately inform the OPM and assist OPM in allocating the remaining compensation among the unfinished Services in order to accomplish as much of the original intent as possible within the Total Compensation Limit of the Project Agreement.
4. Prevailing Wages and Davis-Bacon Act
- a. Consultant acknowledges that work performed on site to support the Services under this PSA is a public work within the meaning of the Davis-Bacon Act and the California Labor Code Section 1720 and that the requirements of Section 1771, et. seq. apply to such public work. Consultant has included (and will include) consideration for this obligation in calculating compensation and cost estimates under this PSA.
5. Errors and Omissions
- a. Consultant must correct errors and omissions in the Contract Documents attributable to Consultant without cost to Owner.
 - b. Owner has the right to pursue claims for any errors and omissions caused by Consultant.

11.02 Reimbursable Expenses

- A. When travel is authorized as a reimbursable expense in a Project Agreement, Consultant agrees to comply with the Santa Barbara County and Federal travel policies and guidelines, where applicable, for all travel, lodging and meal reimbursements arising from the performance of this Agreement. Detailed travel policy requirements and limitations can be found in the Capital Projects Division.
- B. When authorized in the Project Agreement, Owner will reimburse Consultant, at cost, for reasonable expenses incurred in the performance of the Services. Only the following



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expenditures, made by Consultant with Owner's advance written approval, are payable as reimbursable expenses within the Total Compensation Limit of any Project Agreement:

1. Extra-ordinary "office" expenditures specifically related to executing the scope of work in Project Agreements, including overnight mailing such as Federal Express, and additional copies of Deliverable Documents, over and above those required by the terms of the Project Agreement; and mileage reimbursement to attend meetings beyond those specified in the scope of Project Agreements. Any individual expense in excess of \$10.00 must be supported by a copy of the receipt.
2. Other reimbursable expenses specifically identified in a Project Agreement.

11.03 Supplementary Services & Deliverables

- A. County has established a Supplemental Services Allowance (SSA) in a Project Agreement for the performance of services not included within the PA's Scope of Services and Deliverables. Consultant will only commence work pursuant to the SSA following prior, written authorization of County's Project Manager and the Owner's Authorized Representative.

11.04 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 will submit Payment Requests on the forms shown in [Exhibit E](#), "Sample Invoice," 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.
- D. Neither Consultant, nor authorized subconsultants, may provide services to the Construction Contractor or any Subcontractor pursuant to separate agreement for any part of the Project.

11.05 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.

11.06 Timely Billings

- A. Consultant agrees to bill Owner on a timely basis and not later than ninety (90) Days after:
 1. Services are performed;
 2. Reimbursable Expenses are incurred; or
 3. Billings are otherwise due pursuant to the terms of the Project Agreement.
- 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 this ninety (90) Day period.

11.07 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 from 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 affecting 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 exceeding Ten Thousand Dollars (\$10,000) in value pursuant to this PSA or any modification thereof.

PART 12 - TERM & TERMINATION

12.01 Owner's Rights

- A. Termination for Convenience
1. Owner's Authorized Representative 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 Owner's Authorized Representative specifying such failure or violation, 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, which is allowed by this PSA for a termination for convenience.
- C. The rights and remedies provided herein to Owner are in addition to any other rights and remedies provided by law this PSA, or a Project Agreement.

12.02 Consultant's Compensation Upon Termination

- A. In the event of Owner's termination of this PSA or any Project Agreement, Consultant will receive compensation as follows:



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1. For fully performed and accepted items of Service, and authorized Reimbursable Expenses pursuant to any Project Agreement, compensation will be in the amount specified in the Project Agreement 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 that item of Service.

12.03 Delivery of Documents

- A. Upon any termination of this PSA or any Project Agreement, Consultant must furnish Owner all documents and Instruments of Service prepared pursuant to this PSA or such Project Agreement(S), whether complete or incomplete. Consultant may retain a copy for its records.

PART 13 - DISPUTE RESOLUTION

13.01 Consultant's Questions & Concerns

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

13.02 Dispute Resolution During Construction

- A. Alternate Dispute Resolution (ADR)
1. Owner intends to use ADR techniques including Partnering and Mediation during Construction.
- B. Consultant and its subcontractors shall participate in all ADR efforts as directed by owner.
- C. The cost of Partnering training facilities and facilitator will be borne by Owner.

13.03 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.

13.04 Mediation

- A. Voluntary Mediation
1. In the event a dispute or issue is not resolved by negotiation, Owner and Consultant 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 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
1. Any party to a dispute or claim may initiate Mediation by notifying the other party or parties in writing.



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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.

D. Selection of Mediator

1. Upon receipt of a Request for Mediation, within fourteen (14) Days, the parties will confer to select an appropriate Mediator agreeable to all parties.
2. If the parties cannot agree on a Mediator, they hereby agree to accept a Mediator appointed by a recognized association such as the American Arbitration Association.

E. Qualifications of a Mediator:

1. Any Mediator selected 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 by person(s) of their choice who must have full authority to negotiate.
2. The names and addresses of such person(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 its position with regard to the issues that need to be resolved. At the discretion of the Mediator, or otherwise agreed by the parties, the parties may mutually exchange such memoranda.
2. At the first 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.



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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 the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice will be made by the Mediator or the parties, as determined by the Mediator
4. The Mediator is authorized to end the Mediation whenever, in the Mediator's judgment, further efforts at Mediation 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 only with the permission 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 must maintain the confidentiality of the Mediation and must 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:
 - a. By the execution of a Settlement Agreement by the parties;
 - b. By a written declaration of the Mediator to the effect that further efforts at Mediation are no longer worthwhile; or



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- c. By a written declaration of a party or 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 the 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, or the cost of any proofs or expert advice produced at the direct request of the Mediator, will be apportioned as the Mediator finds appropriate or as otherwise agreed to by the parties.

13.05 Compensation for Participation in Mediation

- A. Participation in any Mediation involving Claims by the Construction Contractor, not due to negligence or errors or omissions by Consultant, will be Supplementary Services compensated as provided in Part 5.05, "Supplementary Services & Deliverables", herein.
- B. 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 14 - MISCELLANEOUS PROVISIONS

14.01 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. 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.

14.02 Force Majeure

- A. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees, agents, or representatives.



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14.03 Waiver

- A. In the event any provision of this PSA is held to be invalid and unenforceable, the remaining provisions will be valid and binding on the parties.
- B. One or more waivers by either party of any provision, term, condition or covenant will not be construed by the other party as a waiver of a subsequent breach.

14.04 Timely Approvals

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

14.05 Ownership & Use of Instruments of Service

- A. All Instruments of Service and other materials prepared by Consultant, in whatever media, are the property of Owner. Consultant must provide Owner with such Instruments of Service and materials at appropriate times during this PSA, and on termination or suspension of this PSA or any Project Agreement. Consultant may retain a copy for its records. Consultant does not convey, assign or transfer the intellectual property rights it has so as to limit its ability or right to develop, design or work on other projects of or for its other clients.
- B. In the event Owner desires to re-use the Instruments of Service, in total or in part, on this Project site or any other site, or to complete any incomplete portion of construction documentation, Owner will defend, indemnify, and hold Consultant harmless from any and all claims, loss, damage, defense costs, expense, and other costs resulting from such use of Consultant prepared documents, unless Owner enters into an agreement with Consultant for Services in connection therewith.
- 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.
- D. Copies of data exchanged by, through, and between Owner and Consultant that may be relied upon are limited to the printed copies. Computer-generated files, disks, or tapes of text, data or graphics that are furnished, are only for the mutual convenience of the parties. Any risk of translation or reliance on information obtained or derived from the computer-generated material will be at the user's sole risk, and no representations are made, either expressed or implied, as to the long-term performance of data thus transferred.

14.06 Reliance

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

14.07 County's Quality Assurance Plan

- A. COUNTY, or its agent, will evaluate Consultant's performance under this AGREEMENT on not less than an annual basis. Such evaluation will include assessing Consultant's compliance with all CONTRACT terms and performance standards. Consultant deficiencies which COUNTY determines are severe or continuing, and that may place performance of the AGREEMENT in jeopardy if not corrected, will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by COUNTY and Consultant. If improvement does not occur consistent with the corrective action measures, COUNTY may terminate this AGREEMENT or impose other penalties as specified in this AGREEMENT.

PART 15 - NOTICES



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- 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 G, "Notices."](#)

PART 16 - LIMITS OF AGREEMENT

- A. This PSA and all fully executed Project Agreements constitute the entire and integrated agreement between Owner and Consultant and supersede all prior negotiations, representations, or agreements, either written or oral, preceding this PSA or any Project Agreement.
- B. This PSA including Project Agreements may be amended only by written agreement signed by Owner and Consultant or as otherwise authorized herein.

PART 17 - EXHIBITS

- A. The following listed Exhibits referred to herein are incorporated in this PSA as though set forth in full:
1. [Exhibit A](#), "Consultant's Hourly Rate Schedule"
 2. [Exhibit B](#), "Consultant's Staff & Subconsultants"
 2. [Exhibit C](#), "Sample Project Agreement"
 3. [Exhibit D](#), "Sample Attachments 1, 2, 3 & 4 to Sample Project Agreement"
 4. [Exhibit E](#), "Sample Invoice Format"
 5. [Exhibit F](#), "Indemnification And Insurance Requirements"
 6. [Exhibit G](#), "Notices"

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PART 18 - SIGNATURES:

IN WITNESS WHEREOF, the parties hereto have entered into this Professional Services Agreement on _____.

“CONSULTANT”:
 Tartaglia Engineering
 7360 El Camino Real, Suite E
 Atascadero, CA 93423

By: _____

 President/Owner

“COUNTY”
 County of Santa Barbara

By: _____

DOREEN FARR, CHAIR
 BOARD OF SUPERVISORS

ATTEST:

CHANDRA L. WALLAR
 CLERK OF THE BOARD

By: _____
 Deputy

APPROVED AS TO FORM:
 DENNIS A. MARSHALL,
 COUNTY COUNSEL

By: _____
 Deputy County Counsel

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

By: _____
 Deputy

APPROVED AS TO FORM:
 RAY AROMATORIO, ARM, AIC
 RISK MANAGER

By: _____

Dept 063 Fund 0052 Program 1920 Account 8700 Project 8734

**END OF PART 18
 END OF AGREEMENT**



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EXHIBIT A

CONSULTANT'S and SUBCONSULTANT'S HOURLY RATES

The following rates, which include all overhead, administrative costs, and profit, will be used in arriving at fees for hourly-rate Services. Any rate increases approved by the OAR shall take effect on the yearly anniversary of the Board of Supervisors' approval of the PSA. Modifications to Consultant's Hourly Rate Schedule to include out-years beyond the rates identified in Exhibit A, and the addition of personnel not identified in Exhibit A, will be negotiated by the parties using as a benchmark the prevailing rates/increase for similar Consulting Services in the Central Coast area, and are subject to approval as an administrative modification to the PSA by the OAR.

CONSULTANT FIRM NAME: Tartaglia Engineering

<u>Consultant/Job Title</u>	<u>Billable Hourly Rate (\$)</u>
John Smith, PE / Principal-in-Charge	\$118.00
Scott Kope, PE / Civil Engineer	\$108.00
Robert Tartaglia, PE / Land Surveyor	\$110.00
Patience West, CPESC / Eng. Env. Coord.	\$75.00
Tim Ewalt, LSIT / Eng. Tech.	\$75.00
Forrest Keithley, EIT / Draftsman	\$65.00
Brett Dolan, PE / Inspector	\$97.00 (Straight Time)
Robert Wallace / Inspector	\$97.00 (Straight Time)

SUBCONSULTANT FIRM NAME: Earth Systems Pacific

<u>Subconsultant/Job Title</u>	<u>Billable Hourly Rate (\$)</u>
Ted Cios / Materials Testing Tech.	\$92.00
Fred Potthast, RGE / Geotechnical Engineer	\$150.00

END EXHIBIT A



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EXHIBIT B

CONSULTANT'S STAFF & SUBCONSULTANTS

- A. Consultant declares that the Principal-in-Charge and Project Manager will be John Smith.
- B. Consultant will employ Subconsultants identified in the Consultant's response to the County's RFQ for this project and said Subconsultants must, if their specialty is licensable, be licensed by the State of California to perform their specific Services. Consultant must obtain Owner's approval of any other Subconsultants. Upon Owner's request Consultant must provide copies of all Subconsultant contract agreements to Owner.
- C. None of the above named Staff or Subconsultants shall be replaced without OAR's 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, on written notice from Owner's Project Manager, Consultant will have fifteen (15) calendar Days to remove that person from the Project and provide a replacement acceptable to OAR. In that event Consultant must submit the name of a qualified replacement for OAR's approval.

END EXHIBIT B



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EXHIBIT C

(Sample) PROJECT AGREEMENT

<p>PROJECT AGREEMENT NO. <u>(X)</u> TO PSA BETWEEN THE COUNTY OF SANTA BARBARA AND</p> <p style="color: blue; font-weight: bold; font-style: italic;">Tartaglia Engineering</p>
<p>PROJECT TITLE: Santa Ynez Valley Airport Capital Improvement Program Fiscal Year 2012-2017</p>
<p>PROJECT AGREEMENT TITLE:</p>

Fund	Dept No	Acct #	Program	OrgUnit	Project	Amount
052	0030	8700	1920		8734	\$

WHEREAS, on *October 02, 2012* the County of Santa Barbara, California ("Owner"), and *Tartaglia Engineering* ("Consultant") entered into a Professional Services Agreement ("PSA"), in which said PSA expires on *October 02, 2017*, for Consultant to provide AIRPORT PLANNING, ENGINEERING, AND CONSULTING SERVICES for Santa Ynez Valley Airport; and,

WHEREAS, the said PSA requires that Consultant's Services will be provided pursuant to individual Project Agreements to be negotiated and executed by Owner's Authorized Representative pursuant to the said PSA.

NOW, THEREFORE, the parties agree as follows:

1. PURPOSE:

This is Project Agreement No. (X) pursuant to the said PSA. The Scope of this Project Agreement is set forth in Attachment 1, Consultant's Services and Deliverables. All the definitions, terms and conditions of the said PSA are incorporated into this Project Agreement unless specifically modified herein.

2. OWNER'S PROJECT MANAGER: The Owner's Project Manager is *John Green*. All communications concerning the Project shall be through the Project Manager.



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3. **SCHEDULE AND EXPIRATION DATE:** Services and Deliverables shall be provided according to Attachment 2, Consultant’s Schedule. Consultant’s Schedule may only be modified with Owner’s written approval. The parties mutually agree that the expiration date of this Project Agreement shall be Month Date, Year
4. **MAXIMUM COMPENSATION LIMIT:** The maximum compensation limit for services pursuant to this Project Agreement shall be as stated in Attachment 3, Consultant’s Compensation. Consultant shall be fully responsible for not exceeding this limit.
5. **THE OWNER APPROVED CONSTRUCTION COST (OACC):** The OACC for this Project is \$000,000.
6. **ATTACHMENTS TO EXHIBIT C:**

The following listed Attachments referred to and check marked herein are incorporated in this Project Agreement as though set forth in full.

- Attachment 1: Consultant's Proposed Services, Deliverables, Schedule and Fee
- Attachment 2: Consultant's Schedule
- Attachment 3: Consultant's Compensation

IN WITNESS WHEREOF, the parties hereby execute this Project Agreement and it is effective as of the date it is fully executed.

Tartaglia Engineering, CONSULTANT:

By: _____ Date _____
John A. Smith

Title: _____

COUNTY OF SANTA BARBARA:

John Green, Owner’s Project Manager
Capital Projects Division Date _____

Grady W. Williams, P.E.
Manager, Capital Projects Division,
Owner’s Authorized Representative Date _____

END EXHIBIT C



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EXHIBIT D

**ATTACHMENT 1
to
PROJECT AGREEMENT NO. (X)**

CONSULTANT'S SERVICES AND DELIVERABLES

I. Project Description

II. Basic Services & Deliverables pursuant to PSA Part 5.04

a) **Services:** In accordance with PSA and Consultant Proposal attached here.

b) **Deliverables:** In accordance with PSA and Consultant Proposal attached here.

III. Modifications to Basic Services & Deliverables pursuant to PSA Part 5.04

N/A

IV. Supplementary Services pursuant to PSA

N/A

V. Compensation for Changes in Scope

Per paragraph 4.03 of the Professional Services Agreement dated **October 02, 2012**, the Consultant must notify the County Project Manager, in writing, within ten days of occurrence, of any direction by the County Project Manager which will cause a change in the Consultant's Services and Deliverables for this Project Agreement, for which the Consultant intends to seek additional compensation. The County Project Manager, in response, may revise or rescind any such direction, or both parties will negotiate and implement an Additional Basic Services Order and/or a Supplemental Services Order, as appropriate.



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- VI. Information and Documentation to support Invoice.** Consultant must submit appropriate documentation to support each invoice, including: a narrative description of services performed during the period; milestones achieved and deliverables completed.

End of Attachment 1



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EXHIBIT D (Continued)

ATTACHMENT 2
to
PROJECT AGREEMENT NO. (X)
CONSULTANT'S MILESTONE SCHEDULE



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EXHIBIT D (Continued)

ATTACHMENT 3

to

PROJECT AGREEMENT NO. **(X)**

CONSULTANT'S COMPENSATION

1. COMPENSATION SUMMARY

a.	Consultant's Maximum Fee for the Basic Services described in Part 5.04 shall be:	
	SUBTOTAL: Maximum Fee for Basic Services	\$0
b.	Consultant's fee for Itemized Supplementary Services specified below:	
	SUBTOTAL: Itemized Supplementary Services	\$0
c.	Allowance for Additional Basic Services (PSA Part 5.04) and Supplementary Services that may be authorized by the Owner in writing pursuant to issuance of an Additional Basic Services (ABS) Order and Supplementary Services (SS) Order , respectively, during the Design Phase.	\$0
d.	Allowance for Reimbursable Expenses pursuant to Part 11.01	\$0
2.	MAXIMUM COMPENSATION (a+b+c+d)	\$0



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3. PROGRESS PAYMENTS

a. For **FIXED FEE** portion, Progress Payments will be on the basis of one of two ways, or a combination of both: Upon completion of Project Agreement Milestones.

b. For **HOURLY FEE** portion, Progress Payments will be made monthly and based on the actual hours worked during the billing period charged at the hourly rates set forth in Exhibit A or B to the PSA, or as modified in this Project Agreement. (**Consultant must include back up information for payment including a breakdown of the staff hours for particular tasks performed: task-fee breakdown**)

c. Only invoices identifying personnel listed in Exhibit A or B to the PSA will be accepted by Owner for payment.

d. Consultant must submit appropriate documentation and information to support each invoice, including a narrative description of services performed during the period; completed milestones and deliverables.

END EXHIBIT D



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EXHIBIT E
SAMPLE INVOICE FORMAT

Intentionally Blank

END EXHIBIT E



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EXHIBIT F

INDEMNIFICATION AND INSURANCE REQUIREMENTS

ARCHITECTS & ENGINEERS (Consultants) SERVICES CONTRACTS

1. Indemnification

A. Indemnification pertaining to other than Design Professional Services:

CONSULTANT agrees to indemnify, defend (with counsel reasonably approved by OWNER) and hold harmless OWNER and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses (including but not limited to attorneys' fees) incurred by OWNER on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees.

CONSULTANT's indemnification obligation applies to OWNER's "active" as well as "passive" negligence but does not apply to OWNER's "sole negligence" or "willful misconduct" within the meaning of California Civil Code Section 2782.

CONSULTANT shall notify OWNER immediately in the event of any accident or injury arising out of or in connection with this Agreement. This Indemnification provision shall survive any expiration or termination of this Agreement.

B. Indemnification pertaining to Design Professional Services:

CONSULTANT shall defend, indemnify, and hold OWNER, its officers, employees, and agents harmless from and against any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct on the part of the CONSULTANT or his agents or employees or other independent Consultants directly responsible to him to the fullest extent allowable by law. CONSULTANT shall notify OWNER immediately in the event of any accident or injury arising out of or in connection with this Agreement. This Indemnification provision shall survive any expiration or termination of this Agreement

2. Additional Insured – All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability and Automobile Liability policies, shall contain endorsements naming OWNER and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for OWNER to vicarious liability but shall allow coverage for OWNER to the full extent provided by



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the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

3. Waiver of Subrogation Rights – CONSULTANT shall require the carriers of required coverages to waive all rights of subrogation against OWNER, its officers, employees, agents, volunteers, consultants and subconsultants. All general or auto liability insurance coverage provided shall not prohibit CONSULTANT and CONSULTANT's employees or agents from waiving the right of subrogation prior to a loss or claim. CONSULTANT hereby waives all rights of subrogation against OWNER.

4. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by OWNER.

5. Severability of Interests – CONSULTANT agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between CONSULTANT and OWNER or between OWNER and any other insured or additional insured under the policy.

6. Proof of Coverage – CONSULTANT shall furnish Certificates of Insurance to the OWNER Department administering the Agreement evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and CONSULTANT shall maintain such insurance from the time CONSULTANT commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, CONSULTANT shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

7. Acceptability of Insurance Carrier – 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".

8. Deductibles and Self-Insured Retention – Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

9. 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, OWNER has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by OWNER will be promptly reimbursed by CONSULTANT or OWNER payments to CONSULTANT will be reduced to pay for OWNER purchased insurance.

10. Insurance Review – Insurance requirements are subject to periodic review by OWNER. The Program Risk Administrator or designee is authorized, but not required, to reduce, waive or



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suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of OWNER. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Program Risk Administrator or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against OWNER, inflation, or any other item reasonably related to OWNER's risk.

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

Any failure, actual or alleged, on the part of OWNER 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 OWNER.

11. Insurance Specifications – CONSULTANT agrees to provide insurance set forth in accordance with the requirements herein. If CONSULTANT uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, CONSULTANT agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in any way affecting the indemnity herein provided and in addition thereto, CONSULTANT shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:

A. Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with one million dollar (\$1,000,000) limits covering all persons including volunteers providing services on behalf of CONSULTANT and all risks to such persons under this Agreement.

If CONSULTANT has no employees, it may certify or warrant to OWNER that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the Owner's Program Risk Administrator.

With respect to CONSULTANTS that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

B. Commercial/General Liability Insurance – CONSULTANT shall carry General Liability Insurance covering all operations performed by or on behalf of CONSULTANT providing coverage for bodily injury and property damage with a



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combined single limit of not less than one million dollars (\$1,000,000) per occurrence and a two million dollar (\$2,000,000) general aggregate limit.

C. Professional Liability Insurance – CONSULTANT shall carry Professional Liability Insurance of not less than one million dollars (\$1,000,000) per occurrence and a two million dollar (\$2,000,000) general aggregate limit. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of three (3) years after contract completion.

D. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If CONSULTANT owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

D. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

12. Special Provisions

The following provisions shall apply to this Agreement:

A. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the CONSULTANT and any approval of said insurance by the OWNER or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the CONSULTANT pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

B. The OWNER acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the CONSULTANT. However, this shall not in any way limit liabilities assumed by the CONSULTANT under this Agreement. Any self-insurance shall be approved in writing by the Owner upon satisfactory evidence of financial capacity. CONSULTANT’s obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.



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C. Should any of the work under this Agreement be sublet, the CONSULTANT shall require each of its Subconsultants of any tier to carry the aforementioned coverages, or Consultant may insure Subconsultants under its own policies.

D. The OWNER reserves the right to withhold payments to the Consultant in the event of material noncompliance with the insurance requirements outlined above.

E. Owner hereby notifies CONSULTANT that OWNER'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 CONSULTANT agrees to comply with said ordinance.

END EXHIBIT F



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EXHIBIT G

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 Projects Division
1105 Santa Barbara St. (Historic Courthouse, 2nd Floor)
Santa Barbara, CA 93101

Attention: Grady Williams

b. Consultant:

Tartaglia Engineering
7360 El Camino Real, Suite E
Atascadero, CA 93423

END EXHIBIT G