



Contract Number

SAP Number

San Bernardino County Flood Control District

Department Contract Representative	<u>Jonathan Dillon/Harold Zamora</u>
Telephone Number	<u>(909) 387-8109</u>
Contractor	<u>Westbound Communications</u>
Contractor Representative	<u>Christopher Perez</u>
Telephone Number	<u>951-462-1106</u>
Contract Term	<u>August 1, 2020 - June 31, 2025</u>
Original Contract Amount	<u>\$625,000.00</u>
Amendment Amount	<u></u>
Total Contract Amount	<u>\$625,000.00</u>
Cost Center	<u>CC: 1990002548</u>
	<u>GL: 52002445</u>
	<u>PC: 82130000</u>
	<u>WinCAMS: D20433</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, on February 5, 2013, the California Regional Water Quality Control Board – Lahontan Region (LRWQCB) adopted the National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System Permit (MS4 Permit) for urban stormwater discharges from the County of San Bernardino (County), the Town of Apple Valley and the Cities of Hesperia and Victorville (collectively the Mojave River Watershed Group or MRWG) within the Lahontan Watershed; and

WHEREAS, the County has been designated as the Committee Facilitator to administer the MRWG Stormwater Program (PROGRAM) budget and the PROGRAM activities recommended and approved by the MRWG; and

WHEREAS, the County provides funding to the San Bernardino County Flood Control District (District) for the implementation of the County's NPDES Phase 2 MS4 PERMIT compliance requirements; and

WHEREAS, the District conducted a competitive procurement process to find a vendor qualified to provide public education and community outreach services; and

WHEREAS, District finds Westbound Communications (Consultant) qualified to provide the public education and community outreach services (Services) needed to implement the County's Permit requirements in an efficient and cost-effective manner; and

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

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

A. DEFINITIONS

As presented and defined in RFP No. PWG120-LANDD-3457, Section III Definitions.

- A.1 Board:** The San Bernardino County Flood Control District Board of Supervisors.
- A.2 Contract:** The Contract between the District and the Consultant resulting from the award issued pursuant to this RFP to the successful proposer.
- A.3 Consultant:** Westbound Communications.
- A.4 County:** The County of San Bernardino.
- A.5 Facilitator:** A District Purchasing Department buyer or designated individual tasked with managing the processes of the evaluation panel.
- A.6 MS4 Permit:** The National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit adopted and issued by the California Regional Water Quality Control Board – Lahontan Region on February 5, 2013.
- A.7 MRWG:** County of San Bernardino the Town of Apple Valley and the Cities of Hesperia and Victorville.
- A.8 Proposal:** The offer to provide specific goods or services at specified prices and/or other conditions specified in the RFP.
- A.9 Purchasing Agent:** The Director of the County Purchasing Department.
- A.10 Request for Proposal (RFP):** The request for an offer from proposers interested in providing the identified services sought to be procured by the District. The RFP specifies the evaluation factors to be used and contains or incorporates by reference contractual terms and conditions applicable to the procurement.
- A.11 RWQCB:** Lahontan Regional Water Quality Control Board.
- A.12 Services:** The requested professional services described in this Contract.
- A.13 Subcontractor:** An individual, company, firm, corporation, partnership or other organization, not in the employment of or owned by Consultant who is performing services on behalf of Consultant under the Contract or under a separate contract with or on behalf of Consultant.
- A.14 TMDL:** Total Maximum Daily Load

B. CONSULTANT RESPONSIBILITIES

Consultant shall perform the project described as NPDES Phase 2 MS4 Permit Public Education and Outreach Services for the Mojave River Watershed Group, hereinafter called the MRWG, and for the District on behalf of the County:

B.1 Scope of Work

The Consultant shall perform the Services as defined in Exhibit "1" in accordance with the terms, conditions and services described in this Contract and RFP No. PWG120-LANDD-3457.

Said Scope of Work also includes any relevant dates by which the performance of Consultant of any item of work needs to be completed.

The District reserves the right to delete any portion of Services from the Exhibit "1" Scope of Work and the respective cost from the Exhibit "2" Cost Proposal. At District's sole discretion, the deletion of Services and associated reduction in compensation, may be permanent (meaning for the remaining term of the Contract) or it may be temporary (meaning for less than the remaining term of the Contract). The District will provide Consultant with thirty calendar (30) days' notice of a change in Services and compensation.

The provisions of this Contract shall control any contrary provision or term in either the Consultant's proposal or of the District's RFP. The order of precedence amongst documents in the event of a conflict shall be: (1) This Contract, (2) The RFP, and (3) Consultant's proposal.

C. GENERAL CONTRACT REQUIREMENTS

C.1 Recitals

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

C.2 Contract Amendments

Except as specified in Section B.1, 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 District.

C.3 Contract Exclusivity

This is not an exclusive Contract. The District reserves the right to enter into a Contract with other Contractors for the same or similar Services. The District does not guarantee or represent that the Consultant will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

C.4 Attorney Fees and Costs

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

C.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 District; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the District 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 District, Contractor shall provide the results of the background check of each individual to the District. 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 District's hiring criteria, in District's sole discretion, shall not be assigned to work on District property or Services, and District shall have the right, at its sole option, to refuse access to any Contract personnel to any District facility.

C.6 Change of Address

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

C.7 Choice of Law

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

C.8 Compliance with District Policy

In performing the Services and while at any District facilities, Consultant personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the District 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 District; and (d) abide by all laws applicable to the District facilities and the provision of the Services, and all additions and modifications to each of subsections (b),(c), and (d) (collectively, "District Policies"). District 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 District facility, electronic posting, or other means generally used by District to disseminate such information to its employees or contractors. Consultant shall be responsible for the promulgation and distribution of District Policies to Consultant personnel to the extent necessary and appropriate.

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

C.9 RESERVE

C.10 Primary Point of Contact

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

C.11 District Representative

The Chief Flood Control Engineer (or Interim Chief Flood Control Engineer), the Deputy Director of Flood Control, or their designees shall represent the District 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 Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

C.12 Damage to District Property

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

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

C.13 Debarment and Suspension

The Consultant certifies that neither it nor its principals or subcontracts 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.

C.14 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, Consultant agrees that the Consultant and the Consultant's employees, while performing service for the District, on District property, or while using District equipment:

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

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

C.15 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.

C.16 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 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.

C.17 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 District's environmentally preferable purchases. Contractors must also be able to report on environmentally preferable goods used in the provision of Services to the District, utilizing a District approved form.

C.18 Improper Influence

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

C.19 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 District in an attempt to secure favorable treatment regarding this Contract.

The District, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the District 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 District officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Consultant. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the District is entitled to pursue any available legal remedies.

C.20 Informal Dispute Resolution

In the event the District 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.

C.21 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.

C.22 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 District immediately of loss or suspension of any such licenses, permits, and/or certifications. Failure to maintain required licenses, permits, and certifications may result in immediate termination of this Contract.

C.23 Material Misstatement/Misrepresentation

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

C.24 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".

C.25 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 District 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.

C.26 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.

C.27 Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Consultant pursuant to the Contract shall be considered property of the District upon payment for services (and product, if applicable). All such items shall be delivered to District at the completion of work under the Contract. Unless otherwise directed by District, Consultant may retain copies of such items.

C.28 Participation Clause

The District desires that Municipalities, School Districts, and other Tax Districts within the County of San Bernardino requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Consultant agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that:

- a. Such governmental body does not have and will not have in force any other contract for like purchases.
- b. Such governmental body does not have under consideration for award any other bids or quotations for like purchases.

Such governmental body shall make purchases directly through and to the Consultant. The District will not be liable for any such purchase made between the Consultant and another governmental body who avails themselves of this contract.

C.29 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.

C.30 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 or District. Any provision of this Contract that may appear to give the District 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 District concerning the end results of the performance.

C.31 Release of Information

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

C.32 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.

C.33 Subcontracting

Consultant agrees not to enter into any subcontracting Contracts for work contemplated under the Contract without first obtaining written approval from the District. Any subcontractor shall be subject to the same terms and conditions as Consultant. Consultant shall be fully responsible for the performance and payments of any subcontractor's contract.

Consultant shall obtain District's written consent, which District 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 District. At District'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 District, resumes of proposed subcontractor personnel. Consultant shall remain directly responsible to District for its subcontractors and shall indemnify District for the actions or omissions of its subcontractors under the terms and conditions specified in Paragraph B of this Section X. All approved subcontractors shall be subject to the provision of this contract applicable to Consultant Personnel, including removal pursuant to subsection A.5 of this Section X.

For any subcontractor, Consultant shall:

- a. Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- b. Ensure that the subcontractor follows District's reporting formats and procedures as specified by District.
- c. 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, District 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 District.

C.34 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Consultant or District, 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 District 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 District.

C.35 Termination for Convenience

The District and the Consultant each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. 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 District and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

C.36 Time of the Essence

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

C.37 Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, 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, San Bernardino County, San Bernardino District.

C.38 Successors and Assigns

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

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

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 District 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 District 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, District will make payment to those continuing as though there had been no such death or incapacity and District 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.

C.39 Copyright

District 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 District 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 District. Copies of all educational and training materials, curricula, audio/visual aids, printed material, and periodicals, assembled pursuant to this Contract must be filed with the District prior to publication.

C.40 Artwork, Proofs and Negatives

All artwork, proofs and/or negatives in either print or digital format for this product are the property of the District. These items must be returned to the District within ten (10) calendar days, upon written notification to the Consultant. In the event Consultant fails to return the documents, the District is entitled to pursue any available legal remedies. In addition, the Consultant will be barred from all future solicitations, for a period of at least six (6) months.

C.41 Fiscal Provisions

- a. The maximum amount of reimbursement/payment under this Contract shall be subject to availability of funds to the District. 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.
- b. Consultant shall provide District itemized monthly invoices, in arrears, and in a format acceptable to the District for Services performed under this Contract within twenty (20) days of the end of the previous month. The District shall make payment to Consultant within sixty (60) working days after receipt of invoice or the resolution of any billing dispute.
- c. Consultant shall accept all payments from District via electronic fund 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 District required to process EFT payments.
- d. District 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 District shall only pay for any State or local sales or use taxes on the Services rendered or equipment and/or parts supplied to the District pursuant to the Contract.
- e. Costs for Services under the terms of this Contract shall be incurred during the Contract period except as approved by District. Consultant shall not use current year funds to pay prior or future year obligations.

C.42 RESERVE

C.43 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 District suffer damages due to errors, omissions, and/or conflicts within such documents, the Consultant shall be responsible to District for costs of all such damages.

C.44 Additional Term and Condition of the San Bernardino County Flood Control District:

All of the San Bernardino County Flood Control District's revenues as defined below, have been pledged to secure the payment of the principal and interest on certain bonds and refunding bonds ("Bonds") issued by the San Bernardino County Flood Control District in May 2007. The pledge constitutes a first lien on the revenues for the payment of the Bonds. Any payments under this Contract are subject to the prior pledge of revenues described above. San Bernardino County Flood Control District payments pursuant to this Contract will be made to the extent there are sufficient funds available after payment of the Bonds. For purposes of this paragraph, "revenues" shall mean all income and revenue received by the San Bernardino County Flood Control District from the operation or ownership of the flood and storm water control and conservation facilities ("Flood Control System") of the San Bernardino County Flood Control District (including but not limited to, all real and personal property, or any interest therein, and all additions, improvements, betterments and extensions thereto), determined in accordance with Generally Accepted Accounting Principles, including all ad valorem property taxes received by the San Bernardino County Flood Control District pursuant to Article XIII A of the Constitution of the State of California

and Section 95 et seq. of the California Revenue and Taxation Code, all rents, royalties and license and permit fees and charges received by the San Bernardino County Flood Control District, investment income and all other money howsoever derived by the San Bernardino County Flood Control District from the operation or ownership of the Flood Control System or arising from the Flood Control System, but excluding (a) ad valorem property taxes levied to pay any voter approved general obligation indebtedness of the San Bernardino County Flood Control District, (b) assessments levied pursuant to Section 43-7 or Section 43-26.9 of the San Bernardino County Flood Control Act (Cal. Water Code App. Sect. 43-1 et seq.), and (c) grants, advances or contributions in aid of construction, except to the extent such grants are unrestricted and available for any expenditure of the San Bernardino County Flood Control District.

C.45 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 District. 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 District determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the District 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.

D. TERM OF CONTRACT

This Contract is effective as of July 1, 2020 and expires June 30, 2025, but may be terminated earlier in accordance with provisions of this Contract.

E. DISTRICT RESPONSIBILITIES

- E.1** Designate in writing a person or persons to act as representative of the District with respect to the work to be performed under this Contract. Such personnel shall transmit instructions, receive information, and interpret policies and decisions of the District with respect to the work covered by this Contract. The point of contact as representative of the District is as follows:

San Bernardino County Flood Control District
Attn: Jonathan Dillon, P.E.
825 East Third Street, Room 117
San Bernardino, CA 92415-0835
Phone: (909) 387-8109
Fax: (909) 387-0305
E-mail: Jonathan.Dillon@dpw.sbcounty.gov

- E.2** Furnish to Consultant, as reasonably appropriate, any pertinent information related to the Project.

- E.3** Provide to the Consultant with up-to-date information as it becomes available which may have an effect on the Project activities being performed by the Consultant.
- E.4** Examine all studies, reports, estimates, proposals, and other documents prepared by Consultant under this Contract.
- E.5** Give prompt written notice to the Consultant whenever the District asserts that Consultant's performance is deficient with regards to the services.

F. FISCAL PROVISIONS

- F.1** The maximum amount of payment under this Contract shall not exceed \$625,000.00, of which \$0 may be federally funded, and shall be subject to availability of other funds to the District. 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.
- F.2** Consultant's "Schedule of Rates", attached as Exhibit 1, hereto, sets out the Consultant's hourly rates to be used when generating Task Orders. The Schedule of Rates was used by the District to determine the reasonableness of the Consultant's unit rates and is further used in verifying progress payments to Consultant and in making payment to Consultant in the event of the termination of the Contract prior to the completion of all items of work. Consultant is not entitled to any additional compensation by virtue of its costs (including wages) for any item of work exceeding the cost set forth in individual Task Orders, including excess costs related to delays in completion of the Scope of Work within the Task Order. Payment shall be made on a percent of task completed to the District's satisfaction.
- F.3** Consultant shall provide District itemized monthly invoices, in arrears, and in a format acceptable to the District for Services performed under this Contract within twenty (20) days of the end of the previous month. The District shall make payment to Consultant within sixty (60) days after receipt of invoice or the resolution of any billing dispute.
- F.4** Consultant shall accept all payments from District 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 District required to process EFT payments.
- F.5** District 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 District shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the District pursuant to the Contract.
- F.6** Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by District. Consultant shall not use current year funds to pay prior or future year obligations.
- F.7** Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Consultant shall not claim reimbursement or payment from District for, or apply sums received from District with respect to that portion of its obligations that have been paid by another source of revenue. Consultant agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the District.

- F.8** 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 District. In addition, Consultant is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

For the purposes of this Section, the word "County" and "District" shall refer to both the County of San Bernardino and the San Bernardino County Flood Control District.

G.1 Indemnification

Consultant agrees to indemnify, defend (with counsel reasonably approved by County and District) and hold harmless the **County of San Bernardino and the San Bernardino County Flood Control District** and their authorized officers, employees, agents and volunteers (Indemnitees) from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County or District on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. The Consultant indemnification obligation applies to the County's and District's "active" as well as "passive" negligence but does not apply to the County's and District's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

G.2 Additional Insured

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

G.3 Waiver of Subrogation Rights

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

G.4 Policies Primary and Non-Contributory

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

G.5 Severability of Interests

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

G.6 Proof of Coverage

Consultant shall furnish Certificates of Insurance to the District 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 District, 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.

G.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".

G.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.

G.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, the County has the right but not the obligation or duty to cancel the Contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Consultant or County payments to the Consultant(s)/Applicant(s) will be reduced to pay for County purchased insurance.

G.10 Insurance Review

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

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

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

G.11 Insurance Specifications

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, the 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, the Consultant shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

G.11.1 Workers' Compensation/Employers 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 two hundred and fifty thousand-dollar (\$250,000) limits, covering all persons, including volunteers, providing services on behalf of the Consultant and all risks to such persons under this Contract.

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

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

G.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

G.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 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.

G.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 for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

G.11.5 Professional Services Requirements

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

Or

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

or

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

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

H. RIGHT TO MONITOR AND AUDIT

H.1 Right to Monitor

The County, District, State and Federal governments shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have the 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 District in the implementation, monitoring and evaluation of this Contract and comply with any and all reporting requirements established by the District. Consultant shall repay to District within thirty (30) days of receipt of audit findings any reimbursements made by District to Consultant that are determined by subsequent audit to be unallowable pursuant to the terms of this Contract or by law.

H.2 Records

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

All records relating to the Consultant’s personnel, Contractors, Subcontractors, Service/Scope of Work and expenses pertaining to this Contract shall be kept in 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.

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

I. CORRECTION OF PERFORMANCE DEFICIENCIES

- I.1** In the event of a problem or potential problem that could impact the quality or quantity of work, Services, or the level of performance under this Contract, Consultant shall notify the District within one (1) working day, in writing and by telephone.
- I.2** 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.3** Consultant's Primary Contact and District Representative shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of this Contract. If these representatives are unable to resolve a dispute, controversy or claim with ten (10) days after the initial request for a meeting, then the dispute shall be submitted to an executive-level performance review.

If the Primary Contact and District Representative are not successful in resolving the dispute, negotiations shall be conducted by the Chief Executive Officer, or designee, and the highest-level executive for Consultant. If these representatives are unable to resolve the dispute within ten (10) days after the representatives have commenced negotiations, or 20 days have passed since the initial request for negotiations at this level, the Parties may agree in writing to submit the dispute to mediation.

- I.4** In the event of a non-cured breach, District 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 District;
 - b. Withhold funds pending duration of the breach;
 - c. Discontinue reimbursement to Consultant for and during the period in which Consultant is in breach, which reimbursement shall not be entitled to later recovery;
 - d. Offset against any monies billed by Consultant but yet unpaid by the District;
 - e. Terminate this Contract immediately and be relieved of the payment of any consideration to Consultant. In the event of such termination, the District may proceed with the work in any manner deemed proper by the District. The cost to the District shall be deducted from any sum due to the Consultant under this Contract and the balance, if any, shall be paid by the Consultant upon demand.
- I.5** 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. CORRECTION OF PERFORMANCE DEFICIENCIES

- J.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.
- J.2** In the event of a non-cured breach, District may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- Afford Consultant thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of District; and/or
 - 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
 - Withhold funds pending duration of the breach; and/or
 - Offset against any monies billed by Consultant but yet unpaid by District those monies disallowed pursuant to Item "b" of this paragraph; and/or
 - Terminate this Contract immediately and be relieved of the payment of any consideration to Consultant. In the event of such termination, District may proceed with the work in any manner deemed proper by District. The cost to District shall be deducted from any sum due to Consultant under this Contract and the balance, if any, shall be paid by Consultant upon demand.
- J.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.

K. 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
Department of Public Works - NPDES
Attn: Jonathan Dillon, P.E.
825 East Third Street, Room 117
San Bernardino, CA 92415*

*Westbound Communications
Attn: Christopher Perez, APR
3850 Vine Street, Suite 120
Riverside, CA 92507*

L. ENTIRE AGREEMENT

This Contract, including all Attachments, Exhibits, and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of the 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.

M. ELECTRONIC SIGNATURES

This Contract 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 Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email 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 Contract upon request.

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

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

►

Curt Hagman, Board Chairman

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 Flood Control District

By _____
Deputy

Westbound Communications

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

By ► _____
(Authorized signature - sign in blue ink)

Name Christopher Perez

(Print or type name of person signing contract)

Title Partner

(Print or Type)

Dated: _____

Address 3850 Vine Street, Suite 120,

Riverside, CA 92507

FOR COUNTY USE ONLY

Approved as to Legal Form

► _____
Sophie A. Akins, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

► _____
Andy Silao, P.E.

Date _____

Reviewed/Approved by District

► _____
Brendon Biggs, Interim Chief Flood Control
Engineer

Date _____