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Contract Number

SAP Number

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

District Contract Representative	Noel Castillo
Telephone Number	387-7906
Consultant	San Bernardino County, through its Project and Facilities Management Department
Consultant Representative	Devalkumar Shah
Telephone Number	387-5000
Contract Term	6 months following the Notice of Completion
Original Contract Amount	\$5,710,171
Amendment Amount	
Total Contract Amount	\$5,710,171
Cost Center	7700003100

This MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into this 19th day of November 2024, (Effective Date) by and between the San Bernardino County Flood Control District (DISTRICT) and San Bernardino County, through its Project and Facilities Management Department – Project Management (PFMD). DISTRICT and PFMD are collectively referred herein as "PARTIES" and individually as "PARTY."

RECITALS

WHEREAS, DISTRICT seeks a project management team to manage the construction of the Rancho Cucamonga New Yard Construction Project (PROJECT) on DISTRICT property located at 12158 Baseline Road, Rancho Cucamonga, California; and

WHEREAS, PFMD staff have the expertise to provide project management services to the DISTRICT for the PROJECT, as set forth herein; and

WHEREAS, PFMD and the DISTRICT desire to enter into this MOU under which PFMD shall provide project management services ("SERVICES") to the DISTRICT for the PROJECT; and

NOW, THEREFORE, the PARTIES mutually agree to the following terms and conditions:

A. DEFINITIONS

- A.1 BONDS** – The faithful performance bond and payment bond (labor and materialmen) provided by the construction contractor for the PROJECT.
- A.2 BUDGET** – Approximately \$5,710,171 of DISTRICT funds from property tax revenue.
- A.3 CONSTRUCTION CONTRACT** – The public works construction contract drafted by PFMD and approved by DISTRICT and DISTRICT counsel, between the DISTRICT and the CONSTRUCTION CONTRACTOR for completion of the PROJECT.
- A.4 CONSTRUCTION CONTRACTOR** – The contractor awarded the construction contract by the DISTRICT Board of Supervisors following a competitive bid process managed and overseen by PFMD.
- A.5 CONSTRUCTION SITE** – The DISTRICT property located at 12158 Baseline Road, Rancho Cucamonga, California.
- A.6 DISTRICT** – The San Bernardino County Flood Control District.
- A.7 PFMD** - The San Bernardino County Project and Facilities Management Department – Project Management Division.
- A.8 PROJECT** – The Rancho Cucamonga New Yard Construction Project or PROJECT consists of the planning, design/engineering and construction of a new facility to be located adjacent to an existing building in the current surfaced parking lot. The PROJECT replaces an existing building to provide office space to support DISTRICT staff working at that location.
- A.9 SERVICES** – Those professional project management services outlined in Section B below.

B. PFMD RESPONSIBILITIES

PFMD shall complete the following SERVICES to ensure timely completion of the PROJECT within the BUDGET:

B.1 Pre-Construction Services. PFMD shall prepare the PROJECT bid package, including the proposed CONSTRUCTION CONTRACT between the DISTRICT and CONSTRUCTION CONTRACTOR, which shall be timely submitted to DISTRICT for DISTRICT and DISTRICT counsel review and approval prior to bid. PFMD shall ensure compliance with the California Environmental Quality Act (CEQA) and any other applicable environmental regulations and regulatory agencies, prior to publication for bid. PFMD shall ensure that the insurance and indemnification provisions of the CONSTRUCTION CONTRACT include both the San Bernardino County Flood Control District and San Bernardino County. The DISTRICT is a public agency governed by the San Bernardino County Flood Control Act (Water Code App. Section 43-1 et seq.). PFMD shall ensure that the bid package, including the construction documents, comply with all applicable provisions of the Civil Code, Labor Code, Public Contract Code, and DISTRICT policy. PFMD shall draft and submit to DISTRICT and DISTRICT counsel for approval, all Board Agenda Item(s) required for the CONSTRUCTION CONTRACT award and management. PFMD shall be responsible for submitting the Board Agenda Item(s) through the County Administrative Office's review and approval process. PFMD shall manage the bid process, including uploading the bid package to ePro and responding to bidder questions, seeking DISTRICT input as necessary. PFMD shall manage and administer any mandatory or non-mandatory pre-bid conferences. Following consultation with the DISTRICT, PFMD shall issue to bidders, on the DISTRICT's behalf, any required addenda to the bid package, which addenda shall be reviewed and approved by the DISTRICT prior to issuance.

B.2 Contract Award. PFMD shall receive, open, and review bids in accordance with applicable law and DISTRICT policy. PFMD shall draft the Board Agenda item for CONSTRUCTION CONTRACT award as set forth in Section B.1 above. PFMD shall be responsible for issuing the Notice to Proceed on behalf of the DISTRICT. Prior to issuing a Notice to Proceed, PFMD shall ensure that the BONDS are issued on DISTRICT forms to the San Bernardino County Flood Control District as the obligee.

B.3 Construction Services. PFMD shall oversee the CONSTRUCTION CONTRACTOR and manage the CONSTRUCTION CONTRACT as follows:

- Maintain a competent and sufficient staff to confirm that the work is progressing according to the CONSTRUCTION CONTRACT, including formal inspections prior to covering walls and ceiling and at the time of substantial completion. These CONSTRUCTION SITE visits also include quality assurance and control reviews and commissioning.
- Manage submittal approval request process for a timely review of all submittals. Coordinate with DISTRICT staff directly as necessary for DISTRICT required review and approval.
- Ensuring accurate “As-Constructed” or “As-built” documents are delivered to the DISTRICT from the CONSTRUCTION CONTRACTOR.
- PFMD will hold weekly progress meetings which DISTRICT will attend. Prepare and distribute all PROJECT correspondence.
- Consult with DISTRICT as necessary during the construction phase of the PROJECT, including but not limited to items related to schedule and budget progress. PFMD will forward monthly schedule updates and billings to FCD for informational review.
- Manage the Request for Information (RFI) process for timely issue resolution. Coordinate with DISTRICT staff directly as necessary to resolve RFI issues.
- Develop and implement a system for the preparation, review and processing of Change Orders. PFMD will inform the DISTRICT of necessary or desirable Change Orders and cost impacts. PFMD will consult with DISTRICT regarding negotiations with the CONSTRUCTION CONTRACTOR prior to PFMD’s approval of Change Orders.
- Manage change to CONSTRUCTION CONTRACT scope, cost, or time. Oversee resolution of all change proposals and issue field directives/field orders.
- Coordinate with the CONSTRUCTION CONTRACTOR and DISTRICT to ensure that the PROJECT SITE is able to continue to be used by DISTRICT during construction.
- Develop and implement a procedure for the review, approval, and processing of pay requests by the CONSTRUCTION CONTRACTOR.
- Review pay applications, ensure back-up documentation is properly submitted with the pay application, and promptly process CONSTRUCTION CONTRACTOR pay applications.
- Monitor CONSTRUCTION CONTRACTOR compliance with any and all applicable laws, including but not limited to, the payment of prevailing wages and the maintenance of certified payroll records through a Third-Party labor compliance consultant.
- Assist the DISTRICT in obtaining any and all applicable regulatory permits, including the coordination of any applicable inspections by other agencies.
- Maintain updated records of contracts, drawings, RFI’s, submittals, and all changes and revisions; obtain data from Construction Contractor and maintain a current set of record drawings.
- Coordinate entire punch list process. Track all punch list items through to resolution. Provide documentation. Schedule and facilitate meetings with CONSTRUCTION CONTRACTOR to resolve punch list issues. Coordinate solutions to disputed punch list items.
- Conduct a walk-through inspection with the DISTRICT in order to determine whether there is Substantial Completion. A list of unacceptable items shall be prepared by PFMD and presented to the CONSTRUCTION CONTRACTOR for resolution.
- With the DISTRICT in attendance at a time and date acceptable to both Parties, PFMD shall coordinate and supervise the inspection of utilities, operations' systems and equipment for readiness, and assist DISTRICT in start-up and testing of such utilities, systems and

equipment by the CONSTRUCTION CONTRACTOR. PFMD shall participate in commissioning efforts, including inspections and system startup reviews.

- Establish the date of final completion for the PROJECT and coordinate final inspection and walkthrough with the DISTRICT; secure and transmit to the DISTRICT, after final walk-through and final acceptance by the DISTRICT, required guarantees, affidavits, releases, bonds and waivers; and, after final walk-through and final acceptance by the DISTRICT, coordinate turn over to the DISTRICT all keys, manuals, record drawings and surplus materials and supplies. Draft and file the Notice of Completion on behalf of the DISTRICT.

B.4 PFMD shall designate a staff person, or persons, as a point of contact for DISTRICT regarding the PROJECT and shall promptly respond to DISTRICT'S requests for information.

B.5 PFMD will maintain all records pertaining to the delivery of services under this MOU. DISTRICT shall have the right, upon reasonable notice and at reasonable hours of business, to examine and inspect such records.

C. DISTRICT RESPONSIBILITIES

C.1 DISTRICT shall designate a staff person, or persons, as a point of contact for PFMD regarding the PROJECT and shall promptly respond to PFMD's requests for information and/or approval.

C.2 DISTRICT grant PFMD and the CONSTRUCTION CONTRACTOR access to the PROJECT SITE for the construction of the PROJECT, so long as disruption to existing DISTRICT operations at the PROJECT SITE is minimized or avoided by PFMD and the CONSTRUCTION CONTRACTOR.

C.3 DISTRICT shall promptly respond to RFI's or requests for design clarification and/or modification from PFMD. DISTRICT shall also provide to PFMD, all documents in its possession, or available to its knowledge, regarding existing conditions at the PROJECT SITE necessary for the PROJECT.

C.4 DISTRICT shall designate a Legally Responsible Person (LRP) or Duly Authorized Representative (DAR) for all required SWPPP and SMARTS documentation and reporting.

C.5 Attend weekly progress meetings held by PFMD.

C.6 Inform PFMD of any DISTRICT required change orders and approve related cost impact.

D. TERM OF MOU

This MOU is effective as of *November 19, 2024* and expires six (6) months following the filing of the Notice of Completion but may be terminated earlier in accordance with provisions of this MOU. The MOU term may be extended for two additional one-year periods by mutual agreement of the PARTIES.

E. AUTHORIZED REPRESENTATIVES

E.1 In order to coordinate tasks, supervise subordinate staff, and/or resolve any conflict which may arise in connection with this MOU, the PARTIES designate the following individuals to manage this MOU:

E.1.1 PFMD – Donald Day, Director of Project and Facilities Management Department

E.1.2 DISTRICT- Noel Castillo, Chief Flood Control Engineer

E.2 The PARTIES agree they will establish mutually satisfactory methods for the exchange of such information as may be necessary in order that each PARTY may perform its duties and functions under this MOU.

E.3 The PARTIES agree they will establish mutually satisfactory methods for problem resolution at the lowest possible level as the optimum, with a procedure to mobilize problem resolution up through each PARTY's mutual chain of command, as deemed necessary.

F. FISCAL PROVISIONS

F.1 DISTRICT shall reimburse COUNTY for the services, including the cost of construction, outlined in Section B, up to the not to exceed amount of \$5,710,171. This MOU does not require the COUNTY to expend any funds for the design, construction or staffing of the PROJECT or property. Services provided under this MOU are funded within the individual Capital Improvement Program (CIP) PROJECT budget approved as part of the COUNTY and/or DISTRICT'S Capital Improvement Program. Internal Service Fund Rates for project administration services performed by PFMD, included within the CIP project budgets, are established yearly by the COUNTY AND DISTRICT Board of Supervisors.

F.2 PFMD will issue reimbursement requests, on a monthly basis, to DISTRICT. The reimbursement requests will reflect total PROJECT costs for the month, including but not limited to payments to the CONSTRUCTION CONTRACTOR and PFMD's internal costs.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

G.1 Indemnification.

G.1.1 COUNTY agrees to indemnify, defend (with counsel reasonably approved by the DISTRICT) and hold harmless the DISTRICT and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this MOU, but only to the extent actually caused by the negligent acts, errors or omissions of COUNTY and its authorized officers, employees, agents, and volunteers, and for any costs or expenses incurred by DISTRICT on account of any claim except where such indemnification is prohibited by law.

G.1.2 DISTRICT agrees to indemnify, defend (with counsel reasonably approved by the 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 MOU, but only to the extent actually caused by the negligent acts, errors or omissions of the DISTRICT and its authorized officers, employees, agents, and volunteers, and for any costs or expenses incurred by COUNTY on account of any claim except where such indemnification is prohibited by law.

G.1.3 In the event COUNTY or DISTRICT is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this MOU, COUNTY and/or DISTRICT shall indemnify the other to the extent of its comparative fault. Notwithstanding indemnification for any claim, action, loss or damage involving a third PARTY, COUNTY and DISTRICT hereby waive any and all rights of subrogation recovery against each other.

G.2 Insurance. DISTRICT and COUNTY are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this MOU.

H. GENERAL CONTRACT PROVISIONS

H.1 Interpretation. Since the PARTIES or their agents have participated fully in the preparation of this MOU, the language of this MOU shall be construed simply, according to its fair meaning, and not strictly for any or against any party. Any term referencing time, days or period for performance shall be deemed work days. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this MOU.

H.2 Force Majeure. The PARTIES shall be excused from strict performance hereunder, to the extent that such performance is impeded or prevented by occurrence of force majeure, which shall be deemed to include, without limitation, floods, earthquakes, other natural disasters, war, civil insurrection, riots, epidemics, pandemics, acts of any government (including judicial action), and other similar catastrophic events or acts of God which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

H.3 Waiver. No waiver of any default shall constitute a waiver of any other default of breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

H.4 Jurisdiction. This MOU shall be governed by the laws of the State of California. If a court of competent jurisdiction declares any portion of this MOU invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purposes of this MOU are frustrated. Any dispute or action to enforce any obligation under this MOU shall be filed and resolved in a Superior Court in San Bernardino County, California. In the event of litigation arising from this MOU, each PARTY to the MOU shall bear its own costs, including attorneys' fees.

H.5 Dispute Resolution. In the event that a dispute arises between the PARTIES, the PARTIES shall first attempt to resolve the dispute through meetings with appropriate staff members. In the event that the dispute cannot be resolved at the staff level, the Chief Flood Control Engineer and the Director of the Project and Facilities Management Department shall meet and informally confer to attempt to resolve the matter prior to either PARTY pursuing any legal remedies or filing a claim.

H.6 Successors and Assigns. This MOU shall inure to the benefit of and to be binding upon the successors and assigns both PARTIES.

H.7 Amendment. No supplement, modification, or amendment of this MOU shall be binding unless executed in writing and signed by the PFMD and the DISTRICT.

I. EARLY TERMINATION

This MOU may be terminated without cause upon thirty (30) calendar days written notice by either PARTY. Such termination may include all or part of the services described herein. The Director of the Project and Facilities Management Department, or his designee, is authorized to exercise COUNTY's rights with respect to any termination of this MOU. The DISTRICT's Chief Flood Control Engineer, or his or her designee, has authority to terminate this MOU on behalf of the DISTRICT. Upon receipt of termination notice, COUNTY shall promptly discontinue services unless the notice directs and the PARTIES agree otherwise.

J. NOTICES

All written notices provided for in this MOU or which either PARTY desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other PARTY as follows:

*San Bernardino County Flood Control District
825 East Third Street
San Bernardino, CA 92415*

*San Bernardino County
Project and Facilities Management Department
620 S E Street
San Bernardino, CA 92415*

Notice shall be deemed communicated two (2) District working days from the time of mailing if mailed as provided in this paragraph.

K. ELECTRONIC SIGNATURES

This MOU 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 MOU (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 MOU upon request.

L. ENTIRE AGREEMENT

This MOU, including all Attachment, 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 MOU not expressly set forth herein are of no force or effect. This MOU 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 MOU and signs the same of its own free will.

IN WITNESS WHEREOF, the San Bernardino County Flood Control District and San Bernardino County, through its Project Management Division, have each caused this MOU to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

SAN BERNARDINO COUNTY

► _____
Dawn Rowe, Chair, Board of Supervisors

► _____
Dawn Rowe, Chair, Board of Supervisors

Dated: _____

Dated: _____

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

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

Lynna Monell
Clerk of the Board of Supervisors

Lynna Monell
Clerk of the Board of Supervisors

By _____
Deputy

By _____
Deputy

FOR DISTRICT USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by District
► Sophie A. Curtis, Deputy County Counsel	► Sarah Riley, Chief of Project Management	► Noel Castillo, Chief Flood Control Engineer
Date _____	Date <u>11/14/2024</u>	Date _____