

AMENDMENT No. 1
TO PROFESSIONAL SERVICES AGREEMENT
FOR
Architectural & Engineering Services
Santa Barbara County Emergency Operations Center
PROJECT NO. 8666

This Amendment to Agreement is entered into, by and between:

Austin Building & Design DBA The
Austin Company
hereinafter called "A/E"

and

The County of Santa Barbara, California
hereinafter called "COUNTY"

WITNESSETH

WHEREAS, the parties hereto under the date of May 12, 2009, entered into an agreement for performance of Architectural Services, by A/E in connection with the Santa Barbara county Emergency Operations Center Project No. 8666, Santa Barbara, California; and

WHEREAS, the parties hereto desire to amend the Agreement:

NOW THEREFORE, the parties hereto agree as follows:

- I. Page 1, Paragraph 1 of the Agreement is hereby amended to add construction phase services by adding subparagraph 1.C.5 as follows:

A/E shall perform Architectural Services which shall include the following:

- C. Design Development through Construction:
 1. Design Development
 2. Construction Documents
 3. Cost Estimates
 4. Bid and Award

5. **Construction Administration**

- II. In consideration of the additional services associated with the Construction Administration Phase as detailed in item IV below, the COUNTY will increase the A/E's fee by One Hundred Fifty Nine Thousand, One Hundred Seventeen Dollars (\$159,117), plus an increase in estimated reimbursable expenses of Twenty Thousand Three Hundred and Seventy Dollars (\$20,370). Article 3, item A , par. 1, is hereby amended to read as follows:

ARTICLE 3. FEE AND PROVISION FOR PAYMENT:

- A. Fee: The COUNTY will pay the A/E a fee of Five Hundred Twenty Thousand Nine Hundred and Eight Dollars (\$520,908) plus reimbursable expenses (estimated at \$29,710) for all work described in this Agreement and in Attachment A. Fee shall be invoiced based on Attachment B. Any additional applicable hourly rate billings as authorized in Article 4 shall be based on the information contained in Attachment B. Attachment B is attached hereto and incorporated herein by reference as though here fully set forth. Each portion of the Project let separately on a segregated bid basis shall be considered a separate Project only for the purpose of determining the fee for services for Design Development through Construction Administration in accordance with the Schedule of Fees.

- III. Attachment A “**SCOPE OF SERVICES**” is hereby amended to add sections 9 “**CONSTRUCTION ADMINISTRATION PHASE**” and 10 “**CONSTRUCTION CONTRACT COMPLIANCE PHASE**” as follow:

9. **CONSTRUCTION ADMINISTRATION PHASE**

- 9.1 **General:** The construction phase will commence on the date the construction contract is signed and will terminate one year after notice of completion; or, in the absence of a notice of completion, one year after the Project is fully completed.

- 9.1.2 Within a reasonable time after execution and prior to issuance of a notice to proceed, A/E shall participate in a comprehensive review of construction documents along with COUNTY representatives and the General Contractor. A/E, at its sole expense shall obtain the participation of its consultants on previous phases as deemed necessary by COUNTY. The purpose of this session shall be to reduce construction and/or maintenance costs through all possible means. The A/E shall be compensated as an Additional Service for any revisions made to the contract documents arising out of value engineering undertaken pursuant to the terms of this paragraph.

- 9.1.3 The contractor shall prepare a schedule of required submittals not later than fourteen (14) days after the receipt of the notice to proceed. The designated representative and the A/E shall review the contractor's submittal schedule for completeness, fulfillment of specification requirements, and compatibility with the anticipated construction schedule.
- 9.1.4 The COUNTY's duties shall include, but not be limited to, administration of all communications, records, and meetings; on-site quality control through testing and inspection; monitoring the schedule; negotiation of price changes; and coordination of close-out.
- 9.1.5 The A/E's responsibilities shall include interpretation of the contract documents; periodic site observations; review of submittals; provision of documents for proposed changes; and general consultation to the COUNTY on design matters. The A/E shall be fully responsible for all matters related to the A/E's design and all of the A/E's recommendations to the COUNTY which are carried out by the COUNTY. An allowance for the following site visits is included:
- 34 single-person site visits by ARCHITECT, 10 site visits by the civil engineer, and 9 site visits by the landscape architect. These visits are intended to address service requirements of paragraphs 9.1.5, 9.4.8.3, 10.1.6, but not paragraph 9.4.8.4.
- 9.1.6 The A/E shall at all times have access to the work wherever it is in preparation and progress. When directed by the designated representative, the contractor shall provide facilities for such access at the contractor's cost so the A/E may perform his functions under the contract documents.
- 9.1.7 All written communications to the contractor will be issued by the COUNTY with copies sent concurrently to the A/E. Unless the A/E provides timely notification to the COUNTY in writing that the A/E disagrees with the content of a COUNTY communication with respect to design matters, the A/E shall be deemed to agree with the content of the COUNTY communication.

9.2 **Interpretation of the Contract Documents**

- 9.2.1 The A/E will be the interpreter of the requirements of the drawings and specifications. Written interpretations necessary for the proper execution or progress of the work, in the form of drawings or otherwise, will be issued with reasonable promptness by the A/E through the designated representative and in accordance with any schedule agreed upon. The contractor or COUNTY shall make a written dated request through the designated representative to the A/E for such interpretations. Such interpretations shall be consistent with and reasonable inferable from the contract documents. The contractor or COUNTY shall execute and complete the work in accordance with such interpretations. The A/E shall not

be liable to the contractor for the result of any interpretation or decisions rendered in good faith in such capacity.

- 9.2.1.1 The A/E shall interpret the requirements of change orders and decide all other questions of design intent in connection with the work.
- 9.2.2 It shall be the responsibility of the A/E 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. Such opinions and interpretations, together with the reasons therefore, shall be furnished in writing by the A/E to the COUNTY, designated representative, and contractor within ten (10) days after a request is made thereof.
- 9.2.3 Neither the contractor, the designated representative, nor the COUNTY shall be bound by any determination, interpretation, or opinion of the A/E 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 A/E 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 A/E. However, it is the intent of this Section that in the actual performance of the work, the contractor and the designated representative shall, in the first instance, proceed in accordance with the instruction given by the A/E unless the COUNTY and the designated representative mutually agree that the contractor and the designated representative shall proceed otherwise.

9.3 Changes to the Contract Documents:

- 9.3.1 **Change Order Authority.** The A/E has no authority to issue change orders. All requests for proposals shall be prepared by the A/E, shall be approved by the COUNTY or Director of General Services, and shall be issued to the contractor through the designated representative.
- 9.3.2 Intentionally left blank.
- 9.3.3 **Minor Changes.** The A/E will have the authority to order, through the designated representative, minor changes in the work not involving an adjustment in the contract sum or an extension of the contract time and not inconsistent with the intent of the contract documents. Such changes will be effected by written order and such changes shall be binding on the COUNTY, the designated representative and the contractor. The contractor shall carry out such written orders promptly.
- 9.3.4 **Concealed Conditions.** Should concealed conditions be encountered in the performance of the work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions

indicated by the contract documents, or should unknown physical conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract be encountered, the contractor shall report the conditions to the designated representative before the conditions are disturbed. The designated representative shall thereupon notify the A/E. Upon such notices, or upon its own observation of such conditions, the A/E shall promptly make such changes in the contract documents as it finds necessary to conform to the different conditions. Any change in the cost of the work or the time needed for completion resulting from concealed conditions shall be determined in accordance with COUNTY change order procedures provided a notice thereof is made within ten (10) days after the first observance of the conditions. The A/E shall be compensated, as identified in Attachment B, for any additional services it may have rendered due to the unknown conditions.

9.3.5 **Guarantee Period.** As a basic service, after the completion of the work, the A/E shall review the work at one (1) year, unless otherwise agreed, and make written recommendations to the COUNTY for correction of any deficiencies.

9.4 **Construction Responsibilities:**

9.4.1 **Correspondence.** The A/E and contractor shall communicate with each other only through the designated representative.

9.4.2 **Requests for Substitutions of Labor and/or Materials by the Contractor.** Pursuant to Section 3400 of the Public Contract Code, any reference in the specifications and plans to any brand name, article, device, product, materials fixture, form, or type of construction by brand name, make, or catalog number shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition; and the contractor, may request to use any article, device, product, materials fixture, form, or type of construction which, in the judgment of the A/E, expressed in writing, is equal to that specified. The contractor must, within thirty-five (35) days after award of the contract, submit data substantiating a request for substitution or “an equal”.

If the contractor proposed to use a material which while suitable for the intended use, deviates in any way from the detailed requirements of the contract documents it shall inform the A/E through the designated representative in writing of the nature of such deviations at the time that the materials are submitted for approval and shall request a written approval of the deviation from the contract documents.

In requesting approval of deviations or substitutions, the contractor shall provide evidence leading to a reasonable certainty that the proposed substitutions or deviation will provide a quality of result at least equal to that otherwise attainable. If, in the opinion of the A/E, the evidence presented by the contractor does not

provide a sufficient basis for such reasonable certainty, the A/E shall inform the COUNTY of this opinion.

The A/E will judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits, such as quality of materials and manufacturing, utility and life expectancy. The A/E will not approve proposed substitutes as equal to items specified which, in its opinion, would be inharmonious, or otherwise inconsistent with the character or quality of design of the Project.

Any additional cost, or any loss or damage, arising from the substitution of any material or method for those originally specified or drawn shall be borne by the contractor notwithstanding approval or acceptance of such substitution by the COUNTY or the A/E, unless such substitution was made at the written request or direction of the COUNTY and the A/E. Third-time review of contractor's submittals will be considered additional service.

9.4.3 **Schedule of Values and Progress Payments.** The contractor will submit a detailed breakdown, by task, of cost for the Project total (including contract amendment costs) to the A/E and the COUNTY for review and approval. This breakdown is to be used as a basis for making progress payments and will be referred to as the Schedule of Values. The Schedule of Values, submitted by the contractor shall be evaluated by the A/E within ten (10) days. This evaluation shall determine that the schedule represents an accurate assignment of values to the various divisions of work.

The designated representative must also approve the Schedule of Values submitted by the contractor. Once approved, the designated representative distributes signed copies to the A/E, contractor, and to the General Services Department Accounting Office.

The A/E shall review Contractor's applications for progress payments to recommend COUNTY approval or not based on A/E's knowledge of construction performance and completion status. Once reviewed, the A/E shall forward the document to the designated representative. The A/E may decline to recommend an application for payment if, in its opinion, the application is not adequately supported.

COUNTY Approval. The designated representative will make final approval of the progress payment submitted by the contractor. Once approved, the designated representative will process the application for payment and distribute copies to the A/E and contractor. The designated representative may decline approval of an application for payment if, in his opinion, the application is not adequately supported.

9.4.4 **Submittal of Shop Drawings by Contractor.** The contractor will submit all shop drawings pertaining to the contract to the A/E and the designated representative with a dated transmittal form. Subcontractors and suppliers must submit their respective shop drawings through the contractor. The A/E's approval shall mean that the submittal is in conformance with the construction documents.

9.4.5 **Drawing Submittal and Distribution by Contractor.**

Initial Submittal. All submittals shall be electronic. The COUNTY will forward these to the A/E who will coordinate their review for and/or correction with the COUNTY. After such coordination, the A/E will note corrections and return them to the contractor and the COUNTY with corrections and/or approvals noted.

Re-submittal. An electronic copy of corrected submittal shall be submitted to the COUNTY. The A/E will then follow the same procedure outlined in the preceding paragraph. This re-submittal process should be continued until all corrections have been approved.

Final Distribution: The contractor will send an electronic to the COUNTY. Approval by the A/E will be qualified as stated in this attachment and the general and special provisions of the construction contract. The contractor will obtain and provide such number of prints of the approved submittal as determined for field distribution.

Catalog and Technical Data. All pertinent electronic data should be submitted with shop drawings by the contractor who will then send three (3) copies to the COUNTY.

Materials and Equipment List. A list of materials and equipment must be submitted by the contractor.

Initial submittal. An electronic copy to the COUNTY.

Re-submittals. As required by the A/E, the A/E will furnish the COUNTY with one electronic copy of the re-submittal notice. All communication and correspondence between the A/E and the contractor should take place through the designated representative.

Final submittal. Within fifteen (15) days after receipt of Notice of Approval, the contractor will submit two (2) corrected bound copies to the A/E and two (2) corrected bound copies to the COUNTY.

9.4.6 **Field Orders.** To be used only for emergency instructions to the contractor where the time required for preparation and execution of a formal contract amendment would result in delay or stoppage of the work. The COUNTY must approve a field

order before it is issued. A duly authorized contract amendment will replace field orders as soon as possible and will reference the appropriate field order.

Following signature by the A/E, the contractor, and the COUNTY, the COUNTY will distribute copies to the contractor and the A/E.

- 9.4.7** **Contract Change Orders.** In accordance with the general and special provisions of the construction contract and this AGREEMENT, changes in the work will be authorized using the COUNTY's contract change order procedure. Requests for any changes that might result in a change in contract price or contract time will be directed to the COUNTY.
- 9.4.7.1** **Proposal request.** A proposal request is a request from the COUNTY to the contractor for submittal of an itemized quote for a proposed change in the scope of the contract work. The A/E will prepare a Proposal Request form at the direction of the COUNTY, for the COUNTY's submittal to the contractor with a copy going to the A/E. The designated representative will maintain a log of proposal requests.
- 9.4.7.2** **Cost proposal.** In response to the proposal request, the contractor will submit a quote, or cost proposal. The cost proposal should include documentation from subcontractors and should itemize any adjustments to the contract sum or to the Project Schedule. The cost proposal will be submitted to the COUNTY with one copy going to the A/E.
- 9.4.7.3** **A/E's Recommendation.** The A/E will review the contractor's cost proposal and submit a recommendation to the COUNTY. The COUNTY will review both the contractor's cost proposal and the A/E's recommendation and either approve or disapprove the proposed adjustment to the contract sum/contract time. When requested by COUNTY, A/E shall provide a cost estimate independent of the contractor's proposal. Such A/E's review and estimate will be considered an additional service and shall be billed at the hourly rates set forth in this Agreement.
- 9.4.7.4** **Construction Change Authorization.** If the COUNTY approves the proposed adjustment to the contract sum/contract time, it will issue a directive, sometimes known as a Construction Change Authorization, instructing the contractor to proceed with the change in the scope of work. If the parties cannot agree on a sum/time change, they shall proceed as outlined in the general provisions of the construction contract. A written contract change order will be issued pursuant to the following Section, 9.4.7.5.
- 9.4.7.5** **Contract Change Order.** At the direction of the COUNTY, the A/E will compile the approved proposal requests with a summary of changes in contract scope, sum, and time with attached documentation. COUNTY will submit a formal request to the Director of General Services, and the Board of Supervisors if applicable, for approval of written amendments to the Construction Contract, incorporating the changes in scope, sum, and time. The contract amendment becomes effective upon

approval by the Director of General Services or the Board of Supervisors, whichever is applicable.

9.4.8 Construction Meetings.

9.4.8.1 Partnership Workshop. If requested, A/E will participate in a Partnering Workshop for the purpose of establishing working relationships among stakeholders in the project through a mutually developed, formal strategy of commitment and communication. Such A/E's participation will be considered an additional service and shall be billed at the hourly rates set forth in this Agreement.

9.4.8.2 Preconstruction Meeting. After the partnering session, all parties (i.e., A/E, contractor, the COUNTY, etc.) will meet to discuss the Project scheduling, to clarify procedures, etc.

9.4.8.3 Construction Progress Meetings. These will be held weekly at the job site and will be attended by the contractor's top field supervisory personnel, representative(s) of the A/E, (attendance by conference call) and representative(s) of the COUNTY. Minutes of these meetings will be prepared by the designated representative.

9.4.8.4 End of Warranty Meeting. The COUNTY shall schedule an end of warranty review meeting with the designated representative, A/E, and contractor prior to the end of one year warranty to determine any work requiring correction.

10. CONSTRUCTION CONTRACT COMPLIANCE PHASE

10.1 General:

10.1.1 The A/E shall assist the COUNTY in assuring the contractor's compliance with the construction contract by providing periodic construction observation; evaluation of construction data; evaluation of contractor's applications for payment; consultation at construction meetings; and inspection for beneficial occupancy, if applicable, and final completion, in accordance with the following:

10.1.2 Review by the A/E:

The A/E shall make on-site observations of construction as necessary to ensure conformance to construction documents while work progresses and upon completion and;

Such visits shall be for the purpose of observing: the progress of the work; that the character, scope, and detail of construction comply with the design; and that the quality of workmanship and materials conform to the intent of the A/E as expressed in the contract documents, the A/E's directives, approved shop drawings and samples, and the clarification drawings.

The A/E shall consider the need to reject work which does not conform to the contract documents. Whenever, in its opinion, A/E considers it necessary or advisable for the implementation of the intent of the contract documents, it will have authority to require special inspection or testing of the work in accordance with the general provisions of the construction contract whether or not such work is then fabricated, installed, or completed. However, neither the A/E's authority to act under this paragraph, nor any decision made by it in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the A/E to the contractor, any subcontractor, any of their agents or employees, or any other person performing any of the work.

The A/E will determine the amount, quality, acceptability and fitness of all parts of the work. The A/E will recommend suspension of the work whenever suspension may be necessary to ensure the proper execution of the work. The A/E shall, at the request of the COUNTY, provide guidance to the general contractor as to design requirements expressed or implied in or depicted in the contract documents, the approved shop drawings and samples, and the clarification drawings. Such guidance shall also be provided in relation to or by way of recommendations for or recommended actions in response to: site visits, inspection reports, laboratory reports and test data, contractor proposals, schedules, or other relevant documents. When requested, such guidance shall be in writing.

The A/E shall review the amounts owing to the contractor based on observations at the site and on evaluations of the contractor's applications for payment; and make written recommendations to the COUNTY regarding payment of the amounts. The A/E's recommendation to the COUNTY to pay the amounts on the contractor's applications for payment shall constitute a representation by the A/E to the COUNTY, based on the A/E's periodic on-site observations, that the work has progressed to the point indicated; the work is in accordance with the contract documents; and that the contractor is entitled to payment in the amount approved. Before recommending payment, the A/E shall review the record drawings being maintained by the contractor and inform the COUNTY in writing of the level of completeness and general accuracy of the record drawings.

The A/E shall attend construction progress meetings as defined in 9.4.8.3. If construction progress meetings continue beyond the specified time of the construction contract, through no fault of the A/E, the A/E shall be compensated for additional meetings in accordance with Attachment B.

The A/E shall conduct punch list inspections in conjunction with the COUNTY; and shall recommend based on the progress of the work, the date of final completion. The A/E shall also review, for general content and completion, the warranties, guarantees, record documents, and other documents required by the contract documents and assembled by the contractor.

- 10.1.2.1 The A/E will communicate with the contractor through the designated representative.
- 10.1.3 **Construction Development Responsibilities.**
- 10.1.3.1 **Field Observation.**
- 10.1.3.2 The COUNTY may provide its own resident inspectors, as it deems advisable, during construction. This action on the part of the COUNTY will in no way relieve the A/E from performing their responsibilities as specified in the AGREEMENT.
- 10.1.3.3 As required to ensure conformance during the construction phase, the A/E shall provide to the contractor and the COUNTY interpretations of the contract documents. The A/E (and its consultants) shall provide, at A/E'S sole cost and expense, all design work deemed necessary by the COUNTY to correct an item of error and/or omission in the contract documents.
- 10.1.4 **Punch List.** The A/E will walk the Project with COUNTY representative(s) when requested to do so. The A/E will review the punch list compiled by the contractor using the COUNTY template and indicate any lack of compliance with the contract documents. The A/E is to distribute two copies each of the punch list with A/E comments added to the COUNTY and the contractor
- 10.1.5 **Owner Move-in/Training Orientation – Not Used**
- 10.1.6 **Commissioning.** As defined in paragraph 7.2.8. A/E shall support commissioning of the project as follows: prepare a written sequence of operations for facility MEP systems during the construction document phase; define functional testing requirements for MEP equipment; prepare a pre-functional check list and testing procedures for MEP systems; and, witness on-site testing and commissioning of key MEP equipment and systems.
- 10.1.7 **Record Documents**
- 10.1.7.1 The A/E shall review the contractor's record drawings, guarantees, and operating manuals for compliance with the contract documents and shall either approve the documentation or specify in writing corrective measures to be taken by the contractor.
- 10.1.7.2 Based on A/E's site visit reviews of Contractor's As-built documents during construction, ARCHITECT will recommend COUNTY's acceptance of Contractors As-built documents prior to A/E's preparation of the final Record Documents.
- 10.1.7.3 Upon COUNTY's receipt and acceptance of Contractor's As-built documents, A/E must prepare a set of Record Documents for the Project including the Drawings and Project Manual. These will include all revisions and/or changes that have been made during the course of the construction, as recorded on the job set maintained by the

Contractor. The A/E must review all such revisions and/or changes during the work and must approve the set of prints maintained by the contractor prior to the A/E's final submittal of the record drawings. All computer-generated information shall be copied onto disks or other comparable computer data media as may be specified by COUNTY and given to COUNTY. The record drawings shall:

a. Be submitted as originals of the revised tracings labeled "record drawings" and specifications and are required by the COUNTY prior to final fee payment.

b. Be submitted in Autocad 2000i or higher on disk, DVD or other comparable computer data media as specified by COUNTY.

10.1.7.4 A/E prepared Record Project Manual must incorporate all changes to the Project Manual issued during construction and indicate each product incorporated into the Work.

10.1.7.5 Record Project Manual shall also be submitted in electronic format.

10.1.8 Warranty Phase

10.1.8.1 Acceptance by the County of the A/E-prepared Record Documents constitutes completion of the A/E's Basic Services for compensation purposes; however, the A/E is required to conduct an inspection of the Project one month prior to expiration of the Contractor's one-year Warranty/Guarantee period without additional compensation.

10.1.8.2 Other than the inspection of the Project one month prior to expiration of the Contractor's one-year Warranty/Guarantee period, should County request Warranty Phase Services after A/E's completion of their Basic Services, and Services are required through no fault of A/E, A/E will be compensated pursuant to Attachment B, para. I.B, "Extra Work".

IV. Attachment C "**PROJECT SCHEDULE**" is hereby amended to read as follows:

ATTACHMENT C

PROJECT SCHEDULE

I. SCHEDULE OF PROJECT ACTIVITIES

The following schedule of Project activities has been established by the COUNTY for this project:

<u>Date</u>	<u>Task</u>
April 14, 2009	Design Development documents due
April 21, 2009	D.D. review by County completed
May 14, 2009	50% Construction Documents due
May 29, 2009	50% C.D. review by County completed
June 9, 2009	Cost Estimate due (based on 50% complete C.D.)
June 16, 2009	90% Construction Documents due
June 23, 2009	90% C.D. review by County completed
June 30, 2009	100% Construction Documents due
November 19, 2009	Bid Opening
January 30, 2010	Notice to Proceed
January 21, 2011	Construction completion
March 22, 2011	Closeout/ Commissioning completion
End of scope of work	

APPROVED AND EXECUTED by COUNTY and ARCHITECT on this 20th day of NOVEMBER, 2009.

“A/E”:

By: The Austin Company

Curt Miller Vice President/General Manager
CURT MILLER

“COUNTY”
County of Santa Barbara

ATTEST:

MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Deputy Clerk of the Board

By: _____

CHAIR
BOARD OF SUPERVISORS
County of Santa Barbara

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

By: [Signature]
Deputy County Counsel

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

By: [Signature]
Deputy Auditor-Controller

APPROVED AS TO FORM:
RAY AROMATORIO
RISK PROGRAM ADMINISTRATOR

By: [Signature]

Dept. 063; Account 8700; Fund 0030; Program 1930; Project 8666