



Contract Number

20-1129

SAP Number

## Department of Airports

<b>Department Contract Representative</b>	James E. Jenkins
<b>Telephone Number</b>	909-387-8810
<b>Consultant</b>	Kimley-Horn and Associates, Inc.
<b>Consultant Representative</b>	Pearse Melvin, Vice President
<b>Telephone Number</b>	951-335-8287
<b>Contract Term</b>	December 1, 2020 –November 30, 2023
<b>Original Contract Amount</b>	\$1,500,000
<b>Amendment Amount</b>	\$0
<b>Total Contract Amount</b>	\$1,500,000
<b>Cost Center</b>	6311001000

### IT IS HEREBY AGREED AS FOLLOWS:

**WHEREAS**, the County of San Bernardino (County) desires to utilize the professional service of on-call Airport Engineering and Planning Consultants for Airport Planning, Architectural/Engineering and Special Services; and

**WHEREAS**, the County conducted a competitive process to find Kimley-Horn and Associates, Inc. (Consultant or Contractor) to provide these services, and

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

**NOW, THEREFORE**, the County and Consultant mutually agree to the following terms and conditions of this contact (Contract or Agreement).

#### A. DEFINITIONS

- A.1 Appropriate Authorities - Any private, local, municipal, county, state, regional, or federal authority, public utility or other public or quasi-public agency.

- A.2 Department of Airports (or Department) - The Department of the County of San Bernardino ("County") authorized by the Governing Body of the County to administer this Agreement.
- A.3 Board (or Governing Board) - Board of Supervisors of the County of San Bernardino.
- A.4 Budget - Funding in place and available, for the completion of the work requested, as established in this agreement and as assigned by the Department as referenced by an approved work order.
- A.5 Categories of Work - Those applicable and specific categories of work required for accomplishing any requested analysis, technical reports, plans, or any related work efforts for the Department as submitted in the Consultants Proposals and identified on authorized work order(s) issued by the Department.
- A.6 Consultant –Kimley-Horn and Associates, Inc..
- A.7 Contract Documents - This Agreement and all attachments made a part of this contract, including addenda, Request for Proposals, Consultant's Proposal and fee schedules whether physically attached or made reference hereto, provided that in the event of any conflict among said documents, the Contract and its attachments shall control.
- A.8 Director - The Director of the Department of Airports of the County of San Bernardino.
- A.9 On-Call – Term used to designate that Consultant is available for work as requested by the Department. Time is of the essence on some projects that require timely response to keep projects moving forward with minimal delays.
- A.10 Project Manager - The Department employee responsible for the administration of the contract, issuing a work order and overseeing the work performed by Consultant.
- A.11 Work Order – A document issued by the Department that authorizes the Consultant to perform specific work and render services identified in this document on a specific project with a not-to-exceed maximum fee amount as mutually negotiated with Consultant and per established fee schedules. Work order shall include at a minimum: signatures of authorizing Department representatives, assigned work order number (for billing purposes), not to exceed total amount for that project, description of services requested and the location(s) of where the service(s) are required.

## **B. CONSULTANT RESPONSIBILITIES**

### **B.1 Planning Services**

This category includes studies under the broad headings of airport system and master planning, airport noise compatibility planning and environmental assessments and related studies. These studies include, but are not limited to, the following activities:

- a) Design study to establish the framework and detailed work program.
- b) Airport data collection and facility inventories.
- c) Aeronautical activity forecasts and demand/capacity analyses.
- d) Facility requirement determination.
- e) Airfield modeling for capacity and delay.

- f) Airport layout and terminal area plan development.
- g) Airport noise studies under 14 CFR Parts 150 and 161.
- h) Compatible land use planning in the vicinity of airports.
- i) Airport site selection studies.
- j) Airport development schedules and cost estimates.
- k) Airport financial planning and benefit cost analysis.
- l) Participation in public information and community involvement programs and/or public hearings relating to airport development and planning projects.
- m) Environmental Assessments (EA), Environmental Impact Statements (EIS), and other studies in accordance with FAA Orders 5050.4 and 1050.1.
- n) Preparation of or updating of the airport layout plan.
- o) GIS data collection, entry, and analysis and other electronic graphical/mapping efforts.

## B.2 Engineering Services

This category includes the basic A/E services normally required for airport development projects. It involves services generally of an architectural, civil, geotechnical, structural, mechanical, and electrical engineering nature. The basic services are usually conducted in, but are not limited to, the five distinct and sequential phases summarized below:

- a) Preliminary Phase-the activities required for defining the scope of a project and establishing preliminary requirements. . Some examples of activities within this phase of a project include, but are not limited to:
  - i. Coordinating with the Sponsor on project scope requirements, finances, schedules, operational safety and phasing considerations, site access and other pertinent matters.
  - ii. As applicable, coordinating project with local FAA personnel and other interested stakeholders to identify potential impacts to their operations.
  - iii. Planning, procuring, and/or preparing necessary surveys, geotechnical engineering investigations, field investigations, and architectural and engineering studies required for design considerations.
  - iv. Developing design schematics, sketches, environmental and aesthetic considerations, project recommendations, and preliminary layouts and cost estimates.
  - v. Preparing project design criteria and other bridging documents commonly used for alternative project delivery methods such as design-build contracting.
- b) Design Phase-all activities required to undertake and accomplish a full and complete project design. Examples include, but are not limited to, those below:

- i. Conducting and attending meetings and design conferences to obtain information and to coordinate or resolve design matters.
  - ii. Collecting engineering data and undertaking field investigations; performing geotechnical engineering studies; and performing architectural, engineering, and special environmental studies.
  - iii. Preparing necessary engineering reports and recommendations.
  - iv. Preparing detailed plans, specifications, cost estimates, and design/construction schedules.
  - v. Preparing Construction Safety and Phasing Plan (CSPP).
  - vi. Printing and providing necessary copies of engineering drawings and contract specifications.
- c) Bidding and Negotiation Phase-these activities are sometimes considered part of the construction phase. They involve assisting the Sponsor in advertising and securing bids, negotiating for services, analyzing bid results, furnishing recommendations on the award of contracts, and preparing contract documents.
- d) Construction Phase-this phase may include all basic services rendered after the award of a construction contract, including, but not limited to, the following activities:
- i. Providing consultation and advice to the Sponsor during all phases of construction.
  - ii. Representing the Sponsor at preconstruction conferences.
  - iii. Inspecting work in progress periodically and providing appropriate reports to the Sponsor.
  - iv. Reviewing and approving shop and erection drawings submitted by contractors for compliance with design concept/drawings.
  - v. Reviewing, analyzing, and accepting laboratory and mill test reports of materials and equipment.
  - vi. Assisting in the negotiation of change orders and supplemental agreements.
  - vii. Observing or reviewing performance tests required by specifications.
  - viii. Determining amounts owed to contractors and assisting Sponsors in the preparation of payment requests for amounts reimbursable from grant projects.
  - ix. Making final inspections and submitting punch-lists and a report of the completed project to the Sponsor.
  - x. Reviewing operations and maintenance manuals.
- e) Project Closeout Phase-this phase includes all basic services rendered after the completion of a construction contract, including, but not limited to, the following activities:
- i. Making final inspections and submitting punch-lists and a report of the completed project to the Sponsor.

- ii. Providing record drawings.
- iii. Preparing summary of material testing report
- iv. Preparing summary of project change orders
- v. Preparing grant amendment request and associated justification, if applicable.
- vi. Preparing final project reports including financial summary.
- vii. Obtaining release of liens from all contractors.

**B3. Special Services**

These services may be performed by the principal consultant via a subcontract agreement. A sample of these services are:

- a) Soil investigations, including core sampling, laboratory tests, related analyses, and reports.
- b) Detailed mill, shop, and/or laboratory inspections of materials and equipment.
- c) Land surveys and topographic maps.
- d) Field and/or construction surveys.
- e) Photogrammetry surveys.
- f) Onsite construction inspection and/or management, etc.
- g) Special environmental studies and analyses.
- h) Expert witness testimony in litigation involving specific projects.
- i) Project feasibility studies.
- j) Public Information and community involvement, etc.
- k) Preparation of record drawings.
- l) Assisting the Sponsor in the preparation of necessary applications for local, State, and Federal grants.
- m) Preparations of an as-built airport layout plan.
- n) Preparation of property maps.
- o) Preparation of quality control plan.
- p) Preparation of final report.

**B4. Task that may be included but not specifically outlined are:**

Assist the County in developing the five (5) year projection of the County's needs. This projection would include, but not be limited to:

- a) Estimates of costs (engineering and construction).
  - b) Assistance with developing Capital Improvement Programs.
  - c) Assist with preparation of AIP documents for submittal to FAA and Caltrans.
  - d) Project and contract administration
  - e) Preparation and administration of formal requests for bid proposals
  - f) Administration of Disadvantaged Business Enterprise (DBE) compliance requirements
- B5. Prepare reports and attend meetings as requested by the County. Typical meetings consist of the Airport Commission, public hearings, Board of Supervisors as the Governing Body, and others as required in the normal operation of the County.

## 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

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 the County.

### C.3 Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other consultants for the same or similar services. The County does not guarantee or represent that the Consultant will be permitted to perform any minimum amount of work, or receive a minimum amount of compensation, under the terms of this Contract.

### C.4 Attorney's Fees and Costs

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

### 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 County; and (c) are not otherwise disqualified from performing the services under applicable law. If requested by the County and not in violation of applicable law, Consultant shall conduct a background check, at Consultant's sole expense, on all its personnel providing services. If requested by the County Consultant shall provide the results of the background check of each individual to verify that the individual meets Consultant's standards for employment. Such background check shall be in the form generally used by Consultant in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Consultant personnel who do not meet the County's hiring criteria, in the County's sole discretion, shall not be assigned to work on County property or services, and the County shall have the right, at its sole option, to refuse access to any of Consultant's personnel to any County facility.

- C.6 Change of Address  
Consultant shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.
- 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 County Policy  
In performing the services and while at any County facilities, Consultant personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County and the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to County facilities and the provision of the services, and all amendments and modifications to each of the items addressed in subsections (b), (c), and (d) (collectively, "Policies"). Policies, and additions or modifications thereto, may be communicated orally or in writing to Consultant or Consultant personnel or may be made available to Consultant or Consultant personnel by conspicuous posting at a County facility, as applicable, electronic posting, or other means generally used by the County to disseminate such information to its employees or contractors. Consultant shall be responsible for the promulgation and distribution of Policies to Consultant personnel to the extent necessary and appropriate.
- The County shall have the right to require Consultant's employees, agents, representatives and subcontractors to exhibit identification credentials issued by the County in order to exercise any right of access under this Contract.
- C.9 Confidentiality  
Consultant shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this Contract, except for statistical information not identifying any participant. Consultant shall not use or disclose any identifying information for any other purpose other than carrying out the Consultant's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.
- C.10 Primary Point of Contact  
Consultant will designate an individual to serve as the primary point of contact for the Contract. Consultant or designee must respond to the County inquiries within two (2) business days. Consultant shall not change the primary contact without written acknowledgement to the County. Consultant will also designate a back-up point of contact in the event the primary contact is not available.
- C.11 County Internship Initiative  
Consultant agrees to be contacted by the County to solicit its participation in an internship initiative known as GenerationGo! Career Pathways, involving the potential placement and hiring of interns by Consultant's business. Consultant is encouraged, and agrees to make good faith efforts, to utilize the County's program to aid the **County's Vision for a skilled workforce and jobs that create countywide prosperity**, and its **goal to Create, Maintain and Grow Jobs and Economic Value in the County**. The County's objective with its internship initiative is to focus on training, education, employment and support services to develop a more highly-educated and trained workforce. When participating in the County's internship initiative, the Consultant remains an independent contractor and shall not be construed as agents, officers, or employees of the County. More information about the County's GenerationGo! Career Pathways Program can be located at <http://wp.sbcounty.gov/workforce/career-pathways/>.
- C.12 County Representative

The County's Director of the Department of Airports or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the services/Scope of Work by Consultant. If this Contract was initially approved by the Governing Body, then the Governing Body must approve all amendments to this Contract, unless otherwise delegated by the Governing Body.

C.13 Damage to County Property

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

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

C. 14 Debarment and Suspension

Consultant certifies that neither it nor its principals or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Consultant further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

C.15 Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Consultant agrees that the Consultant and the Consultant's employees, while performing service for the County, on County property, or while using County equipment:

- 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 County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

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

C.16 Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

C.17 Employment Discrimination

During the term of the Contract, Consultant shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Consultant shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

C.18 Environmental Requirements

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Consultant to use recycled paper for any printed or photocopied material created as a result of this Contract. Consultant is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Consultant must be able to annually report the County's environmentally preferable purchases. Consultant must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

C.19 Improper Influence

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

C.20 Improper Consideration

Consultant shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Consultant shall immediately report any attempt by a the County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Consultant. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

C.21 Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

- C.22 Legality and Severability  
The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.
- C.23 Licenses, Permits and/or Certifications  
Consultant shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules and regulations. The Consultant shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Consultant will notify the County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.
- C.24 Material Misstatement/Misrepresentation  
If during the course of the administration of this Contract, the County determines that Consultant has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.
- C.25 Mutual Covenants  
The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".
- C.26 Nondisclosure  
Consultant shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Consultant or an agent of Consultant or otherwise made available to Consultant or Consultant's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Consultant or an agent of Consultant in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.
- C.27 Notice of Delays  
Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.
- C.28 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 County upon payment for services (and products, if applicable). All such items shall be delivered to the County at the completion of work under the Contract, subject to the requirements of Article D—Term of the Contract. Unless otherwise directed by the County, Consultant may retain copies of such items.
- C.29 RESERVED
- C.30 Air, Water Pollution Control, Safety and Health

Consultant shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

**C.31 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 the Contract.

All records relating to the Consultant's personnel, consultants, subcontractors, services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

**C.32 Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto. In the performance of this Contract, Consultant, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino. Any provision of this Contract that may appear to give the County any right to direct the Consultant concerning the details of performing the services/Scope of Work, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the County concerning the end results of the performance.

**C.33 Release of Information**

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

**C.34 Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

**C.35 Subcontracting**

Consultant shall obtain the County's written consent, which the County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the services to the County. At the County's request, Consultant shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Consultant shall remain directly responsible to the County for its subcontractors and shall indemnify the County for the actions or omissions of its subcontractors under the terms and conditions specified in Article G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Consultant Personnel.

For any subcontractor, Consultant shall:

- a) Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and

- b) Ensure that the subcontractor follows the County's reporting formats and procedures as specified by the County.
- c) Include in the subcontractor's subcontract substantially similar terms as are provided in Articles B. Consultant Responsibilities, C. General Contract Requirements, and G. Insurance and Indemnification.

Upon expiration or termination of this Contract for any reason, the County will have the right to enter into direct Contracts with any of the subcontractors. Consultant agrees that its arrangements with subcontractors will not prohibit or restrict such subcontractors from entering into direct contracts with the County.

C. 36 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided under this Contract is served upon Consultant or the County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Consultant and the County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Consultant for the County.

C.37 Termination for Convenience

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

C.38 Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions. If either party is prevented from timely performing its respective obligations under this Agreement due to unforeseeable events that are not caused or within the reasonable control of a party or its employees, agents, and contractors, including but not limited to natural disasters, health pandemics (including COVI-19), adverse weather conditions, and government actions, to the extent such party promptly provides written notice of such event to the other party, is actually prevented from performing its obligations due to such event, and uses diligent efforts to mitigate the effects of such event, the time for performance of such obligation shall be extended for the duration of time that said party is prevented from performing its obligations as a result of such events. Notwithstanding the foregoing, in the event a party is not able to perform its obligations within 90 days after the occurrence of such event, the other party shall have the right to terminate the Agreement.

C.39 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, County of San Bernardino. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino.

C.40 Conflict of Interest

Consultant shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Consultant shall make a reasonable effort to prevent officers, employees, subcontractors, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Consultant's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

Consultant acknowledges and agrees that it will not submit a bid, or enter into an agreement with a third party, for the construction of the Project or any future phases of a Project on which it has previously performed work that was assigned to it under this Contract. Consultant agrees not to affiliate with, or receive financial consideration from, any third party in connection with this Project, except as specifically authorized under this Contract.

C.41 Former County Administrative Officials

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

C.42 Disclosure of Criminal and Civil Procedures

The County reserves the right to request the information described herein from Consultant. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Consultant also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Consultant is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Consultant will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Consultant is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Consultant will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision “key employees” includes any individuals providing direct service to the County. “Key employees” do not include clerical personnel providing service at the firm’s offices or locations.

C.43 Copyright

The County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the County 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 the County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

C.44 Artwork, Proofs and Negatives

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

C.45 Iran Contracting Act

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 Consultant certifies that at the time the Contract is signed, the Consultant signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 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.

Consultants are cautioned that making a false certification may subject the Consultant 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.

C.46 Prevailing Wage Laws

By its execution of this Contract, Consultant certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. (“CA Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. Section 1720 of the California Labor Code states in part: “For purposes of this paragraph, ‘construction’ includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction including, but not limited to, inspection and land surveying work...” If the Services/Scope of Work are being performed as part of an applicable “public works” or “maintenance” project, as defined by the CA Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such CA Prevailing Wage Laws. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant will also adhere to any other applicable requirements, including but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and

forfeiture of penalties prescribed in the Labor Code for violations. Consultant shall defend, indemnify and hold the County and its respective elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with CA Prevailing Wage Laws and Federal Prevailing Wage Laws (as defined below). See Attachment A, which is attached and incorporated by reference, for additional information regarding CA Prevailing Wage Laws. Consultant shall comply with all applicable terms and conditions in Attachment A. The applicable general prevailing wage determinations are on file with the County and are available to any interested party on request. Consultant shall post a copy of the applicable prevailing wage determinations at the job site. By its execution of this Contract, Consultant certifies that it is aware of the requirements federal (Davis-Bacon) prevailing wage laws ("Federal Prevailing Wage Laws"). Consultant shall also comply with Federal Prevailing Wage Laws for those projects identified in Section B, Consultant Responsibilities that receive state and/or federal funding, including but limited to Section K.8. In the event of conflict, the higher of the wages and the stricter of the laws/regulations between the CA Prevailing Wage Laws and the Federal Prevailing Wage Laws shall apply.

C. 47 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 the County suffer damages due to errors, omissions, and/or conflicts within such documents, the Consultant shall be responsible to the county for costs of all such damages.

C. 48 RESERVED

C. 49 Regulatory Agencies

Except for emergencies, or except for situations where contact is required by law or relevant professional cannons of ethics (in which case Consultant will use its professional efforts to notify and confer with the County before such contact, the parties recognizing that there may not be time for such in an emergency), Consultant shall not contact the Local Enforcement Agency, South Coast Air Quality Management District or other regulatory agencies concerning any site that is the subject of this Contract without Department of Airports prior approval.

**D. TERM OF CONTRACT**

This Contract is effective as of December 1, 2020 and expires November 30, 2023 but may be terminated earlier in accordance with provisions of this Contract.

**E. COUNTY RESPONSIBILITIES**

- E.1 Budgets for Department/County and projects with information relative to facility requirements, and scheduling.
- E.2 Access to sites for the purpose of gathering or collecting data.
- E.3 Existing maps, District boundaries, facility plans, operational or previous project reports, blank forms, and any other available documents or items as may be required by Consultant for the satisfactory performance under this agreement.
- E.4 Notify the Consultant in writing of Department procedures required and name the Department representative authorized to act in its behalf. The Department shall review documents submitted by the Consultant and shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of their work.
- E.5 Nothing in this Agreement nor any act or failure to act on the part of the Department shall be construed as a waiver of claim by the Department for any defects or deficiencies in the reports or interpretative conclusions drawn by tests, observations or recommendations provided, conducted

and performed by Consultant. Consultant is responsible to determine the accuracy of all documents used and incorporated into his work.

## **F. FISCAL PROVISIONS**

- F.1 The maximum amount of payment for all services completed pursuant to agreed work orders for approved projects under this Contract shall not exceed \$1,500,000 in the aggregate for the three (3) year term, and shall be subject to the availability of funds from the county. Payment shall be made in accordance with Section F.3 herein. The consideration to be paid to Consultant, as provided herein, shall be in full payment for all Consultant's services and expenses incurred in the performance hereof, including travel and per diem.

Consultant bears the risk that it may not be able to generate its anticipated (or any) profit in completing its performance of all required items of work for the project cost set forth in an agreed work order for an approved project. In no event shall Consultant be entitled to receive compensation for any item of work required of Consultant under the terms of the Contract, which item of work is not performed by Consultant (including Consultant's agents and approved subcontractors).

- F.2 Consultant's "Fee Schedule", attached as Attachment B, hereto, sets out the Consultant's fixed hourly rates (including wages and all other costs), which shall be used by Consultant to calculate proposed costs in accordance with Section F.3 for Consultant's personnel to complete potential projects set forth in Section B of the Agreement. The costs in the agreed work order shall be used in determining any payment to Consultant in the event of any termination of the approved project or the Contract prior to the completion of all items of work for the approved project. Except as set forth in Section F.9, Consultant is not entitled to any additional compensation by virtue of its costs (including wages and all other costs) for any item of work exceeding the project cost or project scope set forth in the agreed work order for said project, including excess costs related to delays in completion of the Project.
- F.3 Upon request of the County for a proposed project, Consultant shall provide the County a not-to-exceed cost proposal for the completion of the proposed project based on the rates set forth in Attachment B. If the parties agree on the not to exceed cost proposal and other relevant terms for the completion of the proposed project, the authorized representatives of the parties shall execute a work order, detailing the cost and terms for the project. Consultant shall provide itemized monthly invoices, in arrears of services performed under an agreed work order pursuant to the agreed work order and this Agreement, and progress payments for completed work are permitted unless otherwise stated in the agreed work order, which invoice shall be in a format acceptable to the County. Invoices should be separated by project, if more than one project appears on an invoice, and each invoice shall be itemized to include locations(s) in which work was performed, full cost accounting of the work performed, any taxes or surcharges, approved reimbursable expenses and all overhead and profit in accordance with the agreed work order and this Agreement. Invoice will include the issued work/job order number and Consultant's invoices shall be sequentially numbered/identified using Consultant's own invoice numbering. The County shall make payment to Consultant on the later of sixty (60) working days after receipt of invoice and the County's verification of the satisfactory completion of the project tasks per the agreed work order on the subject invoice or the resolution of any billing dispute. The County shall have the right to request additional documentation from Consultant to verify completion of invoiced project tasks per the agreed work order.
- F.4 Consultant shall accept all payments from the County via electronic funds transfer (EFT) directly deposited into the Consultant's designated checking or other bank account. Consultant shall promptly comply with directions and accurately complete forms provided by the County required to process EFT payments.

- F.5 The County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Consultant or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
- F.6 Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by the County. 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 the County for, or apply sums received from the County 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 County.
- F.8 Consultant shall adhere to County's Travel Management Policy (8-02 and 08-02SP1) when travel for the County is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Consultant is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport. For avoidance of doubt, the cost of any permitted travel and per diem are included within the Consultant's fee schedule per Attachment B.
- F.9 If either party desires to revise the scope of work and services in an agreed work order, such revision must be mutually agreed by the County and Consultant. If mutually agreed, the authorized representatives of each party shall execute a revised work order prior to Consultant's commencement of work on the revised scope. Any work done by Consultant prior to the mutual execution of a revised work order shall be at Consultant's sole cost and expense.

## **G. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

### **G.1 Indemnification**

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County ) and hold harmless the County and its authorized officers, employees, agents and volunteers (Indemnitees) from any and all claims, actions, losses, damages, and liability arising out of this Contract to the extent caused by the negligent acts, errors or omissions of Contractor. The Contractor's indemnification obligation applies to the Indemnitee's 'passive' negligence but does not apply to the Indemnitee's 'sole' or 'active' negligence or 'willful misconduct' within the meaning of Civil Code Section 2782.

### **G.2 Additional Insured**

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its respective officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.04/13 and 2037 04/13.

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

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

- 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 Consultant and the 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 Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Consultant shall maintain such insurance from the time Consultant commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, Consultant shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
- 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 this Contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by Consultant or the County's payments to the Consultant will be reduced to pay for the County's 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 interests of the County. In addition, if the Department of 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 the above 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 Consultant agrees to provide insurance set forth in accordance with the requirements herein. If Consultant uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Consultant agrees to amend, supplement or endorse the existing coverage to do so.

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

- a) Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits.
- i. If Consultant has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.
  - ii. With respect to Consultants that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
- b) 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:
- i. Premises operations and mobile equipment.
  - ii. Products and completed operations.
  - iii. Broad form property damage (including completed operations).
  - iv. Explosion, collapse and underground hazards.
  - v. Personal injury.
  - vi. Contractual liability pursuant to the standard ISO policy form CG 00 01.
  - vii. \$2,000,000 general aggregate limit.
- c) 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.
- i. If Consultant is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.
  - ii. If Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

d) 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.

e) Professional Services Requirements

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

a. or

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

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

f) RESERVED

g) RESERVED

## H. SUCCESSORS AND ASSIGNS

H.1 This Contract shall be binding upon the County and Consultant and their respective successors and assigns.

H.2 Neither the performance of this Contract, nor any part thereof, nor any monies due or to become due thereunder may be assigned by Consultant without the prior written consent and approval of the County.

H.3 Death or Incapacity:

If the Consultant transacts business as an individual, his/her death or incapacity shall automatically terminate this Contract as of the date of such event, and neither he/she nor his/her estate shall have any further right to perform hereunder, and the County shall pay him/her or his/her estate the compensation payable under Article F, Fiscal Provisions, for any services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by the County by reason of such termination. If there be more than one Consultant and any one of them die or become incapacitated and the others continue to render the services covered herein, the County will make payment to those continuing as though there had been no such death or incapacity and the County will not be obliged to take any account of the person who died or became incapacitated or to make any payments to such person or his estate. The provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Consultant herein, and if death or incapacity befalls the last one of such group before this Contract is fully performed, then the rights shall be as if there had been only one Consultant.

## I. RIGHT TO MONITOR AND AUDIT

I.1 The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Consultant in the delivery of services

provided under this Contract. Consultant shall give full cooperation, in any auditing or monitoring conducted. Consultant shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County. Consultant shall repay to the County within thirty (30) days of receipt of audit findings any reimbursements made by the County to Consultant that are determined by subsequent audit to be unallowable pursuant to the terms of this Contract or by law.

- I.2 All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by the County representatives for a period of three years after final payment under the Contract or until all pending County, State and Federal audits are completed, whichever is later.

## **J. CORRECTION OF PERFORMANCE DEFICIENCIES**

- J.1 Failure by either party to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract. In the event of a default, the non-defaulting party shall provide written notice to the other party and the defaulting party shall have 10 business days after receipt of written notice to cure such default.
- J.2 In the event of a non-cured breach by Consultant, the County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- a. 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
  - b. Withhold funds pending duration of the breach; and/or
  - c. Offset against any monies billed by Consultant but yet unpaid by the County those monies disallowed pursuant to Item "a" of this paragraph; and/or
  - d. Terminate this Contract by providing not less than 10 business days prior written notice and be relieved of the payment of any consideration to Consultant in accordance with this Agreement for any work completed prior to the termination date. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to Consultant under this Contract and the balance, if any, shall be paid by Consultant upon demand.
- J.3 In the event of a non-cured breach by the County, Consultant shall have the remedies available in Section K.22.
- J.4 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. FEDERAL CONTRACT PROVISIONS**

"Sponsor" refers to the County.

Projects identified in Section B, Consultant Responsibilities that receive state and/or federal funding and require actual services to be performed will require inclusion of the following Federal Aviation Administration (FAA) mandated contract provisions. For state and/or federally funded projects, Consultant shall comply with both the following FAA mandated contract provisions and the provisions in

the remainder of the Contract, but in the event of conflict between them, the stricter of the FAA mandated contract provisions or the provisions in the remainder of the Contract shall govern.

**K.1. Access To Records And Reports**

In addition to Sections C.31, I.1, and I.2, the Consultant must maintain an acceptable cost accounting system. The Consultant agrees to provide the Sponsor, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Consultant agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

**K.2. Notice Of Requirement For Affirmative Action To Ensure Equal Employment Opportunity**

a) Consultant's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

i. The goals and timetables for minority and female participation, expressed in percentage terms for the Consultant's aggregate workforce in each trade on all construction work in the covered area, are as follows:

**Timetables**

Goals for minority participation for each trade are set forth in the Sponsor's then current Overall Disadvantaged Business Enterprise (DBE) Goal and Methodology, which is on file with the Sponsor.

Goals for female participation in each trade are set forth in the Sponsor's then current Overall DBE Goal and Methodology, which is on file with the Sponsor,

These goals are applicable to all of the Consultant's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Consultant performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Consultant also is subject to the goals for both its federally involved and non-federally involved construction.

The Consultant's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Consultant shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Consultant to Consultant or from project to project for the sole purpose of meeting the Consultant's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

b) The Consultant shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar

amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

- c) As used in this notice and in the contract resulting from this solicitation, the "covered area" is County of San Bernardino, State of California.

### K.3. Breach of Contract Terms

Any violation or breach of terms of this contract on the part of the Consultant or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

The Sponsor will provide Consultant written notice that describes the nature of the breach and corrective actions the Consultant must undertake in order to avoid termination of the contract. The Sponsor reserves the right to withhold payments to Consultant until such time the Consultant corrects the breach or the Sponsor elects to terminate the contract. The Sponsor's notice will identify a specific date by which the Consultant must correct the breach. The Sponsor may proceed with termination of the contract if the Consultant fails to correct the breach by the deadline indicated in the Sponsor's notice. The foregoing shall be in accordance with Sections J.1 through J.3.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

### K.4. General Civil Rights Provisions

The Consultant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Consultant and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

#### **Title VI Solicitation Notice:**

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all consultants that it will affirmatively ensure that any contract entered into pursuant to this advertisement, [select disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

#### **Compliance with Nondiscrimination Requirements:**

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- a) **Compliance with Regulations:** The Consultant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

- b) **Nondiscrimination:** The Consultant, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- c) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Consultant of the Consultant's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- d) **Information and Reports:** The Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- e) **Sanctions for Noncompliance:** In the event of a Consultant's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Consultant under the contract until the Consultant complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- f) **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Consultant may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

#### **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- i. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- ii. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

- iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- iv. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- v. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- vi. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- vii. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- viii. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- ix. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- x. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- xi. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- xii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

**K.5. Clean Air And Water Pollution Control**

Consultant agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Consultant agrees to report any violation to the Sponsor immediately upon discovery. The Sponsor assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Consultant must include this requirement in all subcontracts that exceeds \$150,000.

**K.6. Contract Workhours And Safety Standards Act Requirements**

a) Overtime Requirements

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b) Violation; Liability for Unpaid Wages; Liquidated Damages

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

c) Withholding for Unpaid Wages and Liquidated Damages

The Federal Aviation Administration (FAA) or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

d) Subcontractors

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

K.7. Copeland "Anti-Kickback" Act

Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Sponsor, a weekly statement on the wages paid to each employee performing on covered work during the prior week. The Sponsor must report any violations of the Act to the Federal Aviation Administration.

K.8. DAVIS-BACON REQUIREMENTS

a) Minimum Wages

All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

- i. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  - a. The work to be performed by the classification requested is not performed by a classification in the wage determination;
  - b. The classification is utilized in the area by the construction industry; and
  - c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- ii. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- iii. In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the

proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- a. The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
  - b. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- iv. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### b) Withholding

The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or the Sponsor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

#### c) Payrolls and Basic Records

- i. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is

financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii.

- a. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or the Sponsor, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm) or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or the Sponsor, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor).
- b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  - 1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;
  - 2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;
  - 3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

- d. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- iii. The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

e) Apprentices and Trainees

- i. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- ii. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than

permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- iii. Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

f) Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

g) Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

h) Contract Termination: Debarment

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

i) Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

j) Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

k) Certification of Eligibility.

- i. By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- ii. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

K.9. Certification Of Consultant Regarding Debarment

By executing this contract, Consultant certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from entering in to this contract. Consultant also makes the certifications set forth in Section C.14.

K.10 Disadvantaged Business Enterprise

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the Sponsor to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Sponsor encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

**Contract Assurance (§ 26.13) –**

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Sponsor deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the Contractor from future bidding as non-responsible.

**Prompt Payment (§26.29) –**

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

K.11 Texting When Driving

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving",

(12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub grant.

In support of this initiative, the Sponsor encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

#### K.12 Energy Conservation Requirements

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201*et seq*).

#### K.13 Equal Opportunity Clause

During the performance of this contract, the Contractor agrees as follows:

- a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other

sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**K.14 Federal Fair Labor Standards Act (Federal Minimum Wage)**

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**K.15 Certification Regarding Lobbying**

The Consultant certifies by signing this contract, to the best of his or her knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**K.16 Prohibition Of Segregated Facilities**

- a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its

employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

- b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

#### K.17 Occupational Safety And Health Act Of 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

#### K.18 Procurement Of Recovered Materials

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

The contract requires procurement of \$10,000 or more of a designated item during the fiscal year;

or

The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at [www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products).

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

K.19 Seismic Safety

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Sponsor a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

K.20 Certification Of Consultant Regarding Tax Delinquency And Felony Convictions

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

**Certifications**

- (1) The applicant represents that it is ( ) is not ( ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- (2) The applicant represents that it is ( ) is not ( ) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

K.21 Termination For Convenience (Professional Services)

In accordance with Section C.37, the Sponsor may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Sponsor, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Sponsor all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

The Sponsor agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

The Sponsor further agrees to that Consultant shall not be responsible for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

K.22 Termination For Default (Professional Services)

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party 10 business days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

a) **Termination by Sponsor:** The Sponsor may terminate this Agreement in whole or in part, for the failure of the Consultant to:

- i. Perform the services within the time specified in the agreed work order or this contract or by the Sponsor approved extension as set forth in a revised work order;
- ii. Make adequate progress so as to endanger satisfactory performance of the project; or
- iii. Fulfill the obligations of the Agreement that are essential to the completion of the project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Sponsor all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

The Sponsor agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

The Sponsor further agrees to that Consultant shall not be responsible or errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Sponsor determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Sponsor issued the termination for the convenience of the Sponsor.

b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Sponsor:

- i. Defaults on its obligations under this Agreement;
- ii. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
- iii. Suspends the project for more than 180 days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, the Sponsor agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If the Sponsor and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Sponsor's breach of the contract.

In the event of termination due to the Sponsor's breach, the Engineer is entitled to invoice the Sponsor and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. The Sponsor agrees that Consultant shall not be responsible for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

## K.23 Trade Restriction Certification

Consultant certifies –

- a) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- b) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- c) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.

The Consultant must provide immediate written notice to the Sponsor if the Consultant learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Consultant must require subcontractors provide immediate written notice to the Consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Consultant or subcontractor:

- a) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- b) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- c) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Consultant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Consultant has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Consultant or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Sponsor or the FAA.

## K.24 Veteran's Preference

In the employment of labor (excluding executive, administrative, and supervisory positions), the Consultant and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

**L. 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 delivered by reputable overnight courier, or deposited in the United States mail, postage prepaid, certified or registered with return receipt requested, and addressed to the other party as follows:

*Department of Airports  
San Bernardino County  
777 East Rialto Avenue  
San Bernardino, CA 92415-0831*

*Kimley-Horn and Associates, Inc.  
3880 Lemon Street, Ste. 325  
Riverside, CA 92501*

Notice shall be deemed given upon receipt or refusal of the recipient to accept receipt if delivered as provided in this paragraph.

**M. ENTIRE AGREEMENT**

This Contract, including all Attachment, Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.







## ATTACHMENT A

### PREVAILING WAGE REQUIREMENTS

**A. All or a portion of the Scope of Work in the Contract requires the payment of prevailing wages and compliance with the following requirements:**

**1. Determination of Prevailing Rates:**

Pursuant to Labor Code sections 1770, et seq., the County has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Scope of Work is to be performed. Copies of said rates are on file with the County, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Scope of Work, and are also available online at [www.dir.ca.gov](http://www.dir.ca.gov). The wage rate for any classification not listed, but which may be required to execute the Scope of Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

**2. Payment of Prevailing Rates**

Each worker of the Contractor, or any subcontractor, engaged in the Scope of Work, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

**3. Prevailing Rate Penalty**

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Scope of Work. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

**4. Ineligible Contractors:**

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the County. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Scope of Work.

**5. Payroll Records:**

a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
- ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement of the DIR;

- iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;
  - iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
  - v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.
- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

**6. Limits on Hours of Work:**

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

**7. Penalty for Excess Hours:**

The Contractor shall pay to the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Scope of Work by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

**8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:**

- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
  - i. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
  - ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.
  - iii. This project is subject to compliance monitoring and enforcement by the DIR.

- iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
  - v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all public works projects.
    - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
    - 2) The County reserves the right to require Contractor and all subcontractors 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.
  - vi. 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.
- b. Labor Code section 1725.5 states the following:

“A contractor shall be registered pursuant to this section to 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 public work contract that is subject to the requirements of this chapter. For the purposes of this section, “contractor” includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

- (ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).
- (b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.
- (c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.
- (d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:
  - (1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.
  - (2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.
  - (3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).
- (e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.
- (f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

c. Labor Code section 1771.1 states the following:

- "(a) 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.
- (b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.
- (c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:
  - (1) The subcontractor is registered prior to the bid opening.
  - (2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.
  - (3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.
- (d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.
- (e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty

of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.”

d. Labor Code section 1771.4 states the following:

“a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.”

## **B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS**

### **1. State Public Works Apprenticeship Requirements:**

- a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless

an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.

- b. Any apprentices employed to perform any of the Scope of Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

**2. Compliance with California Labor Code section 1777.5 requires all public works contractors to:**

a. Submit Contract Award Information (DAS-140):

- i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
- ii. The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—*it is not a request for the dispatch of an apprentice.*
- iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
- iv. Contractors who are already approved to train apprentices (i.e. check “Box 1” on the DAS-140) shall only be required to submit the form to their approved program.
- v. Contractors who are NOT approved to train apprentices (i.e. those that check either “Box 2” or “Box 3” on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.

b. Employ Registered Apprentices

- i. Labor Code section 1777.5 requires that a contractor performing work in an “apprenticeable” craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor’s completion of work on the project. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
- ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
- iii. Contractors may use the “DAS-142” form for making a request for the dispatch of an apprentice.
- iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
- v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement

to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.

- vi. Only "registered" apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. Make Training Fund Contributions
- i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
  - ii. Contractors may use the "CAC-2" form for submittal of their training fund contributions.
  - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
  - iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
  - v. The "training" contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

### **3. Exemptions to Apprenticeship Requirements:**

- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
  - 1) When the Contractor holds a sole proprietor license ("Owner-Operator") and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
    - i. Contractors performing in non-apprenticeable crafts. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
    - ii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
    - iii. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
    - iv. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

### **4. Exemption from Apprenticeship Ratios:**

- a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
  - i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
  - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or

- iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
  - iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

**5. Contractor's Compliance:**

- a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.

**ATTACHMENT B**

**FEE SCHEDULE**

**Kimley-Horn and Associates, Inc.**

Effective July 1, 2020 to June 30, 2021

<u>Classification</u>	<u>Billing Rate per Hour*</u>
Jake Roberts, Project Manager	\$237.71
Edwin Tamang, QA/QC	\$237.71
Pearse Melvin, Principal-in-Charge	\$281.97
Analyst	\$110.21 to \$146.74
Professional	\$149.21 to \$219.70
Sr. Professional	\$231.16 to \$292.60
Sr. Project Support	\$161.48 to \$193.46
Project Support	\$75.43 to \$123.78

\*Rates will be escalated yearly on July 1<sup>st</sup>.

**Other Direct Costs:** Outside Printing/Reproduction, Delivery Services/USPS, Misc. Field Equipment/Supplies, and Travel Expenses will be billed at actual cost. Mileage will be billed at the Federal Rate.



CIVIL ENGINEERS • SURVEYORS • RIGHT-OF-WAYS

SBE • WBE • DBE • CERTIFIED

**HOURLY RATE SCHEDULE**  
**October 1, 2019 to September 30, 2020**  
*(Subject to Annual Revision)*  
 First 8 Hours of Any Non-Holiday Weekday

**PROFESSIONAL AND OFFICE**

	<b><u>HOURLY RATE</u></b>
Principal Engineer/Surveyor	\$270
Senior Project Manager	\$240
Project Manager	\$220
Survey Manager	\$195
Assistant Project Surveyor	\$143
ROW Manager	\$160
ROW/Survey Technician III	\$135
ROW/Survey Technician II	\$120
ROW/Survey Technician I	\$100
Engineering Manager	\$160
Engineer/Planner III	\$155
Engineer/Planner II	\$135
Engineer/Planner I	\$120
Designer III	\$130
Designer II	\$110
Designer I	\$ 90
Research/Expeditor/Office Assistant	\$125
Clerical/Messenger	\$100

**FIELD SURVEY**

	<b><u>Regular</u></b>	<b><u>OT</u></b>	<b><u>DT</u></b>
3-Person Party	\$410	\$560	\$650
2-Person Party	\$300	\$380	\$440
1-Person Party / Robotics	\$215	\$240	\$270

**EXPERT WITNESS**

\$375

**OTHER DIRECT COSTS**

- Daily Per Diem – For projects exceeding 60 miles from our office. \$150.00 per day
- Parking, research, delivery charges (i.e. Federal Express) At Cost
- Mileage Current Fed. Rate

**NOTES**

- Normal survey crew equipment costs are included in the above rates.
- Time over 8 hours per day or any time on a Saturday is billed as overtime.
- Any time outside of a regular working day (6:00AM – 6:00PM), will be billed at 1.5 regular rate for the first 4 hours and 2.0 times regular rate after the first 4 hours. This is the Union rule for IUOE Local 12.
- Any time in excess of 8 hours on a Saturday, any time on a Sunday, or any time on a Union designated holiday is billed as double time.
- Survey crew time be charged from crew arrival time to crew departure time at the job site.
- Our office procedure is to limit employee time charges to a maximum of 8 hours per day. No overtime charges to a client will accrue without specific authorization from client.
- Survey Office Time is billed in 30-minute increments.
- Field Survey Time is based on a 4-hour minimum and 2 hour increments thereafter.

17134 DEVONSHIRE STREET • SUITE 200 • NORTHRIDGE • CA • 91325-1619  
 818.892.6565 • FAX 818.488.9480 • [mail@wesinc.org](mailto:mail@wesinc.org) • [www.wesinc.org](http://www.wesinc.org)

## 2020 VCA ENGINEERS SCHEDULE OF FEES

### PROFESSIONAL STAFF

### HOURLY RATE

Principal	\$210.00
Project Manager	\$180.00
Lead/Senior Project Engineer	\$165.00
Project Engineer	\$150.00
Engineer	\$140.00
BIM Modeler	\$120.00
Senior CADD Technician	\$100.00
CADD Technician	\$90.00
Clerical/Admin	\$65.00

### MILEAGE AND SUBSISTENCE

Auto Mileage	\$ 0.54 per mile plus 10%
Parking	Actual Cost plus 10%
Air Travel and Car Rental	Actual Cost plus 10%
Subsistence (overnight out of LA)	Actual Cost plus 10%

### DIRECT SERVICES

<b>Milestone Reproducible Submittal (one set)</b>	<b>Included in Proposed Fees</b>
Messenger and Overnight Delivery Services	Actual Cost plus 10%
Long Distance Phone	Actual Cost plus 10%
Outside B&W Plotting	Actual Cost plus 10%
Sepia/Mylar	Actual Cost plus 10%
Reprographic Services (binding, mounting and etc.)	Actual Cost plus 10%



<u>Employee Category</u>	<u>Hourly Rate</u>
Principal	\$313.00
Senior Professional	\$287.00
Professional	\$153.00
Technical/Support	\$117.00

This Fee Schedule is in effect until December 31, 2020



**DIAZ-YOURMAN**

**& ASSOCIATES**

*Geotechnical Services*

Item/Quantity	Unit Cost (Per Hour)	Tax Amount	Discount	Total Amount
Geotechnical Principal	\$279.			\$279.
Geotechnical Manager (Associate II)	\$250.			\$250.
Geotechnical Manager (Associate I)	\$233.			\$233.
Senior Engineer	\$213.			\$213.
Project II	\$194.			\$194.
Project I	\$176.			\$176.
Staff II	\$160.			\$160.
Staff I	\$139.			\$139.
CADD/Word Processing	\$ 99.			\$ 99.
Technical Editing	\$121.			\$121.
Technician I	\$117.			\$117.
Technician II	\$141.			\$141.
Prevailing Wage Field Services (Weekdays)	\$162.			\$162.
Prevailing Wage Field Services (Weekday OT)	\$194.			\$194.
Prevailing Wage Field Services (Week Nights)	\$194.			\$194.
Prevailing Wage Field Services (Sundays, Holidays, Other OT)	\$225.			\$225.
Field Truck	\$19.			\$19.

<b>Mileage</b>	<b>IRS Rate Per Mile</b>			<b>IRS Rate Per Mile</b>
<b>Nuclear Gauge</b>	<b>\$100. Per Day</b>			<b>S\$100. Per Day</b>
<b>Manometer</b>	<b>\$ 59. Per Day</b>			<b>\$ 59. Per Day</b>
<b>Slope Inclinometer</b>	<b>\$ 65. Per Day</b>			<b>\$ 65. Per Day</b>
<b>Coring Machine</b>	<b>\$233. Per Day</b>			<b>\$233. Per Day</b>
<b>Outside direct costs such as drillers, laboratory testing, geophysical surveys, traffic control, equipment rental</b>	<b>Cost + 5%</b>			<b>Cost + 5%</b>