

EXHIBIT A

DESIGN-BUILD AGREEMENT

FOR

SAN BERNARDINO COUNTY

**DAAS PACIFIC VILLAGE PLATINUM CAMPUS, PACIFIC
VILLAGE SUBSTANCE USE DISORDER PROGRAM, AND
CDH PACIFIC VILLAGE CAMPUS EXPANSION
DESIGN-BUILD PROJECT**

**PROJECT NUMBER 10.10.1533, 10.10.1380, AND
10.10.1671**



**SAN BERNARDINO
COUNTY**

DESIGN-BUILD AGREEMENT

This Design-Build Agreement ("Agreement") is made effective this ____ day of _____, 2024 ("Agreement Date") by and between SAN BERNARDINO COUNTY ("County"), and _____, a [type of entity] ("Design-Builder") for the design, management, and construction of _____ located at _____, CA, _____ ("Project").

ARTICLE I CONTRACT DOCUMENTS AND INTERPRETATION

1.1 DEFINITIONS

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

1.2 CONTRACT DOCUMENTS

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

1.2.1 This Agreement, including all Exhibits and attachments:

- a. **Exhibit A** – Site Legal Description
- b. **Exhibit B** – Scope of Work and Index of Criteria Documents
- c. **Exhibit C** – Performance Bond
- d. **Exhibit D** – Payment Bond (Labor and Material)
- e. **Exhibit E** – Design-Builder's Project Representation and Key Personnel
- f. **Exhibit F** – Submittal Schedule

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

1.2.3 General Conditions

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

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

1.2.6 Addenda. The following Addenda listed below:

Number	Title	Pages
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1.2.7 Project Safety Program

1.3 REFERENCE DOCUMENTS

The following Reference Documents are not considered Contract Documents and were provided to the Design-Builder for informational purposes. Design-Builder may rely upon the technical data contained in such documents but not upon non-technical data, interpretations, opinions or provisional statements contained therein:

1.3.1 [to be inserted after award]

1.4 ENTIRE AGREEMENT

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

ARTICLE II THE WORK

2.1 SCOPE OF WORK

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

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

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

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

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

2.2 STANDARD OF PERFORMANCE

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

2.2.1 Comply with the requirements of the Contract Documents;

2.2.2 Comply with Applicable Laws;

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

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

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

ARTICLE III TIME FOR PERFORMANCE

3.1 CONTRACT TIME

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

3.2 LIQUIDATED DAMAGES

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

3.2.2 Design-Builder and County agree to liquidate damages with respect to Design-Builder's failure to achieve Substantial Completion of the Work within the Contract Time. The

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

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

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

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

ARTICLE IV CONTRACT SUM

4.1 CONTRACT SUM

4.1.1 Total Compensation. County shall pay the Design-Builder in current funds for the Design-Builder's complete performance of the Work in accordance with the Contract Documents the Contract Sum of [insert amount] Dollars (\$_____).

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

4.1.3 All Inclusive Price. The Contract Sum is the total amount payable by County to Design-Builder for performance of the Work under the Contract Documents and is deemed to cover all costs arising out of or related to the performance of the Work, including, without limitation, the effects of natural elements upon the Work, unforeseen difficulties or obstructions affecting the

performance of the Work (including, without limitation, unforeseen conditions at the Site that do not constitute Differing Site Conditions) and fluctuations in market conditions and price escalations (whether occurring locally, nationally or internationally) from any cause, including, without limitation, causes beyond the control or foreseeability of the Design-Builder.

4.2 ALTERNATES

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

Number	Description	Dollar Amount
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4.3 UNIT PRICES

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

Description	Measurement Unit	Dollar Amount
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4.4 PAYMENT BY ELECTRONIC FUND TRANSFER

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

ARTICLE V DESIGN-BUILDER'S DUTIES AND RESPONSIBILITIES

5.1 GENERAL SCOPE OF WORK

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

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

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

5.2 BEFORE STARTING WORK

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

5.3 INITIAL CONFERENCE

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

5.4 EVALUATION OF PRELIMINARY SUBMITTALS

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

5.5 DESIGN PROFESSIONAL LICENSING REQUIREMENTS

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

5.6 STANDARD OF CARE

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

5.7 CONSTRUCTABILITY AND COORDINATION REVIEWS

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

5.8 DESIGN DEVELOPMENT DOCUMENTS – PHASE 1

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

5.8.1 Consult with County to fully understand County's requirements for the Project and review available data;

5.8.2 Advise County as to the necessity of County's providing or obtaining from others additional reports, data or services and assist County in obtaining such reports, data, or services;

5.8.3 Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Design-Builder with whom consultation is to be undertaken in connection with the Project; and

5.8.4 Review Criteria Documents provided by County.

5.8.5 Prepared plot plans, landscape, irrigation, civil, architectural, structural, mechanical and electrical floor, elevations, cross-sections and other required drawings; and outline specifications describing the size, character, and quality of the entire Project in its essentials as to kinds and locations of materials, and type of structural, mechanical and electrical systems.

5.8.6 Furnish the above documents, drawings, calculations and specifications to and review them with County for approval within the time indicated in the approved Project Schedule at increments of at least 50% and 100% completion of the Design Development Documents.

5.9 CONSTRUCTION DOCUMENTS – PHASE 2

After written acceptance by County of the Design Development Documents, Design-Builder shall:

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

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

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

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

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

a. Electronic computer software in Microsoft Word, latest version for Windows.

b. For articles, materials and equipment identified by brand names, at least two names shall be used, and such names shall be followed by the words "or equal." Specifications shall not contain restrictions that will limit competitive bids. Exceptions shall only be permitted by California Public Contract Code Section 3400.

c. All disks produced shall be clearly labeled to indicate files contained and date produced.

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

5.10 CONSTRUCTION – PHASE 3

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The County reserves the right to require Design-Builder and all subcontractors at every tier to submit certified payroll records more frequently than monthly to the Labor Commissioner.

(3) The certified payroll records must be in a format prescribed by the Labor Commissioner.

f. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.

g. Labor Code Section 1771.1(a) states the following: "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

5.12 INSURANCE

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

5.13 SKILLED AND TRAINED WORKFORCE

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

Builder agrees that it and all of its subcontractors at every tier will comply with the requirements of Public Contract Code Section 22164(c) and will provide the County with written evidence that Design-Builder and all of its subcontractors at every tier are complying with these requirements by the 10th day of each month that Work is performed.

5.14 AMERICAN RESCUE PLAN ACT (ARPA) CORONAVIRUS LOCAL FISCAL RECOVERY FUND (CLFRF)

The Design-Builder shall comply with all of the requirements of ARPA CLRF funding for this Project, including but not limited to Davis-Bacon requirements, as more fully set forth in Exhibit J to the RFP. To the extent that the requirements of Exhibit J conflict with any other provision of the Contract Documents, Exhibit J shall prevail. The Design Builder shall cooperate with the County in meeting ARPA CLFRF reporting requirements as more fully set forth in Section 1.12 of the Special Conditions for this Project. Contractor's obligation to comply with ARPA CLFRF requirements shall survive termination of the Design Build Agreement.

ARTICLE VI DESIGN-BUILDER'S REPRESENTATIONS AND WARRANTIES

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

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

6.2 Design-Builder has reasonably examined all reports of exploration and tests of subsurface conditions, as-built drawings, drawings or reports, available for design and construction purposes, of physical conditions, including those which are identified in Paragraph 1.3 hereinabove, or which may be apparent at the Site and accepts the criteria set forth in these documents and the General Conditions to the extent of the information contained in these documents upon which the Design-Builder is entitled to rely. Design-Builder agrees that except for the information so identified, Design-Builder does not and shall not rely on any other information contained in these documents.

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

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

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

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

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

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

NAME OF SUBCONTRACTOR AND LOCATION OF MILL OR SHOP	DESCRIPTION OF WORK: REFERENCE TO BID ITEMS	SUBCONTRACTOR'S LICENSE NO.

**ARTICLE VII
MISCELLANEOUS PROVISIONS**

7.1 INDEPENDENT DESIGN-BUILDER

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

7.2 COUNTY EMPLOYEES AND OFFICIALS

Design-Builder shall employ no County official nor any regular County employee in the Work performed pursuant to this Agreement. No officer or employee of County shall have any financial interest in this Agreement in violation of applicable provisions of law.

Design-Builder agrees to provide or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Design-Builder. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Design-Builder. For purposes of this provision, "County Administrative Official" is defined as a member of the Board of Supervisors or such officer's staff, Chief Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

7.3 IRAN CONTRACTING ACT OF 2010

(Public Contract Code sections 2200 et seq.)

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

In accordance with Public Contract Code section 2204(a), the Design-Builder certifies that at the time the Contract is signed, the Design-Builder signing the contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 (<http://www.dgs.ca.gov/pd/Resources/PDLegislation.aspx>) as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three

(3) years in accordance with Public Contract Code section 2205. Design-Builder agrees that signing the Contract shall constitute signature of this Certification.

7.4 DEBARMENT AND SUSPENSION

The Design-Builder certifies that neither it nor its principals, or other key decision makers, or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency or on the Federal Government Excluded Parties List System (www.epls.gov). Design-Builder agrees that signing this Contract shall constitute signature of this Certification.

7.5 INACCURACIES OR MISREPRESENTATIONS

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

7.6 NOTICES

Any notices or special instruction required to be given in writing under this Agreement shall be given either by personal delivery to Design-Builder's agent (as designated in Section 1 hereinabove) or to County's Engineer and County Counsel as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as follows:

COUNTY	DESIGN-BUILDER
_____	_____
_____	_____
_____	_____

7.7 CONTRACTOR'S LICENSE NOTICE

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

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

SAN BERNARDINO COUNTY

Dawn Rowe, Chair, Board of Supervisors

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

Dated: _____

By _____
(Authorized signature – sign in blue ink)

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 County of San Bernardino

Name: _____
(Print or type name of person signing contract)

By _____
Deputy

Title: _____

Dated: _____

Address: _____

<p>Approved as to Legal Form</p> <p>_____ , Deputy County Counsel</p> <p>Date: _____</p>	<p>Reviewed by Contract Compliance</p> <p>_____</p> <p>Date: _____</p>	<p>Presented to BOS for Signature</p> <p>_____ Don Day, Director</p> <p>Date: _____</p>
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NOT FOR BID

EXHIBIT A

SITE LEGAL DESCRIPTION

NOT FOR BID

EXHIBIT B

**SCOPE OF WORK AND INDEX OF
CRITERIA DOCUMENTS**

NOT FOR BID

EXHIBIT C

Performance Bond No. _____

PERFORMANCE BOND

WHEREAS, the County of San Bernardino ("County") has awarded [insert name of Design-Builder] designated as the "Principal" herein, a contract for the work described as follows:

WHEREAS, on or about _____, 20____, the Principal entered into a Design-Build Contract with the County for the design and construction of the work of improvement, which Design-Build Contract and all Contract Documents set forth therein are incorporated herein and made a part hereof by this reference; and

WHEREAS, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents concurrently with delivery to County of the executed Design-Build Contract.

NOW, THEREFORE, Principal and _____ ("Surety"), a duly admitted surety in the State of California, are held and firmly bound to County for payment of the penal sum of \$_____ ("the Bonded Sum"), in lawful money of the United States, for payment of which sum Principal and Surety jointly and severally bind themselves and their heirs, executors, administrators, successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The following terms and conditions shall apply with respect to this Bond:

1. The Design-Builder and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to County for the complete and proper performance of the Design-Build Contract, which is incorporated herein by reference.
2. If the Design-Builder completely and properly performs all of its obligations under the Design-Build Contract, the Surety and the Design-Builder shall have no obligation under this Bond.
3. If there is no County Default, the Surety's obligation under this Bond shall arise after:
 - 3.1 County has declared a Design-Builder Default under the Design-Build Contract pursuant to the terms of the Design-Build Contract; and
 - 3.2 County has agreed to pay the Balance of the Contract Sum to:

- 3.2.1 The Surety in accordance with the terms of this Bond and the Design-Build Contract; or
 - 3.2.2 The contractor selected to perform the Design-Build Contract in accordance with the terms of this Bond and the Design-Build Contract.
4. When County has satisfied the conditions of Paragraph 3, the Surety shall promptly (within thirty (30) days) and at the Surety's expense elect to take one of the following actions (provided, that unless and until County has actually terminated Design-Builder for default, the Surety need only respond to County and commence a diligent investigation, not make an election):
 - 4.1 Arrange for the Design-Builder, with consent of County, to perform and complete the Design-Build Contract (but County may withhold consent, in which case the Surety must elect an option described in Paragraphs 4.2, 4.3 or 4.4, below); or
 - 4.2 Undertake to perform and complete the Design-Build Contract itself, through its agents or through independent contractors, but County may reject use of the Design-Builder as an agent or independent contractor; or
 - 4.3 Obtain bids from qualified Design-Builders acceptable to County for a contract for performance and completion of the Design-Build Contract (other than the original Design-Builder), and, upon determination by County of the lowest responsible bidder, arrange for a contract to be prepared for execution by County and the Design-Builder selected with County's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Design-Build Contract; and, if the Surety's obligations defined in Paragraph 6, below, exceed the Balance of the Contract Sum, then the Surety shall pay to County the amount of such excess; or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new Design-Builder and with reasonable promptness under the circumstances, and, after investigation and consultation with County, determine in good faith its monetary obligation for which it may then be liable to County under Paragraph 6, below, for the performance and completion of the Design-Build Contract and, as soon as practicable after the amount is determined, tender payment therefor to County with full explanation of the payment's calculation. If County accepts the Surety's tender under this Paragraph 4.4, County may still hold Surety liable for future damages then unknown or unliquidated resulting from the Design-Builder Default. If County disputes the amount of Surety's tender under this Paragraph 4.4, County may exercise all remedies available to it at law to enforce the Surety's liability under Paragraph 6 below.
5. If the Surety does not proceed as provided in Paragraph 4, above, then the Surety shall be deemed to be in default on this Bond ten (10) days after receipt of an additional written notice from County to the Surety demanding that the Surety perform its obligations under this Bond. At all times County shall be entitled to enforce any remedy available to County at law or under the Design-Build Contract including, without limitation, and by way of example only, rights to perform work, protect work, mitigate damages, or coordinate work with other consultants or Design-Builders.

6. The Surety's monetary obligation under this Bond is limited to the amount of this Bond, plus the Balance of the Contract Sum paid hereunder. Subject to these limits, the Surety's obligations under this Bond are commensurate with the obligations of the Design-Builder under the Design-Build Contract. The Surety's obligations shall include, but are not limited to:
 - 6.1 The responsibilities of the Design-Builder under the Design-Build Contract for completion of the Design-Build Contract and correction of defective work;
 - 6.2 The responsibilities of the Design-Builder under the Design-Build Contract to pay liquidated damages, and for damages for which no liquidated damages are specified in the Design-Build Contract, actual damages caused by non-performance of the Design-Build Contract, including but not limited to, all valid and proper backcharges, offsets, payments, indemnities, or other damages;
 - 6.3 Additional legal, design professional and delay costs resulting from the Design-Builder Default or resulting from the actions or failure to act of the Surety under Paragraph 4, above.
7. No right of action shall accrue on this Bond to any person or entity other than County or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, alteration or addition to the Design-Build Contract or to related subcontracts, purchase orders and other obligations, including changes of time. The Surety consents to all terms of the Design-Build Contract, including provisions on changes to the Contract. No extension of time, change, alteration, modification, deletion, or addition to the Contract Documents, or of the work required thereunder, shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond.
9. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between County and the Design-Builder regarding the Design-Build Contract, or in the courts of the County of San Bernardino, or in a court of competent jurisdiction in the location in which the work is located.
10. Notice to the Surety, County or the Design-Builder shall be mailed or delivered to the address shown on the signature page.
11. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.
12. Definitions.
 - 12.1 Balance of the Contract Sum: The total amount payable by County to the Design-Builder pursuant to the terms of the Design-Build Contract after all proper adjustments have been made under the Design-Build Contract, for example, deductions for progress payments made, and increases/decreases for approved modifications to the Design-Build Contract.

- 12.2 Design-Build Contract: The agreement between County and the Design-Builder identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Design-Builder Default: Material failure of the Design-Builder, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Design-Build Contract.
 - 12.4 County Default: Material failure of County, which has neither been remedied nor waived, to pay the Design-Builder progress payments due under the Design-Build Contract or to perform other material terms of the Design-Build Contract, if such failure is the cause of the asserted Design-Builder Default and is sufficient to justify Design-Builder termination of the Design-Build Contract.
13. Qualification Regarding Extended Warranties. The Surety's liability for extended warranties for Subcontractors and suppliers shall not apply to a breach of any such extended warranty under the Design-Build Contract that occurs more than one year after the applicable warranty commencement date under the Design-Build Contract.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety of the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body. Principal and Surety have caused this Bond to be duly executed and delivered as of this _____ day of _____, 20__.

SURETY:

PRINCIPAL:

Name

Name

Principal Place of Business

Address

By: _____

Signature

By: _____

Signature

Attorney-In-Fact

Printed Name

Signature

Its: _____

Title

(Attach Attorney-in-Fact Certificate, Corporate Seal and Surety Seal)

END OF DOCUMENT

NOT FOR BID

EXHIBIT D

Payment Bond No. _____

PAYMENT BOND
(Labor and Material Bond)

WHEREAS, the County of San Bernardino ("County") has awarded [insert name of Design-Builder] designated as the "Principal" herein, a contract for the work described as follows:

WHEREAS, on or about _____, 20____, the Principal entered into a Design-Build Contract with the County for the design and construction of the work of improvement, which Design-Build Contract and all Contract Documents set forth therein are incorporated herein and made a part hereof by this reference; and

WHEREAS, by terms of the Design-Build Contract, as well as California Civil Code §9550, Principal is required to furnish a bond guaranteeing payment of claims.

NOW, THEREFORE, Principal and _____ ("Surety"), a duly admitted surety in the State of California, are held and firmly bound to the County for payment of the penal sum of \$_____ ("the Bonded Sum"), in lawful money of the United States, for payment of which sum Principal and Surety jointly and severally bind themselves and their heirs, executors, administrators, successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if Principal shall fail to pay any of the persons named in California Civil Code §9100 for all labor, materials, equipment or services used or reasonably required for use in performance of the Work of the Project, then Surety shall pay for the same in an amount not-to-exceed the Bonded Sum, otherwise this obligation shall be null and void.

The following terms and conditions shall apply with respect to this Bond:

1. The Design-Builder and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to County and to Claimants, to pay for labor, materials and equipment furnished for use in the performance of the Design-Build Contract, which is incorporated herein by reference.
2. With respect to County, this obligation shall be null and void if the Design-Builder:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies and holds harmless County from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Design-Build Contact, provided County has promptly notified the Design-Builder and the Surety (at the address described in Paragraph 10) of any claims, demands, liens or suits and tendered defense of such claims,

demands, liens or suits to the Design-Builder and the Surety, and provided there is no County Default.

3. With respect to Claimants, this obligation shall be null and void if the Design-Builder promptly makes payment, directly or indirectly through its subcontractors, for all sums due Claimants. However, if Design-Builder or its subcontractors fail to pay any of the persons named in California Civil Code section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Design-Builder or subcontractors pursuant to the Unemployment Insurance Code section 13020, with respect to such work and labor, then Surety will pay for the same, and also, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the Court.
4. Consistent with the California Mechanic's Lien Law, California Civil Code §§ 8000, et seq., the Surety shall have no obligation to Claimants under this Bond unless the Claimant has satisfied all applicable notice requirements.
5. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety under this Bond.
6. Amounts due the Design-Builder under the Design-Build Contract shall be applied first to satisfy claims, if any, under any Construction Performance Bond and second, to satisfy obligations of the Design-Builder and the Surety under this Bond.
7. County shall not be liable for payment of any costs, expenses, or attorney's fees of any Claimant under this bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
8. The Surety hereby waives notice of any change, including changes of time, to the Design-Build Contract or to related subcontracts, purchase orders and other obligations.
9. Suit against Surety on this Payment Bond may be brought by any Claimant, or its assigns, at any time after the Claimant has furnished the last of the labor or materials, or both, but, pursuant to California Civil Code §9558, must be commenced before the expiration of six months after the period in which stop notices may be filed as provided in Civil Code §9356.
10. Notice to the Surety, County or the Design-Builder shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, County or the Design-Builder, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
11. This Bond has been furnished to comply with the California Mechanic's Lien Law, including, but not limited to, Civil Code §§9550, et seq. Any provision in this Bond conflicting with said statutory requirements shall be deemed deleted and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Design-Builder shall promptly furnish a copy of this Bond or shall permit a copy to be made.

13. DEFINITIONS

13.1 Claimant: An individual or entity having a direct contract with this Design-Builder or with a subcontractor of the Design-Builder to furnish labor, materials or equipment for use in the performance of the Contract, as further defined in California Civil Code §9100. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Design-Build Contract, architectural and engineering services required for performance of the work of the Design-Builder and the Design-Builder's subcontractors, and all other items for which a stop notice might be asserted. The term Claimant shall also include the Unemployment Development Department as referred to in California Civil Code §9554(b).

13.2 Design-Build Contract: The agreement between County and the Design-Builder identified on the signature page, including all Contract Documents and changes thereto.

13.3 County Default: Material failure of County, which has neither been remedied nor waived, to pay the Design-Builder as required by the Design-Build Contract, provided that failure is the cause of the failure of Design-Builder to pay the Claimants and is sufficient to justify termination of the Design-Build Contract.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety of the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body. Principal and Surety have caused this Bond to be duly executed and delivered as of this _____ day of _____, 20____.

SURETY:

PRINCIPAL:

Name

Name

Principal Place of Business

Address

By: _____
Signature

By: _____
Signature

Attorney-In-Fact

Printed Name

Signature

Its:

Title

(Attach Attorney-in-Fact Certificate, Corporate Seal and Surety Seal)

END OF DOCUMENT

NOT FOR BID

EXHIBIT E

**DESIGN-BUILDER'S PROJECT
REPRESENTATION AND KEY PERSONNEL**

NOT FOR BID

EXHIBIT F

SUBMITTAL SCHEDULE

NOT FOR BID