



Contract Number

23-414 A1

SAP Number

4400022527

Project and Facilities Management

Department Contract Representative	<u>Moe Yousif</u>
Telephone Number	<u>(909) 387-5000</u>
Contractor	<u>Ninyo & Moore Geotechnical & Environmental Sciences Consultants</u>
Contractor Representative	<u>Kurt Yoshii</u>
Telephone Number	<u>(909) 758-5960</u>
Contract Term	<u>May 23, 2023 – May 22, 2028</u>
Original Contract Amount	<u>Not-to-exceed \$1,000,000</u>
Amendment Amount	<u>\$700,000</u>
Total Contract Amount	<u>\$1,700,000</u>
Cost Center	
Grant Number (if applicable)	<u>On Call Professional Services – Geotechnical Materials Testing Inspection</u>

IT IS HEREBY AGREED AS FOLLOWS:

AMENDMENT No. 1

CONTRACT No. 23-414

On Call Professional Services – Geotechnical Materials Testing Inspection

The following are amendments to Contract No. 23-414 with Ninyo & Moore Geotechnical & Environmental Sciences Consultants, for the On Call Professional Services – Geotechnical Materials Testing Inspection

WHEREAS, a construction contract (“Agreement”) was entered into between the San Bernardino County (“County”), and Ninyo & Moore Geotechnical & Environmental Sciences Consultants, (“Contractor”), on May 23, 2023, to perform certain work as described in the Request for Proposal Documents for the On Call Professional Services – Geotechnical Materials Testing Inspection

NOW THEREFORE, the Agreement is hereby amended as follows:

1. Replace Article 1. The Project, Subsection 1.2 Total Contract Amount with the following:

The total Contract amount as determined by County shall not exceed the amount of \$1,700,000 through the life of this Contract, subject to any amendments.

2. Replace Article 1. The Project, Subsection 1.4.a Consultant's Fees with the following:

County agrees to pay Consultant, based on the actual work performed as requested and approved by the County through a County issued Work Order/Purchase Order. The total contract amount shall not exceed \$1,700,000 for the term of this Contract. Consultant shall be paid based on Article 4 – Compensation of this Contract, Consultant's Fee Proposal Sheet (Appendix H), Consultant Rate Sheet (Appendix B), and the completed Work Order for a Project (Appendix G, Work Order).

3. Replace Article 4. Compensation, Paragraph 4.3 with the following:

Maximum compensation under the Contract shall not exceed \$1,700,000 for the term of the Contract.

4. Replace Article 4. Compensation, Paragraph 4.8 with the following:

For services in excess of \$200,000 and where otherwise legally required, including but not limited to the use of ARPA CLFRF funding or to meet other federal and/or state funding requirements, the County reserves the right to seek proposals from various Consultants on the "On-Call" list using Appendix F, or to obtain services in any manner that serves the best interest of the County, including but not limited to preparing a separate procurement document to retain all needed services. The County reserves the right to seek proposals for services under the \$200,000 threshold for projects where legally required, including but not limited to the use of ARPA CLFRF funding or to meet other federal and/or state funding requirements. Firms may be selected based on lowest price if legally required by the funding source.

5. Add Article 7.8 to read as follows:

7.8 Select Consultant to provide the County with needed services utilizing the following method:

- a. Selection from On-Call List of Consultants for Services in the amount of \$200,000 or less:
 - 1) There is no requirement for a solicitation of proposals from On-Call Consultants for services.
 - 2) The selected Consultant will be made by the Department on the basis of demonstrated competence of the On-Call Consultant, professional qualifications necessary for the satisfactory performance of the required services, availability of Consultant, and a reasonable price to the Department.
 - 3) The selection must be made by, at a minimum, two Department employees.
- b. Selection from On-Call List of Consultants for Services Greater than \$200,000.
 - 1) The Department will notify all On-Call Consultants for the professional service(s) required for a Project of the Department's need for an On-Call Consultant and seek Proposals from interested On-Call Consultants.
 - 2) The notification will include, at a minimum, the following:
 - i. Any specific qualifications/experience required;
 - ii. The project budget;
 - iii. The project timeline;
 - iv. The deadline for interested On-Call Consultants to submit a proposal for evaluation to work on a specific project;
 - v. The evaluation criteria;

vi. A requirement On-Call Consultants submit their proposal in two separate sealed envelopes:

- a) Proposal for On-call professional services (Envelope "A").
- b) Fee Proposal Sheet (Envelope "B").

3) Department will arrange for all interested On-Call Consultants to have an opportunity to inspect the Project site, if the Department determines a site inspection is necessary.

4) The Department shall establish a Selection Committee composed of three to five members to review the Proposals.

5) The Department will arrange for oral interviews/presentation if required by the Department.

6) Department will notify On-Call Consultants who submitted a timely Proposal of their selection or denial for the services for a Project.

c. The County reserves the right to:

1) Select the next acceptable Consultant until the County's requirements are met, if the preceding Consultant is unable to provide the service as needed or negotiations with the Consultant fail.

2) Postpone/cancel jobs if in the best interest of the County or County requirements change.

3) Reject services that do not meet job specifications.

4) Dismiss a Consultant from a project in the event the Consultant does not deliver On-Call Services in a satisfactory manner or perform in a timely manner.

5) Negotiate or solicit competitive proposals from any company for On-Call services.

6) Terminate this Contract if there is significant change in key personnel.

7) Increase the amount of a Work Order/Purchase Order, without requiring a new solicitation of services, even if the amount of the revised Work Order exceeds the thresholds discussed above.

8) Revise Appendix F and the evaluation criteria to best meet the needs of the County for a specific Project.

6. Replace Article 29. Levine Act - Campaign Contribution Disclosure (formerly referred to as Senate Bill 1439)

Contractor has disclosed to the County using Attachment E – Levine Act - Campaign Contribution Disclosure (formerly referred to as Senate Bill 1439), whether it has made any campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Contractor's proposal to the County, or (2) 12 months before the date this Contract was approved by the Board of Supervisors. Contractor acknowledges that under Government Code section 84308, Contractor is prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Contract.

Campaign contributions include those made by any agent/person/entity on behalf of the Contractor or by a parent, subsidiary or otherwise related business entity of Contractor.

7. Add Appendix E "Levine Act – Campaign Contribution Disclosure."

8. Add Appendix F "Request for Project Proposal – On Call _____ Services."

9. Add Appendix G "Work Order."

10. Add Appendix H "Sample Fee Proposal Sheet."

All other terms and conditions of Contract No. 23-414 remain in full force and effect.

This Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Amendment (whether by facsimile, PDF or other

email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Amendment upon request.

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

SAN BERNARDINO COUNTY

▶

 Dawn Rowe, Chair, Board of Supervisors

Dated: _____

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

Lynna Monell
 Clerk of the Board of Supervisors
 San Bernardino County

By

Deputy

Ninyo & Moore Geotechnical & Environmental Sciences Consultants

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

By

▶

(Authorized signature - sign in blue ink)

Name: _____

(Print or type name of person signing contract)

Title

(Print or Type)

Dated: _____

Address

7888 Cherry Avenue, Unit 1

 Fontana, CA 92336

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ _____, County Counsel

Date _____

Reviewed for Contract Compliance

▶ _____
 Arham Limoochi, Supervising Project Controls Manager, Project and Facilities Management

Date _____

Reviewed/Approved by Department

▶ _____
 Moe Yousif, Interim Director, Project and Facilities Management

Date _____



ATTACHMENT E

Levine Act –

Campaign Contribution Disclosure

(formerly referred to as Senate Bill 1439)

The following is a list of items that are not covered by the Levine Act. A Campaign Contribution Disclosure Form will not be required for the following:

- Contracts that are competitively bid and awarded as required by law or County policy
- Contracts with labor unions regarding employee salaries and benefits
- Personal employment contracts
- Contracts under \$50,000
- Contracts where no party receives financial compensation
- Contracts between two or more public agencies
- The review or renewal of development agreements unless there is a material modification or amendment to the agreement
- The review or renewal of competitively bid contracts unless there is a material modification or amendment to the agreement that is worth more than 10% of the value of the contract or \$50,000, whichever is less
- Any modification or amendment to a matter listed above, except for competitively bid contracts.

DEFINITIONS

Actively supporting or opposing the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidiary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

1. Name of Contractor: Ninyo & Moore, A Socotec Company
2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?
 Yes If yes, skip Question Nos. 3-4 and go to Question No. 5 No x
3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: _Kenneth Mansir, President/CEO_
4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):
IBA Holdings, LLC
5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship
Socotec US Holding LP	Parent
N/A	N/A

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)
N/A	N/A	
N/A	N/A	

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and//or Agent(s):
N/A	N/A	N/A
N/A	N/A	N/A

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
N/A	N/A
N/A	N/A

9. Was a campaign contribution, of more than \$500, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No If **no**, please skip Question No. 10.

Yes If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: N/A

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Contract, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer while award of this Contract is being considered and for 12 months after a final decision by the County.

Appendix F Request for Project Proposal – On Call _____ Services

(The County reserves the right to revise this document to meet the needs of the County for each Project)

<u>CONTRACT NUMBER:</u>	
<u>PROJECT NAME:</u>	
<u>PROJECT LOCATION:</u>	
<u>PROJECT NUMBER:</u>	

<u>AMERICAN RESCUE PLAN ACT (ARPA) CORONAVIRUS LOCAL FISCAL RECOVERY FUND (CLFRF):</u> <i>(If the project is using ARPA CLFRF Funding both boxes must be checked.)</i>	
<input type="checkbox"/>	This Project includes ARPA CLFRF Funds
<input type="checkbox"/>	ARPA CLFRF requirements, including but not limited to Article 3.2 of the Contract and Appendix F to the Contract, are required.

MANDATORY PRE-PROPOSAL CONFERENCE: *(if applicable)*

A mandatory proposal conference will be held **on: Day, Date, Time at:**

San Bernardino County
Department Name
Address
City, State, Zip Code

Attendance at the conference is mandatory. No proposal will be accepted from any proposer who fails to attend the proposal conference.

SCOPE OF WORK DESCRIPTION:

County hereby requests proposals On-Call Consultants (Proposers) interested in providing services for _____.
(Include any specific qualifications/experience required; the project budget; and the project timeline.)

PROPOSAL DEADLINE:

Proposals must be received no later than **(insert time and date)**. Postmarks will not be accepted in lieu of actual receipt. Facsimile or electronically transmitted proposals will not be accepted in lieu of actual receipt. Late or incomplete proposals will not be accepted.

All questions must be submitted in writing on or before _____ and directed to the individual listed below. If the questions are answered, the questions and answers will be distributed to all On-Call Consultants via e-mail or facsimile. If Consultant desires to use a different e-mail or facsimile than is listed on the Contract, Consultant is responsible for notifying in writing the County individual listed below of that request.

All correspondence, **including proposals and questions**, are to be submitted to:

San Bernardino County
Project and Facilities Management Department
Attn: _____
385 North Arrowhead Avenue, 3rd Floor
San Bernardino, CA 92415-0184
(909) _____ Phone

PROPOSAL CONTENTS:

Items 1-4 shall be in one sealed envelope [Envelope A] labeled with “Proposal, Project Name and Project Number.”

1. Proposal Description

Provide a detailed description of the proposal being made.

The proposal should include the following:

- a. A brief synopsis of the Proposer’s understanding of the County’s needs and how the Proposer plans to meet these.
- b. A concise statement of the services (and product, if applicable) proposed.
- c. An explanation of any assumptions and/or constraints.

2. Project Team Organization Chart

Project Team Organization Chart shall clearly show the organization of the team and the hierarchy of the members. It must include:

- a. Organizational framework for the proposed Project team.
- b. Company name and key staff name for each role identified in the chart.

3. Work Plan and Schedule

Include the following:

- a. Summary of management/work plan for this Project;
- b. Project schedule

4. Statement of Qualifications/Availability

Include the following in this section of the proposal:

- a. Explanation of any workload or availability issues which would impact on Proposer’s ability to perform this Scope of Work.
- b. A list of references with which Proposer has provided similar services during the last five (5) years. Please include the name, address, and telephone number, and the type of services provided. Please include a contact person who the County can call in order to verify the quality of services your organization/firm has provided.
- c. Resumes of key Project team members.
- d. Provide project profiles that directly relate to this Project in terms of size and scope. The project profiles shall clearly indicate the scope of services Proposer provided for that project.

5. Cost (In a separate sealed envelope [Envelope B] labeled “Fee Proposal Sheet, Project Name, Project Number).

EVALUATION OF PROPOSALS:

The Selection Committee will conduct an evaluation of all proposals under the criteria set forth below. The Evaluation Committee may seek interviews from the proposers as part of the evaluation process. The Selection Committee will rank all proposals. Following a ranking of the proposal, the Selection Committee will open all fee proposals. The Selection Committee will not alter the ranking of the proposals once the fee proposals have been opened. However, the fee proposals will be used during negotiations with the selected Proposer.

EVALUATION CRITERIA:

The successful Proposer will be selected on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. The Selection Committee will use the following criteria in its evaluation and comparison of proposals submitted.

1. Proposer's experience with similar projects. (30 Points)
2. The availability/workload of Consultant's personnel. (15 Points)
3. Proposed Project Work Plan and Schedule. (25 Points)
4. Adequacy/experience of Consultant's support staff/sub-consultants. (15 Points)
5. References. (5 Points)
6. Other factors unique to this Project (*To be Specified by County*). (10 Points)

The County may contact any of the Proposer's references to discuss the Proposer's qualifications and past performance. The results of any such reference checks will be considered in the evaluation and scoring of proposals.

The County may also contact any Proposer to clarify any response; contact any current users of a Proposer's services; solicit information from any available source concerning any aspect of a proposal; request an oral presentation of any or a select few Proposers; and seek and review any other information deemed pertinent to the evaluation process.

No proposal shall be rejected if it contains a minor irregularity, defect, or variation if the irregularity, defect or variation is considered by the County (at the County's sole discretion) to be immaterial or inconsequential. In such cases the Proposer will be notified of the deficiency in the proposal and given an opportunity to correct the irregularity, defect or variation, or the County may elect to waive the deficiency and accept the Proposal.

NEGOTIATIONS:

Following the evaluation process, the most qualified firm will be selected and negotiations will be held with that firm. If negotiations are not successful, the County will so notify the firm, and commence negotiations with the next rated firm, and so on.

After negotiations are complete, the County will issue a work order/purchase order, utilizing Appendix E, under the Agreement between the Consultant and the County.

DISPUTES RELATING TO PROJECT PROPOSAL PROCESS AND AWARD:

In the event a dispute arises concerning the proposal process and award of work order/purchase order, the party wishing resolution of the dispute shall submit a request in writing to the Director of Purchasing. Proposer may appeal the recommended award or denial of award, provided the following stipulations are met:

1. Appeal must be in writing.
2. Must be submitted within seven (7) calendar days of the date of the recommended award or denial of award letter/e-mail/notification is sent to Proposer for a particular Project.

An appeal of a denial of award of work order/purchase order can only be brought on the following grounds:

1. Failure of the County to follow the selection procedures and adhere to requirements specified in the Contract or Request for Project Proposal or any addenda or amendments.
2. There has been a violation of conflict of interest as provided by California Government Code Section 87100 et seq.
3. A violation of State or Federal law.

Appeals will not be accepted for any other reasons than those stated above. All appeals must be sent to:

Pete Mendoza, Interim Director
San Bernardino County
Purchasing Department
777 E. Rialto Avenue
San Bernardino, CA 92415-0760

The County Purchasing Agent shall make a decision concerning the appeal, and notify the Proposer making the appeal, within a reasonable timeframe prior to the award of the work order/purchase order. The decision of the County Purchasing Agent shall be deemed final.

Appendix G Work Order

<u>CONTRACT NUMBER:</u>	
<u>PROJECT NAME:</u>	
<u>PROJECT LOCATION:</u>	
<u>PROJECT NUMBER:</u>	

<u>AMERICAN RESCUE PLAN ACT (ARPA) CORONAVIRUS LOCAL FISCAL RECOVERY FUND (CLFRF):</u> <i>(If the project is using ARPA CLFRF both boxes must be checked.)</i>	
<input type="checkbox"/>	This Project includes ARPA CLFRF Funds
<input type="checkbox"/>	ARPA CLFRF requirements, including but not limited to Article 3.2 of the Contract and Appendix F to the Contract, is required.

Pursuant to the terms of the Contract, including all attachments, between the San Bernardino County and (insert firm name here), and all documents attached and incorporated by reference below herein, Consultant is awarded this Project/Work Order. There will be no changes in Project/Work Order Scope of Services or Budget described in the Request for Project Proposals and Consultant's Proposal without written approval by the Director of the Project and Facilities Management Department, or his/her designee. *Invoices for costs outside the approved budget and scope will not be reimbursed unless the additional costs have been previously approved in writing.*

Documents Attached:

<input type="checkbox"/>	<u>REQUEST FOR PROJECT PROPOSALS</u> <i>(Provided by County)</i>
<input type="checkbox"/>	<u>DETAILED PROJECT UNDERSTANDING AND SERVICES TO BE PROVIDED</u> <i>(Provided by Consultant)</i>
<input type="checkbox"/>	<u>FEE PROPOSAL SHEET</u> <i>(Provided by Consultant)</i>
<input type="checkbox"/>	<u>PROJECT SCHEDULE</u> <i>(Provided by Consultant)</i>

<u>NOT-TO-EXCEED LIMIT OF AGREEMENT:</u>		\$	
<u>FUNDS OBLIGATED TO DATE UNDER THE AGREEMENT:</u>		\$	
<u>PROJECT FUNDING APPROVED UNDER THIS WORK ORDER:</u>		\$	
<u>BALANCE AVAILABLE FOR FUTURE EXPENDITURES:</u>		\$	

ACCEPTANCE OF WORK ORDER *(to be signed if awarded project)*

I hereby acknowledge the receipt of the Work Order and agree to implement the Project/Activity described, in accordance with the Contract, the attached "Request for Project Proposals", "Project Understanding and Services to be Provided", "Fee Proposal Sheet" and "Project Schedule", subject to necessary approvals of the County Director or Chief of Project Management of Project and Facilities Management Department, or his/her designee.

Project And Facilities Management Department



Director / Chief of Project Management

Dated: _____

(Print or type name of the consultant company)

By

(Authorized signature - sign in blue ink)

Name _____

(Print or type name of person signing contract)

Title _____

(Print or Type)

Dated: _____

Appendix H Sample Fee Proposal Sheet

(The County reserves the right to revise this document to meet the needs of the County for each Project)

Project No. _____

Project Title _____

Consultant's Total All-Inclusive Fee \$ _____
(Includes Consultant's Design Fee, Consultant's
Construction Admin Fee, and Consultant's
Reimbursable Expenses)

Consultant's Design Fee \$ _____

Consultant's Construction Admin. Fee \$ _____

Consultant's Reimbursable Expenses \$ _____
(Reimbursable Expenses will only be
reimbursed for actual expenses incurred
and reimbursed at cost with no mark-up.)

Proposed Man Hours for Design _____ Man Hours
(including estimated man hours for agency(ies) reviews)

Total Proposed Schedule for Design _____ Weeks
(including estimated agency(ies) reviews)

Preliminary Construction Document Phase _____ Weeks

Construction Documents Phase _____ Weeks

Bidding/Pre-Construction Phase _____ Weeks

Estimate of Construction Schedule _____ Weeks

(Optional at County's Request)

Include the hourly rate for each individual or classification that will be working on the project and the estimated number of hours each individual will work on the Project.