



**Contract Number**

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**SAP Number**

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## County Counsel

<b>Department Contract Representative</b>	Robin Simon
<b>Telephone Number</b>	909-387-5456
<b>Consultant</b>	Langan Engineering and Environmental Services, Inc.
<b>Consultant Representative</b>	Dorinda Shipman, PG
<b>Telephone Number</b>	415.717.2516
<b>Contract Term</b>	February 9, 2021 – February 8, 2024
<b>Original Contract Amount</b>	\$500,000
<b>Amendment Amount</b>	
<b>Total Contract Amount</b>	\$500,000
<b>Cost Center</b>	

### IT IS HEREBY AGREED AS FOLLOWS:

**WHEREAS**, the County of San Bernardino (County) desires to obtain services to assist in the representation of the County in connection with soil and groundwater contamination issues in the Chino Basin in the vicinity of the Chino Airport (“Chino Airport Project” or “Project”), including technical support for the County’s legal claims under applicable environmental laws and insurance recovery related to the Project; and

**WHEREAS**, the County finds Consultant has the expertise and competence to perform the professional services sought by the County; and

**WHEREAS**, the professional services to be performed by Langan are of an expert and technical nature and are temporary and occasional in character; 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:

**A. CONSULTANT RESPONSIBILITIES**

**A.1** Consultant shall assist County Counsel and the law firms Kaplan, Kirsch & Rockwell LLP and Reed Smith LLP (the "Firms") by providing professional services regarding the Project, as requested by the Firms, as described in Exhibit A ("Services"). The Services include all reports and other work product, oral and written communications, review and analysis necessary to deliver the Services.

**A.2** The County, County Counsel and the Firms will rely on the competence, expertise, and experience of Consultant. At all times, Consultant shall provide professional services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession in the State of California. This is a non-exclusive agreement to provide professional services and the Firms and the County may augment the services with other subcontractors or elect to terminate Consultant's services in a manner consistent with this Agreement.

**B. GENERAL CONTRACT REQUIREMENTS**

**B.1 Recitals**

The recitals set forth above are true and correct and incorporated herein by this reference.

**B.2 Contract Amendments**

Consultant agrees any alterations, variations, modifications, or waivers of the provisions of the 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 County.

**B.3 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 the Consultant will be permitted to perform any minimum amount of work, or receive a minimum amount of compensation, under the terms of this Contract.

**B.4 Attorney's Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

**B.5 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, Contractor 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.

**B.6 Change of Address**

Consultant shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

**B.7 Choice of Law**

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

## **B.8 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.

## **B.9 Confidentiality**

Consultant understands that its consulting work and that of its subcontractors under this Agreement will be performed in connection with the provision of legal advice to the County. All information, analysis, communications and any other type of work product whether draft or final, written or oral, associated with such Services shall be considered privileged and confidential attorney-client communications and attorney work product and shall be maintained as confidential by Consultant. Except as expressly authorized in advance in writing by the County or the Firms, Consultant shall maintain as confidential and not disclose in any form to others, including individuals, corporations, governmental agencies or any other entities, either before or after the termination of this Agreement, any data, documents, reports or other information or communications, whether draft or final, written or oral, provided to Consultant by the County (including its employees and agents) or to the County's in-house counsel or outside counsel, or produced or developed by Consultant in conjunction with its performance hereunder. Unless otherwise instructed by the Firms or the County, Consultant shall (i) prominently mark all documents generated under this Agreement "Privileged and Confidential"; (ii) prominently mark all draft documents (including reports, work plans and technical memoranda) additionally as "DRAFT – FOR DISCUSSION PURPOSES ONLY"; and (iii) maintain all documents received or generated under this Agreement in separate files marked "PRIVILEGED AND CONFIDENTIAL." Consultant, by contract, also shall require its subcontractors to comply with the conditions set forth herein. Such obligations shall survive the completion of the Services hereunder or the expiration, cancellation or termination of this Agreement. Notwithstanding the foregoing, if Consultant is compelled by law, an order of a court of competent jurisdiction or a subpoena to produce data or other factual information provided to Consultant hereunder, Consultant shall follow the following procedures:

A. Consultant's obligations of confidentiality shall not apply to disclosures compelled by law, an order of a court of competent jurisdiction or a subpoena, provided that Consultant shall immediately notify the County of the circumstances requiring such disclosure and refrain from such disclosure for the maximum period of time allowed by law so that the County or the Firms may procure a protective order or take action to protect the confidentiality of the information.

B. Notwithstanding anything in the foregoing to the contrary, Consultant shall provide to the County, all (i) draft documents (including reports, work plans and technical memoranda); and (ii) any document, report or other communication in any form, draft or final, written or oral, containing Consultant's conclusions and recommendations.

C. Consultant, by contract, shall require its subcontractors to comply with the conditions set forth in this Subsection. Such obligations shall survive the completion of the Services hereunder or the expiration, cancellation or termination of this Agreement.

**B.10 Primary Point of Contact**

Consultant will designate an individual to serve as the primary point of contact for the Contract. Consultant or designee must respond to County inquiries within two (2) business days. Consultant shall not change the primary contact without written acknowledgement to the County. Consultant will also designate a back-up point of contact in the event the primary contact is not available.

**B.11 Reserved.****B.12 County Representative**

The County Counsel 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 services/Scope of Work by Consultant. If this Contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract, unless otherwise delegated.

**B.13 Damage to County Property**

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 misconduct or negligent acts of Consultant or its employees or agents. 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.

**B. 14 Debarment and Suspension**

Consultant certifies that neither it nor its principals 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. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). 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.

**B.15 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, while performing service for the County, on County property, or while using County equipment:

- B.15.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- B.15.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- B.15.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Consultant or Consultant's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

Consultant shall inform all employees 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 are determined by the County not to be in compliance with above.

#### **B.16 Duration of Terms**

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.

#### **B.17 Employment Discrimination**

During the term of the 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. Consultant shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and 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.

#### **B.18 Environmental 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 any printed or photocopied material created as a result of this Contract. Consultant is also required 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 (AB 939), 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.

#### **B.19 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.

#### **B.20 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 the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

### **B.21 Informal 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.

### **B.22 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.

### **B.23 Licenses, Permits and/or 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 this 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 this Contract.

### **B.24 Material Misstatement/Misrepresentation**

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

### **B.25 Mutual Covenants**

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".

### **B.26 Nondisclosure**

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.

### **B.27 Notice of Delays**

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.

### **B.28 Ownership of Documents**

All information, documents, records, reports, data, or other materials furnished to Consultant pursuant to this Contract are deemed confidential and shall remain the property of the County. Any compiled databases, final presentations, reports, indexes, or technical memoranda produced pursuant to this Contract shall be considered instruments of service and shall also be the property of the County. All

preliminary drafts, notes, files, backup data or communications that are not retained in the ordinary course of business, are not property of the County. Consultant shall not make use of any information obtained from the County, the Firms, or a County consultant, agent, or representative, for any purpose unrelated to the matter involved herein and shall not make oral or written disclosure thereof, other than as necessary for their performance hereunder, without the prior written approval of the County or the Firms.

**B.29 Reserved.**

**B.30 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 work performed pursuant to this Contract.

**B.31 Records**

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.

**B.32 Relationship of the Parties**

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 County of San Bernardino. 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.33 Release of Information**

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.

**B.34 Strict Performance**

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.

**B.35 Subcontracting**

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 Article G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Consultant Personnel.

For any subcontractor, Consultant shall:

- 35.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and

- 35.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 35.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Articles B. Consultant Responsibilities and C. General Contract Requirements.

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.

**B. 36 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.

**B.37 Termination for Convenience**

The County and the Consultant each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Consultant for services rendered and expenses reasonably 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 County and transfer title (if necessary) to all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

**B.38 Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions provided that Consultant shall have no responsibility or liability for delays not within its reasonable control.

**B.39 Venue**

The parties acknowledge and agree that this Contract is intended to be performed for the benefit of San Bernardino County, California. The parties agree that the venue of 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.

**B.40 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 the 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.



As of the effective date of this Contract, Consultant represents and warrants that it is not aware of any current clients that have interests adverse to the County. Further, during the term of this Contract, Consultant shall not accept engagements from clients with interests adverse to the County. The County recognizes that Consultant may have clients that, from time to time, may have interests adverse to the County. Should this occur, Consultant must immediately contact the County and provide in writing details of the nature of the engagement by Consultant, and why Consultant believes a waiver of this requirement is appropriate.

#### **B.41 Former County Administrative Officials**

Consultant agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Consultant. 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 Consultant. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County 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.

#### **B.42 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.

#### **B.43 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 County of San Bernardino 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, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

#### **B.44 Artwork, Proofs and Negatives**

All artwork, proofs, and/or negatives in either print or digital format for anything produced under the terms of this 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 any available legal remedies. In addition, Consultant will be barred from all future solicitations, for a period of at least six (6) months.

#### **B. 45 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 to the extent arising out of, pertaining to, or relating to, Consultant's negligence, recklessness or willful misconduct.

#### **B. 46 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 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.

### **C. TERM OF CONTRACT**

This Contract is effective as of February 9, 2021 and expires February 8, 2024 but may be terminated earlier in accordance with provisions of this Contract. The Contract term may be extended for two additional one-year periods by mutual written agreement of the parties.

### **D. COUNTY RESPONSIBILITIES**

**D.1** Compensate Consultant in accordance with the Fiscal Provisions below.

**D.2** Provide Consultant the information and documentation necessary to complete the Services pursuant to this Contract.

### **E. FISCAL PROVISIONS**

**E.1** The maximum amount of payment under this Contract shall not exceed \$500,000 which shall be subject to availability of other funds to the County. The consideration to be paid to Consultant, as provided herein, shall be in full payment for all Consultant's services and expenses incurred in the performance hereof, including travel and per diem.

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 the Contract, which item of work is not performed by Consultant (including Consultant's agents and approved subcontractors).

The County reserves the right to demand reimbursement any time the County, or the Firms, determines that previously paid costs and expenses were not properly billed by Consultant. Consultant shall promptly return such monies to the County upon request.

- E.2** The fees for Services provided to the County shall be based upon the time expended to render the required Services, in a form acceptable to the County, and shall be computed at a rate not to exceed the rates specified for each category of staff as listed in Exhibit B. Billing rates may be increased with the prior written approval of County Counsel.
- E.3** Consultant shall provide County itemized monthly invoices, in arrears, and in a format acceptable to the County for services performed under this Contract within twenty (20) days of the end of the previous month. The County shall make payment to Consultant within sixty (60) working days after receipt of invoice or the resolution of any billing dispute.

Consultant shall establish a separate matter for purposes of billing for services provided at the request of Kaplan, Kirsch & Rockwell related to recovery from potentially responsible parties, and services provided at the request of Reed Smith LLP for recovery from the County's insurance carriers. Each invoice shall be identified by a unique number and itemized according to the matter under which the Services were performed, and include the following:

- a. Staffing level(s), hourly rates and specific activities for each professional;
- b. A specific description of specific activities for each professional shall include, but is not limited to:
  - i. In-person conferences
  - ii. Telephone call(s)
  - iii. Correspondence
  - iv. Reporting
  - v. Research
  - vi. Travel
- c. Total current monthly fees billed for each staffing level;
- d. Total cumulative fees billed for each staffing level;
- e. Total cumulative expenses to date billed.

Billings under this Contract shall be made in one-half hour (30 minute) increments. Under no circumstances shall Consultant use "block billing" procedures, wherein a list of series of activities is done each day with only an aggregate amount of time specified. Instead, Consultant shall provide a detailed specific entry for each separate task and sub-task reflecting time for such task or subtask.

- E.4** Consultant shall accept all payments from County via electronic funds transfer (EFT) directly deposited 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.
- E.5** 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.
- E.6** Consultant shall obtain prior approval from the County for travel in connection with this Contract. Unapproved travel will not be reimbursed.
- E.7** 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.

## **F. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

### **F.1 Indemnification**

Consultant hereby holds harmless and indemnifies the County, their successors, assigns, officers, agents and employees, and volunteers from any and all third party claims, demands and actions ("Claims") and the reasonable attorney's fees, costs and expenses resulting from such Claims to the extent arising out of, pertaining to, or relating to, negligent acts or negligent omissions of Consultant or its principals, employees, subconsultants or other agents while performing Services under this Agreement. With respect to professional liability Claims only, Consultant shall not have an upfront duty to defend and shall satisfy its defense obligation with respect to such Claims at the time of judgment, award or settlement by paying a share of the defense costs incurred by the indemnified party in a proportionate amount equal to Consultant's determined fault.

### **F.2 Additional Insured**

All policies, except for Worker's Compensation / Employer's Liability, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured 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 endorsement forms ISO, CG 2010 and CG 20 37.

### **F.3 Waiver of Subrogation Rights**

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 Consultant and Consultant's employees or agents from waiving the right of subrogation prior to a loss or claim. Consultant hereby waives all rights of subrogation against the County.

### **F.4 Policies Primary and Non-Contributory**

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

### **F.5 Severability of Interests**

With the exception of Professional Liability, 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 Consultant and County or between County and any other insured or additional insured under the policy.

### **F.6 Proof of Coverage**

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 this contract, 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.

### **F.7 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".

**F.8 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.

**F.9 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, County has the right but not the obligation or duty to cancel this Contract or obtain insurance if it deems necessary and any premiums paid by County will be promptly reimbursed by Consultant or County payments to the Consultant will be reduced to pay for County purchased insurance.

**F.10 Insurance Review**

Insurance requirements are subject to periodic review by 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 County. Any failure, actual or alleged, on the part of 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 County.

**F.11** Consultant agrees to provide insurance set forth in accordance with the requirements herein. If Consultant uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Consultant agrees to amend, supplement or endorse the existing coverage to do so.

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

**F.11.1** Workers' 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 employed by the Consultant and all risks to such persons under this contract.

If Consultant has no employees, it may certify or warrant to the 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.

**F.11.2** Commercial/General Liability Insurance – Consultant shall carry General Liability Insurance covering all operations performed by or on behalf of 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.

**F.11.3** 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 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 Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**F.11.4** 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 in the amount of \$5,000,000 each occurrence and policy aggregate for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**F.11.5** Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

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

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the state 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.

## **G. SUCCESSORS AND ASSIGNS**

**G.1** This Contract shall be binding upon County and Consultant and their respective successors and assigns.

**G.2** 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.

**G.3** 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 Article F, Fiscal Provisions, 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.

**H. RIGHT TO MONITOR AND AUDIT**

**H.1** The County 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.

**H.2** 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 the Contract or until all pending County audits are completed, whichever is later.

**I. CORRECTION OF PERFORMANCE DEFICIENCIES**

**I.1** Failure by Consultant to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

**I.2** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Afford Consultant thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
- b. Discontinue reimbursement to Consultant for and during the period in which Consultant is in breach, which reimbursement shall not be entitled to later recovery; and/or
- c. Withhold funds pending duration of the breach; and/or
- d. Offset against any monies billed by Consultant but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
- e. Terminate this Contract immediately and be relieved of the payment of any consideration to Consultant. In the event of such termination, County may proceed with the work in any manner deemed proper by County. The cost to County shall be deducted from any sum due to Consultant under this Contract and the balance, if any, shall be paid by Consultant upon demand.

**I.3** Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

**J. NOTICES**

All written notices provided for in this Contract 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:

County of San Bernardino  
County Counsel  
Michelle D. Blakemore  
385 N. Arrowhead Avenue  
4<sup>th</sup> Floor  
San Bernardino, CA 92415

Philip T. Tringale, Ph.D, P.E.  
Senior Consultant and Director  
Dorinda Shipman  
Principal  
Langan Engineering and Environmental  
Services, Inc.  
501 14<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Oakland, California 94611

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

**K. ENTIRE AGREEMENT**

This Contract, 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 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.

**L. LIMITATION OF LIABILITY**

Notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and its officers, directors, partners, employees, agents, and subconsultants, to County, for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way relating to the Services provided pursuant to this Agreement, from any cause or causes, including but not limited to tort (including negligence and professional errors and omissions), strict liability, breach of contract, or breach of warranty, shall not exceed the minimum insurance coverage amounts listed above for the policy covering the claim.

**M. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGE**

Notwithstanding any other provision of this Agreement, Consultant and County waive all consequential or special damages, including, but not limited to, loss of use, profits, revenue, business opportunity, or production, for claims, disputes, or other matters arising out of or relating to the Agreement or the services provided by Consultant, regardless of whether such claim or dispute is based upon breach of contract, willful misconduct or negligent act or omission of either of them or their employees, agents, subconsultants, or other legal theory, even if the affected party has knowledge of the possibility of such damages. This mutual waiver shall survive termination or completion of this Agreement.



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

COUNTY OF SAN BERNARDINO

Langan Engineering and Environmental  
Services, Inc.

►  
\_\_\_\_\_  
Curt Hagman, Chairman, 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 Dorinda Shipman, PG

Title Principal/Vice President

Lynna Monell  
Clerk of the Board of Supervisors  
of the County of San Bernardino

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

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

Address 501 14<sup>th</sup> Street, 3<sup>rd</sup> Floor

Oakland, CA 94611

**FOR COUNTY USE ONLY**

Approved as to Legal Form  
►  
\_\_\_\_\_  
Kristina M. Robb, Supervising Deputy  
County Counsel  
Date \_\_\_\_\_

Reviewed for Contract Compliance  
►  
\_\_\_\_\_  
Date \_\_\_\_\_

Reviewed/Approved by Department  
►  
\_\_\_\_\_  
Michelle D. Blakemore, County Counsel  
Date \_\_\_\_\_

## **EXHIBIT A**

### **Scope of Services**

1. To review environmental investigation and cleanup documentation concerning the response action at the County-owned Chino Airport and information about the sources and events surrounding the release of hazardous substances to soil and groundwater, occurrences and to provide expert advice regarding analysis of same.
2. Consulting services in connection with legal advice provided to the County by in-house and designated outside counsel.
3. To provide expert testimony and prepare expert reports regarding same, as necessary.

## ATTACHMENT B

### SCHEDULE OF FEES AND CONDITIONS

Effective 1 January 2019

BILLING CATEGORY	HOURLY BILLING RATE
Technician - Level I (Engineering Technicians)	100
Technician - Level II (Technicians/Word Processors/Technical Typists/Financial Analysts)	145
Technician - Level III (Engineering Technicians/Inspectors, CADD and GIS)	155
Staff Personnel - Level I	160
Staff Personnel - Level II	170
Staff Personnel - Level III	180
Senior Staff Personnel - Level I	190
Senior Staff Personnel - Level II	200
Senior Staff Personnel - Level III	210
Project Personnel - Level I	225
Project Personnel - Level II	235
Project Personnel - Level III	245
Senior Project Personnel - Level I	270
Senior Project Personnel - Level II	295
Associate/Senior Project Personnel - Level III	320
Senior Associate	335
Principal	350
Senior Principal	390
Managing Principals	435
Senior Consultants	365

- At any level, personnel may be engineers, geologists, hydrogeologists, landscape architects, regulatory specialists, scientists, planners, toxicologists, wetland specialists, etc.
- Litigation related services, including expert testimony, court appearances, depositions, etc. are billed at 1.5 times the above rates. The services will be billed at a minimum of 4 hours for up to one half day and a minimum of 8 hours for services over 4 hours.
- Langan reserves the right to make adjustments for individuals within these classifications as may be necessary by reason of promotion, and to increase our hourly billing rates due to annual salary increases, upon written agreement of the County.

#### CONSULTANT EQUIPMENT RENTAL RATES

Automobiles, Vans, and Small Trucks (travel time plus time on site) \$23.50 per hour/\$185 per day. Nuclear Moisture-Density Gauge \$16 per hour

#### COMPUTER SERVICES

Our in-house computer usage is billed on a time used basis at the following rates:

	Rate per Hour
CADD, GIS and Terrain Modeling Programs	\$30
Engineering Programs/Digitizing	\$25

#### SURVEYING SERVICES

See survey-specific Schedule of Fees and Conditions

#### SUBCONTRACTOR/SUBCONSULTANT COSTS

All subcontracted services including lab tests and analyses, borings, test pits, report reproduction, outside computer services, surveying, etc., will be billed at cost plus 15%.

#### REIMBURSABLE EXPENSES

##### PROFESSIONAL LIABILITY AND RELATED INSURANCE

A surcharge of 4% will be added to the invoice total to cover the cost of Professional Liability Insurance and related costs of insurance.

#### IN-HOUSE LABORATORY TESTS

Laboratory testing will be billed at unit rates depending on the type of test. A schedule of unit prices for standard laboratory tests will be furnished upon request. Engineering soil and/or rock samples will be stored for 90 days without charge and will be discarded, or returned to the client, unless otherwise requested by the client. Sample storage past 90 days will be billed at \$10.00 per box per month.

#### HEALTH AND SAFETY AND OTHER SPECIAL FIELD EQUIPMENT

Special equipment such as nuclear densitometers, seismographs, load test equipment, surveying equipment, disposable protective equipment, and respirator cartridges will be billed on a daily rate. PID's and similar safety and/or monitoring equipment will be billed on daily, weekly or monthly rates. A rate schedule will be provided upon request.

#### OTHER EXPENSES

All expenses incurred for special supplies, plan reproduction, long distance communications, travel and subsistence and other project related expenses will be billed at cost plus 10%. Car mileage is billed at current IRS rates.

#### PREVAILING WAGE

If applicable, prevailing wage premium will be added to the rates stated above.

**TERMS**

Invoices are payable within 30 days. If a bill remains unpaid after 60 days, we will discontinue our work until payments are received to bring your account current. We reserve the right to terminate an account without notice for non-payment.

2021 Bay Area Rates