



Contract Number

24-743

SAP Number

### Public Works

<b>Department Contract Representative</b>	Darren Meeka, P.E., Deputy Director
<b>Telephone Number</b>	(909) 386-8701
<b>Consultant</b>	Merrell Johnson Companies
<b>Consultant Representative</b>	Craig Johnson, PLS, Secretary/Treasurer
<b>Telephone Number</b>	(760) 240-8000
<b>Contract Term</b>	5 years (09/10/2024-09/09/2029)
<b>Original Contract Amount</b>	Aggregate Amount of \$15,000,000
<b>Amendment Amount</b>	
<b>Total Contract Amount</b>	Aggregate Amount of \$15,000,000
<b>Cost Center</b>	6701004250
<b>Grant Number (if applicable)</b>	

**IT IS HEREBY AGREED AS FOLLOWS:**

**WHEREAS**, the San Bernardino County (County) desires as needed On-Call General Engineering Services for various County landfills and disposal sites; and

**WHEREAS**, the County conducted a competitive process to find Merrell Johnson Companies (Consultant) to provide these services, and

**WHEREAS**, the County finds Consultant qualified to provide On-Call General Engineering Services; and

**WHEREAS**, the County desires that such services be provided by Consultant and Consultant agrees to perform these services as set forth below;

**NOW, THEREFORE**, the County and Consultant mutually agree to the following terms and conditions:

**1. Project**

Consultant shall perform consulting services for the project described as On-Call General Engineering Services for the San Bernardino County Department of Public Works Solid Waste Management Division.

## 2. Scope of Work

Consultant will provide services in accordance with the Request for Proposal (“RFP”) entitled “PWG-124-SOLID-5349 On-Call General Engineering Services for the San Bernardino County Department of Public Works Solid Waste Management Division”, dated April 17, 2024, and RFP Amendment No. 1 issued on May 9, 2024, and incorporated herein by reference. The Scope of Work includes, but is not limited to, all items listed in Exhibit “1” attached hereto and incorporated by reference, and the task order issued for each project assigned to Consultant as needed. Said Scope of Work also includes any relevant dates by which the performance of Consultant of any item of work needs to be completed.

The provisions of this Contract shall control any contrary provision or term of either the Consultant’s proposal or of the County’s RFP.

## 3. Retention of Consultant

### **(a) Independent Capacity**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto. In the performance of this Contract, Consultant, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County. Any provision of this Contract that may appear to give the County any right to direct the Consultant concerning the details of performing the services/Scope of Work, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the County concerning the end results of the performance.

### **(b) Consultant Project Manager and Key Personnel**

Consultant herein designates Craig Johnson, PLS to be the Project Manager. Consultant shall not change the Project Manager without written acknowledgment by the County. The Project Manager or designee must respond to County inquiries within two (2) business days or as otherwise required by the Scope of Work (Exhibit “1”). If the Project Manager will be unavailable to the County for more than three (3) days, another person must be designated as a contact for the County. Further, Consultant must provide a list of and the résumés of the individuals who will provide services to the County. These individuals will be designated “key personnel” and may not be removed from the project that is the subject matter of the Contract without the written approval of the County.

### **(c) Subconsultants/Subcontractors**

Consultant shall obtain County’s written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the services to County. At County’s request, Consultant shall provide information regarding the subcontractor’s qualifications and a listing of a subcontractor’s key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Consultant shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Sections 8 and 9. All approved subcontractors shall be subject to the provisions of this Contract applicable to Consultant Personnel.

For any subcontractor, Consultant shall:

- (1) Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions;
- (2) Ensure that the subcontractor follows County's reporting formats and procedures as specified by County; and
- (3) Include in the subcontractor's subcontract substantially similar terms as are provided in Exhibits 1 and 2 and the same terms and conditions as Consultant in this Contract.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the subcontractors. Consultant agrees that its arrangements with subcontractors will not prohibit or restrict such subcontractors from entering into direct contracts with County. The fact that Consultant employs subconsultant(s) not in its regular employ shall not relieve Consultant from any responsibility regarding the adequacy of its designs or other work.

**(d) Contract Exclusivity**

This is not an exclusive Contract. The County reserves the right to enter into a contract with other consultants for the same or similar services. The County does not guarantee or represent that Consultant will be permitted to perform any minimum amount of work, or receive a minimum amount of compensation, under the terms of this Contract.

**(e) Background Checks for Consultant Personnel**

Consultant shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide services to the County; and (c) are not otherwise disqualified from performing the services under applicable law. If requested by the County and not in violation of applicable law, Consultant shall conduct a background check, at Consultant's sole expense, on all its personnel providing services. If requested by the County, Consultant shall provide the results of the background check of each individual to verify that the individual meets Consultant's standards for employment. Such background check shall be in the form generally used by Consultant in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Consultant personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or services, and County shall have the right, at its sole option, to refuse access to any of Consultant's personnel to any County facility.

**(f) Compliance with County Policy**

In performing the services and while at any County facilities, Consultant personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the services, and all amendments and modifications to each of the items addressed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Consultant or Consultant personnel or may be made available to Consultant or Consultant personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Consultant shall be responsible for the promulgation and distribution of County Policies to Consultant personnel to the extent necessary and appropriate.

County shall have the right to require Consultant's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

#### **4. Commencement of Work**

Consultant shall commence work immediately upon receipt of a notice to proceed from the Department of Public Works- Solid Waste Management Division ("SWMD") following the acceptance of this Contract by the San Bernardino County Board of Supervisors. Consultant shall confer on an as-needed basis with the County's Project Manager to review progress of work elements, adherence to work schedule, coordination of work, scheduling of reviews, and resolve any problems that may develop.

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

Task orders containing specific scope, fee and schedule will be issued for each task to be performed under this Contract and Consultant will be compensated as described in Section 5.

#### **5. Compensation**

The maximum amount of payment under this Contract is a combined total for all Consultants providing On-Call General Engineering Services identified in the corresponding Board Agenda Item, and together shall not exceed \$15,000,000. Payment shall only be made for work authorized and performed pursuant to the requirements of this Contract.

With respect to Task Orders to be performed on a Fixed Fee basis, Consultant bears the risk that it may not be able to generate its anticipated (or any) profit in completing its performance of all required items of work for the specified level of compensation. In no event shall Consultant be entitled to receive compensation for any item of work required of Consultant under the terms of this Contract, which item of work is not performed by Consultant (including Consultant's agents and subconsultants). Payment shall be made on a percent of task completed to the County's satisfaction in accordance with issued Task Orders.

With respect to Task Orders to be performed on a Time and Materials basis, Consultant shall be paid its actual time and materials as specified in, and subject to the limitations of, Exhibit "2". The Cost Proposal was used by the County to determine the reasonableness of the cost of Consultant's proposal and is further used in making progress payments to Consultant and in making payment to Consultant in the event of the termination of the Contract prior to the completion of all items of work. Consultant is not entitled to any additional compensation by virtue of its costs (including wages) for any item of work exceeding the cost set forth in its Cost Proposal, including excess costs related to delays in completion of the project. Payment shall be made on a percent of task completed to the County's satisfaction pursuant to Exhibit "2".

The County does not guarantee any minimum or maximum number of tasks will be assigned to Consultant.

Consultant shall provide County itemized monthly invoices in arrears, for services performed under the Contract within twenty (20) days of the end of the previous month. Invoicing for this project shall indicate the project and task numbers. Consultant's itemized monthly invoice shall be in the form of an Invoice Summary attached and incorporated herein as Exhibit "3." The County shall make payment to Consultant within sixty (60) calendar days after receipt of invoice or the resolution of any billing dispute.

Notwithstanding any other provision of this Contract (including any attachments), in no event will the County pay late fees or interest to the Consultant on the compensation due Consultant under the terms of this Contract.

**(a) Payment by Electronic Funds Transfer (EFT)**

Consultant shall accept all payments from County via electronic funds transfer (EFT) directly into the Consultant's designated checking or other bank account. Consultant shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

**(b) Travel Management**

Consultant shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1)) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Consultant is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

**(c) Taxes**

County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Consultant or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.

**(d) Costs Incurred**

Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Consultant shall not use current year funds to pay prior or future year obligations.

**6. Term of Contract**

This Contract is effective as of September 10, 2024, and expires September 9, 2029, but may be terminated earlier in accordance with provisions of this Contract.

**7. Termination for Convenience**

The County for its convenience may terminate the Contract in whole or in part, for any reason, upon thirty (30) calendar days written notice. If such termination is affected, an equitable adjustment in the price provided for in this Contract shall be made. Such adjustment shall provide for payment to the Consultant for services rendered and expenses incurred prior to the effective date of termination. Upon receipt of termination notice, Consultant shall promptly discontinue services unless the notice directs otherwise. Consultant shall deliver promptly to the County and transfer title (if necessary) to all completed work, and work in progress, including spare parts, drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

**8. Indemnification**

The Consultant agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Consultant's indemnification obligation applies to the County's "active" as well as

“passive” negligence but does not apply to the County’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.

## 9. Insurance

### (a) Coverage

The Consultant agrees to provide insurance set forth in accordance with the requirements herein. If the Consultant uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Consultant agrees to amend, supplement or endorse the existing coverage to do so.

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

- (1) Worker’s Compensation/Employer’s Liability – A program of Workers’ Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer’s Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Consultant and all risks to such persons under this Contract.

If Consultant has no employees, it may certify or warrant to County that it does not currently have any employees or individuals who are defined as “employees” under the Labor Code and the requirement for Workers’ Compensation coverage will be waived by the County’s Director of Risk Management.

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

- (2) Commercial/General Liability Insurance – The Consultant shall carry General Liability Insurance covering all operations performed by or on behalf of the Consultant providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse and underground hazards.
- (e) Personal injury.
- (f) Contractual liability.
- (g) \$2,000,000 general aggregate limit.

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

If the Consultant is transporting one or more non-employee passengers in performance of Contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

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

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

(5) a. **Professional Liability** – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits, or

**Errors and Omissions Liability Insurance** with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits, or

**Directors and Officers Insurance** coverage with limits of not less than one million (\$1,000,000) shall be required for contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

b. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the Contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after Contract completion.

**(b) Additional Insured**

All policies, except for the Workers’ Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsements from ISO, CG 2010.11 85.

**(c) Waiver of Subrogation Rights**

The Consultant shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Consultant and Consultant’s employees or agents from waiving the right of subrogation prior to a loss or claim. The Consultant hereby waives all rights of subrogation against the County.

**(d) Policies Primary and Non-Contributory**

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

**(e) Severability of Interests**

The Consultant agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Consultant and the County or between the County and any other insured or additional insured under the policy.

**(f) Proof of Coverage**

The Consultant shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage, at the time the Contract is executed additional endorsements, as required, shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Consultant shall maintain such insurance from the time Consultant commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of the Contract, the Consultant shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

**(g) Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".

**(h) Deductibles and Self-Insured Retention**

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

**(i) Failure to Procure Coverage**

In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the Contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Consultant or County payments to the Consultant will be reduced to pay for County purchased insurance.

**(j) Insurance Review**

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

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

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

**10. Licenses, Permits and Certifications**



Consultant shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules, and regulations. The Consultant shall maintain these licenses, permits and/or certifications in effect for the duration of the Contract. Consultant will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of the Contract. Professional Engineers shall be duly registered in the State of California.

## **11. Notification Regarding Performance**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

## **12. Ownership of Documents**

All documents, data, products, graphics, computer programs, and reports prepared by Consultant pursuant to the Contract shall be considered property of the County upon payment for product/services. All such items shall be delivered to County at the completion of work under the Contract, subject to the requirements of Section 7 Termination of Convenience. Unless otherwise directed by County, Consultant may retain copies of such items.

## **13. Artwork, Proofs and/or Negatives**

All artwork, proofs, and/or negatives in either print or digital format for the project that is the subject matter of the Contract are the property of the County. These items must be returned to the County within ten (10) days upon written notification to the Consultant. In the event of a failure to return the documents, the County is entitled to pursue available legal remedies. In addition, the Consultant will be barred from all future contracts with County, for a period of at least six (6) months.

## **14. Copyright**

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the San Bernardino County as the funding agency and Consultant as the creator of the publication. No such materials or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Consultant in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printed material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

## **15. Release of Information**

Consultant shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Consultant or an agent of Consultant or otherwise made available to Consultant or Consultant's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Consultant or an agent of Consultant in the performance of this

Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

No news releases, advertisements, public announcements or photographs arising out of the Contract or Consultant's relationship with County may be made or used without prior written approval of the County.

## **16. Contact with Regulatory Agencies**

Except for emergencies, or except for situations where contact is required by law or relevant professional canons of ethics (in which case Consultant will use its professional efforts to notify and confer with the County before such contact, the parties recognizing that there may not be the time for such in an emergency), Consultant shall not contact the Local Enforcement Agency, South Coast Air Quality Management District or other regulatory agencies concerning any site that is the subject of this Contract without the County's prior approval.

## **17. Right to Monitor and Audit**

The County, State and Federal Government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Consultant in the delivery of services provided under this Contract. Consultant shall give full cooperation, in any auditing or monitoring conducted. Consultant shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.

All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

## **18. Cooperation Between All System Contract Contractors**

This Contract is but one of the County contracts which are or will be necessary to keep, operate and maintain the County's Solid Waste Disposal System ("**Disposal System**"), including without limitation for the overall expansion, operation, maintenance, remediation and closure of the Disposal System. Specifically, but not by way of limitation, the County has entered, or will enter into, the following contracts with third parties: (i) construction contracts related to various aspects of the expansion, remediation and closure of the Disposal System; (ii) contracts for the management of the foregoing construction contracts, to the extent the County does not manage such contracts with its own employees; (iii) a contract for the aggregate operation at the Mid Valley Landfill; (iv) contracts for the operation and maintenance of the landfill gas collection systems located at various County Landfills; (v) the lease of the landfill gas collection systems and lease of the rights to the landfill gas collected by such systems; (vi) a contract for the operation of the Baker Transfer Station; (vii) a Development contract with the City of Rialto regarding various aspects of the expansion of the Mid Valley Landfill; (viii) a contract with the City of Needles relating to the closure of the Needles Landfill; and (ix) a contract for performing day to day operations at the facilities comprising the Disposal System. These contracts, together with this Contract, will collectively be referred to as "**All System Contracts**".

In performing its duties under this Contract, Consultant shall be required, pursuant to direction provided by the Deputy Director - Solid Waste Management Division, to coordinate such performance with the performance of the duties required of the contractors under each of the other All System Contracts. Likewise, the contractors under each of the other All System Contracts will be required to coordinate the performance of the duties required of them under the terms of their contracts with the performance of the duties required of the contractors under each of the other All System Contracts, including this Contract. The goal of the County is to maximize, in the aggregate, the effectiveness of performance of the duties required under all of the All System Contracts to keep, operate and maintain the Solid Waste Disposal System, rather than to maximize the effectiveness of performance of duties required to be performed under any single All System Contract.

## **19. Employment Discrimination**

During the term of this Contract, Consultant shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

## **20. Conflict of Interest**

Consultant shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Consultant shall make a reasonable effort to prevent officers, employees, subcontractors, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed, by the County and such conflict may constitute grounds for termination of this Contract. This provision shall not be construed to prohibit employment of persons with whom Consultant's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

## **21. Damage to County Property, Facilities, Buildings or Grounds**

The Consultant shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Consultant or employees or agents of the Consultant. Such repairs shall be made immediately after Consultant becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Consultant fails to make timely repairs, the County may make any necessary repairs. The Consultant, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Consultant from the County, as determined at the County's sole discretion.

## **22. Former County Officials**

Consultant agrees to provide or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Consultant or its subcontractor(s) being utilized on this project. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates, or members of the business. The information also includes the employment and/or representative capacity and the dates these individuals began employment with or representation of Consultant. For purposes of this section, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, Chief Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

Consultant is directed to review and must comply with County Code sections 13.0701 through 13.0708 which can be viewed at [www.sbcounty.gov](http://www.sbcounty.gov). The applicable sections are found under Title 1 – Government and Administration, Division 3 – Personnel, Chapter 7 – Disqualification of Former Officers and Employees.

### **23. Improper Influence**

Consultant shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Consultant or officer or employee of the Consultant.

### **24. Improper Consideration**

Consultant shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension, or evaluation process once a contract has been awarded.

Consultant shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Consultant. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

### **25. Inaccuracies or Misrepresentations**

If in the course of the RFP process or in the administration of this Contract, the County determines the Consultant has made a material misstatement, omission or misrepresentation, or that materially inaccurate information has been provided to the County, the Contract may be immediately terminated. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

### **26. Notice**

#### **(a) Service**

Except as otherwise required by law, any notice, information, request or reply (“**Notice**”) required or permitted to be given under the provisions of this Contract shall be deemed fully given when made in writing and either personally served, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the respective parties specified in Section 26(d) below.

**(b) When Effective**

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in Paragraph 26(a).

**(c) Change of Address**

Either Party may, by written Notice to the other in the manner provided herein, specify an address within the United States for notices in lieu of or in addition to the address set forth below. Consultant shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

**(d) Designation of Recipients**

Until changed by Notice duly given, the following persons shall receive all notices required or permitted to be given under the provisions of this Contract:

**(1) For Consultant:**

Craig Johnson, PLS, Secretary/Treasurer  
Merrell Johnson Companies  
22221 US Highway 18  
Apple Valley, CA 92307  
Telephone: (760) 240-8000

**(2) For County:**

Marc Rodabaugh, PE  
Engineering Manager  
Solid Waste Management Division  
San Bernardino County  
222 West Hospitality Lane, 2<sup>nd</sup> Floor  
San Bernardino, CA 92415-0017  
Telephone: (909) 386-8701

**27. Contract Assignability**

Without the prior written consent of the County, this Contract is not assignable by the Consultant either in whole or in part.

**28. Contract Amendments**

Consultant agrees any alterations, variations, modifications, or waivers of the provisions of this Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Consultant and the County.

**29. Attorney Fees and Costs**

If any legal action is instituted to enforce any Party’s rights in this Contract, each Party shall bear its own costs and attorneys’ fees, regardless of who is the prevailing Party. This paragraph shall not

apply to those costs and attorneys' fees directly arising from a third-party legal action against a Party hereto and payable under **the Indemnification and Insurance Requirements**.

### **30. Venue**

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any Party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each Party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

### **31. Environmental Products Requirements**

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Consultant to use recycled paper for proposals and for any printed or photocopied material created as a result of this Contract. The policy also requires Consultant to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB939), Consultant must be able to annually report the County's environmentally preferable purchases. Consultant must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

### **32. Iran Contracting Act of 2010**

(Public Contract Code sections 2200 et seq.)

In accordance with Public Contract Code section 2204(a), the Consultant certifies that at the time the Contract is signed, the Consultant signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Consultants are cautioned that making a false certification may subject the Consultant to civil penalties, termination of an existing Contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205. Consultant agrees that signing the Contract shall constitute signature of this Certification.

### **33. Records**

Consultant shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for Contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of this Contract.

All records relating to the Consultant's personnel, consultants, subcontractors, Services/Scope of Work, and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

#### **34. Prevailing Wage Laws**

By its execution of this Agreement, Consultant certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Section 1720 of the California Labor Code states in part: "For purposes of this paragraph, 'construction' includes work performed during the design and preconstruction phase of construction including, but not limited to, inspection and land surveying work". If the Scope of Work is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Scope of Work available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant will also adhere to any other applicable requirements, including but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. Consultant shall defend, indemnify and hold the County, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws. See Exhibit 4 "Prevailing Wage Requirements" for additional information and requirements for Prevailing Wage Laws. Consultant shall comply with all applicable terms and conditions in Exhibit 4. The applicable general prevailing wage determinations are on file with the County and are available to any interested party upon request. Consultant shall post a copy of the applicable prevailing wage determinations at the job site.

#### **35. Errors, Omissions and/or Conflicts**

Consultant shall be responsible for the integrity of all design and research studies prepared or approved by the Consultant and should County suffer damages due to errors, omissions, and/or conflicts within such documents, the Consultant shall be responsible to County for costs of all such damages.

#### **36. Debarment and Suspension**

The Consultant certifies that neither it nor its principals, or other key decision makers, or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency or on the Federal Government Excluded Parties List System. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). As a requirement of this Contract, Consultant must be registered in the Federal Government Excluded Parties List System. Consultant further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good

standing with the Secretary of State. Consultant agrees that signing this Contract shall constitute signature of this Certification.

### **37. Miscellaneous Provisions**

#### **(a) Compliance with Legal Requirements**

With respect to its performance of any work required under this Contract, Consultant and its subconsultants shall be required to meet all legal requirements the County requires all of its Consultants to meet.

#### **(b) Covenant of Good Faith and Fair Dealing**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing."

#### **(c) Dispute Resolution**

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question, or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

#### **(d) Drug and Alcohol-Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Consultant agrees that the Consultant and the Consultant's employees and subconsultants/subcontractors, while performing service for the County, on County property, or while using County equipment:

- a. Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- c. Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another Person.

The Consultant shall inform all employees and subconsultants/subcontractors that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Consultant has with the County, if the Consultant or Consultant's employees or subconsultants/subcontractors are determined by the County not to be in compliance with above.

#### **(e) Air, Water Pollution Control, Safety and Health**

Consultant shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the services performed pursuant to this Contract.

#### **(f) Complete Agreement; Priority**

This Contract, including all Attachments, Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth



herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

**(g) Binding Effect**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

**(h) Captions and Headings**

Section, subsection, and paragraph captions and headings are used only for convenience and shall not be used in determining the intent of the parties in entering into this Contract nor in otherwise construing or interpreting this Contract.

**(i) Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**(j) Representation of County**

The Director of the Department of Public Works or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract and shall be the final authority in all matters pertaining to the Scope of Work by Consultant. If this Contract was initially approved by the San Bernardino County Board of Supervisors, the Board of Supervisors must approve all amendments to this Contract, unless otherwise delegated.

**(k) Execution in Counterparts**

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

**(l) Governing Law**

This Contract shall be governed by and construed according to the laws of the State of California.

**(m) Time for Performance**

Time is of the essence in performance of this Contract and of each of its provisions.

**(n) Waiver**

Failure by a Party to insist upon the strict performance of any of the provisions of this Contract by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Contract thereafter.

**(o) Construction Bids**

Consultant acknowledges and agrees that it will not submit a bid, or enter into any agreement with a third party, for the construction of the Project. Consultant agrees not to affiliate with, or receive

financial consideration from, any third party in connection with this Project, except as specifically authorized under this Contract.

**(p) Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided under this Contract is served upon Consultant or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Consultant and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Consultant for County.

**(q) Disclosure of Criminal and Civil Procedures**

County reserves the right to request the information described herein from Consultant. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Consultant also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Consultant is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Consultant will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Consultant is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Consultant will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

**(r) Executive Order N-6-22 Russia Sanctions**

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined that Contractor is a target of Economic Sanctions

or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. Contractor shall be provided advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the County.

**(s) Campaign Contribution Disclosure (SB 1439)**

Contractor has disclosed to the County using Attachment A - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Contractor's proposal to the County, or (2) 12 months before the date this Contract was approved by the Board of Supervisors. Contractor acknowledges that under Government Code section 84308, Contractor is prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or County elected officer for 12 months after the County's consideration of the Contract. In the event of a proposed amendment to this Contract, the Contractor will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of the Contractor or by a parent, subsidiary, or otherwise related business entity of Contractor.

**(t) Confidentiality**

Consultant shall protect from unauthorized use or disclosure the names and other identifying information concerning persons receiving services pursuant to this Contract, except for statistical information not identifying any participant. Consultant shall not use or disclose any identifying information for any purpose other than carrying out the Consultant's obligations under this Contract, except as may otherwise be required by law. This provision will remain in force even after the termination of the Contract

**38. Successors and Assigns**

This Contract shall be binding upon County and Consultant and their respective successors and assigns.

Neither the performance of this Contract, nor any part thereof, nor any monies due or to become due thereunder may be assigned by Consultant without the prior written consent and approval of County.

Death or Incapacity: If the Consultant transacts business as an individual, his/her death or incapacity shall automatically terminate this Contract as of the date of such event, and neither he/she nor his/her estate shall have any further right to perform hereunder, and County shall pay him/her or his/her estate the compensation payable under Section 5, Compensation, for any services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by County by reason of such termination. If there be more than one Consultant and any one of them die or become incapacitated and the others continue to render the services covered herein, County will make payment to those continuing as though there had been no such death or incapacity and County will not be obliged to take any account of the person who died or became incapacitated or to make any payments to such person or his estate. The provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Consultant herein, and if death or incapacity befalls the last one of such group before this Contract is fully performed, then the rights shall be as if there had been only one Consultant.



IN WITNESS WHEREOF, San Bernardino County and Consultant have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

► Dawn Rowe

Dawn Rowe, Chair, Board of Supervisors

AUG 06 2024

Dated: \_\_\_\_\_

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell  
Clerk of the Board of Supervisors  
San Bernardino County

By [Signature] Deputy



Merrell Johnson Companies

(Print or type name of corporation, company, contractor, etc.)

By ► [Signature]

(Authorized signature - sign in blue ink)

Name Craig Johnson, PLS  
(Print or type name of person signing contract)

Title Secretary / Treasurer  
(Print or Type)

Dated: 07-24-2024

Address 22221 US Highway 18  
Apple Valley, CA 92307

FOR COUNTY USE ONLY

Approved as to Legal Form

SEE ATTACHED

► [Signature]  
Maria L. Insixiangmay, Deputy County Counsel

Date \_\_\_\_\_

Reviewed for Contract Compliance

► [Signature]  
Andy Silao, Contract Compliance Officer

Date 7/25/24

Reviewed/Approved by Department

► [Signature]  
Noel Castillo, Director

Date 7/25/24

IN WITNESS WHEREOF, San Bernardino County and Consultant have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

Merrell Johnson Companies

*(Print or type name of corporation, company, contractor, etc.)*

►  
\_\_\_\_\_  
Dawn Rowe, Chair, Board of Supervisors

By ► \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

Dated: \_\_\_\_\_  
SIGNED AND CERTIFIED THAT A COPY OF  
THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

Name Craig Johnson, PLS  
*(Print or type name of person signing contract)*

Lynna Monell  
Clerk of the Board of Supervisors  
San Bernardino County

Title Secretary / Treasurer  
*(Print or Type)*

By \_\_\_\_\_  
Deputy

Dated: \_\_\_\_\_

Address 22221 US Highway 18

Apple Valley, CA 92307

**FOR COUNTY USE ONLY**

Approved as to Legal Form

► Maria Insixiengmay  
Maria L. Insixiengmay, Deputy County Counsel

Date 7/18/2024

Reviewed for Contract Compliance

► \_\_\_\_\_  
Andy Silao, Contract Compliance Officer

Date \_\_\_\_\_

Reviewed/Approved by Department

► \_\_\_\_\_  
Noel Castillo, Director

Date \_\_\_\_\_

Standard Contract  
EXHIBIT 1

SCOPE OF WORK

## On-Call General Engineering Services for the San Bernardino County Department of Public Works Solid Waste Management Division Scope of Work

### A. BACKGROUND INFORMATION

The County operates and manages five (5) active landfills, nine (9) transfer stations, and dozens of closed landfill and disposal sites to provide waste disposal services to the County's Valley, Mountain, High Desert, and Low Desert Regions. The County is responsible for managing all operations, maintenance and compliance activities for all of these sites in compliance with federal, state and local regulations.

ACTIVE SANITARY LANDFILLS		
Barstow Sanitary Landfill	Mid Valley Sanitary Landfill	Victorville Sanitary Landfill
Landers Sanitary Landfill	San Timoteo Sanitary Landfill	

TRANSFER STATIONS		
Baker Transfer Station	Newberry Springs Transfer Station	Twenty-Nine Palms Transfer Station
Big Bear Transfer Station	Sheep Creek Transfer Station (Phelan)	
Camp Rock Transfer Station (Lucerne Valley)	Trails End Transfer Station (Morongo)	
Heaps Peak Transfer Station	Trona – Argus Transfer Station	

INACTIVE OR CLOSED LANDFILLS		
Apple Valley	Lucerne Valley	Trona-Argus
Baker	Milliken	Twenty-Nine Palms
Big Bear	Morongo	Yermo
Cajon	Needles	Yucaipa
Hesperia	Newberry Springs	Colton
Lenwood-Hinkley	Phelan	

DISPOSAL SITES (PRE-SUBTITLE D REGULATIONS)		
Cedar Springs	Heaps Peak	Parker Dam
Cooley Ranch	Joshua Tree	Plunge Creek
Crestline	Mill Creek	Wrightwood
Crestmore	Oak Glen	
Daggett	Etiwanda	

The County is regulated by numerous agencies including the following: California Regional Water Quality Control Board (the Lahontan Region, Santa Ana Region, and Colorado River Basin Region), CalRecycle (formally the California Integrated Waste Management Board), the local enforcement agency, and two Air Quality Management Districts (South Coast and Mohave Desert). In addition,



County operations and capital projects often require negotiations with other federal, state, and local agencies such as, U.S. Fish and Wildlife Services, Army Corp of Engineers, California Department of Transportation, County Land Use Services, and cities located in the County. During the day to day operations of the County's waste disposal system, there is often a need to quickly respond to many of the aforementioned agencies' orders, directives, comments or concerns. In order to support the County's interaction with these agencies, the County is seeking Consultants to provide General Engineering Services, on an as needed basis. The County may also require services that may not be specific to, or limited to, the sites listed above.

As-Needed General Engineering services will be provided to the County through the issuance of Task Orders. Each Task Order will be initiated with the determination of a scope of work by the County. This Scope of Work will be distributed to each of the contracted Consultant(s). Should the Consultant desire to perform the work, the Consultant will provide any additional information relevant to their ability to perform the requested scope, schedule to complete the work, and a cost estimate. The County may require the cost estimate be in the form of a "lump sum" cost, or a "time and materials" cost (utilizing Consultant contract labor rates). If the County does not specify the compensation structure, the Consultant may choose the structure of preference. The County will review the submitted information and cost, and, at its sole discretion, select a Consultant to perform the work. Upon agreement with the Consultant, a Task Order will be prepared that will include, at a minimum, the summary of the approach to the County identified scope of work and the cost estimate. The Task Order will be reviewed and written approval provided by the County prior to work activities commencing.

The County shall make available to the Consultant all pertinent data that is in the County's possession in the manner and format the County deems most beneficial, and in the condition it exists.

The County reserves the right to negotiate for a reasonable cost to perform each scope of work prior to issuance of a Task Order.

The Consultant shall be required to work successfully with County staff as a project team.

## **B. ON-CALL GENERAL ENGINEERING SERVICES**

The Consultant will be required to provide General Engineering Services for SWMD on an as-needed basis. The Consultant will be required to provide professional advice and consultation in a timely manner.

The Services sought include, but are not limited to, the following:

### **TASK 1.0: General Engineering Services**

Under this Task, the Consultant will be required to perform investigations, studies, testing and analysis for the development of landfill waste disposal infrastructure. This Task includes, but is not limited to, the following:

- Perform third party reviews.
- Develop and implement training programs.
- Perform value engineering analysis.
- Prepare conceptual, preliminary and/or permit level engineering plans.
- Prepare construction plans, specifications and cost estimates.
- Prepare technical work plans for regulatory approval.
- Perform modeling and analysis.
- Prepare and maintain data management systems.
- Perform constructability/bid-ability reviews.
- Provide technical support.
- Perform survey support.

- Perform environmental site assessments for real estate transaction.
- Perform biological, archeological and paleontological services in support of improvement projects or planning studies.
- Perform/Review financial analysis studies related with the adequacy of insurance compliance, operator liability compliance, site closure financial assurances, and other financial and administrative items.
- Prepare bid documents.
- Perform system wide planning studies for disposal and/or waste handling and processing.
- Prepare construction quality assurance/quality control plans.
- Prepare and review property legal descriptions.
- Update and prepare property maps showing the active landfill, boundary changes, and easements.
- Perform forensic engineering and analysis.
- Perform real estate related services that may include initial site investigation and assessments, suitability of property for use as mitigation or conservation, valuation of property, preparation of easement language, etc.
- Perform other General Engineering Services as requested by SWMD.

#### **TASK 2.0: Solid Waste Services**

Under this Task the Vendor shall provide environmental analysis and technical support to SWMD. In addition, the Vendor shall prepare documentation in connection with project development and permit processing. This Task includes, but is not limited to, the following:

- Perform groundwater, vadose zone and/or surface water sampling, design analysis, data management, and prepare reports.
- Prepare or review corrective action plans and/or reports.
- Perform statistical evaluations of monitoring data.
- Perform alternative liner and cover design and analysis.
- Perform leachate management system design and analysis.
- Perform landfill gas management system design and operation analysis.
- Perform liner, cover, and subsurface barrier design and analysis.
- Prepare operations, emergency response, health and safety plans.
- Assist with regulatory liaison including public presentations.
- Review and update closure, post-closure and reasonably foreseeable release cost estimates.
- Perform site and facility audit and environmental assessments.
- Perform National Pollutant Discharge Elimination Systems (NPDES) services including preparation of Storm Water Pollution Prevention Plans (SWPPP) and evaluation of Best Management Practices.
- Process California Environmental Quality Act (CEQA) documents including preparation, biological, cultural, traffic and other special studies.
- Perform landfill flare source testing and prepare reports.
- Provide transfer station design, annual inspection/survey (station floor), and operations support.
- Provide support services related to any solid waste handling process and/ or facility as directed by SWMD.
- Review and update Partnership Strategy Implementation Plan.

- Consult on federal and state regulations regarding solid waste, environmental, and other issues.
- Assist with Findings of Conformance.
- Prepare or review applications to amend, revise and update Solid Waste Facility Permits.
- Prepare regulatory compliance documentation including, but not limited to, Reports of Disposal Site Information, Reports of Waste Discharge, Joint Technical Documents, Periodic Site Reviews, Closure and Post-Closure Maintenance Plans, Conditional Use Permits, Subtitle D Documentation
- Perform landfill fill sequencing and liner phasing evaluations.
- Assist in regulatory agency and public presentations in support of anticipated capital improvement projects.
- Install and/or maintain site and weather monitoring equipment.
- Provide post-closure maintenance monitoring, re-use evaluations, and inspections.
- Prepare or review site Master Development Plans including sequencing phases, preparation/update of phased development plans, fill plans, master excavation, final grading plans, preparation of phased drainage and landfill gas management plans, planning related to the development of landfill entrance facilities and other waste disposal infrastructure.
- Perform engineering design, engineering support, construction management and construction quality assurance services.
- Perform other solid waste services as requested by SWMD.

**TASK 3.0: Civil/ Architectural/ Electrical/ Mechanical Engineering Services**

Under this Task the Vendor shall provide civil, architectural, electrical and mechanical design/analysis for the following services as directed by SWMD. This task includes, but is not limited to, the following:

- Perform subsurface and surface drainage system design and analysis.
- Perform hydraulic and hydrologic design and analysis.
- Perform road, bridge, and parking design and analysis.
- Perform methane barrier design and analysis.
- Perform grading design and analysis.
- Perform and/or review erosion and sediment control designs and analyses.
- Prepare and update SWPPP and provide support for NPDES compliance activities.
- Review site operational and/or construction activities for conformance to SWPPP and Best Management Practices.
- Perform landscaping and irrigation design.
- Perform structural design and analysis.
- Perform electrical design and analysis.
- Perform mechanical design and analysis.
- Perform architectural designs.
- Perform civil design and analysis.
- Prepare volume and quantity estimates.
- Perform maintenance facility design and analysis.
- Perform foundation design and analysis.
- Prepare associated plans, specifications and cost estimate in support of civil, architectural, electrical, and mechanical engineering conducted for all services above including any other items/aspects for the County.

- Perform other Civil/Architectural/Electrical/Mechanical Engineering Services as requested by SWMD.

#### **TASK 4.0: Construction Support Services**

Under this Task the Vendor shall provide the following services as directed by SWMD. This task includes, but is not limited to, the following:

- Provide construction quality assurance/quality control services.
- Provide construction support services that may include design peer review, oversight of construction activities, etc.
- Analyze construction claims and change orders.
- Provide construction technical/engineering support.
- Provide bid period support services, including preparing addenda and perform a bid analysis.
- Prepare responses to Request for Information.
- Review contractor bids and documentation.
- Provide support with building and grading permits.
- Prepare a final construction certification report to document construction activities.
- Perform other Construction Support Services as requested by SWMD.

#### **TASK 5.0: Project Management Services**

Under this Task the Vendor shall provide project management services. This task includes, but is not limited to, the following:

- Prepare monthly progress reports and invoices.
- Prepare meeting minutes.
- Participate in SWMD coordination/review project meetings.
- Review staffing requirements.
- Prepare project schedules.
- Coordinate and manage technical staff.
- Perform other Project Management Services as requested by SWMD.

#### **TASK 6.0: Miscellaneous Services**

Under this Task the Vendor shall provide miscellaneous civil, geotechnical, mechanical and electrical engineering, geological services and other solid waste related engineering services as required. This task includes, but is not limited to, the following:

- Provide litigation support that may include investigation of conditions, provide expert opinion, prepare white paper(s), prepare presentations, etc.
- Coordinate with other A/E firms.
- Perform unanticipated landfill support services.
- Prepare correspondence and reports to regulatory agencies.
- Assess potential hazardous materials of properties owned or being considered for acquisition by the SWMD.
- Perform other miscellaneous services as requested by SWMD.

Standard Contract  
EXHIBIT 2

COST PROPOSAL

# SCHEDULE OF FEES

## PROFESSIONAL STAFF

Principal Engineer	\$200 /Hr.
Geotechnical Engineer	\$200 /Hr.
Principal Land Surveyor	\$200 /Hr.
Engineering Geologist	\$200 /Hr.
Associate Engineer	\$180 /Hr.
Project Manager	\$158 /Hr.

## ADMINISTRATIVE AND TECHNICAL STAFF

Qualified SWPPP Developer (QSD)	\$180 /Hr.
Qualified SWPPP Practitioner (QSP)	\$147 /Hr.
Laboratory Manager	\$158 /Hr.
Quality Control Manager	\$147 /Hr.
Senior Designer	\$147 /Hr.
Designer	\$120 /Hr.
Project Coordinator	\$120 /Hr.
Administrative Assistant	\$105 /Hr.
Laboratory Technician	\$100 /Hr.
Dispatcher	\$80 /Hr.

## FIELD STAFF STANDARD RATE

One-Man Survey Crew	\$205 /Hr.
Two-Man Survey Crew	\$275 /Hr.
Special Inspector / Materials Technician	\$100 /Hr.
Non-Destructive Testing Technician (NDT)	By Quotation
Core Drilling	\$280 /Hr.

## FIELD STAFF PREVAILING RATE

One-Man Survey Crew	\$240 /Hr.
Two-Man Survey Crew	\$425 /Hr.
Special Inspector / Materials Technician	\$140 /Hr.
Non-Destructive Testing Technician (NDT)	By Quotation
Core Drilling	\$330 /Hr.

**ADDITIONAL SERVICES**

Mileage (Where Applicable)	\$0.75 /Mi.
Materials Sample Transport	\$92 /Hr.
Travel (Where Applicable)	See Terms
Per Diem	By Quotation
Permit Application Fees	By Quotation
Miscellaneous Equipment	By Quotation
Geotechnical Investigation	By Quotation
Geologic Hazards Report	By Quotation
Phase I / II Environmental	By Quotation
Percolation Test and Report	By Quotation
Infiltration Test and Report	By Quotation
Quality Control Plan	By Quotation
On Site / Mobile Laboratory	By Quotation
Certified Payroll	See Terms
Sub-Contract Services	Cost +20%

# Terms and Conditions

## ADDITIONAL SERVICES

Provided above are typical costs and services most frequently conducted by Merrell Johnson Engineering, Inc. and Merrell Engineering Company, Inc. Costs and services not listed may be provided upon request, as well as special quotations for volume projects.

## ADVANCE NOTICE AND CANCELLATION

Land Surveying and Construction Staking services require a minimum of seventy-two hours advanced notice for scheduling personnel to report to the project site. Materials Testing and Special Inspection Services require twenty-four hours advanced notice for scheduling personnel to report to the project site. This advance notice is greatly appreciated and will provide assistance in avoiding schedule conflicts, as well as allow us to better accommodate your project. Cancellations must be made by 4:00 pm the day preceding scheduled services, or a minimum charge may be incurred at the applicable rate.

## MINIMUM CHARGES

Unless otherwise noted, a four-hour minimum charge will be incurred for all field services. A six-hour minimum charge will be incurred for all field services in excess of four-hours. An eight-hour minimum charge will be incurred for all field services in excess of six-hours. Field services in excess of eight-hours will continue to accrue in one-hour intervals at the applicable rate.

## OVER TIME

Services conducted more than eight-hours per day Monday – Friday, conducted outside of normal business hours of 7:00 am - 4:00 pm, or conducted during the first twelve-hours on Saturday will incur a charge at time and one-half the applicable rate.

## DOUBLE TIME

Services conducted in excess of twelve-hours per day Monday – Saturday or conducted on Sunday will incur charges at double the applicable rate. Services conducted on the following holidays will incur a charge at double the applicable rate. New Year's Day, Martin Luther King Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and the day after, Christmas Day.



## **TRAVEL TIME**

For materials testing and special inspection services travel time fees (if applicable) will be provided by quotation. For surveying services, travel time is invoiced at the applicable field rate up to 8 hours per day, and at one-half the applicable rate for time in excess of 8 hours per day, on-site.

## **PER DIEM**

On remote projects, subsistence, when not furnished by the client, may be charged by quotation.

## **RUSH REPORTING**

Unit rates provided do not include rush or urgent testing / inspection or reporting. Standard reporting time may vary depending on project conditions and workload. Rush or urgent testing/inspection or reporting may be provided at additional cost by quotation. The client is advised to express desired scheduling and reporting timelines so that preparation and applicable expenses may be accounted for prior to the commencement of work.

## **SAMPLE DISPOSAL**

Materials samples may be disposed of at the discretion of Merrell Johnson 30 days after submission of test reports unless a prior request is made.

## **INVOICING**

Invoices will be issued on a periodic basis. The net cash amount is payable on receipt of the invoice. The unpaid balance will be subject to a maximum finance charge of 7% per annum if not paid within 30 days of the invoice date. Unless noted otherwise, fees include standard invoicing with time detail. Invoicing backup (timesheets, daily field reports or test reports) may be included at an additional cost upon request.

## **CERTIFIED PAYROLL**

Certified payroll for prevailing wage projects will be provided only if requested at the start of the project. An additional hour of administrative time will be charged for each pay period.

Standard Contract  
EXHIBIT 3

INVOICE SUMMARY

Company Name/Letterhead  
Remit to Address  
City, State, Zip Code

**SAMPLE**

**Date**

San Bernardino County  
Department of Public Works  
Solid Waste Management Division  
222 W. Hospitality Lane, 2<sup>nd</sup> Floor

**Invoice #** \_\_\_\_\_

**San Bernardino, CA 92415-0017**

**Attention: Fiscal Section**

Project Title: "Anytown" Landfill-Expansion

Description of the Project: Conceptual Design and Permitting for the Expansion Area

**Contract #:** 00-000

**INVOICE SUMMARY**

Site Location	Task #	Scope of Work	Amount	Less	Net Amount
"Anytown"	100	Design Parameters	\$	(\$ )	\$
"Anytown"	200	Geotechnical Analysis	\$	(\$ )	\$
"Anytown"	500	CEQA Support/Public Relations	\$	(\$ )	\$
"Anytown"	900	Meetings/Project Coordination/Admin			
		Total Current Charges	\$ (\$ )		
		Total Charges Due	\$		

Submitted by: \_\_\_\_\_  
(Name) (Title)

\_\_\_\_\_  
(Telephone)

**Note: ALL terminology should be consistent with language used in the contract.**

# Standard Contract

## Exhibit 4

### PREVAILING WAGE REQUIREMENTS

**A. All or a portion of the Scope of Work in the Contract requires the payment of prevailing wages and compliance with the following requirements:**

**1. Determination of Prevailing Rates:**

Pursuant to Labor Code sections 1770, et seq., the County has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Scope of Work is to be performed. Copies of said rates are on file with the County, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Scope of Work, and are also available online at [www.dir.ca.gov](http://www.dir.ca.gov). The wage rate for any classification not listed, but which may be required to execute the Scope of Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

**2. Payment of Prevailing Rates**

Each worker of the Contractor, or any subcontractor, engaged in the Scope of Work, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

**3. Prevailing Rate Penalty**

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Scope of Work. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

**4. Ineligible Contractors:**

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the County. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Scope of Work.

**5. Payroll Records:**

a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the

requirements of the California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
  - ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement of the DIR;
  - iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;
  - iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
  - v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.
- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

**6. Limits on Hours of Work:**

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

**7. Penalty for Excess Hours:**

The Contractor shall pay to the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Scope of Work by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

**8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:**

- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:

- i. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from these requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
  - ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.
  - iii. This project is subject to compliance monitoring and enforcement by the DIR.
  - iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
  - v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all public works projects.
    - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
    - 2) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
    - 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
  - vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.
- b. Labor Code section 1725.5 states the following:

“A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, “contractor” includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final

judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

c. Labor Code section 1771.1 states the following:

“(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works



contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

d. Labor Code section 1771.4 states the following:

"a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

- (1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- (2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.
- (3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:
  - (A) At least monthly or more frequently if specified in the contract with the awarding body.
  - (B) In a format prescribed by the Labor Commissioner.
- (4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.
- (5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.
  - (b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:
    - (1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.
    - (2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.
  - (c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.
  - (d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.”

## **B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS**

### **1. State Public Works Apprenticeship Requirements:**

- a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.
- b. Any apprentices employed to perform any of the Scope of Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

### **2. Compliance with California Labor Code section 1777.5 requires all public works contractors to:**

- a. Submit Contract Award Information (DAS-140):

- i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
  - ii. The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—*it is not a request for the dispatch of an apprentice.*
  - iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
  - iv. Contractors who are already approved to train apprentices (i.e. check “Box 1” on the DAS-140) shall only be required to submit the form to their approved program.
  - v. Contractors who are NOT approved to train apprentices (i.e. those that check either “Box 2” or “Box 3” on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.
- b. Employ Registered Apprentices
- i. Labor Code section 1777.5 requires that a contractor performing work in an “apprenticeable” craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor’s completion of work on the project. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
  - ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
  - iii. Contractors may use the “DAS-142” form for making a request for the dispatch of an apprentice.
  - iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
  - v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
  - vi. Only “registered” apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. Make Training Fund Contributions
- i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
  - ii. Contractors may use the “CAC-2” form for submittal of their training fund contributions.
  - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
  - iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
  - v. The “training” contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

### **3. Exemptions to Apprenticeship Requirements:**

- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
  - i. When the Contractor holds a sole proprietor license (“Owner-Operator”) and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
  - ii. Contractors performing in non-apprenticeable crafts. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
  - iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
  - iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
  - v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

**4. Exemption from Apprenticeship Ratios:**

- a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
  - i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
  - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
  - iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
  - iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

**5. Contractor's Compliance:**

- a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.



# ATTACHMENT A

## Campaign Contribution Disclosure (SB 1439)

### DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

**Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.**

1. Name of Contractor: \_\_\_\_\_

2. Is the entity listed in Question No. 1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?

Yes  If yes, skip Question Nos. 3-4 and go to Question No. 5      No

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: \_\_\_\_\_

4. If the entity identified in Question No. 1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):

\_\_\_\_\_

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and//or Agent(s):

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name

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9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No  If **no**, please skip Question No. 10.

Yes  If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: \_\_\_\_\_

Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Contract, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while award of this Contract is being considered and for 12 months after a final decision by the County.