

# DESIGN-BUILD AGREEMENT

FOR

PROJECT NO. 10.10.0181

VALLEY COMMUNICATIONS CENTER

DATED: June 13, 2023



SAN BERNARDINO COUNTY  
PROJECT AND FACILITIES MANAGEMENT DEPARTMENT  
385 NORTH ARROWHEAD AVENUE, THIRD FLOOR  
SAN BERNARDINO, CA 92415-0184  
<https://pfm.sbcounty.gov/>

## DESIGN-BUILD AGREEMENT

This Design-Build Agreement ("Agreement") is made effective this 13 day of June, 2023 ("Agreement Date") by and between the SAN BERNARDINO COUNTY ("County"), and SWINERTON BUILDERS, a California Corporation ("Design-Builder") for the design, management, and construction of the San Bernardino County Valley Communications Center located at E. Rialto Road and S. Lena Road in the City of San Bernardino, CA, ("Project").

### ARTICLE I CONTRACT DOCUMENTS AND INTERPRETATION

#### 1.1 DEFINITIONS

The meanings of all capitalized terms used in the Contract Documents and not otherwise defined herein are contained in the General Conditions. If not defined in the General Conditions, they shall have the meanings assigned to them elsewhere in the Contract Documents. If not defined in the General Conditions or elsewhere, they shall have the meanings reasonably understood to apply to them by the context of the portion of the Contract Documents where such terms are used.

#### 1.2 CONTRACT DOCUMENTS

The "Contract Documents" except for modifications issued after execution of this Agreement, consist of the following documents, all of which are either attached hereto as exhibits or are incorporated herein by this reference:

##### 1.2.1 This Agreement, including all Exhibits and attachments:

- a. Exhibit A – Site Legal Description
- b. Exhibit B – Scope of Work and Index of Criteria Documents
- c. Exhibit C – Performance Bond
- d. Exhibit D – Labor and Material Bond
- e. Exhibit E – Design-Builder's Project Representation and Key Personnel
- f. Exhibit F – Construction Schedule
- g. Exhibit G – American Rescue Plan Act (ARPA) Coronavirus Local Fiscal Recovery Fund (CLFRF) Federal Guidelines Use of ARPA CLFRF and Requirements
- h. Exhibit H – Political Contributions Report

1.2.2 RFP Documents, Design-Builder Proposal, Best and Final Offer. The RFP Documents, the Design-Builder Proposal (if no Best and Final Offers have been submitted) or (if Best and Final Offers have been submitted) the Design-Builder's last submitted Best and Final Offer (including, in the case of a Best and Final Offer that is an amendment to a Design-Builder Proposal, any portion of the Design-Builder's Proposal expressly stated to be a part of the Design-Builder's Best and Final Offer); provided, however, that, with the exception of Approved Deviations, the Contract Documents shall not include any portion of the Design-Builder Proposal or a Best and Final Offer that deviates from the Project criteria.

### 1.2.3 General Conditions

### 1.2.4 Supplemental and Special Conditions. The following Supplemental and Special Conditions:

Document	Title	Pages
RFP Exhibit C	Special Conditions	12

1.2.5 Final Construction Documents. The Final Construction Drawings to be hereafter prepared by the Design-Builder and its Subconsultants that are approved by the County in accordance with the terms of the Contract Documents; provided, however, that, in the exception of Approved Deviations, the Contract Documents shall not include any portion of the Design-Builder Proposal or a Best and Final Offer that deviates from the Project criteria.

### 1.2.6 Addenda. The following Addenda listed below:

Number	Title	Pages
01	RFP Addendum No. 1	5 plus listed attachments

### 1.2.7 Project Safety Program

## 1.3 REFERENCE DOCUMENTS

The following Reference Documents are not considered Contract Documents and were provided to the Design-Builder for informational purposes. Design-Builder may rely upon the technical data contained in such documents:

### 1.3.1 N/A

Design-Builder has the right to rely on Contract Documents.

## 1.4 ENTIRE AGREEMENT

The Contract Documents represent the entire and integrated agreement between County and Design-Builder, all other representations or statements, whether verbal or written, are merged herein. The Design-Build Contract may be amended only by written modification.

## ARTICLE II THE WORK

### 2.1 SCOPE OF WORK

Design-Builder shall provide, furnish, and perform all necessary planning, architectural, engineering, and all other design services of any type, procurement, permitting and support services, construction, landscaping, clean-up, and all other construction services of any type, provide and furnish all necessary supplies, materials and equipment (except those to be provided by County, if any) and all necessary supervision, labor, and services required for the complete engineering, design, procurement, quality assurance, construction and all necessary installation, start-up and testing required for a complete, operational, and fully functional Project, as further described in Design-Builder's Best and Final Proposal (hereinafter, the all-inclusive obligations of the Design-Builder set forth in this sentence shall be referred to as the "Work"). Except with regard to any material to be provided and/or installed by County, Design-Builder shall fully commission and turn over a complete operational, and fully functional Project to County. Without limiting the generality of this Section, Design-Builder shall provide the following work and services:

#### 2.1.1 Design-Builder shall prepare complete designs, engineering, working drawings, shop drawings and

generate drawings and/or engineering analysis setting forth in detail the specifications and requirements for the purchasing and procurement of the services, materials and equipment and for the construction of the complete, operational, and fully functional Project, and shall furnish the services of all necessary supervisors, engineers, designers, draftsmen, and other personnel necessary for preparation of those drawings and specifications required for the Work, including the pertinent information for natural gas, water supply, and any other utilities, as required.

2.1.2 Design-Builder shall provide, install and complete as specified and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction, start-up and testing, utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the complete, operational, and fully functional Project, including the permanent interconnection for electricity, natural gas, water supply, and any other utilities and demonstration of fully satisfactory operation of all systems and equipment.

2.1.3 Design-Builder shall supervise and direct the Work, and shall furnish the services of all supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to design and construct the complete, operational, and fully functional Project. Design-Builder shall provide, manage and organize such personnel as necessary to complete the Work in accordance with all requirements of the Contract Documents.

2.1.4 Design-Builder shall obtain, at Design-Builder's expense, all governmental and private approvals, licenses, and permits required to complete the Work; provided, however, County will be responsible for paying the cost of all County imposed fees. Design-Builder shall design and construct complete, operational, and fully functional Project in full compliance with all applicable laws, codes and standards (both public and private), including but not limited to, the standards included and warranties expressed in the Contract Documents and manufacturer's recommendations pertaining to individual items of equipment or systems.

## 2.2 STANDARD OF PERFORMANCE

In addition to and without limiting Design-Builder's other obligations under the Contract Documents, Design-Builder shall at all times in its performance of its obligations under the Contract Documents conform to the following general standards of performance:

2.2.1 Comply with the requirements of the Contract Documents;

2.2.2 Comply with Applicable Laws.

2.2.3 Conform to the standard of care applicable to those who provide design-build project services and construction of the type called for by this Design-Build Contract for projects of a scope and complexity that is comparable to the Project;

2.2.4 Furnish efficient business administration of the Work, utilizing sufficient senior level management and other qualified personnel to manage the Work; and

2.2.5 Apply its best and highest skill and attention to completing the Work in an expeditious and economical manner, consistent with the expressed best interests of the County and within the limitations of the Contract Sum and Contract Time.

## 2.3 AMERICAN RESCUE PLAN ACT

The services provided under this Agreement will be subject to the ARPA CLFRF Requirements as set forth in Exhibit G to this Agreement. The Design Builder is required to comply with all requirements set forth in Exhibit G. The County will also be required to comply with reporting requirements issued by the Federal Authorities and in turn requires Consultant to cooperate with County to meet these reporting requirements. Areas of reporting will include but not be limited to labor compliance, project status and any issue set forth

in the ARPA CLFRF Exhibit G. Design-Builder shall respond to the County's request for information to meet reporting requirements within five (5) business days. Consultant's obligation to comply with ARPA CLFRF Exhibit G, shall survive termination of this Agreement. To the extent that ARPA CLFRF Exhibit G conflicts with any other provision of this Agreement, ARPA CLFRF Exhibit G shall prevail.

### ARTICLE III TIME FOR PERFORMANCE

#### 3.1 CONTRACT TIME

The Date of Commencement of the Work shall be fixed in a Notice to Proceed issued by the County. If County's issuance of a Notice to Proceed is delayed due to Design-Builder's failure to return a fully-executed Agreement, insurance documents or bonds within fourteen (14) calendar days after the date of award of the Contract, one (1) calendar day will be deducted from the number of days to achieve Substantial Completion of the Work for every day of delay in County's receipt of such documents. This right is in addition to and does not affect County's right to demand forfeiture of Design-Builder's bid Security, or any other rights or remedies available to County if Design-Builder persistently delays in providing the required documentation. Design-Builder agrees to promptly commence the Work after the Notice to Proceed is issued by the County, to achieve Substantial Completion of the entire Work within eight hundred fifty-two (852) calendar days after the Date of Commencement ("Contract Time") and to achieve Final Completion of the Work within the time fixed by the County in the Certificate of Substantial Completion. The Contract Time may be extended only with the written authorization of the County.

#### 3.2 LIQUIDATED DAMAGES

3.2.1 County and Design-Builder recognize that time is of the essence of this Agreement and that the County may suffer financial loss in the form of lost grant funds, additional contract administration expenses, loss of public use if the Work is not completed within the Contract Time, including any extensions thereof allowed in accordance with the Contract Documents.

3.2.2 Design-Builder and County agree to liquidate damages with respect to Design-Builder's failure to achieve Substantial Completion of the Work within the Contract Time. The Parties intend for the liquidated damages set forth herein to apply to this Contract as set forth in Government Code Section 53069.85. Design-Builder acknowledges and agrees that the liquidated damages are intended to compensate County solely for Design-Builder's failure to meet the deadline for Substantial Completion and shall not excuse Design-Builder from liability from any other breach, including any failure of the Work to conform to the requirements of the Contract Documents.

3.2.3 In the event that Design-Builder fails to achieve Substantial Completion of the Work within the Contract Time, Design-Builder agrees to pay County \$1,000 per day for each calendar day that Substantial Completion is delayed.

3.2.4 It is further mutually agreed that County shall have the right to deduct liquidated damages against progress payments or retainage and that the County will issue a unilateral Construction Change Directive and reduce the Contract Sum accordingly. In the event the remaining unpaid Contract Sum is insufficient to cover the full amount of liquidated damages, Design-Builder shall pay the difference to County.

3.2.5 Design-Builder acknowledges that the foregoing liquidated damages have been set based on an evaluation by County of damages that it will incur in the event of the late completion of the Work. Design-Builder and County agree that because of the nature of the Project it would be impractical or extremely difficult to fix the amount of actual damages incurred by the County due to a delay in completion of the Work. Accordingly, the County and Design-Builder have agreed to such liquidated damages to fix Design-Builder's costs and to avoid later disputes. It is understood and agreed by Design-Builder that any liquidated damages payable pursuant to this Agreement are not a penalty and that such amounts are not manifestly unreasonable under the circumstances existing

as of the effective date of this Agreement

## ARTICLE IV CONTRACT SUM

### 4.1 CONTRACT SUM

4.1.1 Total Compensation. County shall pay the Design-Builder in current funds for the Design-Builder's complete performance of the Work in accordance with the Contract Documents the Contract Sum of Ninety-Eight Million Forty-One Thousand One Hundred Nineteen Dollars (\$98,041,119.00).

4.1.2 Design Fee. The Contract Sum includes a Design Fee of Six Million Six Thousand Three Hundred Seventy-Five Dollars (\$6,006,375.00). The sole purpose of the Design Fee is to determine: (1) the compensation County is obligated to pay to Design-Builder under Article 13 of the General Conditions in the event the Design-Build Contract is terminated, by either the County or Design-Builder, for cause or convenience, prior to commencement of any physical construction at the Site; and (2) the amount that the Design-Builder is entitled pursuant to Paragraph 9.3 of the General Conditions to include in its Applications for Payment seeking progress payments for the design and non-design portions of the Work.

4.1.3 All-Inclusive Price. The Contract Sum is the total amount payable by County to Design-Builder for performance of the Work under the Contract Documents and is deemed to cover all costs arising out of or related to the performance of the Work, including, without limitation, the effects of natural elements upon the Work, unforeseen difficulties or obstructions affecting the performance of the Work (including, without limitation, unforeseen conditions at the Site that do not constitute Differing Site Conditions) and fluctuations in market conditions and price escalations (whether occurring locally, nationally or internationally) from any cause, including, without limitation, causes beyond the control or foreseeability of the Design-Builder.

### 4.2 ALTERNATES

The Contract Sum is based upon the following Alternates described in the RFP Documents, which are hereby accepted by the County:

Number	Description	Dollar Amount
01	700 kVA Photovoltaic System	\$3,258,356.00

### 4.3 UNIT PRICES

The following unit prices are agreed to by the Design-Builder and County:

Description	Measurement Unit	Dollar Amount
n/a	n/a	n/a

### 4.4 PAYMENT BY ELECTRONIC FUND TRANSFER

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

## ARTICLE V DESIGN-BUILDER'S DUTIES AND RESPONSIBILITIES

### 5.1 GENERAL SCOPE OF WORK

5.1.1 Design-Builder shall furnish all design and other Services, provide all materials and undertake all efforts necessary or appropriate to construct the Project in accordance with the requirements of the Contract Documents, all governmental approvals, the approved Construction Documents, all Applicable Law, and all other applicable safety, environmental and other requirements taking into account the constraints affecting the Project Site. Except as otherwise specifically provided in this Contract, all materials, services and efforts necessary to achieve Substantial Completion of the Project and elements thereof on or before the deadlines provided in the Contract Documents shall be Design-Builder's sole responsibility. The costs of all such materials, services and efforts are included in the Contract Sum.

5.1.2 The scope of Services to be provided by Design-Builder is set forth in the Contract Documents as more particularly described in Exhibit B and the Criteria Documents.

5.1.3 The Design-Builder and all Subcontractors, shall obtain a Business Tax Registration from San Bernardino County Permit Services, (909) 387-8311, prior to commencement of Work.

## 5.2 BEFORE STARTING WORK

Design-Builder shall submit the following to County for review and acceptance within fourteen (14) calendar days after the Date of Commencement fixed in County's Notice to Proceed, and as a condition to payment: (i) detailed Project Schedule including each deadline specified in the Contract Documents; (ii) Schedule of Submittals; (iii) material Procurement Schedule; and (iv) a Schedule of Values in accordance with the requirements of the General Conditions and other Contract Documents.

## 5.3 INITIAL CONFERENCE

Within twenty (20) calendar days after the Date of Commencement fixed in County's Notice to Proceed, a conference attended by County and Design-Builder and others as appropriate will be held to establish a working understanding among the Parties as to the Work and to discuss the design concepts, updating schedules, progress meetings, procedures for handling submittals, processing Application for Payment, maintaining required records, coordination with Design-Builder Team Members, and other Project administration matters.

## 5.4 EVALUATION OF PRELIMINARY SUBMITTALS

At least ten (10) calendar days before submission of the first Application for Payment, a conference attended by Design-Builder, County and others as appropriate, will be held to review for acceptability the submittals required by the Contract Documents. No progress payment shall be made to Design-Builder until the required submittals are acceptable to County. The detailed Project Schedule will be acceptable to County as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Time, but such acceptance will neither impose on County responsibility for the sequencing, scheduling or progress of the Work nor interfere with nor relieve Design-Builder from Design-Builder's full responsibility therefore. The format and structure of the Project Schedule will be set forth in the Contract Documents and approved by County. County's acceptance shall not be deemed to confirm that the schedule is a reasonable plan for performing the Work. Design-Builder's schedule of submittal will be acceptable to County as providing a workable arrangement for reviewing and processing the required submittals.

## 5.5 DESIGN PROFESSIONAL LICENSING REQUIREMENTS

County does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of this Contract, Design-Builder acknowledges that County has no such intent. It is the intent of the Parties that Design-Builder is fully responsible for furnishing the design of the Project, although the fully licensed design firms designated as members of the Design Team, will perform the design services required by the Contract Documents. Nothing in this Article shall create a contractual relationship between such Persons and the County.

## 5.6 STANDARD OF CARE

All design Services performed by Design-Builder, the Design Team Members, Subcontractors, and their employees identified by the Design-Builder or other persons approved by the County shall be performed in an expeditious and professional manner using architects, engineers and other professionals properly licensed and duly qualified in the jurisdiction in which the Project is located. The professional obligations of such persons shall be undertaken and performed in the interest of the Design-Builder. All design Services performed pursuant to this Agreement shall be performed with the degree of skill and learning ordinarily possessed by architects and engineers in good standing in the community regularly engaged in the design and construction of an improvement such as this Project and must apply that knowledge with the diligence ordinarily exercised by reputable architects and engineers under similar circumstances ("Standard of Care").

## 5.7 CONSTRUCTABILITY AND COORDINATION REVIEWS

On at least a monthly basis or such other intervals identified in the Contract Documents, Design-Builder shall meet with the County, its Separate Contractors, and consultants to coordinate the Construction Documents, including the design of building systems delegated to the Design-Builder, for the purpose of continuing construction feasibility, identifying conflicts, missing information or gaps in the planned scope of Work and to take appropriate action to ensure the full scope of intended Work is performed efficiently and economically.

## 5.8 DESIGN DEVELOPMENT DOCUMENTS – PHASE 1

Reserved. For required Project Design Services related to Construction Document Development, please see paragraph 5.9 of this Agreement. Not Used

## 5.9 CONSTRUCTION DOCUMENTS – PHASE 2

After County's issuance of the Notice to Proceed and within the times set forth in the Project Schedule accepted by County, Design-Builder shall

5.9.1 On the basis of the Bridging Documents, prepare final Construction Documents showing the scope, extent, and character of the construction to be performed and furnished by Design-Builder including technical drawings, schedules, diagrams, calculations, and specifications (which, unless otherwise approved by County, will be prepared, where appropriate, in general conformance with the Construction Specifications Institute) setting forth the requirements for construction of the Work which shall provide information customarily necessary for the use of those in building trades.

5.9.2 Provide technical criteria, written descriptions and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist County in consultations with appropriate authorities.

5.9.3 Furnish the above documents, drawings, calculations and specifications to and review them with County for approval within the time indicated in the approved Project Schedule at increments of at least 50% and 100% completion of the Construction Documents. After County's approval of the final Construction Documents, said documents shall be deemed to be incorporated as Contract Documents. Design-Builder shall not proceed with the construction phase unless and until it receives County's written approval of the Construction Documents or portions thereof.

5.9.4 Design-Builder shall submit to County Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and County shall review and approve, the



Construction Documents in accordance with the procedures set forth herein. Design-Builder shall proceed with construction in accordance with the approved Contract Documents and shall submit one set of approved Construction Documents by County prior to commencement of construction.

5.9.5 The Design-Builder shall prepare Construction Documents for the entire Project in full compliance with all applicable building codes, ordinances, and other regulatory authorities. The Construction Documents shall at a minimum comply with all applicable California State Building Codes to include, but not limited to, Title 8 (Industrial Relations) Title 17 (Public Health), and Title 24 (Building Standards). The completed Construction Documents are to be delivered to the County and shall consist of the following: (1) Drawings—Provide one reproducible original and ten (10) printed copies of all approved Construction Document drawings. Provide one copy of all approved Construction Document drawings on compact disks (CD) using Computer-Aided Design (CAD) software, using the latest version of AutoCAD; and (2) Specifications – Provide an original and ten (10) printed copies of approved specifications, bound and organized. Provide approved specifications on compact disks for all sections for all work applicable to the Project in a format complying with the current edition of the Construction Specifications Institute's "Master Format", as directed by the County in accordance with the following:

- a. Electronic computer software in Microsoft Word, latest version for Windows.
- b. For articles, materials and equipment identified by brand names, at least two names shall be used, and such names shall be followed by the words "or equal." Specifications shall not contain restrictions that will limit competitive bids. Exceptions shall only be permitted by California Public Contract Code Section 3400.
- c. All disks produced shall be clearly labeled to indicate files contained and date produced.

5.9.6 County's review and approval of interim design submissions and the Contract Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither County's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to County.

## 5.10 CONSTRUCTION – PHASE 3

Design-Builder shall perform Construction Phase Series in accordance with the requirements of the General Conditions.

5.10.1 Construction Services shall be performed by Design-Builder and/or by qualified and licensed Design-Builder, Subcontractors and suppliers who are selected, paid and acting in the interest of the Design-Builder in accordance with the procedures outlined in the Contract Documents.

5.10.2 The Design-Builder shall keep the County informed of the progress and quality of the Work in the form of periodic written reports, as determined by the County but no less than monthly.

5.10.3 As a condition to final payment to Design-Builder, each Design Team Member shall provide written certification that the Work has been constructed in accordance with the Contract Documents and the design provided by such person.

5.10.4 Design-Builder acknowledges that release of any portion of the retention withheld by County will not occur until, at a minimum, thirty-five (35) days following the County's filing of the Notice of Completion. Release of any retention is subject to the requirements in the General Conditions, including, but not limited to General Conditions Section 9.6, Substantial Completion, and Section 9.8, Final Completion.

## 5.11 SENATE BILL 854 (CHAPTER 28, STATUTES OF 2014) AND SENATE BILL 96 (CHAPTER 28, STATUTES OF 2017) REQUIREMENTS

5.11.1 Design-Builder shall comply with Senate Bill 854 (signed into law on June 20, 2014) and Senate Bill 96 (signed into law on June 27, 2017). The requirements include, but are not limited to, the following:

a. No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code Section 1725.5, with limited exceptions from this requirement for bid purposes only as allowed under Labor Code Section 1771.1(a).

b. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code Section 1725.5.

c. This Project is subject to compliance monitoring and enforcement by the DIR.

d. As required by the DIR, Design-Builder is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.

e. Design-Builder and all of its subcontractors at every tier must submit certified payroll records online to the Labor Commissioner for all new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.

(1) The certified payroll must be submitted at least monthly to the Labor Commissioner.

(2) The County reserves the right to require Design-Builder and all subcontractors at every tier 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.

f. 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.

g. Labor Code Section 1771.1(a) states the following: "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."

## 5.12 INSURANCE

Design-Builder agrees to provide the County with Certificates of Insurance evidencing the required insurance coverage at the time Design-Builder executes the contract with the County.

## 5.13 SKILLED AND TRAINED WORKFORCE

The Design-Builder shall comply with all of the requirements of Public Contract Code Section 22164(c). As required by this section Design-Builder agrees that it "and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades." Design-Builder agrees that it and all of its subcontractors at every tier will comply with the requirements of Public Contract Code Section 22164(c) and will provide the County with written evidence that Design-

Builder and all of its subcontractors at every tier are complying with these requirements by the 10<sup>th</sup> day of each month that Work is performed.

#### 5.14 American Rescue Plan Act (ARPA) Coronavirus Local Fiscal Recovery Fund (CLFRF)

The Design Builder shall comply with all of the requirements of ARPA CLRF funding for this Project, including but not limited to Davis-Bacon requirements, as more fully set forth in Exhibit J to the RFP. To the extent that the requirements of Exhibit J conflict with any other provision of the Contract Documents, Exhibit J shall prevail. The Design Builder shall cooperate with the County in meeting ARPA CLFRF reporting requirements as more fully set forth in Section 1.17 of the Special Conditions for this Project. Contractor's obligation to comply with ARPA CLFRF requirements shall survive termination of the Design Build Agreement.

### ARTICLE VI DESIGN-BUILDER'S REPRESENTATIONS AND WARRANTIES

In order to induce County to enter into this Agreement, Design-Builder makes the following representations and warranties:

6.1 Design-Builder has reasonably examined the general nature and extent of the Work, Site, locality, actual observable conditions, as-built conditions if apparent or included in the information identified in Section 1.3 above, and all local and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Design-Builder and safety precautions and programs incident thereto.

6.2 Design-Builder has reasonably examined all reports of exploration and tests of subsurface conditions, as-built drawings, drawings or reports, available for design and construction purposes, of physical conditions, including those which are identified in Paragraph 1.3 hereinabove, or which may be apparent at the Site and accepts the criteria set forth in these documents and the General Conditions to the extent of the information contained in these documents upon which the Design-Builder is entitled to rely.

6.3 After contract award, Design-Builder, will conduct or obtain any additional examinations, investigations, explorations, tests, reports and studies, including but not limited to geotechnical investigations upon which the design will be based, that pertain to the surface and subsurface conditions, as-built conditions, underground facilities and all other physical conditions at or contiguous to the Site as Design-Builder considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

6.4 Design-Builder has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

6.5 Design-Builder has given County prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered before contract award in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by County is acceptable to Design-Builder.

6.6 Design-Builder is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.

6.7 Design-Builder has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Design-Builder.

6.8 Design-Builder confirms its intent to include in the project the following pre-qualified subcontractors, who were listed in the Design-Builder's Statement of Qualifications earlier in this design-build procurement process. Design-Builder acknowledges its responsibility to provide County with a complete and updated list of subcontractors as they become known on the project, and that such listing shall be in accordance with the requirements of California Public Contract Code Section 22166. As required by Public Contract Code Section 22166(b), following the County's approval of the Contract, the Design-Builder shall award construction subcontracts with a value exceeding ½ of 1% of the Contract Sum allocable to construction Work as follows: (1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process used by the County, including a fixed date and time when qualification statements, bids or proposals will be due; (2) Establish reasonable qualification criteria and standards; and (3) Award the subcontract either on a best value basis or to the lowest responsible bidder – this process may include prequalification or short-listing and does not apply to construction subcontractors listed in the Design-Builder's Proposal. All construction subcontractors that were identified in the Proposal and awarded as required under Public Contract Code Section 22166 shall be afforded all the protections of Public Contract Code Section 4100 et seq.

NAME OF SUBCONTRACTOR AND LOCATION OF MILL OR SHOP	DESCRIPTION OF WORK: REFERENCE TO BID ITEMS	SUBCONTRACTOR'S LICENSE NO.	DIR REGISTRATION
CMC Steel Fabricators, Inc. dba CMC REBAR	Concrete Reinforcing	778010	1000000298
Swinerton Builders	CIP Concrete	92	1000000296
Triad Steel Services	Structural Steel	71582	1000007699
The McIntyre Company, A California Partnership	Metal Decking	590332	1000005985
Triad Steel Services	Metal Fabricators	71582	1000007699
Metal-Weld Specialties, Inc.	Metal Railing	652755	1000009644
Anning – Johnson Company	Membrane Roofing	652825	1000000625
Danny Letner, Inc dba Letner Roofing	Flashing and Sheet Metal	689961	1000002763
Swinerton Builders	Doors and Frames	92	1000000296
Elite Glazing Group	Glass Glazing	1019426	1000043734
Swinerton Builders	Metal Stud & Drywall	92	1000000296

NAME OF SUBCONTRACTOR AND LOCATION OF MILL OR SHOP	DESCRIPTION OF WORK: REFERENCE TO BID ITEMS	SUBCONTRACTOR'S LICENSE NO.	DIR REGISTRATION
Clark Pacific	Architectural Precast Panels	690453	1000004366
Swinerton Builders	Specialties	92	1000000296
TK Elevator Corporation	Elevators	651371	1000002104
Pro-craft Construction Inc.	Fire Sprinkler	467234	1000001106
Murray Plumbing and Heating Corporation dba Murray Company	Plumbing	162382	1000008261
Thermalair, Inc.	HVAC	102216	1000008322
Helix Electric, Inc.	Electrical	483309	1000000019
Crew, Inc.	Earthwork	696291	1000000685
Dean Visosky Contractors Inc dba DV Contractors Inc.	Site Concrete	1005771	1000028369
The Bedrock Company	Asphalt Paving	674525	1000024301
Pierre Landscape, Inc.	Landscape and Irrigation	638989	1000009575
Concrete Fence Installers	Precast Fence	1057703	PW-LR-1000712814
Pro-Craft Construction Inc.	Site Utilities	467234	1000001106

## ARTICLE VII MISCELLANEOUS PROVISIONS

### 7.1 INDEPENDENT DESIGN-BUILDER

Design-Builder is, and shall be, acting at all times in the performance of this Agreement as an independent Design- Builder. Design-Builder shall secure at its expense and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for Design-Builder and its officers, agents and employees and all business licenses, if any, in connection with the services to be performed hereunder.

### 7.2 COUNTY EMPLOYEES AND OFFICIALS

Design-Builder shall employ no County official nor any regular County employee in the Work performed

pursuant to this Agreement. No officer or employee of County shall have any financial interest in this Agreement in violation of applicable provisions of law.

Design-Builder agrees to provide or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Design-Builder. 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 with or representation of Design-Builder. For purposes of this provision, "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.

### 7.3 IRAN CONTRACTING ACT OF 2010

(Public Contract Code sections 2200 et seq.)

(Applicable for all Contracts of one million dollars (\$1,000,000) or more)

In accordance with Public Contract Code section 2204(a), the Design-Builder certifies that at the time the Contract is signed, the Design-Builder signing the contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 (<http://www.dgs.ca.gov/pd/Resources/PDLegislation.aspx>) 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.

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

### 7.4 DEBARMENT AND SUSPENSION

The Design-Builder 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 ([www.epls.gov](http://www.epls.gov)). Design-Builder agrees that signing this Contract shall constitute signature of this Certification.

### 7.5 INACCURACIES OR MISREPRESENTATIONS

If during the course of the administration of this agreement, the County determines that the Design-Builder has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Agreement may be immediately terminated. If this Agreement is terminated according to this provision, the County is entitled to pursue any available legal remedies.

### 7.6 NOTICES

Any notices or special instruction required to be given in writing under this Agreement shall be given either by personal delivery to Design-Builder's agent (as designated in Section 1 hereinabove) or to County's

Engineer and County Counsel as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as follows:

**SAN BERNADINO COUNTY**

**SWINERTON BUILDERS**

Project and Facilities Management

Besim Fejvagic

385 N. Arrowhead Avenue

200 N. Main Street

San Bernadino, CA., 92415

Santa Ana, CA., 92701

**7.7 CONTRACTOR'S LICENSE NOTICE**

Contractors are required by law to be licensed and regulated by the Contractors State License Board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California 95826.

**7.8 POLITICAL CONTRIBUTIONS**

Contractor has disclosed to the County using Attachment C, 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 other 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.

**7.9 ELECTRONIC SIGNATURES**

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.

WHEREFORE, this Design-Builder Contract is entered into as of the day and year first written above.

SAN BERNARDINO COUNTY

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

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  
of the San Bernardino County

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

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

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

Name \_\_\_\_\_  
(Print or type name of person signing contract)

Title \_\_\_\_\_  
(Print or Type)

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

Address \_\_\_\_\_  
\_\_\_\_\_

**FOR COUNTY USE ONLY**

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► _____ Katherine Hardy, Deputy County Counsel	► _____ Scott Hughes, Supervising Project Manager	► _____ Don Day, Director – PFMD
Date _____	Date _____	Date _____