

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

SAP Number

COUNTY ADMINISTRATIVE OFFICE

Department Contract Representative
Telephone Number

Subgrantee
Subgrantee Representative
Telephone Number
Contract Term
Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

**FUNDING AND DISBURSEMENT AGREEMENT BETWEEN SAN BERNARDINO COUNTY
COUNTY ADMINISTRATIVE OFFICE
AND
[NAME OF SUBGRANTEE]
AND
[NAME OF CONSTRUCTION COMPANY]
FOR
CAPITAL PROJECTS**

COMMUNITY CARE EXPANSION PRESERVATION FUNDS

THIS FUNDING AND DISBURSEMENT AGREEMENT is entered into by and between San Bernardino County (County), [Subgrantee] (Subgrantee) a [non-profit, etc. describe form of entity], in the State of California, duly organized, existing and acting pursuant to the laws thereof, located at [enter address of facility] (Facility) and [Contractor] (Contractor) which parties do hereby agree as follows:

A. PURPOSE.

County has been allocated funding by the State of California, Department of Social Services (CDSS) pursuant to the Community Care Expansion Preservation Funds (CCE) program to assist in the preservation and avoidance of closure of critical residential adult and senior care facilities serving

applicants or recipients of Supplemental Security Income/State Supplementary Payment or Cash Assistance Program for Immigrants, including those who are experiencing or at risk of homelessness (hereinafter referred to as “the Program”). Subgrantee has been selected to receive Capital Projects (CP) funds for use as authorized by the Notice of Funding Announcement for the CCE. The intent of CP funds is to preserve facilities in need of critical repairs or required upgrades, thereby potentially preventing facility closure, which would result in exits to homelessness.

B. DEFINITIONS

B.1 Adult Residential Facility (ARF): “ARF” has the same meaning as in Title 22 of the California Code of Regulations Section 80001: “any facility of any capacity that provides 24-hour-a-day nonmedical care and supervision to the following: (A) persons 18 years of age through 59 years of age; and (B) persons 60 years of age and older only in accordance with Section 85068.4.”

B.2 Prioritized Population: Qualified residents who are experiencing, or at risk of experiencing homelessness.

B.3 Qualified Resident: Applicants or recipients of Supplemental Social Security Income/State Supplementary Payment (SSI/SSP) pursuant to Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code and Welfare and Institutions Code section 12000 et seq., and applicants or recipients of the Cash Assistance Program for Immigrants (CAPI) pursuant to WIC section 18937 et seq., who need the care and supervision that is provided by the licensed facility that receives the grant. “Qualified resident” shall not include SSI/SSP or CAPI applicants or recipients who are receiving services through a regional center.

B.4 Residential Care Facility for the Chronically Ill (RCFCI): “RCFCI” has the same meaning as in Title 22 of the California Code of Regulations Section 87801: “any place, building, or housing arrangement which is maintained and operated to provide care and supervision to all or any of the following: (A) Adults with HIV disease or AIDS, (B) Emancipated minors with HIV disease or AIDS, or (C) Family units as defined in Section 87801(f)(1) with adults or children or both with HIV disease or AIDS.”

B.5 Residential Care Facility for the Elderly (RCFE): “RCFE” has the same meaning as in Title 22 of the California Code of Regulations Section 87101: “a housing arrangement chosen voluntarily by the resident, the resident’s guardian, conservator or other responsible person; where 75 percent of the residents are sixty years of age or older and where varying levels of care and supervision are provided, as agreed to at time of admission or as determined necessary at subsequent times of reappraisal. Any younger residents must have needs compatible with other residents.”

C. TERM

The term of this Funding and Disbursement Agreement (Agreement) begins on the date this Agreement is initially executed by the County, through the earlier of subsidy funds being exhausted, the liquidation deadline of December 31, 2026, or the Subgrantee is no longer able to demonstrate need.

D. FUNDING AMOUNT. The maximum amount payable by the County under this Agreement shall not exceed \$[INSERT AMOUNT].

E. BASIC CONDITIONS. County shall have no obligation to disburse money for the Program under this Agreement until Subgrantee has satisfied the following conditions:

E.1 Eligible Facility Meet the qualifications of an Eligible Facility, which includes:

E.1.1 Be an existing licensed ARF, RCFE, or RCFCI;

E.1.2 Currently serve at least one Qualified Resident;

E.1.3 Be in good standing with the community Care Licensing Division (CCLD) or certify that the CP funds will bring Subgrantee into good standing, defined as licensees in “substantial compliance” with licensing statutes and regulations per Title 22, sections 80001(s)(8), 81001(s)(8), 87101(s)(9), and 87801(s)(7) of the California Code of regulations;

E.1.4 Agree to continue to serve Qualified Residents;

E.1.5 Agree to prioritize applications from Qualified Residents who are part of the Prioritized Population;

E.1.6 Agree to use the CP funds disbursed for only Eligible Uses; and,

E.1.7 Have a gap in its financial ability to make needed repairs or upgrades, placing the Facility at risk of closure and reducing the number of beds available for Qualified Residents.

Subgrantee's execution of this Agreement certifies that it meets the qualifications listed above.

E.2 Subgrantee may not be a facility vendored by a regional center.

F. PROJECT REQUIREMENTS.

F.1 Eligible Uses CP funds shall only be applied for physical repairs and upgrades at the Facility, including inside and outside the Facility within the Facility's property line. The CP may also fund repairs needed to ensure facilities are compliant with licensing standards. Eligible uses are fully described in the Notice of Funding Availability dated June 10, 2022.

Subgrantee, in coordination with the County, has solicited bids, quotes, or proposals, or used another applicable and compliant method for the Project(s) described below pursuant to the County's procurement policies and state law. Subgrantee, with the approval of the County, has selected Contractor to complete the following Project(s) as further detailed on Exhibit 1:

[SELECT WHICH PROJECT(S) ARE BEING FUNDED AND DELETE OTHERS]

- Weather stripping repair.
- Outdoor activity space upgrades.
- Perimeter fencing.
- Delayed egress.
- Repairs to holes in walls.
- Signal system upgrade (e.g., egress and ingress systems, signals/alarms on doors, integration to personal emergency responses systems).
- Elevator repairs.
- Water damage repairs.
- Appliance upgrades
- Furniture upgrades
- Locked storage area upgrades
- Fire protection upgrades
- Fire alarm systems upgrades
- Employee accommodations upgrades (e.g., break rooms)
- First aid supply upgrades
- Windows and screens repair and upgrades
- Carpet and flooring upgrades
- Interior paint upgrades
- Roof repairs and replacement

- ADA upgrades and other upgrades to improve mobility and accessibility
- HVAC repairs
- Repairs or upgrades to bedrooms, bathrooms and showers, common areas, kitchens (note: repairs or upgrades may not increase square footage of the facility)
- Seismic upgrades to applicable facility types with two stories or more
- Solar panel purchasing, installation, and other upgrades that will reduce long-term operating costs
- Other sustainable/green or energy-efficient building upgrades

F.2 Ineligible Uses Expenses that are not eligible to be covered by the CP funds include the following:

F.2.1 Expenses for operating costs.

F.2.2 Repairs to foundations of leased facilities.

F.2.3 Projects that would expand or create new usable space.

F.2.4 The provision of services.

F.3 Withholding of Disbursements by the County If the County determines that the CP funds are not being utilized in accordance with the provisions of this Agreement, or that Subgrantee has failed in any other respect to comply with the provisions of this Agreement, and if Subgrantee does not remedy any such failure to the County's satisfaction, the County may withhold from Subgrantee all or any portion of the CP funds and take any other action that it deems necessary to protect its interests. Where a portion of the CP funding has been disbursed on behalf of the Subgrantee and the County notifies the Subgrantee of its decision not to release funds that have been withheld pursuant to Article Q, the portion that has been disbursed shall thereafter be repaid immediately as directed by the County. The County may consider Subgrantee's refusal to repay the requested disbursed amount a contract breach subject to the default provisions in Article Q, "Default Provisions." If the County notifies Subgrantee of its decision to withhold all future CP funds from the Subgrantee/Contractor pursuant to this Paragraph, this Agreement shall terminate upon receipt of such notice by Subgrantee and the County shall no longer be required to provide funds under this Agreement and the Agreement shall no longer be binding on the Parties.

F.4 The Project(s) must meet state and local residential and building codes, as applicable.

F.5 Subgrantee and Contractor shall enter into a separate agreement for the selected projects that includes:

F.5.1 Bid documents and specifications released by the County and Subgrantee. (if applicable)

F.5.2 Contractor's proposal (if applicable)

F.5.3 A project scope and timeline (if applicable)

F.5.4 Labor and Material Bond

F.5.5 Performance Bond.

F.5.6 Contractor must obtain final, stamped plans and specifications, when required, and all required permits.

F.5.7 Contractor must provide a Certification of Compliance certifying that the Contractor shall comply with California's prevailing wage and working hours laws (including posting job notices, as required by Labor Code section 1720). From time to time, additional documents that are not stated here may be required at the discretion of the County, CDSS or its third party administrator.

F.5.8 Contractor must comply with the provisions of this Agreement, including, but not limited to, the additional provisions contained in Appendix B.

F.6 Subgrantee shall be responsible for managing completion of the Project, including all oversight of Contractor, monitoring of the progress of the Project, appropriately inspecting the Project, obtaining any government agency approvals/permits, administration of the agreement between Subgrantee and Contractor and cooperating with all County requests in connection with this funding.

F.7 Upon receipt of written notice that the Project is ready for final inspection and acceptance and upon receipt of a Final Application for Payment, the County together with the Subgrantee will promptly make such inspection and, when the County and Subgrantee find the Project acceptable and fully completed, the County will promptly issue a final authorization for payment.

F.7 Relocation Assistance To the extent in order for completion of the Project, individuals residing within the Facility are required to move, Subgrantee must comply with federal and state laws pertaining to relocation assistance and protections, including but not limited to California Government Code sections 7260-7277 and 42 United States Code sections 4601, et seq. Any relocation plan must be provided to the County for approval prior to implementation.

G. CONTINUING ELIGIBILITY

Subgrantee must meet the following ongoing requirement(s) to remain eligible to receive CP funds:

G.1 Subgrantee shall only use CP funds in accordance with the Eligible Uses defined herein as well as the requirements of this Agreement, including all reporting requirements.

G.2 Subgrantee agrees to continue serving Qualified Residents for the duration of this Agreement.

G.3 Subgrantee agrees to prioritize applications from Qualified Residents who are currently experiencing or at risk of homelessness.

G.4 Subgrantee must remain in good standing with CCLD.

G.5 Subgrantee shall respond immediately to requests for information from the County, CDSS and the third-party administrator under contract with CDSS (currently HORNE).

H. ANNUAL AUDIT

Subgrantee shall provide its annual audit within 90 days of the end of its fiscal year. If Subgrantee meets the threshold for a federal single audit, a copy of the most recent single audit must be provided to the County.

I. NOTICE OF SIGNIFICANT EVENTS

Subgrantee and Contractor shall report to the County within thirty (30) days any of the following:

I.1 Changes to key staff, including the director, chief executive officer, chief financial officer, chief operating officer, program coordinator or the individuals responsible for administration of this Agreement at the Facility.

I.2 Any actual or threatened lawsuits against Subgrantee/Contractor that may impact the provision of services.

I.3 Any changes to the licensure of Subgrantee.

J. SUBMISSION OF REPORTS

Subgrantee agrees to provide project timeline and progress updates to the County upon request, per County, CDSS or its third party administrator, guidelines and timeline. In addition, Subgrantee shall submit to the County such periodic reports, updates, and information as deemed necessary by the County to monitor compliance and/or perform program evaluation. Any requested data or information shall be submitted electronically in a format provided by the County.

The submittal and approval of all reports is a requirement for the successful completion of this Funding Agreement. Reports shall meet generally accepted professional standards for technical reporting and shall be proofread for content, numerical accuracy, spelling, and grammar prior to submittal to State. If requested, Subgrantee shall promptly provide any additional information deemed necessary by the County for the approval of reports. The timely submittal of reports is a requirement for initial and continued disbursement of OSP funds.

K. GENERAL AGREEMENT REQUIREMENTS

For purposes of this Article, references to Subgrantee shall include Contractor.

K.1 Recitals

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

K.2 Agreement Amendments

Subgrantee agrees any alterations, variations, modifications, or waivers of the provisions of the Agreement, shall be valid only when reduced to writing, executed and attached to the original Subgrantee and approved by the person(s) authorized to do so on behalf of Subgrantee and County.

K.3 Agreement Assignability

Without the prior written consent of the County, the Agreement is not assignable by Subgrantee either in whole or in part.

K.4 Americans with Disabilities Act

By signing this Funding Agreement, Subgrantee assures the County that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. § 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

K.5 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's fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

For disputes involving CDSS or its third party administrator, the following provision shall apply:

If a dispute arising out of this Agreement is finally adjudicated, the non-prevailing party shall pay the prevailing party's reasonable expenses incurred in connection therewith, including reasonable arbitration costs and reasonable attorneys' fees. If multiple items are disputed and the final decision is split, then the Parties shall allocate such expenses pro rata as to each item.

K.6 California Civil Rights Requirements

During the term of this Agreement, Subgrantee and its contractors and subcontractors, shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender identity, gender expression, age, sexual orientation, or military or veteran status, nor shall they discriminate unlawfully 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, age, sexual orientation, or military and veteran status.

K.7 Change of Address

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

K.8 Choice of Law

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

K.9 Confidentiality

Subgrantee shall protect from unauthorized use or disclosure the names and other identifying information concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any participant. Subgrantee shall not use or disclose any identifying information for any purpose other than carrying out the Subgrantee's obligations under this Agreement, except as may otherwise be required by law. This provision will remain in force even after the termination of the Agreement.

Subgrantee shall comply with the requirements set forth in Attachment A – The California Department of Social Services Confidentiality and Information Security Requirements.

K.10 Primary Point of Contact

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

K.11 County Representative

The Chief Executive Officer and/or the County Chief Financial Officer or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Agreement, including termination and assignment of this Agreement, and shall be the final authority in all matters pertaining to the services by Subgrantee. If this Agreement was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Agreement.

K.12 Debarment and Suspension

Subgrantee certifies that neither it nor its principals or subcontractors is presently debarred, 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>). Subgrantee 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.

K.13 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 Agreement, the Subgrantee agrees that the Subgrantee and the Subgrantee's employees, while performing service for the County, on County property, or while using County equipment:

- K.13.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- K.13.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- K.13.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Subgrantee or Subgrantee's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Subgrantee shall inform all employees that are performing service for the Program, 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 Program.

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

K.14 Duration of Terms

This Agreement, 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 Agreement.

K.15 Employment Discrimination

During the term of the Agreement, Subgrantee 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. Subgrantee 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. Subgrantee shall permit access by representatives of the Department of Fair Employment and Housing, CDSS or its third party administrator, upon reasonable notice at any time during normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities to ascertain compliance with this clause.

K.16 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 Subgrantee to use recycled paper for any printed or photocopied material created as a result of this Agreement. Subgrantee 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), Subgrantee must be able to annually report the County's environmentally preferable purchases. Subgrantee 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.

K. 17 Force Majeure

Neither Party shall be liable to the other for loss or damages due to failure or delay rendering performance caused by circumstances beyond its reasonable control, if such failure could not have been overcome by the exercise of due diligence, due care, or foresight. Circumstances may include, but are not limited to, acts of God or a public enemy; wars; acts of terrorism; riots; fires; floods; epidemics; quarantine restrictions; labor disputes; strikes; defaults of subcontractors/vendors; failure/delays in transportation; unforeseen freight embargoes; unusually severe weather; or any law/order/regulation/request of a state or local government entity, the U.S. Government, or of any agency, court, commission, or other instrumentality of any such governments. Times of performance under this Agreement may be appropriately extended for excused delays if the Party whose performance is affected promptly notifies the other of the existence and nature of such delay.

K.18 Improper Influence

Subgrantee 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 Agreement or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Agreement or shall have any relationship to the Subgrantee or officer or employee of the Subgrantee.

K.19 Improper Consideration

Subgrantee 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 Agreement.

The County, by written notice, may immediately terminate this Agreement 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.

Subgrantee shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Subgrantee. 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.

K.20 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 Agreement 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.

For those disputes involving CDSS or its third party administrator the following provision applies:

The Parties shall use reasonable efforts to resolve any dispute arising under this Agreement within thirty (30) days pursuant to informal mediation before a retired judge with Judicial Arbitration and Mediation Services ("JAMS") in Los Angeles, California.

If the Parties cannot resolve a dispute arising under this Agreement pursuant to the above, the Parties shall submit such dispute to arbitration in accordance with the provisions of the American Arbitration Association. The Parties shall conduct any arbitration in Los Angeles, California. The arbitrator's decision in any such arbitration shall be final, conclusive, and binding on the Parties.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES HEREBY UNCONDITIONALLY WAIVE ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY CLAIM ARISING OUT OF THIS AGREEMENT.

The Subgrantee shall be obligated to continue to perform pursuant to this Agreement while any dispute is pending.

K.21 Legality and Severability

The parties' actions under the Agreement shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Agreement are specifically made severable. If a provision of the Agreement is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

K.22 Licenses, Permits and/or Certifications

Subgrantee shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Subgrantee shall maintain these licenses, permits and/or certifications in effect for the duration of this Agreement. Subgrantee will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Agreement.

K.23 Mutual Covenants

The parties to this Agreement 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".

K.24 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 Agreement, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

K.25 Policies and Legal Authorities

The Subgrantee shall comply with all California and federal law, regulations, and published guidelines, to the extent that these authorities contain requirements applicable to the Subgrantee's performance under this Agreement, including any licensing and health and safety requirements.

The Subgrantee shall comply with California Welfare and Institutions Code section 18999.97-18999.98 et seq., including any related CDSS guidance, regulations, and/or subsequent additions or amendments thereto.

In the event Subgrantee does not comply with the terms of this Section, the County shall give notice in accordance with and have all rights set forth in Article Q.

K.26 Air, Water Pollution Control, Safety and Health

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

K.27 Records

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

All records relating to the Subgrantee's personnel, consultants, subcontractors, facility and expenses pertaining to this Agreement 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.

****Contractor** expressly acknowledges it is aware of and will comply with all record retention and audit requirements contained in this Agreement. These requirements include, but are not limited to, the maintenance of an Official Project File that must be preserved a minimum of five (5) years, the protection of records from fire or other damage, the maintenance of all records in accordance with generally accepted accounting principles, and the agreement that the County or its designated representative shall have the right to review, to audit, and to copy any records and supporting documentation pertaining to the performance of this Agreement.

K.28 Relationship of the Parties

Nothing contained in this Agreement 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.

K.29 Release of Information

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

K.30 Representation of the County

In the performance of this Agreement, Subgrantee, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County.

K.31 Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement 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 Agreement thereafter.

K.32 Subcontracting

Subgrantee shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Agreements with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Subgrantee 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. Subgrantee shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified Article O. All approved subcontractors shall be subject to the provisions of this Agreement applicable to Subgrantee Personnel.

For any subcontractor, Subgrantee shall:

K.32.1 Be responsible for subcontractor compliance with the Agreement and the subcontract terms and conditions; and

K.32.2 Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.

K.32.3 Include in the subcontractor's subcontract substantially similar terms as are provided in Article E. Basic Conditions, Article F. Eligible Uses, Article G. Continuing Eligibility and Article K. General Agreement Requirements.

K. 33 Subpoena

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

K.34 Third Party Beneficiaries

The State, represented by CDSS and its third party administrator, is a third party beneficiary of this Agreement. This Agreement shall not be construed so as to give any other person or entity, other than the parties, CDSS, and its third party administrator, any legal or equitable claim or right. CDSS or another authorized department or agency representing the State of California may enforce any provision of this Agreement to the full extent permitted in law or equity as a third party beneficiary of this Agreement. The State may take any and all remedies available in law and equity. In the event of litigation, the State may choose to seek any type of damages available in law or equity, up to the full amount of Program Funds awarded to Subgrantee.

K.35 Time of the Essence

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

K.36 Venue

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

To the extent a dispute arises between the County, the Subgrantee, CDSS and/or its third party administrator such that the terms of the funding agreement between the County and the third party administrator apply, venue shall be in the appropriate state or federal court in the State of California, County of Sacramento.

K.37 Conflict of Interest

Subgrantee shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Subgrantee shall make a reasonable effort to prevent employees, Subgrantee, 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 Agreement. This provision shall not be construed to prohibit employment of persons with whom Subgrantee'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.

Subgrantee shall certify on Attachment C Certification Regarding Lobbying and Conflicts of Interest that it is in compliance with the Political Reform Act of 1978 and regulations promulgated by the Fair Political Practices Commission (FPPC) regarding requirements relating to lobbying and conflicts of interest.

K.38 Former County Administrative Officials

Subgrantee agrees to provide, or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Subgrantee. 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 Subgrantee. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

K.39 Disclosure of Criminal and Civil Procedures

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

Subgrantee is required to disclose whether it, 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 Subgrantee will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Subgrantee 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 Subgrantee 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.

K.40 Waiver

The County's failure to notify the Subgrantee of a breach or to insist on strict performance of any provision of this Agreement shall not constitute waiver of such breach or provision.

K.41 Remedies

No remedy in this Agreement is exclusive of any other remedy available under this Agreement, at law or in equity. The County may seek equitable relief, including an injunction, against the Subgrantee in connection with any breach or threatened breach of this Agreement.

K.42 Limitation of Liability

Except as otherwise provided in this Agreement, or by applicable law, the Subgrantee waives any right to sue, and the County shall not be liable for, any special, consequential, or punitive damages, including but not limited to, negligence claims; indirect, or incidental damages; or for any loss of goodwill, profits, data, or loss of use arising out of, resulting from, or in any way connected with the performance or breach of this Agreement, even if the Subgrantee advises the County of the possibility of any such damages.

K.43 California Consumer Privacy Act

To the extent applicable, if Subgrantee is a business that collects the personal information of a consumer(s) in performing Services pursuant to this Agreement, Subgrantee must comply with the provisions of the California Consumer Privacy Act (CCPA). (Cal. Civil Code §§1798.100, et seq.). For purposes of this provision, "business," "consumer," and "personal information" shall have the same meanings as set forth at Civil Code section 1798.140. Subgrantee must contact the County immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the County, including but not limited to, providing a list of disclosures or deleting personal information. Subgrantee must not sell, market or otherwise disclose personal information of a consumer provided by the County unless specifically authorized pursuant to terms of this Agreement. Subgrantee must immediately provide to the County any notice provided by a consumer to Subgrantee pursuant to Civil Code section 1798.150(b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to this Agreement. Subgrantee must immediately notify the County if it receives a notice of violation from the California Attorney General pursuant to Civil Code section 1798.155(b).

K. 44 Executive Order N-6-22 Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined that Subgrantee is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. Subgrantee shall be provided advance written notice of such termination, allowing Subgrantee at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the County.

K.45 Campaign Contribution Disclosure (SB 1439)

Subgrantee has disclosed to the County using Attachment B - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 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 Subgrantee's proposal to the County, or (2) 12 months before the date this Agreement was approved by the Board of Supervisors. Subgrantee acknowledges

that under Government Code section 84308, Subgrantee is prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Agreement.

In the event of a proposed amendment to this Agreement, the Subgrantee will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

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

K.46 Prevailing Wage Laws

By its execution of this Agreement, Subgrantee and Contractor certify that they are 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. ("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 Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Subgrantee agrees to fully comply with such Prevailing Wage Laws. Subgrantee shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Project available to interested parties upon request, and shall post copies at the Subgrantee's principal place of business and at the project site. Subgrantee 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. Subgrantee shall defend, indemnify and hold the County, its 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 Prevailing Wage Laws. See Attachment D, which is attached and incorporated by reference, for additional information regarding Prevailing Wage Laws. Subgrantee shall comply with all applicable terms and conditions in Attachment D. The applicable general prevailing wage determinations are on file with the County and are available to any interested party on request. Subgrantee shall post a copy of the applicable prevailing wage determinations at the job site.

K.47 American Rescue Plan Act (ARPA) Coronavirus Local Fiscal Recovery Fund (CLFRF)

K.47.1 Subgrantee agrees to comply with the requirements set forth in Appendix A to this Agreement. To the extent that the requirements of Appendix A conflict with any other provisions of this Agreement, Appendix A shall prevail.

K.47.2 The County is required to provide reporting regarding compliance with ARPA CLFRF requirements and will require Subgrantees cooperation to meet this requirement. Subgrantee agrees to cooperate with County in meeting ARPA CLFRF reporting requirements and provide requested information within five (5) business days. Areas of reporting may be related to any requirement set forth in Appendix A to this Agreement as well as Project status.

K.47.3 Subgrantee's obligation to comply with the ARPA CLFRF requirements of this Agreement, including but not limited to Appendix A, shall survive termination of this Agreement.

L. TERMINATION

The County shall have the right, in its sole discretion and without prejudice to any other rights and remedies it may have under applicable law, to terminate this Agreement immediately upon notice of such termination to Subgrantee/Contractor, if (i) an Event of Default occurs; (ii) three (3) violations, breaches or defaults by the County of the terms and conditions of this Agreement (whether the same or different) occur within any twelve-month period, regardless of whether any or all such violations, breaches or defaults are timely corrected; (iii) Subgrantee/Contractor files a petition in bankruptcy or is adjudicated by a court of competent jurisdiction to be bankrupt or insolvent, or makes an assignment for the benefit of creditors or an arrangement pursuant to any bankruptcy law, or if the County discontinues or dissolves its business or if a receiver is appointed for Subgrantee/Contractor or the Subgrantee's/Contractor's business; or (iv) Subgrantee/Contractor fails to provide the County with adequate assurances within a reasonable time that the Subgrantee/Contractor is financially solvent, or the County determines that the Subgrantee/Contractor is financially insecure.

Notwithstanding the foregoing, or anything to the contrary stated herein, the County may terminate this Agreement upon thirty (30) days' notice without cause or if the County is directed by CDSS, or its third party administrator, to terminate this Agreement.

Upon termination of this Agreement for any reason, neither the County nor the State shall be liable for any work that is not performed in accordance with the Agreement or for any commitments made by the Subgrantee/Contractor. Upon any termination, neither the County nor CDSS shall be responsible for any additional disbursements of Program Funds after the termination date or for any damages to the Subgrantee as a result of such termination.

M. DISBURSEMENT OF FUNDS

M.1 All Inclusive Price.

The Funding Amount in Article D, subject to additions and deductions, is the total amount payable by the County to Contractor for work performed on the Project pursuant this Agreement and the agreement entered into between Contractor and Subgrantee and is deemed to cover all costs arising out of or related to the performance of the Project, including, without limitation, the effects of natural elements upon the Project, unforeseen difficulties or obstructions affecting performance of the Project and fluctuations in market conditions and price escalations (whether occurring locally, nationally or internationally) from any cause, including, without limitation, causes beyond the control or foreseeability of the Contractor.

M.2 Application for Payment

Contractor shall submit to the County an itemized Application for Payment, utilizing a form approved in writing by the County, for operations completed in accordance with the Scope of Work and the payment provisions of the Agreement. Contractor's submission of Applications for Payment must be accompanied by a Facility Acknowledgement of Work form signed by Subgrantee verifying completion of the work performed. All Applications for Payment must include Certified Payrolls for the time period covered in the Application for Payment. Such Application shall be notarized, if required by County, and supported by such data substantiating the Contractor's right to payment as the County may require, including copies of requisitions from Subcontractors and Suppliers.

Payment will be made on valuation of Work done as of the twenty-fifth of each month, and such application shall be submitted approximately five (5) days before the end of the month.

No payments made to the Contractor, nor partial or entire use or occupancy of the work by the Subgrantee, shall be acceptance of any work or materials not in accordance with this Agreement.

Each application for payment shall be reviewed by the County as soon as practicable after receipt for the purpose of determining that the payment request is proper. Any application for payment determined not to be suitable for payment shall be returned to Contractor not later than seven (7) calendar days after receipt. Any returned application for payment shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper. Payment shall not be made more often than once each thirty (30) days. Applications for payment shall not be deemed properly completed unless certified payrolls and any other mandatory submittals have been properly completed and submitted for each week worked during the time period covered by said payment request. The County shall make any progress payment within 30 days after receipt of an undisputed and properly submitted application for payment from the Contractor.

Such applications for payment shall not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason, or as to which an appropriate conditional or unconditional waiver and release of rights upon payment has not been provided.

M.3 Payment to Subcontractors Within seven (7) calendar days of Contractor's receipt of payment from County for Work performed by a subcontractor, the Contractor shall pay all subcontractors for and on account of work on the Contract performed by each. The Contractor shall by appropriate agreement with each subcontractor and supplier, require each subcontractor to make payments to sub-subcontractor in a similar manner. The County will, on request, furnish to a subcontractor, sub-subcontractor, or supplier, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the County on account of portions of the work done by each.

M.4 Withhold for Disputes. In the event of a dispute between County and Contractor, the County may withhold from payments an amount not to exceed one hundred fifty percent (150%) of the disputed amount. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

M.5 Retention
From each progress payment, five percent (5%) will be deducted and retained by the County and the remainder, less the amount of all previous payments and less the amounts needed to satisfy outstanding stop notices, will be paid to the Contractor. At no time shall the progress payments be in excess of ninety-five percent (95%) of the percentage of actual work completed plus ninety-five percent (95%) of the value of materials delivered on the ground or stored and under the control of the County.

Final payment is to be made sixty (60) days subsequent to filing of Notice of Completion, and in accordance with the provisions of Appendix B.

M.6 Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations pursuant to any federal statute or regulation. Any and all money disbursed to Subgrantee under this Agreement shall be used solely to pay for eligible CP uses as defined in this Agreement.

M.7 Applications for payment must be submitted by one of the following methods:

M.7.1 Via email at CCEAdminTeam@cao.sbcounty.gov

M.7.2 Mail the invoice with the original "wet signature" to the following address:
County Administrative Office, CCE Administration
385 N Arrowhead Ave, Fourth Floor
San Bernardino County, CA 92415

- M.8** All invoices submitted shall be accurate and signed under penalty of law. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of grant funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder plus interest. Additionally, the County may request an audit pursuant to Article P.
- M.9** Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Subgrantee's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- M.10** County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Subgrantee 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 Agreement.
- M.11** Costs for services under the terms of this Agreement shall be incurred during the contract period except as approved by County.
- M.12** Funds made available under this Agreement shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Agreement. Subgrantee/Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Subgrantee/Contractor agree that they will not use funds received pursuant to this Agreement, 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.
- M.13** Subgrantee/Contractor shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Agreement and for which reimbursement is sought from the County. In addition, Subgrantee is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

N. WARRANTIES

Subgrantee and Contractor each represent and warrant that:

- N.1** It is free to enter into and fully perform this Agreement.
- N.2** It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
- N.3** It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to the County, CDSS or its third party administrator in this Agreement.
- N.4** It has appropriate systems and controls in place to ensure that CP funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- N.5** It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Subgrantee's performance of this Agreement.
- N.6** It shall comply with all applicable California and federal laws and published guidelines in connection with its performance of its obligations under this Agreement.

- N.7** The provisions set forth in this Agreement shall survive any termination or expiration of this Agreement.

O. BONDS, INDEMNIFICATION AND INSURANCE REQUIREMENTS

O.1 Payment and Performance Bond

Contractor shall furnish a Labor and Material Payment Bond in an amount equal to one hundred percent (100%) of the Project cost amount, and a Performance Bond in an amount equal to one hundred percent (100%) of the Project cost amount. The Bonds must comply with all requirements in this Agreement, be on County approved bond forms, and be secured from a surety company satisfactory to the County within ten (10) calendar days of the execution of this Agreement. The Bonds shall remain in full force and effect for a period of one (1) year following the date of filing the Notice of Completion. The Performance Bond shall name the County as a beneficiary under the bond.

O.2 Indemnification

Contractor To the fullest extent possible permitted by law, Contractor assumes liability for and agrees, at the Contractor's sole cost and expense, to promptly and fully indemnify, defend (with counsel reasonably approved by County) (even if the allegations are false, fraudulent, or groundless), and hold harmless the County, CDSS and its third party administrator, and their authorized officers, employees, agents and volunteers (Indemnitees) from and against any and all claims (including claims against the Indemnitees seeking compensation for labor performed or materials used or furnished to be used in the work or alleged to have been furnished on the project, including all incidental or consequential damages resulting to the Indemnitees from such claims), allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceedings, demands, losses, costs, damages, judgments, liens, stop notices, penalties, anticipated losses of revenue and/or liability, and expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses) arising out of, resulting from, or in any way (either directly or indirectly) related to the contract, the work, the project or any breach of the Agreement by Contractor (or any of its officers, agents, employees, subcontractors, or any person performing any of the work, or from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The 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 provided such "active" negligence or "willful misconduct" is determined by agreement of the parties or by findings of a court. In instances where an Indemnitee's "active" negligence accounts for only a percentage of the liability for the claim involved, the obligation of the Contractor will be for that entire percentage of liability for the claim not attributable to the "active" negligence or "willful misconduct" of the Indemnitees. The Indemnitees shall be consulted with regard to any proposed settlement.

The duty of the Contractor to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by Contractor of the tender of any claim from the Indemnitees. The Contractor's obligation to defend the Indemnitees shall be at Contractor's sole expense, and not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines that the Contractor is not liable. The duty to defend shall apply whether or not a claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively, or concurrently negligent, or which otherwise asserts that the Indemnitees are responsible, in whole or in part, for any claim. The Contractor shall respond within thirty (30) calendar days to the tender of any claim for defense and/or indemnity by the Indemnitees, unless the County agrees in writing to an extension of this time. The defense

provided to the Indemnitees by Contractor shall be by well qualified, adequately insured, and experienced legal counsel acceptable to the County Counsel.

It is the intent of the parties to the Agreement that the Contractor and its subcontractors of all tiers shall provide the Indemnitees with the broadest defense and indemnity permitted by law. In the event that any of the defense, indemnity, or hold harmless provisions are found to be ambiguous, or in conflict with one another, it is the parties' intent that the broadest and most expansive interpretation in favor of providing defense and/or indemnity to the Indemnitees be given effect.

Contractor shall ensure, by written subcontract agreement, that each of Contractor's subcontractors of every tier shall protect, defend, indemnify and hold harmless the Indemnitees with respect to all claims arising out, in connection with, or in any way related to each such subcontractor's work in the same manner in which Contractor is required to protect, defend, indemnify, and hold the Indemnitees harmless. In the event Contractor fails to obtain such defense and indemnity obligations from its subcontractors as required herein, Subgrantee agrees to be fully responsible to the Indemnitees according to the terms of this Section.

Contractor's indemnification and defense obligations set for in this Section are separate and independent from the insurance requirements and do not limit, in any way, the applicability, scope, or obligations set forth in such insurance requirements. The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations.

Contractor's obligations under this Section are binding on Contractor's and its subcontractors' successors, heirs and assigns and shall survive the completion of the work or termination of the Contractor's performance of the work.

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

O.2 Insurance

Contractor and Subgrantee shall comply with the following insurance requirements:

O.2.1 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 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 2010.11 85.

O.2.2 Waiver of Subrogation Rights

The Subgrantee shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Subgrantee and

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

O.2.3 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.

O.2.4 Severability of Interests

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

O.2.5 Proof of Coverage

The Subgrantee shall furnish Certificates of Insurance to the County Department administering the Agreement evidencing the insurance coverage at the time the Agreement 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 Subgrantee shall maintain such insurance from the time Subgrantee commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, the Subgrantee 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.

O.2.6 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".

O.2.7 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.

O.2.8 Failure to Procure Coverage

In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Subgrantee or County payments to the Subgrantee will be reduced to pay for County purchased insurance.

O.2.9 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 Agreement. Subgrantee 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.

O.2.10 The Subgrantee agrees to provide insurance set forth in accordance with the requirements herein. If the Subgrantee uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Subgrantee agrees to amend, supplement or endorse the existing coverage to do so.

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

O.2.10.1 Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Subgrantee and all risks to such persons under this Agreement.

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

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

O.2.10.2 Commercial/General Liability Insurance – The Subgrantee shall carry General Liability Insurance covering all operations performed by or on behalf of the Subgrantee providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

O.2.10.3 Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Subgrantee is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Subgrantee owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

O.2.10.4 **Umbrella Liability Insurance** – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

O.2.10.5 ****if applicable* Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

****if applicable* Abuse/Molestation Insurance** – Subgrantee shall have abuse or molestation insurance providing coverage for all employees for the actual or threatened abuse or molestation by anyone of any person in the care, custody, or control of any insured, including negligent employment, investigation and supervision. The policy shall provide coverage for both defense and indemnity with liability limits of not less than one million dollars (\$1,000,000) with a two million dollars (\$2,000,000) aggregate limit.

O.2.11 In addition to the insurance requirements above, **Contractor** is required to maintain the additional policies below:

O.2.11.1 Course of Construction/Installation (Builder’s Risk) Property Insurance providing all risk, including theft coverage for all property and materials to be used on the project. The insurance policy shall not have any coinsurance penalty.

O.2.11.2 Environmental Liability Insurance with a combined single limit of not less than five million (\$5,000,000) per claim or occurrence and a separate aggregate for the contract project. The required additional insured endorsement shall protect the County without any restrictions.

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

P. RIGHT TO MONITOR, INSPECT AND AUDIT

P.1 Right of Inspection. Except as otherwise provided in this Agreement, Subgrantee shall maintain and preserve all financial records, supporting documents, statistical records, and all other records pertinent to the Project for the term of this Agreement and for a minimum of three (3) years after termination of this Agreement and final payment of CP funds. Contractor is required to maintain an official project file that must be preserved a minimum of five (5) years after termination of this Agreement final payment of CP funds. Records must be maintained in accordance with generally accepted accounting principles.

Subgrantee and Contractor shall permit the County, CDSS, or its third party administrator, or any duly authorized representative, to have access to, examine, inspect, investigate or audit any pertinent records and all facilities related to this Agreement and to allow interviews of any employees who might reasonable have information related to such records and facilities. Subgrantee/Contractor shall cooperate in any desk reviews requested by the County, CDSS or

its third party administrator. The right to access records is not limited to the required retention period but lasts as long as the records are retained by the Subgrantee.

A review or inspection undertaken by the County or its designee, of the Subgrantee's/Contractor's records and facilities is solely for the purpose of determining whether the Subgrantee/Contractor is properly discharging its obligations to the County, and should not be relied upon by the Subgrantee/Contractor as a warranty or representation by the County as to the quality of the design, construction, or operation of any project. The Subgrantee/Contractor agrees that claims based upon an audit finding and/or an audit finding that is appealed and upheld shall be recovered by the County by one of the following options:

P.1.1 The Subgrantee's/Contractor's remittance to the County of the full amount of the audit exception within thirty (30) days following the County's request for payment; or

P.1.2 A repayment schedule which is agreeable to the County and the Subgrantee/Contractor.

The County reserves the right to select which option described above shall be employed, and the County shall notify the Subgrantee/Contractor in writing of the claim procedure to be utilized. Interest on the unpaid balance of the audit finding or debt shall accrue at a rate equal to the maximum allowed by the applicable law.

P.2. Monitoring and Audits.

At all times during construction of the Project, Contractor and Subgrantee shall coordinate with the County to provide employees, subcontractors, and consultants of the County reasonable unrestricted access to observe, monitor and inspect the Project, including all facilities at which work is being performed pursuant to this Agreement. The County's access to observe, monitor and inspect shall include the right to review all documents and files relating to the Project, as well as construction on the Site, including all tests and inspections relating to construction of the Project.

All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Agreement or until all pending County, State and Federal audits are completed, whichever is later. The costs of such audit shall be borne by the County. Subgrantee/Contractor shall give full cooperation, in any auditing or monitoring conducted. Subgrantee/Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Agreement and comply with any and all reporting requirements established by the County.

After termination of the Agreement, the County may require Subgrantee/Contractor to conduct a final audit to the County's specifications, at Subgrantee's/Contractor's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by the Subgrantee/Contractor to comply with this provision shall be considered a breach of this Agreement, and the County may elect to pursue any remedies provided in Article Q or take any other action it deems necessary to protect its interests. The Subgrantee/Contractor agrees it shall return any audit disallowances to the County.

Pursuant to Government Code section 8546.7, the Subgrantee/Contractor shall be subject to the examination and audit by the California State Auditor, DCSS or the County for a period of three (3) years after final payment under this Funding Agreement with respect of all matters connected with this Agreement, including but not limited to, the cost of administering this Agreement. All records of Subgrantee/Contractor or its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after receipt of the final disbursement under this Agreement.

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 Subgrantee/Contractor in the delivery of services provided under this Agreement.

Q. DEFAULT PROVISIONS

Q.1 Event of Default Subgrantee/Contractor will be in default under this Agreement if any of the following occur:

Q.1.1 Substantial breaches of this Agreement, or any supplement or amendment to it, or any other agreement between Subgrantee/Contractor and the County evidencing or securing Subgrantee's/Contractor's obligations.

Q.1.2 The County's determination of the following:

Q.1.2.1 The Subgrantee/ Contractor has concealed any material fact from the County related to the Subgrantee/ Contractor;

Q.1.2.2 Any material fact or representation, made or furnished to the County by Subgrantee/Contractor in connection with this Agreement shall have been untrue or misleading at the time that such fact or representation was made known to the County, or subsequently becomes true or misleading; or

Q.1.2.3 Any Certification provided by the Subgrantee/Contractor is determined to be untrue or misleading; or

Q.1.2.4 Any objectives or requirements of the Program cannot be met in accordance with this Agreement or within applicable timeframes, as memorialized by this Agreement.

Q.1.3 Failure to operate or maintain status as an Eligible Facility in accordance with this Agreement.

Q.1.4 Failure to make any remittance required by this Agreement, including any remittance recommended as the result of an audit conducted pursuant to Article P.

Q.1.5 Failure to submit timely progress reports.

Q.1.6 Failure to routinely invoice the County.

Q.1.7 Subgrantee's/ Contractor's failure to timely satisfy each or any of the conditions set forth in this Agreement.

Q.1.8 Failure to meet any of the requirements set forth in Article G. "Continuing Eligibility."

Q.2 Cure Should an event of default occur, the County shall provide a notice of default to the Subgrantee/ Contractor and shall give Subgrantee/ Contractor at least ten (10) calendar days to cure the default from the date the notice is sent via first-class mail to the Subgrantee/ Contractor. If the Subgrantee/ Contractor fails to cure the default within the time prescribed by the County, the County may do any of the following:

Q.2.1 Declare the funding disbursed be immediately repaid.

Q.2.2 Terminate any obligation to make future payments to Subgrantee.

Q.2.3 Terminate the Agreement.

Q.2.4 Take any other action that it deems necessary to protect its interests.

Notwithstanding the foregoing, the Subgrantee/ Contractor may request additional time to cure any default from the County. The County may, but shall not be required to, grant any such request, subject to County approval, in the County's sole discretion. The County's approval of Subgrantee's/ Contractor's request for additional time to cure shall be subject to the Subgrantee's/ Contractor's continuing and diligent efforts to cure, and any additional cure period provided to the Subgrantee/ Contractor shall be reasonable, as determined by the County, in the County's sole discretion. The County shall provide notice to the Subgrantee/ Contractor of approval or denial of the County's request for additional time to cure any default. In no event shall any extension of the cure period exceed thirty (30) days.

In the event the County finds it necessary to enforce this provision of this Agreement in the manner provided by law, Subgrantee/ Contractor agrees to pay all costs incurred by the County including, but not limited to, reasonable attorneys' fees, legal expenses, and costs.

Q.3 Remedies Upon the occurrence of an Event of Default, the County may take any and all actions or remedies that are available under this Agreement, at law, or in equity, including but not limited to the following:

Q.3.1 Temporarily withhold reimbursement of program funds pending correction of the breach, violation, or default.

Q.3.2 Disallow use of Program Funds for all or part of the costs resulting from the breach, violation, or default;

Q.3.3 Wholly or partly suspend or terminate this Agreement and the Subgrantee's award of Program Funds, or disbursements thereof (any such suspension or termination of this Agreement or the County's award of Program Funds shall be effective upon the Subgrantee's receipt of County notice of termination or suspension);

Q.3.4 Withhold or deny further Program Funds or awards to the Subgrantee/Contractor;

Q.3.5 Require the Subgrantee/ Contractor to return all or part of any Program Funds, including any interest;

Q.3.6 Specific performance;

Q.3.7 Injunctive relief; and

Q.3.8 Any and all remedies allowed by law or equity.

R. SUSPENSION OR STOP WORK NOTIFICATION

R.1 The County, CDSS, or its third party administrator, may, at any time, issue a notice to suspend performance or stop work under this Agreement. The initial notification may be a verbal or written directive issued by the County, CDSS, its third party administrator or their designated representative. Upon receipt of said notice, Subgrantee/ Contractor is to suspend and/or stop all, or any part of, the work called for by this Agreement.

R.2 Written confirmation of the suspension or stop work notification with directions as to what work (if not all) is to be suspended and how to proceed will be provided within thirty (30) working days of the verbal notification. The suspension or stop work notification shall remain in effect until further written notice is received from the County. The resumption of work (in whole or in part) will be at the County, CDSS, or its third party administrator's discretion and upon receipt of written confirmation.

R.2.1 Upon receipt of a suspension or stop work notification, Subgrantee/ Contractor shall immediately comply with its terms and take all reasonable steps to minimize or halt the incurrence of costs allocable to the performance covered by the notification during the period of work suspension or stoppage.

R.2.2 Within ninety (90) days of the issuance of a suspension or stop work notification, the County shall either:

R.2.2.1 Cancel, extend, or modify the suspension or stop work notification; or

R.2.2.2 Terminate the Agreement as provided for in the Termination Clause of this Agreement.

R.3 If a suspension or stop work notification issued under this clause is cancelled or the period of suspension or any extension thereof is modified or expires, Subgrantee/ Contractor may resume work only upon written concurrence of the County.

R.4 If the suspension or stop work notification is cancelled and the Agreement resumes, changes to the terms resulting from the suspension or stop work notification shall require an amendment to the Agreement.

R.5 If a suspension or stop work notification is not cancelled and the Agreement is cancelled or terminated pursuant to the Termination provision, the County shall allow reasonable costs resulting from the suspension or stop work notification in arriving at the settlement costs.

R.6 In accordance with [enter Indemnification provision] and [Limitation of Liability] of the Agreement, the County shall not be liable to Subgrantee/ Contractor or its subcontractors for loss of profits because of any suspension or stop work notification issued under this clause.

S. NOTICES

All written notices provided for in this Agreement or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*San Bernardino County
Department
Address*

*Subgrantee
Address*

*Contractor Information
Address*

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

T. ELECTRONIC SIGNATURES

This Agreement 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 Agreement. The

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

U. ENTIRE AGREEMENT

This Agreement, including all 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 Agreement not expressly set forth herein are of no force or effect. This Agreement 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 Agreement and signs the same of its own free will.

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

SAN BERNARDINO COUNTY

►

Luther Snoke, Chief Executive Officer

Dated: _____

Approved as to legal form:

County Counsel

SUBGRANTEE:

(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)

Address _____

CONTRACTOR:

(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)

Address _____

ATTACHMENT A
The California Department of Social Services
Confidentiality and Information Security Requirements County - v 2019 01

This Confidentiality and Information Security Requirements - Attachment A (hereinafter referred to as "this Exhibit" or "Attachment A") sets forth the information security and privacy requirements Subgrantee is obligated to follow with respect to all confidential and sensitive information (as defined herein) disclosed to or collected by Subgrantee, pursuant to the Agreement in which this Attachment is incorporated. CDSS, its third party administrator, the County and Subgrantee desire to protect the privacy and provide for the security of CDSS Confidential, Sensitive, and/or Personal (CSP) Information (hereinafter referred to as "CDSS CSP") in compliance with state and federal statutes, rules and regulations.

Order of Precedence. With respect to information security and privacy requirements for all CDSS CSP, unless specifically exempted, the terms and conditions of this Attachment shall take precedence over any conflicting terms or conditions set forth in any other part of the Agreement between County and Subgrantee.

I. Effect on lower tier transactions. The terms of this Attachment shall apply to all lower tier transactions (e.g., agreements, sub-agreements, contracts, subcontracts, and sub- awards, etc.). Subgrantee shall incorporate the contents of this Attachment into each lower tier transaction.

II. Confidentiality of Information.

A. DEFINITIONS. The following definitions apply to this Attachment and relate to CDSS Confidential, Sensitive, and/or Personal Information:

- i. "Confidential Information" is information maintained by CDSS that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250 *et seq.*) or has restrictions on disclosure in accordance with other applicable state or federal laws.
- ii. "Sensitive Information" is information maintained by CDSS which is not confidential by definition, but requires special precautions to protect it from unauthorized access and/or modification (i.e., financial or operational information). Sensitive information is information in which the disclosure would jeopardize the integrity of CDSS (i.e., CDSS' fiscal resources and operations).

"Personal Information" is information, in any medium (paper, electronic, or oral) that identifies or describes an individual (i.e., name, social security number, driver's license, home/mailling address, telephone number, financial matters with security codes, medical insurance policy number, Protected Health Information (PHI), etc.) and must be protected from inappropriate access, use or disclosure, and must be made accessible to information subjects upon request. It can also be information in the possession of the Department in which the disclosure is limited by law or contractual Agreement (i.e., proprietary information, etc.).
- iii. "Breach" is the unauthorized acquisition, access, use, or disclosure of CDSS CSP in a manner which compromises the security, confidentiality or integrity of the information; or the same as the definition of "breach of the security of the system" set forth in California Civil Code section 1798.29(l).
- iv. "Information Security Incident" is unauthorized access or disclosure, modification or destruction of, or interference with, CDSS CSP that actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits or that constitutes a violation or imminent threat of violation of any state or federal law or in a manner not permitted under the Agreement, including this Exhibit.

B. CDSS CSP which may become available to Subgrantee as a result of the implementation of the Agreement shall be protected by County from unauthorized access, use, and disclosure as described in this Attachment.

C. Subgrantee is notified that unauthorized disclosure of CDSS CSP may be subject to civil and/or criminal penalties under state and federal law, including but not limited to:

- California Welfare and Institutions Code section 10850
- Information Practices Act - California Civil Code section 1798 *et seq.*
- Public Records Act - California Government Code section 6250 *et seq.*
- California Penal Code section 502, 11140-11144, 13301-13303
- Health Insurance Portability and Accountability Act of 1996 ("HIPAA")- 45 CFR Parts 160 and 164
- Safeguarding Information for the Financial Assistance Programs - 45 CFR Part 205.50
- Unemployment Insurance Code section 14013

D. EXCLUSIONS. "Confidential Information," "Sensitive Information," and "Personal Information" (CDSS CSP) does not include information that:

- i. Is or becomes generally known or available to the public other than because of a breach by County of these confidentiality provisions;
- ii. Already known to Subgrantee before receipt from CDSS without an obligation of confidentiality owed to CDSS;
- iii. Provided to Subgrantee from a third party except where Subgrantee knows, or reasonably should know, that the disclosure constitutes a breach of confidentiality or a wrongful or tortious act; or
- iv. Independently developed by Subgrantee without reference to CDSS CSP.

III. Subgrantee Responsibilities.

A. TRAINING. Subgrantee shall instruct all employees, agents, and subcontractors with access to CDSS CSP regarding:

- i. The confidential nature of the information;
- ii. The civil and criminal sanctions against unauthorized access, use, or disclosure found in the California Civil Code section 1798.55, Penal Code section 502 and other state and federal laws;
- iii. CDSS procedures for reporting actual or suspected information security incidents in Paragraph V - Information Security Incidents and/or Breaches; and
- iv. That unauthorized access, use, or disclosure of CDSS CSP is grounds for immediate termination of this Agreement and may be subject to penalties, both civil and criminal.

B. USE RESTRICTIONS. Subgrantee shall take the appropriate steps to ensure that their

employees, agents, and subcontractors will not intentionally seek out, read, use, or disclose CDSS CSP other than for the purposes described in the Agreement and to meet its obligations under the Agreement.

C. DISCLOSURE OF CDSS CSP. Subgrantee shall not disclose any individually identifiable CDSS CSP to any person other than for the purposes described in the Agreement and to meet its obligations under the Agreement.

D. SUBPOENA. If Subgrantee receives a subpoena or other validly issued administrative or judicial notice requesting the disclosure of CDSS CSP, Subgrantee will immediately notify the AHP Project Director and CDSS Information Security and Privacy Officer. In no event should notification to CDSS occur more than three (3) business days after receipt by Subgrantee's responsible unit for handling subpoenas and court orders.

E. INFORMATION SECURITY OFFICER. Subgrantee shall designate an Information Security Officer to oversee its compliance with this Attachment and to communicate with CDSS on matters concerning this Attachment.

F. REQUESTS FOR CDSS CSP BY THIRD PARTIES. Subgrantee shall promptly transmit to the County all requests for disclosure of any COSS CSP requested by third parties to the Agreement (except from an individual for an accounting of disclosures of the individual's personal information pursuant to applicable state or federal law), unless prohibited from doing so by applicable state or federal law.

G. DOCUMENTATION OF DISCLOSURES FOR REQUESTS FOR ACCOUNTING. Subgrantee shall maintain an accurate accounting of all requests for disclosure of COSS CSP Information and the information necessary to respond to a request for an accounting of disclosures of personal information as required by Civil Code section 1798.25, or any applicable state or federal law.

H. RETURN OR DESTRUCTION OF CDSS CSP ON EXPIRATION OR TERMINATION. Upon expiration or termination of the Agreement between County and Subgrantee, or upon a date mutually agreed upon by the Parties following expiration or termination, Subgrantee shall return or destroy COSS CSP. If return or destruction is not feasible, Subgrantee shall provide a written explanation to the County, using the contact information in this Agreement. The County, in its sole discretion, will make a determination of the acceptability of the explanation and, if retention is permitted, shall inform Subgrantee in writing of any additional terms and conditions applicable to the retention of COSS CSP.

I. RETENTION REQUIRED BYLAW. If required by state or federal law, Subgrantee may retain, after expiration or termination, COSS CSP for the time specified as necessary to comply with the law.

J. RECORDS RETENTION. Maintain all project materials and records pertaining to service delivery and fiscal and administrative controls for three years after final payment has been made under the terms of this Agreement, or until all pending county, State and federal audits are completed, whichever is later. Subgrantee agrees that the State or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. Upon request, the Subgrantee shall promptly make these materials and records available to the State or its representative including the State Auditor. Subgrantee agrees to allow the State or its representative access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Subgrantee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to this Agreement.

K. OBLIGATIONS CONTINUE UNTIL RETURN OR DESTRUCTION. Subgrantee 's obligations regarding the confidentiality of CDSS CSP set forth in this Agreement, including but not limited to obligations related to responding to Public Records Act requests and subpoenas, shall continue until Subgrantee returns or destroys CDSS CSP or returns CDSS CSP to the County; provided, however, that on expiration or termination of the Agreement between County and Subgrantee, Subgrantee shall not further use or disclose CDSS CSP except as required by state or federal law.

L. NOTIFICATION OF ELECTION TO DESTROY CDSS CSP. If Subgrantee elects to destroy CDSS CSP, Subgrantee shall certify in writing, to the County, using the contact information, that CDSS CSP has been destroyed.

M. BACKGROUND CHECK. Before a member of Subgrantee 's workforce may access CDSS CSP, Subgrantee must conduct a thorough background check of that worker and evaluate the results to assure that there is no indication that the worker may present a risk to CDSS information technology systems and/or CDSS data. Subgrantee shall retain each workforce members background check documentation for a period of three (3) years following Agreement termination.

N. CONFIDENTIALITY SAFEGUARDS. Subgrantee shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of CDSS CSP that it creates, receives, maintains, uses, or transmits pursuant to the Agreement. Subgrantee shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of Subgrantee 's operations and the nature and scope of its activities, including at a minimum the following safeguards:

i. General Security Controls

- (1) **Confidentiality Acknowledgement.** By executing the Agreement and signing Paragraph XI, CDSS Confidentiality and Security Compliance Statement, Subgrantee acknowledges that the information resources maintained by CDSS and provided to Subgrantee may be confidential, sensitive, and/or personal and requires special precautions to protect it from wrongful access, use, disclosure, modification, and destruction.
- (2) **Workstation/Laptop Encryption.** All Subgrantee -owned or managed workstations, laptops, tablets, smart phones, and similar devices that process and/or store CDSS CSP must be encrypted using a FIPS 140-2 certified algorithm which is 128 bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by CDSS Information Security Office.
- (3) **Data Encryption.** Any CDSS CSP shall be encrypted at rest when stored on network file shares or document repositories.
- (4) **Server Security.** Servers containing unencrypted CDSS CSP must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- (5) **Minimum Necessary.** Only the minimum necessary amount of CDSS CSP required to perform necessary business functions may be copied, downloaded, or exported.
- (6) **Removable Media Devices.** All electronic files that contain CDSS CSP must be encrypted when stored on any removable media

or portable device (i.e., USB thumb drives, floppies, CD/DVD, smart phone, backup tapes, etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128 bit or higher, such as AES.

- (7) **Antivirus Software.** All Subgrantee -owned or managed workstations,- laptops, tablets, smart phones, and similar devices that process and/or store CDSS CSP must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- (8) **Patch Management.** To correct known security vulnerabilities, Subgrantee shall install security patches and updates in a timely manner on all Subgrantee -owned or managed workstations, laptops, tablets, smart phones, and similar devices that process and/or store CDSS CSP as appropriate based on Subgrantee 's risk assessment of such patches and updates, the technical requirements of Subgrantee 's systems, and the vendor's written recommendations. If patches and updates cannot be applied in a timely manner due to hardware or software constraints, mitigating controls will be implemented based upon the results of a risk assessment.
- (9) **User IDs and Password Controls.** All users must be issued a unique user name for accessing CDSS CSP. Subgrantee 's password policy must be based on information security best practices for password length, complexity, and reuse.
- (10) **Data Destruction.** Upon termination of the Agreement, all CDSS CSP must be sanitized in accordance with NIST Special Publication 800-88, Guidelines for Media Sanitization.

ii. System Security Controls

- (1) **System Timeout.** The system providing access to CDSS CSP must provide an automatic timeout, requiring re-authentication of the user session after no more than thirty (30) minutes of inactivity for applications, and fifteen (15) minutes of inactivity for desktops and laptops.
- (2) **Warning Banners.** All systems (servers, desktops, laptops, etc.) containing CDSS CSP must display a warning banner at login stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.
- (3) **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for CDSS CSP, or which alters CDSS CSP. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If CDSS CSP is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least one (1) year after occurrence.

- (4) **Access Controls.** The system must use role-based access controls for all user authentications, enforcing the principle of least privilege.
- (5) **Transmission Encryption.** All data transmissions of CDSS CSP by Subgrantee outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128-bit key or higher. Encryption can be end-to-end at the network level, or the data files containing CDSS CSP can be encrypted. This requirement pertains to any type of CDSS CSP in motion such as website access, file transfer, and email.
- (6) **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting CDSS CSP that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

iii. **Audit Controls**

- (1) **System Security Review.** All systems processing and/or storing CDSS CSP must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews shall include vulnerability scanning tools.
- (2) **Log Reviews.** All systems processing and/or storing CDSS CSP must have a routine procedure in place to review system logs for unauthorized access.
- (3) **Change Control.** All systems processing and/or storing CDSS CSP must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

iv. **Business Continuity/Disaster Recovery Controls**

- (1) **Disaster Recovery.** Subgrantee must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic CDSS CSP in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than twenty-four (24) hours.
- (2) **Data Backup Plan.** Subgrantee must have established documented procedures to backup CDSS CSP to maintain retrievable exact copies of CDSS CSP. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore CDSS CSP should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of CDSS data.

v. Paper Document Controls

- (1) **Supervision of Information.** CDSS CSP in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information may be observed by an individual not authorized to access the information. CDSS CSP in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- (2) **Escorting Visitors.** Visitors to areas where CDSS CSP are contained shall be escorted, and CDSS CSP shall be kept out of sight while visitors are in the area.
- (3) **Confidential Destruction.** CDSS CSP must be disposed of through confidential means, such as cross-cut shredding and/or pulverizing.
- (4) **Removal of Information.** CDSS CSP must not be removed from the premises of County except for identified routine business purposes or with express written permission of CDSS.
- (5) **Faxing.** CDSS CSP that must be transmitted by fax shall require that County confirms the recipient fax number before sending, takes precautions to ensure that the fax was appropriately received, maintains procedures to notify recipients if County's fax number changes, and maintains fax machines in a secure area.
- (6) **Mailing.** Paper copies of CDSS CSP shall be mailed using a secure, bonded mail service, such as Federal Express, UPS, or by registered U.S. Postal Service (i.e., accountable mail using restricted delivery). All packages must be double packed with a sealed envelope and a sealed outer envelope or locked box.

IV. Information Security Incidents and/or Breaches of CDSS CSP

- A. CDSS CSP Information Security Incidents and/or Breaches Response Responsibility.** Subgrantee shall be responsible for facilitating the Information Security Incident and/or Breach response process as described in California Civil Code 1798.82, and State Administrative Manual (SAM) section 5340, Information Security Incident Management, including, but not limited to, taking:
- i. Prompt corrective action to mitigate the risks or damages involved with the Information Security Incident and/or Breach and to protect the operating environment; and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- B. Discovery and Notification of Information Security Incidents and/or Breaches of CDSS CSP.** Subgrantee shall notify the County of an Information Security Incident and/or Breach as expeditiously as practicable and without unreasonable delay, taking into account the time necessary to allow Subgrantee to determine the scope of the Information Security Incident and/or Breach, but no later than three (3) calendar days after the discovery of an Information Security Incident and/or Breach. Notification is to be made by telephone call and email.

- C. Isolation of System or Device.** A system or device containing CDSS CSP compromised by an exploitation of a technical vulnerability shall be promptly disconnected or quarantined and investigated until the vulnerability is resolved. Subgrantee will notify the County within two (2) business days of a confirmed exploitation of a technical vulnerability and keep the County informed as to the investigation until resolution of the vulnerability is completed.
- D. Investigation of Information Security Incidents and/or Breaches.** Subgrantee shall promptly investigate Information Security Incidents and/or Breaches of CDSS CSP. The County shall have the right to participate in the investigation of such Information Security Incidents and/or Breaches. The County shall also have the right to conduct its own independent investigation, and Subgrantee shall cooperate fully in such investigations. Subgrantee is not required to disclose their un-redacted confidential, proprietary, or privileged information. Subgrantee will keep the County fully informed of the results of any such investigation.
- E. Updates on Investigation.** Subgrantee shall provide regular (at least once a week) email updates on the progress of the Information Security Incident and/or Breach investigation of CDSS CSP to the County until the updates are no longer needed, as mutually agreed upon between Subgrantee and the County. Subgrantee is not required to disclose their unredacted confidential, proprietary, or privileged information.
- F. Written Report.** Subgrantee shall provide a written report of the investigation to the County within thirty (30) business days of the discovery of the Information Security Incident and/or Breach of CDSS CSP. Subgrantee is not required to disclose their unredacted confidential, proprietary, or privileged information. The report shall include, but not be limited to, if known, the following:
- i. Subgrantee point of contact information;
 - ii. A description of what happened, including the date of the Information Security Incident and/or Breach of CDSS CSP and the date of the discovery of the Information Security Incident and/or Breach, if known;
 - iii. A description of the types of CDSS CSP that were involved and the extent of the information involved in the Information Security Incident and/or Breach;
 - iv. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed CDSS CSP;
 - v. A description of where CDSS CSP is believed to have been improperly transmitted, sent, or utilized;
 - vi. A description of the probable causes of the improper use or disclosure;
 - vii. Whether Civil Code sections 1798.29 or 1798.82, or any other federal or state laws requiring individual notifications of breaches, are triggered; and
 - viii. A full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the Information Security Incident and/or Breach of CDSS CSP.
- G. Cost of Investigation and Remediation.** Per SAM section 5305.8, Subgrantee shall be responsible for all direct and reasonable costs incurred by the County due to Information Security Incidents and/or Breaches of CDSS CSP resulting from Subgrantee's failure to perform or from negligent acts of its personnel, and resulting in the unauthorized disclosure, release, access, review or destruction, or loss, theft or misuse of an information asset. These costs include, but are not limited to, notice and credit monitoring for twelve (12)

months for impacted individuals, County staff time, material costs, postage, media announcements, and other identifiable costs associated with the Information Security Incident, Breach and/or loss of data.

- V. Contact Information.** To direct communications to the above-referenced County staff, Subgrantee shall initiate contact as indicated herein. The County reserves the right to make changes to the contact information below by giving written notice to Subgrantee. Said changes shall not require an amendment to this Attachment or the Agreement to which it is incorporated.

[INSERT COUNTY CONTACT]

- VI. Audits and Inspections.** The County may inspect and/or monitor compliance with the safeguards required in this Attachment. Subgrantee shall promptly remedy any violation of any provision of this Attachment and shall certify the same to the County in writing. The fact that the County inspects, or fails to inspect, or has the right to inspect, does not relieve Subgrantee of its responsibility to comply with this Attachment.
- VII. Amendment.** The Parties acknowledge that federal and state laws regarding information security and privacy rapidly evolve and that amendment of this Attachment may be required to provide for procedures to ensure compliance with such laws. The Parties specifically agree to take such action as is necessary to implement new standards and requirements imposed by regulations and other applicable laws relating to the security or privacy of CDSS CSP.
- VIII. Interpretation.** The terms and conditions in this Attachment shall be interpreted as broadly as necessary to implement and comply with regulations and applicable State laws. The Parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with federal and state laws and regulations.
- IX. Termination.** An Information Security Incident and/or Breach of CDSS CSP by Subgrantee, its employees, agents, or subcontractors, as determined by the County, may constitute a material breach of the Agreement between County and Subgrantee and grounds for immediate termination of the Agreement.

X. CONFIDENTIALITY AND SECURITY COMPLIANCE STATEMENT v 2019 01

Information resources maintained by the California Department of Social Services (CDSS) and the County, and provided to Subgrantee may be confidential, sensitive, and/or personal and requires special precautions to protect it from wrongful access, use, disclosure, modification, and destruction.

We hereby acknowledge that the confidential and/or sensitive records of CDSS are subject to strict confidentiality requirements imposed by state and federal law, which may include, but are not limited to, the following: the California Welfare and Institutions Code§ 10850, Information Practices Act - California Civil Code § 1798 *et seq.*, Public Records Act - California Government Code§ 6250 *et seq.*, California Penal Code§ 502, 11140-11144, 13301-13303, Health Insurance Portability and Accountability Act of 1996 ("HIPAA")- 45 CPR Parts 160 and 164, and Safeguarding Information for the Financial Assistance Programs - 45 CPR Part 205.50. Subgrantee agrees to comply with the laws applicable to CDSS CSP received.

This Confidentiality and Security Compliance Statement must be signed and returned with the Agreement.

SUBGRANTEE:

CONTRACTOR:

Signature

Signature



ATTACHMENT B
Campaign Contribution Disclosure
(SB 1439)

DEFINITIONS

Actively supporting 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-subsidary 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.

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

1. Name of Subgrantee/Contractor:_____
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 ☐
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: _____
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):_____
5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship

6. Name of agent of Subgrantee/Contractor:

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

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):

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

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9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer on or after January 1, 2023, 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: _____

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, Subgrantee/Contractor certifies that the statements made herein are true and correct. Subgrantee/Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 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.

ATTACHMENT C

CERTIFICATION REGARDING LOBBYING AND CONFLICTS OF INTEREST

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. By entering into the Agreement and accepting Program Funds, Contractor/Subgrantee is in compliance with the Political Reform Act of 1978 and regulations promulgated by the Fair Political Practices Commission (FPPC) regarding requirements relating to lobbying and conflicts of interest.
2. Contractor/Subgrantee is aware of California state laws and regulations regarding employing current or former state employees. If Contractor/Subgrantee has any questions on the status of any person rendering services or involved with the Agreement, the County must be contacted immediately for clarification.
 - (a) Current State Employees (Pub. Contract Code§ 10410): 1). No officer or employee of the State shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment. No officer or employee of the State shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
 - (b) Former State Employees (Pub. Contract Code§ 10411): 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which they engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency. For the twelve-month period from the date they left state employment, no former state officer or employee may enter into a contract with any state agency if they were employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to their leaving state service.

If Contractor/Subgrantee violates any provisions of above paragraphs, such action by Contractor/Subgrantee shall render this Agreement void (Pub. Contract Code § 10420). Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem (Pub. Contract Code§ 10430(e)).

SUBGRANTEE:

CONTRACTOR:

Signature

Signature

ATTACHMENT D

PREVAILING WAGE REQUIREMENTS

A. All or a portion of the Scope of Work in the Agreement 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. 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:
 - i. 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.

- ii. 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.
- iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
- iv. 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).
- v. 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.

Appendix A

COMPLIANCE WITH AMERICAN RESCUE PLAN ACT (ARPA) **CORONAVIRUS LOCAL FISCAL RECOVERY FUND (CLFRF) FEDERAL GUIDELINES** **USE OF ARPA CLFRF AND REQUIREMENTS**

¹This Agreement may be funded in whole or in part with funds provided by the American Rescue Plan Act - Coronavirus Local Fiscal Recovery Fund (ARPA), *Federal Award Identification Number (FAIN): SLFRP0154 and Assistance Listing Number (formerly known as a CFDA number): 21.027*, and therefore Subgrantee agrees to comply with any and all ARPA requirements in addition to any and all applicable County, State, and Federal laws, regulations, policies, and procedures pertaining to the funding of this Agreement. The use of the funds must also adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure. Any funds expended by Subgrantee or its subcontractor(s) in any manner that does not adhere to the ARPA requirements shall be returned or repaid to the County. Any funds paid to Subgrantee i) in excess of the amount to which Subgrantee is finally determined to be authorized to retain; ii) that are determined to have been misused; or iii) that are determined to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid, shall constitute a debt to the federal government. Subgrantee agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to the Act, and guidance issued by Treasury regarding the foregoing. Subgrantee shall provide for such compliance in any agreements with subcontractor(s).

Subgrantee agrees to comply with the following:

- A.** In accordance with Title 2 Code of Federal Regulations (C.F.R.) Section 200.322, the non-Federal Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- B.** In accordance with Title 2 C.F.R. Section 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances: Obligor or expending covered telecommunications and video surveillance services or equipment or services (as described in Title 2 C.F.R. Section 200.216) to: 1) Procure or obtain, extend or renew a contract to procure or obtain; 2) Enter into a contract (or extend or renew a contract) to procure; or 3) Obtain the equipment, services, or systems, as described in Title 2 C.F.R. Section 200.216 that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) and: (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (ii) Telecommunications or video surveillance services provided by such entities or using such equipment; and (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- C.** A non-Federal Contractor that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at Title 40 C.F.R. Part 247 that contain the highest percentage of recovered materials

¹ All references to Subgrantee herein shall also refer to Contractor

practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- D. Byrd Anti-Lobbying Amendment (31 U.S.C. Section 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by Title 31 U.S.C. Section 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- E. Clean Air Act (42 U.S.C. Sections 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. Sections 1251-1389), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. Sections 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. Sections 1251-1389).
- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under Title 37 C.F.R. Section 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Title 33 U.S.C. Sections 1251-1387 recipient or subrecipient must comply with the requirements of Title 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- G. Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 3701-3708). Where applicable, all contracts awarded by the non-Federal Contractor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with Title 40 U.S.C. Sections 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under Title 40 U.S.C. Section 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of Title 40 U.S.C. Section 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to health or safety. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- H. Davis-Bacon Act, as amended (40 U.S.C. Sections 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. Sections 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal contractor must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal Contractor must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. Section 874 and 40 U.S.C. Section 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal contractor must report all suspected or reported violations to the Federal awarding agency.
- i. The Subgrantee and all Subcontractors and Sub-subcontractors are required to pay their employees and workers a wage not less than the minimum wage for the work classification as specified in both the Federal and California wage decisions. See Exhibit “B” for additional information regarding California Prevailing Wage Rate Requirements and the applicable general prevailing wage determinations which are on file with the County and are available to any interested party on request. The higher of the two applicable wage determinations, either California prevailing

wage or Davis-Bacon Federal prevailing wage, will be enforced for all applicable work/services under this Agreement.

- I. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by Title 41 U.S.C. Section 1908, must address administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- J. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal Contractor including the manner by which it will be effected and the basis for settlement.
- K. Equal Employment Opportunity. Except as otherwise provided under Title 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in Title 41 C.F.R. Section 60-1.3 must include the equal opportunity clause provided under Title 41 C.F.R. Section 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The identified clause is below and Subgrantee shall comply with the clause and all legal requirements and include the equal opportunity clause in each of its nonexempt subcontracts.
 - i. The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at Title 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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 identity, 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.
- (2) 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he 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.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) 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.
- (7) 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.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

- L. Data Collection Requirements** – Subgrantee agrees to collect pre-post data per County, and United States Treasury guidelines and timeline, for project tracking and monitoring and various reporting purposes. Data including, but not limited to: Required Project Demographic Distribution Data; Required Performance Indicators and Programmatic Data; Required Expenditure Report Data; and Required Program Evaluation Data. Subgrantee agrees to track and monitor data in a quantifiable and reportable database - retrievable collective data that needs to be available to County, State or Federal governments upon request.
- M. Data Submission Requirements** - Subgrantee agrees to furnish data to the County upon request, per County, and United States Treasury guidelines and timeline, for project tracking and monitoring and various reporting purposes. Data including, but not limited to: Required Project Demographic Distribution Data; Required Performance Indicators and Programmatic Data; Required Expenditure Report Data; Required Program Evaluation Data. Contractor agrees to track and monitor data in a quantifiable and reportable database - retrievable collective data that needs to be available at request.
- N. Project Progress Reporting** - Subgrantee agrees to provide project timeline and progress updates to the County upon request, per County, and United States Treasury guidelines and timeline. Subgrantee agrees to routine and impromptu program and project evaluation by the County.
- O. Subgrantee shall comply with Title 2 Code of Federal Regulations Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), including, but not limited to, Title 2 C.F.R. Section 200.303 (internal control), Title 2 C.F.R. Sections 200.331 through 200.333 (subrecipient monitoring and management), and Title 2 C.F.R. Part 200 Subpart F (audit requirements), as these sections currently exist or may be amended. The use of funds must also adhere to official federal guidance issued or to be issued on what constitutes an eligible expenditure. Any funds expended by Subgrantee or its subcontractor(s) in any manner that does not adhere to official federal guidance shall be returned to the County. Subgrantee agrees to comply with all official guidance regarding the ARPA CLFRF. Subgrantee also agree that as additional federal guidance becomes available, an amendment to this Agreement may become necessary. If an amendment is required, Subgrantee agrees to promptly execute the Agreement amendment.**

- P.** Subgrantee shall retain documentation of all uses of the funds, including but not limited to invoices and/or sales receipts in a manner consistent with Title 2 C.F.R. Section 200.334 (retention requirements for records). Such documentation shall be produced to County upon request and may be subject to audit. Unless otherwise provided by Federal or State law (whichever is the most restrictive), Subgrantee shall maintain all documentation connected with its performance under this Contract for a minimum of five (5) years from the date of the last payment made by County or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of the County, the State or the United States Government during normal business hours at Subgrantee. Copies will be made and furnished by Subgrantee upon written request by County.
- Q.** Subgrantee shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Subgrantee's requests for reimbursement which segregate and accumulate costs of Subgrantee and produce monthly reports which clearly identify reimbursable costs, matching fund costs (if applicable), and other allowable expenditures by Subgrantee. Subgrantee shall provide a monthly report of expenditures under this Agreement no later than the 20th day of the following month.
- R.** Subgrantee shall cooperate in having an audit completed by County, at County's option and expense. Any audit required by ARPA CLFRF and its regulation and United States Treasury guidance will be completed by Subgrantee at Subgrantee's expense.
- S.** Subgrantee shall repay to County any reimbursement for ARPA CLFRF funding that is determined by subsequent audit to be unallowable under the ARPA CLFRF within the time period required by the ARPA CLFRF, but no later than one hundred twenty (120) days of Subgrantee receiving notice of audit findings, which time shall include an opportunity for Subgrantee to respond to and/or resolve the findings. Should the findings not be otherwise resolved and Subgrantee fail to reimburse moneys due County within one hundred twenty (120) days of audit findings, or within such other period as may be agreed between both parties or required by the ARPA CLFRF, County reserves the right to withhold future payments due Subgrantee from any source under County's control.
- T.** Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Title 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply.
- U.** Universal Identifier and System for Award Management (SAM), Title 2 C.F.R. Part 25: Subgrantee, contractor, and if applicable, the subcontractor(s) should maintain procedures for obtaining information evidencing a given beneficiary, subrecipient, subcontractor or vendor's eligibility including a valid Unique Entity Identifier (UEI) from SAM.gov.
- V.** Reporting Subaward and Executive Compensation Information, Title 2 C.F.R. Part 170.
- W.** OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (nonprocurement), Title 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to Title 2 C.F.R. Part 180 and Treasury's implementing regulation at Title 31 C.F.R. Part 19. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 C.F.R. Section 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at Title 2 C.F.R. Part 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- X.** Recipient Integrity and Performance Matters, pursuant to which the award terms set forth in Title 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- Y.** Government Requirements for Drug-Free Workplace, Title 31 C.F.R. Part 20.
- Z.** New Restrictions on Lobbying, Title 31 C.F.R. Part 21.
- AA.** Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. Sections 4601-4655) and implementing regulations.
- BB.** Applicable Federal environmental laws and regulations.
- CC.** Statutes and regulations prohibiting discrimination include, without limitation, the following:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d et seq.) and Treasury's implementing regulations at Title 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.
- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Sections 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. Sections 6101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sections 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

DD. Subgrantee understands that making false statements or claims in connection with the ARPA funded activities is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

EE. Any publications produced with ARPA funds must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number SLFRP0154 awarded to San Bernardino County by the U.S. Department of Treasury."

FF. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subgrantee is being encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.

GG. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subgrantee is being encouraged to adopt and enforce policies that ban text messaging while driving and establishing workplace safety policies to decrease accidents caused by distracted drivers.

HH. As a recipient of federal financial assistance, the Civil Rights Restoration Act of 1987 applies, and Subgrantee assures that it:

- i. Ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal funds, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. Sections 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at Title 31 C.F.R. Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda and/or guidance documents.
- ii. Acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subgrantee understands that denying a person access to its programs, services, and activities, because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Subgrantee shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure LEP persons have meaningful access to its programs, services, and activities. Subgrantee understands and agrees that meaningful access may entail provide language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication.
- iii. Agrees to consider the need for language services for LEP persons during development of applicable budgets and when conducting programs, services, and activities.
- iv. Agrees to maintain a complaint log of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome.

II. The County must include the following language in every contract or agreement subject to Title VI and its regulations:

"The sub-grantee, contractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or nation origin (42 U.S.C. Section 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, Title 31 C.F.R.

Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. Section 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, Title 31 C.F.R. Sections Part 22, and herein incorporated by reference and made a part of this contract or agreement."

JJ. Subgrantee shall cooperate in any enforcement or compliance review activities by the County and/or the Department of the Treasury. Subgrantee shall comply with information requests, on-site compliance reviews, and reporting requirements.

KK. Subgrantee shall maintain records and financial documents sufficient to evidence compliance with section 603(c), regulations adopted by Treasury implementing those sections, and guidance issued by Treasury regarding the foregoing.

LL. County has the right of access to records (electronic or otherwise) of Subgrantee in order to conduct audits or other investigations.

MM. Subgrantee shall maintain records for a period of five (5) years after the completion of the contract or a period of five (5) years after the last reporting date the County is obligated with the Department of the U.S. Treasury, whichever is later.

NN. Subgrantee must disclose in writing any potential conflict of interest in accordance with Title 2 C.F.R. Section 200.112.

OO. In accordance with Title 41 U.S.C. Section 4712, subrecipient or Subgrantee may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The list of persons and entities referenced in the paragraph above includes the following: (i) A member of Congress or a representative of a committee of Congress; (ii) An Inspector General; (iii) The Government Accountability Office; (iv) A Treasury employee responsible for contract or grant oversight or management; (v) An authorized official of the Department of Justice or other law enforcement agency; (vi) A court or grand jury; or (vii) A management official or other employee of Recipient, subrecipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct. Subrecipient or Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

PP. County and Subgrantee acknowledge that if additional federal guidance is issued, an amendment to this Agreement may be necessary. In the event any of the terms in this Exhibit conflict with any other terms in the Agreement, the terms in this Exhibit shall control.

APPENDIX B

Labor Laws

1. The Contractor, his agents and employees shall be bound by and comply with all applicable provisions of the Labor Code and such federal, state and local laws which affect the conduct of the Work.
2. The Contractor hereby agrees to comply with the State Labor Code and acknowledges that, in accordance with Section 3700 of the State Labor Code, Contractor will be required to secure the payment of compensation to Contractor's employees.
3. The Contractor acknowledges that he will be held responsible for compliance with the provisions of Sections 1777.5 and 1776 of the State Labor Code.
4. The Contractor hereby agrees to reimburse the County for costs incurred by the awarding authority in the substitution of subcontractors. Where a hearing is held pursuant to the provisions of Chapter 4 of the Public Contract Code (commencing with Section 4100) by the awarding authority or a duly appointed hearing officer, the Clerk of the Board of Supervisors shall prepare and certify a statement of all costs incurred by the County for investigation and conduct of the hearing, including the costs of any hearing officer and shorthand reporter appointed. For the purposes of a hearing for the substitution of subcontractors (pursuant to the Public Contract Code commencing with Section 4100) the awarding authority shall be the Director of the Project and Facilities Management Department, or his/her designee. The statement shall then be sent to the general contractor, who shall reimburse the County for such costs. If not paid separately, such reimbursement may be deducted from any money due and owing to the general contractor prior to acceptance of the project.
5. Contractor shall strictly adhere to the applicable provisions of the Labor Code regarding the employment of apprentices; minimum wages; travel and subsistence pay; alien labor; the eight hour day; overtime, Saturday, Sunday and holiday Work; retention and inspection of payroll records; workers compensation; and payment of wages. The Contractor shall forfeit to the County the penalties prescribed in the Labor Code for violations.
6. In accordance with the Labor Code, prevailing wage rate determinations are provided for the Work to be done under this Contract. Updated wage rates will be made available to the Contractor, who shall pay not less than these rates. The Contractor can download updated wage rates at <http://www.dir.ca.gov/dlsr/pwd/Southern.html>.
7. When the State Labor Code minimum wage and the Federal Wage Determinations (Davis-Bacon Act) are applicable due to federal funding involvement, the higher of the two wage rates per each work classification will prevail.
8. Contractors are prohibited from performing work on a public works project with a subcontractor who is ineligible to perform work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code. 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 awarding body. The contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.
9. By its execution of this Agreement, Contractor 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. ("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 state in part: "For purposes of this paragraph 'construction' includes work performed during the design and preconstruction phase of construction including, but not limited to, inspection and land surveying work". If the Work being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor 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 Contractor's principal place of business and at the project site. Contractor 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. Contractor shall defend, indemnify and hold the County, its 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 Prevailing Wage Laws.

10. Contractor agrees to comply with the American Disability Act of 1990 (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the American Disabilities Act.

Revised 5/12/21 Page 5 of 18

11. Contractor agrees to comply and certify compliance with the Drug Free Workplace Act of 1990 per Government Code section 8350 et seq.

12. During the term of the Contract, Contractor shall not willfully 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, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment 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.

13. Contractor agrees to comply with Senate Bill 854 (signed into law on June 20, 2014). The requirements include, but are not limited to, the following:

- a. No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirement for bid purposes only as allowed under Labor Code section 1771.1(a).
- b. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5.
- c. This project is subject to compliance monitoring and enforcement by the DIR.
- d. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
- e. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all new public works projects (Job Orders) issued on or after April 1, 2015, and for all public works projects (Job Orders), new or ongoing, on or after January 1, 2016.
 - i. The certified payroll must be submitted at least monthly to the Labor Commissioner.
 - ii. The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner
 - iii. The certified payroll records must be in a format prescribed by the Labor Commissioner.

14. As required by Labor Code section 1771.1(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."

Safety Orders

Contractor agrees to conform to safety orders of OSHA, CALOSHA and/or NIOSHA, and OSH-POD.

Final Payment

Documentation. In addition to the requirements for Final Payment set forth in the Agreement, the Final Payment shall not become due until (i) Contractor has fully performed the Contract, including all Punch List work; (ii) a Final Certificate of Occupancy (or equivalent inspection sign-off) has been issued (unless failure to issue is due to circumstances beyond the control of Contractor); (iii) sixty (60) calendar days have elapsed since County's recordation of a Notice of Completion; and (iii) Contractor has submitted to the County:

- (1) A full, complete and proper Final Application for Payment;
- (2) A current Sworn Statement from the Contractor setting forth all Subcontractors and material suppliers with whom Contractor has subcontracted; the amount of each subcontract; the amount requested for each Subcontractor and supplier in the payment application; the balance remaining on the subcontract; and that payrolls, bills for materials and equipment, and other indebtedness connected with the Project for which the County or Subgrantee's property might be responsible or encumbered (less amounts withheld by County) have been paid or otherwise satisfied;
- (3) A current Sworn Statement from each Subcontractor setting forth all Sub-subcontractors and material suppliers with whom Subcontractor has subcontracted; the amount of each sub-subcontract; the amount requested for each Sub-subcontractor and supplier in the payment application; the balance remaining on the subcontract; and that payrolls, bills for materials and equipment, and other indebtedness connected with the Project for which the County, Subgrantee or the Subgrantee's property might be responsible or encumbered (less amounts withheld by County) have been paid or otherwise satisfied;
- (4) Completed and executed forms of conditional waiver and release of rights upon final payment in accordance with California Civil Code Section 8136 from Contractor and all persons eligible to record mechanics' liens and file stop notices in connection with the Work, covering the final payment period;
- (5) Completed and executed forms of unconditional waiver and release of rights upon progress payment in accordance with California Civil Code Section 8134 from Contractor and all persons eligible to record mechanics' liens and file stop notices in connection with the Work, covering the previous payment period;
- (6) Completed and executed affidavits from Contractor and Subcontractors, attaching certificates and endorsements evidencing that insurance required by the Agreement to remain in force after Final Payment, if any, is currently in effect and will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the County;
- (7) A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- (8) Consent of surety(ies) to Final Payment;
- (9) Contractor's written assurance that identified corrective work not complete and accepted will be completed by a stated date agreeable to County;
- (10) The required Record Documents and As-Built Construction Documents including, but not limited to, shop drawings and other submittals;
- (11) Reasonable proof that taxes, fees and similar obligations of Contractor have been paid;
- (12) A certificate in form and substance acceptable to County and signed by the Subgrantee certifying that, to the best of its knowledge, the Project has been completed in accordance with the Agreement, all Applicable Laws and restrictions; that the Project, as completed, complies in all material respects with all applicable zoning, environmental, building, and land use laws which

apply to the Project; that to the knowledge of the Subgrantee, no governmental entity has issued any notice of violation or nonconformity in connection with the improvements; that direct connection has been made to all abutting gas, sewer, telephone, and electrical facilities necessary for occupancy and use of the Project; and that the Project is ready for occupancy/use;

- (13)** All warranties from vendors and Subcontractors, maintenance manuals, instructions and related agreements, equipment certifications and similar documents, and maintenance and operating instructions, which shall include:
- (a)** Schematic piping and wiring diagrams;
 - (b)** Valve charts and schedules;
 - (c)** Electrical panel schedules complete and posted in panels;
 - (a)** Lubrication charts and schedules;
 - (b)** Guides for troubleshooting;
 - (c)** Pertinent diagrams of equipment with main parts designated for identification;
 - (d)** Manufacturer's data and capacity data on all equipment;
 - (e)** Operating and maintenance instructions for all items of equipment and all control systems;
 - (f)** Manufacturer's parts list; and
 - (j)** Testing procedures for operating tests;
- (14)** Tools, spare parts and required extra materials (i.e., attic stock), and similar items;
- (15)** Written start-up testing performance reports of all systems after completion of start-up testing, and complete instruction of the Subgrantee's operating and maintenance personnel, if applicable; and
- (16)** Proof of touch up and other repairs and restoration of all marred and exposed finishes.

Release of Stop Notices. If a Subcontractor or supplier refuses to furnish a release or waiver required by County or files a stop notice, the Contractor shall furnish a bond satisfactory to the County to release the stop notice and indemnify the County and Subgrantee against such stop notice and County shall enforce its right under the Withhold for Stop Notice Claims below.

Delay Not Caused by Contractor. If, after Substantial Completion of the Project, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting Final Completion, the County shall, upon application by the Contractor and certification by the County and Subgrantee, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted provided, however, that the retainage amount held following such payment shall be equal to 150% of the estimated cost of completing the Project as determined by the County. If the remaining balance for the Project not fully completed or corrected is less than retainage stipulated in the Agreement, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Project fully completed and accepted shall be submitted by the Contractor to the County and Subgrantee prior to certification of such payment. Such payment shall be made under terms and conditions governing Final Payment.

Contractor's Acceptance of Final Payment. Acceptance of Final Payment by the Contractor, a Subcontractor, or material supplier shall constitute a waiver of any and all Claims by that payee, of whatsoever nature, character

or kind, except those previously made in writing and identified by that payee as unsettled at the time of Final Application for Payment.

County's Final Payment. The making of Final Payment shall not constitute a waiver of Claims by the County arising from:

- (1) Unsettled stop notices;
- (2) Faulty or defective work appearing after Substantial Completion of the Work;
- (3) Failure of the Work to comply with the requirements of the Contract Documents;
- (4) Terms of any special warranties required by the Contract Documents; or
- (5) Any other Claim unless specifically waived by the County in writing.

Withhold for Stop Notice Claims.

If at any time there shall be evidence of the existence, whether or not same has been asserted, of any stop notice, or claim arising out of or in connection with the performance or default in performance of this Contract or any subcontract or supply contract entered into by Contractor to perform this Contract, and if the County might become liable for the discharge of or satisfaction of such stop notice or claim, then the County shall have the right to retain out of any payment then due or thereafter to become due, in addition to the amounts set forth above, an amount sufficient to discharge such stop notice or satisfy such claim and to reimburse the County and the Project Manager(s) of the County for all costs and expenses in connection therewith, including attorneys' fees. Further, the County, in its sole discretion, shall have the right to discharge or satisfy such stop notice or claim and pay all costs and expenses in connection therewith if the Contractor does not have such stop notice or claim discharged or satisfied within ten (10) calendar days after receiving notice to remove the stop notice or claim from County or unless some other procedure for discharge or satisfaction of such claim is agreed between County and Contractor. If the amounts retained are insufficient for the aforesaid purposes, or if such stop notice or claim remains undischarged or unsatisfied after all payments have been made to the Contractor, then the Contractor shall refund to the County all monies that may have been paid, or need to be paid, to discharge such stop notice or satisfy such claims, including the costs, expenses, and attorney's fees in connection therewith.

The County may release any payments withheld due to a stop notice claim if the Contractor obtains a release bond that is: (i) issued by a surety acceptable to County admitted to issue surety bonds by the California Department of Insurance; (ii) is in form and substance satisfactory to the County; and (ii) is in an amount of not less than 125% of the amount of any stop notice claim.

EXHIBIT 1
SCOPE OF WORK