

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this 11th day of July, 2024, by and between the San Simeon Community Services District, a special district of the State of California (“District”), whose address is 111 Pico Avenue, San Simeon, California 93452, and Padre Associates, Inc., a California Corporation, (“Professional”), whose address is 369 Pacific Street, San Luis Obispo, CA 93401 (each individually a “Party” and collectively the “Parties”). There are no other parties to this Agreement.

RECITALS

A. District seeks to hire an independent contractor to perform professional services to assist the District with permitting support for the District’s Arroyo Del Padre Juan creek debris removal project (the “Project”).

B. Professional has made a proposal to the District to provide such professional services. A description of the services Professional proposes to provide is included in the Scope of Services in **Exhibit A** (“Services”). District desires to retain Professional to perform the Services, subject to the terms and conditions set forth in this Agreement.

C. The Parties have outlined the rates and method of payment to Professional for its performance of the Services under this Agreement (“Compensation Schedule”), which shall be included in the Scope of Services in **Exhibit A**.

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties agree as follows:

AGREEMENT

Section 1. Recitals. The recitals set forth above (“Recitals”) are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Section 1 through 30 of this Agreement, Sections 1 through 30 shall prevail.

Section 2. Term. The term of this Agreement shall be twelve (12) months and will commence on the Effective Date and terminate on the 11th day of July, 2024 (“Term”) unless the Parties mutually agree in writing to terminate the Agreement earlier or extend the Term pursuant to this Agreement.

Section 3. Effective Date. This Agreement shall only become effective once all of the Parties have executed the Agreement (the “Effective Date”).

Section 4. Work.

4.1. Services. Subject to the terms and conditions set forth in this Agreement, Professional shall provide District the Services described in Exhibit A. Any request for Services not included in **Exhibit A** will be considered a request for additional or modified Services

(“Modification” or “Modifications”). Professional shall not receive additional compensation for any Modification of the Services unless the Parties agree otherwise in writing executed by both Parties.

4.2. District Requested Modification of Services. District may, by written order, authorize Modifications to the Services described in Exhibit A. If such Modifications cause an increase in the cost or time required for performance of Professional’s Services, the Parties shall enter into a written amendment to this Agreement to adjust the Services and the compensation to be paid to Professional and, if necessary, amend the Compensation Schedule. The Services or Compensation Schedule shall not be revised unless District and Professional mutually agree to a written amendment to this Agreement reflecting such revisions, additional compensation, time for performance or such other terms or conditions mutually agreed upon by the Parties.

4.3. Professional Requested Modification in Services. Professional shall not be compensated for work outside the Services described in this Agreement, unless, prior to the commencement of the Services:

(a) Professional provides District with written notice that specific work requested by District or required to complete the Project is outside the agreed upon Services. Such notice shall: (1) be supported by substantial evidence that the work is outside the Services; (2) set forth the Professional’s proposed course of action for completing the work and a specific request for the District to approve the Modification to the Services; and (3) set forth the Professional’s proposed revisions, if any, to the Compensation Schedule; and

(b) District agrees that the work requires a Modification;

(c) District approves all adjustments, if any, to the Compensation Schedule; and

(d) The Parties execute a written amendment to this Agreement describing any Modification, together with any adjustment in the Compensation Schedule for Professional’s work. Compensation for any additional Services will be in accordance with the Professional’s current rate sheet.

4.4. Usage of Professional’s Intellectual Property. The Parties understand and agree that, in the performance of the work or Services under this Agreement or in contemplation thereof, the District and Professional may have access to private or confidential proprietary information, including but not limited to hardware, software, security and encryption information, data and other intellectual information, which may be owned or controlled by either Party and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to either Party. The Parties agree that all information disclosed by either Party shall be held in confidence and used only in the performance of this Agreement and subject to the confidentiality provisions set forth in Section 11 of this Agreement.

Section 5. Compensation.

5.1. Amount, Time and Manner of Payment for Professional Services. District shall pay Professional according to the rates and timing set forth in the Compensation Schedule. District’s total compensation to Professional shall not exceed the hourly rates contained in Exhibit A (“Maximum Payment”), unless the Parties mutually agree in writing otherwise.

5.2. Subsequent Payments. District shall make monthly payments in the amount invoiced by Professional within thirty (30) calendar days of receiving such invoice. In the event that an amount of an invoice is in dispute, District shall inform Professional of the amount and basis for the dispute and may withhold the amount which is in dispute until the dispute has been resolved.

5.3. Invoices. Professional shall provide District with monthly invoices sufficiently evidencing Professional's expenses and completion of the Services. All invoices furnished to District by Professional shall be in a form approved by District. The payments specified shall be the only payments made to Professional for performance of the Services including compensation for any Modification. Professional shall submit all billings for Services to District within forty-five (45) days of the performance of such Services. District shall issue payment according to District's customary procedures and practices for issuing payments to independent contractors.

Section 6. District Assistance to Professional. Professional shall, at its sole cost and expense, furnish all facilities, equipment, materials, information, personnel and administrative assistance which may be required to perform its obligations under this Agreement, with the exception of assistance or coordination with the District General Manager as necessary to carry out the Services. Notwithstanding the foregoing, District shall cooperate with Professional and shall not actively interfere with Professional's performance of Services under this Agreement.

Section 7. Time and Personnel Devoted to Services. Professional shall devote such time and personnel to the performance of this Agreement, as is necessary to perform the Services in compliance with the Compensation Schedule and this Agreement.

Section 8. Performance by Qualified Personnel and Subcontracting. Services under this Agreement shall be performed only by competent personnel under the supervision and direct employment of Professional. Professional will conform with District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, shall be supervised by Professional. Professional is prohibited from assigning this Agreement or any part of it but retains the right to subcontract all or part of it at its discretion, with written approval by the District. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of the other Party. An agreement made in violation of this provision shall confer no rights on any Party and shall be null and void.

Section 9. Representations of Professional. District relies upon the following representations by Professional in entering into this Agreement:

9.1. Qualifications. Professional represents that it is qualified to perform the Services provided in Exhibit A and that it possesses the necessary licenses or permits required to perform the Services or will obtain such licenses or permits prior to the time such licenses or permits are required. Professional shall also ensure that all subcontractors are similarly licensed and qualified. Professional and all subcontractors shall also obtain any necessary business license from San Luis Obispo County before they commence performance of the Services. Professional represents and warrants to District that Professional shall, at Professional's sole cost and expense, keep in effect or obtain at all times during the Term of this Agreement, any licenses, permits, and approvals which are legally required for Professional to practice Professional's profession at the time the Services are rendered.

9.2. Professional Performance. Professional represents that all Services under this Agreement shall be performed in a professional manner and shall conform to the customs and standards of practice observed on similar, successfully completed projects by specialists in the Services to be provided. Professional shall adhere to accepted professional standards as set forth by relevant professional associations and shall perform all Services required under this Agreement in a manner consistent with generally accepted professional customs, procedures and standards for such Services. All work or products completed by Professional shall be completed using the best practices available for the profession. Professional agrees that, if a Service is not so performed, in addition to all of its obligations under this Agreement and at law, Professional shall re-perform or replace unsatisfactory Service at no additional expense to District.

9.3. District's Remedies are Cumulative. Nothing in this Section shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which District or Professional may have under this Agreement or any applicable law. All rights and remedies of District, whether under this Agreement or applicable law, shall be cumulative.

9.4. No Conflict of Interest. Professional represents that no conflict of interest will be created under state or federal law by entering into or in carrying out this Agreement.

Section 10. Conformity with Law and Safety. Professional shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of Services, including all provisions of the Occupational Safety and Health Act of 1970 as amended, all California Occupational Safety and Health Regulations, the California Building Code, the American with Disabilities Act, any copyright, patent or trademark law and all other applicable federal, state, municipal and local safety regulations, appropriate trade association safety standards, and appropriate equipment manufacturer instructions. All Services performed by Professional must be in accordance with these laws, ordinances, codes and regulations. Professional's failure to comply with any laws, ordinances, codes or regulations applicable to the performance of the Services hereunder shall constitute a breach of contract. In cases where standards conflict, the standard providing the highest degree of protection shall prevail.

If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, Professional shall immediately notify the District's risk manager by telephone. If any accident occurs in connection with this Agreement, Professional shall promptly submit a written report to District, in such form as the District may require. This report shall include the following information: (a) name and address of the injured or deceased person(s); (b) name and address of Professional's subcontractor, if any; (c) name and address of Professional's liability insurance carrier; and (d) a detailed description of the accident, including whether any of District's equipment, tools or materials were involved.

If a release of a hazardous material, substance, or waste occurs in connection with the performance of this Agreement, Professional shall immediately notify District. Professional shall not store hazardous materials or hazardous waste within the District limits without a proper permit from District.

Section 11. Confidentiality. Both Parties understand and agree that, in the performance of Services under this Agreement or in the contemplation thereof, one Party may have access to private or confidential information that may be owned or controlled by the Disclosing Party and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Disclosing Party. (“Confidential Information”).

Neither Party shall, either during or after the Term, disclose to any third party any Confidential Information without the prior written consent of the Disclosing Party. If the Disclosing Party gives the Receiving Party written authorization to make any such disclosure, the Receiving Party shall do so only within the limits and to the extent of that authorization. Professional may be directed or advised by District Counsel on various matters relating to the performance of the Services on the Project or on other matters pertaining to the Project, and in such event, Professional agrees that it will treat all communications between itself, its employees and its subcontractors as being communications which are within the attorney-client privilege.

Notwithstanding the foregoing, either Party may disclose Confidential Information required to be disclosed under law, provided that, prior to disclosure, the Receiving Party shall first give notice to Disclosing Party and make a reasonable effort to obtain a protective order requiring that Disclosing Party’s Confidential Information not be disclosed. This exception is limited to the extent disclosure is required under law.

Section 12. Excusable Delays; Notice to Other Party of Delay. Professional shall not be in breach of this Agreement in the event that performance of Services is temporarily interrupted or discontinued due to a “Force Majeure” event which is defined as: pandemics, riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts and other labor disturbances or other catastrophic events, which are beyond the reasonable control of Professional. Force Majeure does not include: (a) Professional’s financial inability to perform; (b) Professional’s failure to obtain any necessary permits or licenses from other governmental agencies; or (c) Professional’s failure to obtain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Professional.

Section 13. Assignment Prohibited. No Party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempt or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

Section 14. Suspension of Services by District. District reserves the right to suspend Professional's Services under this Agreement when District determines that it is necessary to do so. When possible, District shall give Professional notice of such suspension and Professional shall, upon receipt of said notice, suspend all Services except any Services, the completion of which is authorized by the notice given by District. If the Services are suspended by District for more than sixty (60) consecutive days, for reasons other than the fault of the Professional, the Professional shall be compensated for Services performed prior to notice of such suspension. When the Project is resumed, the Professional's compensation shall be equitably adjusted by the District to provide for expenses incurred by the interruption of the Services. In this regard, Professional shall furnish to District such financial information as in the judgment of the District General Manager is necessary to determine the reasonable value of the Services rendered by Professional during the period when Services were suspended.

If the Parties are unable to agree upon the amount of extra compensation which is due to Professional within thirty (30) days of Professional resuming Services, the amount of such additional compensation, if any, that is required to appropriately compensate the Professional for its expenses incurred by the interruption of Services may, upon the request of either Party, be determined by arbitration conducted in accordance Section 20. Such arbitration shall be commenced by the Professional no later than sixty (60) calendar days following the event which entitles the Parties to pursue arbitration unless the Parties agree in writing to an extended time period for commencement of arbitration. Unless otherwise agreed in writing, all Parties shall carry on the Services and perform their duties during any arbitration proceedings, and the District shall continue to make payments for the Services in progress as required by this Agreement.

Section 15. Ownership of Work Product. Any and all work, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, designs, specifications, drawings, diagrams, surveys, source codes, professional or technical information or data, photographs, notes, letters, emails or any original works of authorship created by Professional or its subcontractors or subcontractors in connection with Services performed under this Agreement (“Products”) shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of District. In the event that it is ever determined that any Product created by Professional or its subcontractors or subcontractors under this Agreement are not works for hire under U.S. law, Professional hereby assigns all copyrights to such Products to District. With the prior written approval of District's point of contact for the Project, Professional may retain and use copies of such Products for reference and as documentation of its experience and capabilities.

All Products shall become the property of District irrespective of where located or stored and Professional agrees to deliver all such documents and information to District, without charge and in whatever form it exists, on the completion of the Professional's services hereunder. Professional shall have no ownership interest in such Products.

All work product of Professional under this Agreement, including written information which District will cause to be distributed for either internal or public circulation, including both preliminary and final drafts shall be delivered to District in both printed and electronic form, or as may be specified in Exhibit A.

When this Agreement is terminated, Professional agrees to return to District all documents, drawings, photographs and other written or graphic material, however produced, that it received from District, its contractors or agents, in connection with the performance of its Services under this Agreement. All materials shall be returned in the same condition as received.

Section 16. Termination of Work by District or Professional for Its Convenience.

16.1. Termination of Work by District. District shall have the right to terminate this Agreement at any time for its convenience by giving notice of such termination to Professional. In the event District shall give such notice of termination, Professional shall cease rendering Services upon receipt of said notice given as required in this Agreement. If District terminates this Agreement:

- (a) Professional shall deliver copies of all Products prepared by it pursuant to this Agreement.
- (b) If District terminates this Agreement for convenience before Professional commences any Services hereunder, District shall not be obligated to make any payment to Professional. If District terminates this Agreement after the Effective Date and after Professional has commenced performance under this Agreement, District shall pay Professional the reasonable value of the Services rendered by Professional pursuant to this Agreement prior to termination of this Agreement. District shall not in any manner be liable for Professional's actual or projected lost profits had Professional completed the Services. Professional shall furnish to District such financial information, as in the judgment of the District General Manager, is necessary to determine the reasonable value of the Services rendered by Professional prior to termination. In the event of a dispute as to the reasonable value of the Services rendered by Professional prior to termination and the Parties are unable to agree upon said amount within sixty (60) calendar days following the date of the notice of termination by the District, such dispute may, upon the request of either Party, be resolved by arbitration conducted in accordance with Section 20.
- (c) Except as provided in this Agreement, in no event shall District be liable for costs incurred by or on behalf of Professional after the date of the notice of termination.

16.2. Termination of Work by Professional. Professional may cancel for convenience with Ninety (90) days' notice to District and shall be entitled to payment for all services provided under this Agreement through the date of cancellation.

Section 17. Assurance of Performance. If, at any time, District believes Professional may not be adequately performing its obligations under this Agreement or may fail to complete the Services as required by this Agreement, District may submit a written request to Professional for written assurances of performance and a plan to correct observed deficiencies in Professional's performance. Failure to provide written assurances subsequent to such written request, constitutes grounds to declare a breach under this Agreement.

Section 18. Cancellation for Breach by Either Party. Should either Party fail to substantially perform its obligations in accordance with the provisions of this Agreement, the other Party shall thereupon have the right to cancel the Agreement by giving written notice and specifying the effective date of such cancellation. If District cancels this Agreement for breach and it is subsequently determined that Professional did not fail to substantially perform its obligations in accordance with this Agreement, then cancellation for breach by District shall be deemed, and treated, as termination for convenience.

Neither Party waives the right to recover damages against the other for breach of this Agreement including any amount necessary to compensate District for all detriment proximately caused by Professional's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom. District reserves the right to offset such damages against any payments owed to Professional.

District shall not in any manner be liable for Professional's actual or projected lost profits had Professional completed the Services required by this Agreement.

Section 19. Non-Discrimination. In its performance of the Services, Professional shall adhere to the District's anti-discrimination and anti-harassment policy which states, "The District does not unlawfully discriminate on the basis of race, color, religion, religious creed (including religious dress and religious grooming), sex (including pregnancy, perceived pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity (including transgender identity and transitioning), gender expression and sex stereotyping, national origin, ancestry, citizenship, age, physical or mental disability, legally protected medical condition or information (including genetic information), family care or medical leave status, military caregiver status, military status, veteran status, marital status, domestic partner status, sexual orientation, status as a victim of domestic violence, sexual assault or stalking, enrollment in a public assistance program, engaging in protected communications regarding wages, requesting a reasonable accommodation on the basis of disability or bona fide religious belief or practice, or any other basis protected by local, state, or federal laws. Consistent with the law, the District also makes reasonable accommodations for disabled applicants and staff; for pregnant staff who request an accommodation (on the advice of a health care provider), for pregnancy, childbirth, or related medical conditions; for staff who are victims of domestic violence, sexual assault, or stalking; and for applicants and staff based on their religious beliefs and practices. The District is committed to creating a work environment, in which all individuals are treated with respect and dignity. Staff, Board members, and third parties interacting with the District have a right to function in a professional atmosphere that promotes positive opportunities. The District prohibits discrimination and harassment of staff or Board members by Board members, managers, co-workers, or third parties with whom staff or Board members come into contact. Similarly, the District will not tolerate harassment or discrimination by its staff or Board members of non-staff members, Board members, or other third parties with whom the District's staff or Board members have a business, service, or professional relationship."

In addition, all agreements with sub-contractors will include language as required by the Office of Federal Contract Compliance Programs (OFCCP) that requires sub-contractors to maintain equal employment opportunity policies, and as necessary, affirmative action policies.

Section 20. Arbitration of Disputes. All claims, disputes and other matters in question between District and Professional arising out of, or relating to this Agreement or the breach thereof, including claims of Professional for extra compensation for Services related to the Project, shall be decided by arbitration before a single arbitrator in accordance with the provisions of Sections 1281 to 1284.2 of the California Code of Civil Procedure (the "Arbitration Laws") unless the Parties mutually agree otherwise. The provisions of Section 1283.05 of the Arbitration Laws apply to any arbitration proceeding except as otherwise provided in this Agreement. The arbitrator shall have authority to decide all issues between the Parties including, but not limited to, claims for extras, delay and liquidated damages, if any, provided for in this Agreement, matters involving defects in the work product of the Professional, rights to payment, and whether the necessary procedures for arbitration have been followed. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Notice of the demand for arbitration shall be filed in writing with the other Party. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or

equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitation.

The Parties shall jointly appoint an arbitrator within fifteen (15) calendar days of the date of giving of the notice of the demand for arbitration. If the Parties are unable to jointly agree upon the appointment of an arbitrator within said fifteen (15) calendar day period, and do not agree in writing to extend said period for a fixed period, then either Party may seek to have the arbitrator appointed by the Superior Court of San Luis Obispo County in accordance with the Arbitration Laws.

If any proceeding is brought to contest the right to arbitrate and it is determined that such right exists, the losing Party shall pay all costs and attorneys' fees incurred by the prevailing party.

In addition to the other rules of law which may be applicable to any arbitration hereunder, the following shall apply:

- (a) Promptly upon the filing of the arbitration each Party shall be required to set forth in writing and to serve upon each other Party a detailed statement of its contentions of fact and law.
- (b) All parties to the arbitration shall be entitled to the discovery procedures as provided in Section 1283.05 of the California Code of Civil Procedure.
- (c) The arbitration shall be commenced and conducted as expeditiously as possible consistent with affording reasonable discovery as provided herein.
- (d) These additional rules shall be implemented and applied by the arbitrator.

The costs of arbitration shall be borne by the Parties as determined by the arbitrator, but each Party shall bear its own attorney's fees associated with the dispute with the other Party and to the arbitration.

Section 21. Insurance Coverage. During the Term, the Professional shall maintain in full force and effect policies of insurance set forth herein, which shall be placed with insurers with a current A M Best's rating of no less than A VII and will provide the District with written proof of said insurance. Professional shall maintain coverage as follows:

21.1. General Liability. Professional shall carry general liability insurance in the amount of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury, and property damage. If commercial general liability insurance or another form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate shall be Two Million Dollars (\$2,000,000.00).

21.2 Worker's Compensation Insurance and Employer's Liability. Professional shall carry workers' compensation insurance as required by the State of California under the Labor Code. Professional shall also carry employer's liability insurance in the amount of One Million Dollars (\$1,000,000.00) per accident, with a One Million Dollar (\$1,000,000.00) policy limit for bodily injury by disease, and a One Million Dollar (\$1,000,000.00) limit for each employee's bodily injury by disease.

21.3. Errors and Omissions Liability. Professional shall carry errors and omissions liability insurance in the amount of no less than Two Million Dollars (\$2,000,000.00) per claim or greater if appropriate for the Professional's profession. Any deductibles or self-insured retentions must be declared to and approved by the District. At the option and expense of the District, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the District, elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("District's Agents"); or the Professional shall provide a financial guarantee satisfactory to the District guaranteeing payment of losses and related investigations, claims administration and defense expenses.

21.4. Commercial Automobile Liability. Professional shall carry commercial automobile liability insurance in the amount of One Million Dollars (\$1,000,000) or greater per occurrence for owned, leased, hired, and borrowed automobiles.

21.5. Waiver of Subrogation. With the exception of errors and omissions liability insurance, Professional hereby agrees to waive subrogation which any insurer of Professional may acquire from Professional by virtue of the payment of any loss. The commercial general liability policy and workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of District for all work performed by Professional, its agents, employees, independent contractors, and subcontractors. Professional agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

Section 22. Additional Insurance Requirements. Within five (5) days of the Effective Date, Professional shall provide District with certificates of insurance for all of the policies required under this Agreement ("Certificates"), excluding the required worker's compensation insurance. Such Certificates shall be kept current for the Term of the Agreement and Professional shall be responsible for providing updated copies and notifying District if a policy is cancelled, suspended, reduced, or voided. With the exception of the worker's compensation insurance, all of the insurance policies required in this Agreement shall: (a) provide that the policy will not be cancelled, allowed to expire, or materially reduced in coverage without at least thirty (30) days' prior written notice to District of such cancellation, expiration, or reduction and each policy shall be endorsed to state such; (b) name District, and District's Agents as additional insureds with respect to liability arising out of Services, work or operations performed by or on behalf of the Professional; products and completed operations of the Professional; premises owned, occupied, or used by the Professional, or automobiles owned, leased, or hired or borrowed by the Professional. The coverage shall contain no special limitations on the scope of protection afforded to the District; (c) be primary with respect to any insurance or self-insurance programs covering District or District's Agents and any insurance or self-insurance maintained by District or District's Agents shall be in excess of Professional's insurance and shall not contribute to it; (d) contain standard separation of insured provisions; and (e) state that any failure to comply with reporting or other provisions of the policy including breaches of warranties shall not affect the coverage provided to the District.

Section 23. Indemnification by Professional. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Professional shall defend with legal counsel reasonably acceptable to District, indemnify and hold harmless the District and District's Agents from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Professional or its subcontractors), expense and

liability of every kind, nature and description that arise out of, pertain to or relate to acts or omissions of Professional, or any direct or indirect subcontractor, employee, contractor, representative or agent of Professional, or anyone that Professional controls (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify District and District's Agents shall not apply to the extent that such Liabilities are caused in whole by the sole negligence, active negligence, or willful misconduct of District or District's Agents, but shall apply to all other Liabilities. With respect to third party claims against the Professional, the Professional waives any and all rights of any type of express or implied indemnity against District and District's Agents.

Section 24. Liability of Parties. Notwithstanding any other provision of this Agreement, in no event shall either Party be liable to the other, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

Section 25. Independent Contractor. At all times during the Term, Professional shall be deemed to be an independent contractor and shall be wholly responsible for the manner in which Professional performs the services required under this Agreement. Professional shall be liable for its acts and omissions, and those of its employees, contractors, subcontractors, representatives, volunteers, and its agents. Nothing contained herein shall be construed as creating an employment, agency or partnership relationship between District and Professional. District shall have the right to control Professional only insofar as the result of Professional's services rendered pursuant to this Agreement; however, District shall not have the right to control the means by which Professional accomplishes Services rendered pursuant to this Agreement.

Section 26. Professional Not Agent. Except as District may specify in writing, Professional shall have no authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Professional shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever.

Section 27. Payment of Taxes and Other Expenses. Payment of any taxes, including California sales and use taxes, levied upon this Agreement, the transaction, or the Services or goods delivered pursuant hereto, shall be the obligation of Professional.

Section 28. Notices. Any notice or communication required hereunder between District and Professional must be in writing, and may be given either personally, by electronic mail ("email") (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice or communication shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by email transmission, a notice or communication shall be deemed to have been given and received upon actual receipt of the entire document by the receiving Party's email server. Notices transmitted by email after 5:00 p.m. on a normal business day, or on a Saturday, Sunday or holiday, shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or

communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to District: San Simeon Community Services District
111 Pico Avenue
San Simeon, California 93452
Attention: District General Manager
805-927-4778
Email: adminsscscsd@sansimeoncsd.org

With courtesy copies to: San Simeon Community Services District
111 Pico Avenue
San Simeon, California 93452
Attention: Board Chairperson
805-927-4778
Email: adminsscscsd@sansimeoncsd.org

and White Brenner LLP
1608 T Street
Sacramento, California 95811
Attention: Nubia I. Goldstein, Esq.
Tel: (916) 468-0950
nubia@whitebrennerllp.com

If to Professional: Padre Associates, Inc.
ATTN: Michaela Craighead
369 Pacific St
San Luis Obispo, CA 93401
(805) 786-2650

Section 29. Exhibits. All “Exhibits” referred to below or attached to herein are by this reference incorporated into this Agreement:

<u>Exhibit Designation</u>	<u>Exhibit Title</u>
Exhibit A:	Scope of Services and Compensation Schedule

Section 30. General Provisions.

30.1. Modification. No alteration, amendment, modification, or termination of this Agreement shall be valid unless made in writing and executed by all of the Parties to this Agreement.

30.2. Waiver. No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

30.3. Assignment. No Party to this Agreement shall assign, transfer, or otherwise dispose of this Agreement in whole or in part to any individual, firm, or corporation without the prior written consent of the other Party. Subject to the forgoing provisions, this Agreement shall be binding upon, and inure to the benefit of, the respective successors and assigns of the Parties hereto.

30.4. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into the Agreement have been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

30.5 Drafting and Ambiguities. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

30.6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

30.7. Venue. Venue for all legal proceedings shall be in the Superior Court of California for the County of San Luis Obispo.

30.8. Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this Agreement, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

30.9. Counterparts. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

30.10. Audit. District shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Professional's charges to District under this Agreement.

30.11. Entire Agreement. This Agreement, together with its specific references, attachments and exhibits, constitutes the entire agreement of the Parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, understanding and agreements with respect hereto, whether oral or written.

30.12. Supersedes Prior Agreement. It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, whether written, electronic or oral, between the Parties with respect to the subject matter of this Agreement.

30.13. Mandatory and Permissive. “Shall” and “will” and “agrees” are mandatory. “May” and “can” are permissive.

30.14. Successors and Assigns. All representations, covenants, and warranties specifically 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.

30.15. Headings. Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

30.16. Attorney’s Fees and Costs. If any action at law or in equity not resolved pursuant to Section 20 of this Agreement, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

30.17. Necessary Acts and Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

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

[SIGNATURES ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, this Agreement has been entered into by and between District and Professional as of the Effective Date.

DISTRICT:

San Simeon Community Services District, a special district of the State of California

By: _____
Patrick Faverty, Interim General Manager

Date Signed: _____

Approved as to Form:

By: _____
Nubia I. Goldstein, District Legal Counsel

PROFESSIONAL:

Padre Associates, Inc.

By: _____

Title

Date Signed: _____

EXHIBIT A

Scope of Services and Compensation Schedule



June 14, 2024
Project No. 2402-2551
San Simeon Community Services District
111 Pico Avenue
San Simeon, California 93452

Attention: Patrick Faverty, Interim General Manager
Subject: Proposal for the San Simeon Community Services District Arroyo Del Padre Juan Creek Debris Removal Project – Permitting Support

Dear Mr. Faverty:

Padre Associates, Inc. (Padre) is pleased to submit this proposal to provide permitting support for the San Simeon Community Services District (SSCSD) Arroyo Del Padre Juan Creek Debris Removal Project (Project). Large logs, driftwood and other natural debris has clogged the creek bed above the San Simeon Wastewater Treatment Plant (WWTP) untreated water pipeline bridge which spans the Arroyo Del Padre Juan Creek. Recent structural engineering surveys have identified anomalies in the pipelines' integrity making them particularly vulnerable to high storm flows that may dislodge the large wooden debris. The proposal includes a scope of work and budget for preparation of the required permit application materials for the Project and coordination with the federal and state agencies during the permit application review process. It is Padre's understanding that the Project will include the following:

- Cutting and lifting of large wooden logs and debris that was lodged in the Arroyo del Padre Juan creek bed during high tide and storm events during the winter of 2023/2024.
- Debris will be removed with the least amount of disturbance feasible and will likely require the use of a crane and/or winch from the paved driveway adjacent to the San Simeon Wastewater Treatment Plant (WWTP).
- Vegetation removal would be necessary to accommodate debris removal equipment and crews; however, vegetation removal will be minimized to the extent feasible.

Project activities are located within designated federal and state wetlands and waters. Due to the anticipated disturbance to wetlands and waters, as well as the location in the Coastal Zone, the Project will trigger review authority from the U.S. Army Corps of Engineers (ACOE), Regional Water Quality Control Board (RWQCB), the California Department of Fish and Wildlife (CDFW), the County of San Luis Obispo, and/or California Coastal Commission (CCC). However, the volume and size of the debris presents an emergency situation, one where there is a clear, sudden, unexpected, and imminent threat to life or property demanding immediate action to prevent or mitigate loss of or damage to, life, health, property or essential public services" related to the WWTP (ACOE, 2023). Therefore, the following scope and costs assume that the Project will qualify for use of the ACOE Regional General Permit (RGP) 63 which covers repair and protection activities in emergency situations and is issued in cooperation with notifications to the State agencies: RWQCB, CDFW and CCC. Below is a summary of the tasks included in this

proposal to acquire such permits

June 12, 2024

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SCOPE OF WORK

TASK 1 – ACOE Regional General Permit (RGP) 63

Padre will work with the ACOE and will schedule a pre-application meeting to discuss the Project and confirm the use of the RGP 63. Following the pre-application meeting, Padre will prepare and submit the required RGP application materials including a Project description containing the basic details outlining the situation, threats to the WWTP pipe bridge and environment if the debris is not removed, and the remedies proposed to correct the situation. Since the Project will occur within U.S. Fish and Wildlife Service (USFWS) designated Critical Habitat for the California red-legged frog as well as habitat for tidewater goby, the ACOE will consult with the appropriate resource agencies, including the USFWS to obtain their input regarding the Project; however, the RGP does not require the preparation of a Biological Assessment or Essential Fish Habitat Assessment.

TASK 2 – RWQCB Notification of Intent (NOI)

Padre will send a copy of the request for an RGP and prepare a NOI for the State and RWQCB. A processing fee will be required; however, this fee is not included in the cost estimate below. Padre will assist the SSCSD in responding to any agency questions or requests for additional information.

TASK 3 – CDFW Lake and Streambed Alteration Emergency Notification

Padre will utilize the aforementioned Project description and support material to submit an emergency notification to the CDFW via their EPIMS portal as an authorized representative for the SSCSD. Padre will provide recommendations for avoidance measures and will provide assistance responding to any agency questions or requests for additional information. Padre would also prepare a Revegetation and Restoration Plan which CDFW would likely require for any vegetation removal within the creek bed and bank.

TASK 4 – Coastal Development Permit

The County of San Luis Obispo has a certified Local Coastal Plan, and as such, they are authorized to issue a CDP within County jurisdiction. Accordingly, Padre will initiate discussion with the County to determine if the County is interested in issuing its own emergency permit or CDP for work within County jurisdiction or would like to defer Project review to the California Coastal Commission (CCC) given their existing authorization of the pipe bridge and revetment. If the County defers their review, Padre will notify and coordinate with the CCC to obtain approvals to conduct the emergency work. Padre will conduct initial outreach to confirm the existing CDP #3-19-0020, which covers maintenance and repairs of the revetment and pipe bridge, would be sufficient for the proposed debris removal. Alternatively, Padre will apply for an Emergency Permit and will coordinate with the CCC to provide supporting documentation in order to amend the existing CDP. For an emergency permit, a permit fee of \$1,471 is required; however, that cost is not included in this proposal.

COST ESTIMATE

Costs associated with obtaining the required permits for the Project are included in Table 1. Padre will complete the above scope of work on a time and materials basis invoiced in accordance with Padre’s 2024 fee schedule. Padre will not exceed the total amount without written approval from the SSCSD.

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TABLE 1. COST ESTIMATE

Personnel/Item Rate Hours/Unit Cost

TASK 1. ACOE RGP

Principal Professional II	\$220	2	\$440.00
Senior Professional II	\$170	8	\$1,360.00
Project Professional II	\$135	20	\$2,700.00

{CW139606.1}

Staff Professional \$100 20 \$2,000.00
Senior GIS Specialist \$110 8 \$880.00
Task 1 Subtotal \$7,380.00

TASK 2. RWQCB NOI

Principal Professional II \$220 2 \$440.00
Senior Professional II \$170 4 \$680.00
Project Professional II \$135 8 \$1,080.00
Staff Professional \$100 12 \$1,200.00
Senior GIS Specialist \$115 2 \$230.00
Task 2 Subtotal \$3,630.00

TASK 3. CDFW LSA Emergency Notification

Senior Professional II \$170 2 \$340.00
Senior Professional I \$160 30 \$4,800.00
Project Professional II \$135 12 \$1,620.00
Staff Professional \$100 30 \$3,000.00
Senior GIS Specialist \$115 6 \$690.00
Task 3 Subtotal \$9,760.00

TASK 4. Coastal Development Permit

Principal Professional II \$220 2 \$440.00
Senior Professional II \$170 8 \$1,360.00
Project Professional II \$135 16 \$2,160.00
Task 4 Subtotal \$3,960.00

TOTAL \$24,730.00Mr. Faverty, SSCSD
June 12, 2024

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SCHEDULE AND ASSUMPTIONS

Several assumptions have been made in developing this proposal and cost estimate and, if not valid, will constitute a change in the scope of services, requiring an adjustment in Project cost and schedule. Padre will notify the SSCSD of any such changes in writing. Assumptions and limitations to our scope of services are presented below:

- This proposal is for permitting services; No biological field surveys or compliance monitoring are included in this proposal;
- Technical studies and permitting support documents completed for recent Pipe Bridge Repairs Project would be sufficient to support permitting of proposed Project;
- Either an emergency CDP would be issued by the County or an amendment to the existing CCC CDP may be requested, but a new CDP is not anticipated from the CCC;
- Debris removal will address the immediate emergency and disturbance footprint would be minimized to the extent feasible; and
- Permit application fees are not included in the budget.

CLOSING

If you should have any questions regarding Padre's proposal and/or require additional information for review purposes, please contact Michaela Craighead at (805) 786-2650, ext. 147.

Sincerely,
Michaela Craighead

Project Manager/Marine Biologist

