

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and the Santa Barbara County Association of Governments (hereinafter SBCAG) wherein SBCAG agrees to provide and COUNTY agrees to accept the services specified herein. COUNTY and SBCAG are collectively referred to as "Parties" and individually as "Party".

WHEREAS, SBCAG, has performed as a regional planning and coordinating agency and has provided regional planning functions and services in support of countywide comprehensive planning activities of benefit to Santa Barbara County; and

WHEREAS, SBCAG represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of SBCAG pursuant to the terms, covenants, and conditions herein set forth; and

WHEREAS, this Agreement shall replace in its entirety the Agreement for Services, dated October 18, 1990, as amended by that certain First Amendment to Agreement for Services, dated December 7, 1993.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVE

Lisa Plowman, Planning and Development Department Director, is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Michael Becker, Director of Planning, is the authorized representative for SBCAG. Changes in designated representatives shall be made only after advance written notice to the other party.

2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY: Santa Barbara County Planning and Development,
Attn: Lisa Plowman, Director
123 E. Anapamu St., Santa Barbara CA 93101

To SBCAG: SBCAG, Attn: Michael Becker, Director of Planning
260 N. San Antonio Road, Suite B, Santa Barbara CA 93110

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. SCOPE OF SERVICES

SBCAG agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. TERM

SBCAG shall commence performance on the date this Agreement is fully executed by the Parties, and shall continue performance until terminated by one of the Parties as provided herein.

5. COMPENSATION

In full consideration for SBCAG's services, SBCAG shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 NOTICES above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that each Party (including any and all of its officers, agents, and employees), under this Agreement is an independent contractor as to the other Party. Furthermore, neither Party shall have no right to control, supervise, or direct the manner or method by which the other Party shall perform its work or function under this Agreement. Each Party understands and acknowledges that it shall not be entitled to any of the benefits of the other Party employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. Each party shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits

7. STANDARD OF PERFORMANCE

CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a good and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

8. DEBARMENT AND SUSPENSION

Each Party certifies to the other Party that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. SBCAG certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. TAXES

Each Party shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work it performs under this Agreement and shall make any and all payroll deductions required by law. Neither Party will be responsible for paying any taxes on the other Party's behalf. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. CONFLICT OF INTEREST

Each Party covenants that it presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

County & SBCAG ALUC Agreement

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Each Party further covenants that in the performance of this Agreement, no person having any such interest shall be employed by the Party. Each Party must promptly disclose to the other Party, in writing, any potential conflict of interest. Each Party retains the right to waive a conflict of interest disclosed if it determines it to be immaterial, and such waiver is only effective if provided in writing.

11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Each Party shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. Public records created under this Agreement shall be subject to disclosure to the extent required by the California Public Records Act.

12. NO PUBLICITY OR ENDORSEMENT

Neither Party shall use the other Party's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Neither Party shall in any way contract on behalf of or in the name of the other Party.

13. COUNTY PROPERTY AND INFORMATION

All of each Party's existing property, documents, and information used in connection with the services shall remain that Party's property.

14. RECORDS, AUDIT, AND REVIEW

Each Party shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of the Party's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. Each Party shall have the right to audit and review all such documents and records at any time during the other Party's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), each Party shall be subject to the examination and audit of the California State Auditor, at the request of the other Party or as part of any audit, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). Each Party shall participate in any audits and reviews, whether by a Party or the State, at no charge.

15. INDEMNIFICATION AND INSURANCE

- A. In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to California Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead all parties agree that pursuant to California Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by California Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties hereto, their officers, board members, employees or agents, under or in

connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement.

- B. Each party shall maintain its own insurance coverage, through commercial insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage, or liability arising out of the performance of its responsibilities pursuant to this Agreement.

16. NONDISCRIMINATION

Each Party hereby agrees that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and each Party agrees to comply with said ordinance.

17. NONEXCLUSIVE AGREEMENT

Each Party understands that this is not an exclusive Agreement and that each Party shall have the right to negotiate with and enter into contracts with others providing the same or similar services.

18. NON-ASSIGNMENT

Neither Party shall assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

19. TERMINATION

- A. Each Party may, by written notice to the other Party, terminate this Agreement in whole or in part at any time, whether for convenience, for nonappropriation of funds, or because of the failure of the other Party to fulfill the obligations herein.
 - 1. **For Convenience.** Each Party may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, each Party shall wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects from such winding down and cessation of services.
 - 2. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state, COUNTY, or CONTRACTOR, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then the Party will notify the other Party of such occurrence and may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.
 - 3. **For Cause.** Should either Party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching Party in its sole option, terminate or suspend this Agreement in whole or in part by written notice. The date of termination shall be the date the notice is received, unless the notice directs otherwise.
- B. Upon termination, SBCAG shall deliver to COUNTY copies of all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by SBCAG in performing this Agreement, whether completed or in process. Notwithstanding any other

payment provision of this Agreement, COUNTY shall pay SBCAG for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall SBCAG be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. SBCAG shall furnish to COUNTY such financial information as in the judgment of SBCAG is necessary to determine the reasonable value of the services rendered by SBCAG. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

20. SECTION HEADINGS

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

21. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

22. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

23. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

24. NO WAIVER OF DEFAULT

No delay or omission of either Party to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement may be exercised from time to time and as often as may be deemed expedient.

25. ENTIRE AGREEMENT AND AMENDMENT

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

26. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

27. COMPLIANCE WITH LAW

Each Party shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement.

28. CALIFORNIA LAW AND JURISDICTION

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

29. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

30. AUTHORITY

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, each Party hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which it is obligated, which breach would have a material effect hereon.

31. SURVIVAL

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

32. PRECEDENCE

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

[This area intentionally left blank. Signatures on following pages.]

Agreement for Services of Independent Contractor between the County of Santa Barbara and the Santa Barbara County Association of Governments.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: *Shirley LaGuerra*
Deputy Clerk

COUNTY OF SANTA BARBARA:

By: *Das Williams*
Das Williams, Chair, Board of Supervisors
Date: 7-11-23

APPROVED AS TO ACCOUNTING FORM:

BETSY M. SCHAFFER, CPA
AUDITOR-CONTROLLER

DocuSigned by:
By: *Robert Geis*
D25919E2AF094DE...
Deputy Auditor- Controller

APPROVED AS TO FORM:

RACHEL VAN MULLEM
COUNTY COUNSEL

DocuSigned by:
By: *Rm Van Mullem*
6DB10F663F3444F...
Deputy County Counsel

APPROVED AS TO FORM:

GREG MILLIGAN, ARM
RISK MANAGEMENT

DocuSigned by:
By: *Gregory Milligan*
53A8AAB798BA4D7...
Risk Manager

[Signatures continue on following page.]

Agreement for Services of Independent Contractor between the County of Santa Barbara and the Santa Barbara County Association of Governments.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective on the date when fully executed by both parties.



SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS

Jenelle Osborne

By: Jenelle Osborne

Chair, Board of Directors

Date:

M. J. Kirn

Attest:

Marjie Kirn
Executive Director
Clerk of the Board

By:

M. J. Kirn

Approved as To Form:
Rachel Van Mullem
County Counsel

By:

Rachel Van Mullem

Deputy County Counsel
Counsel for SBCAG

For the term of the Agreement, SBCAG shall provide the following services:

1. The operation, staffing, administration, and support, including provision of supplies, of the Airport Land Use Commission (ALUC);
2. The development, preparation of applicable environmental documents, presentation, public outreach, and public hearings associated with the development and maintenance of airport land use planning projects; and
3. Serve in the role of lead agency for the Airport Land Use Compatibility Plans (ALUCP) throughout the county which includes:
 - A. Drafting updates to the ALUCPs for each airport in the county (based on anticipated changes in air traffic patterns, intensities, etc.);
 - B. Preparing applicable environmental document(s) for the updates to the ALUCPs;
 - C. Coordinating with the County to ensure the environmental documents are adequate for the County's purposes, as the County relies on the environmental document(s) that SBCAG prepares; and
 - D. Until the County adopts the Comprehensive Plan amendments to achieve consistency with the updated ALUCPs, determining whether a proposed project is consistent with the ALUCPs.

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EXHIBIT B

PAYMENT ARRANGEMENTS Periodic Compensation

- A. For SBCAG services to be rendered under this Agreement, COUNTY agrees to pay fifty thousand dollars (\$50,000) in fiscal year 2023-24, such amount to be paid through the budget of the County Planning and Development Department. For future fiscal years thereafter, the amount payable shall be adjusted in accordance with the Consumer Price Index (CPI) of the U.S. Bureau of Labor Statistics of the Department of Labor for All Urban Consumers, All Items, for the Los Angeles-Long Beach-Anaheim, CA. In no event shall the adjustment result in a reduced payment from the fiscal year prior, nor shall any increase exceed a maximum of 3.5% annually.
- B. Payment shall be made upon SBCAG's satisfactory performance of the scope of work contained in **EXHIBIT A**, as determined by COUNTY.
- C. Annually, SBCAG shall submit to the County Planning and Development Department an invoice for the amount set-forth in Paragraph A. Invoices shall detail the CPI applied to the amount requested from prior year payments. COUNTY shall pay invoices within 60 days of receipt of correct and complete invoices from SBCAG.