SAN BERNARDINO COUNTY

Contract Number
23-377

SAP Number

Project and Facilities Management Department

Department Contract Representative	Don Day
Telephone Number	(909) 387-5000
Consultant	Design West Engineering
Consultant Representative	Roy Morales
Telephone Number	909-890-3700
Contract Term	5 Years
Original Contract Amount	Not-to-exceed $3,000,000
Amendment Amount	
Total Contract Amount	Not-to-exceed $3,000,000
Cost Center	
Discipline Name	On Call Professional Services – Mechanical / Electrical / Plumbing

IT IS HEREBY AGREED AS FOLLOWS:

ARTICLE 1. THE PROJECT

1.1 Scope of Work

County does hereby engage Consultant to perform for the San Bernardino County under the terms and conditions in this Contract all Consultant services relative to Mechanical / Electrical / Plumbing per the County's Request for Proposal dated 12/1/2022, and Appendix A, Consultant Scope of Work (the Project). The Consultant Scope of Work shall be incorporated into this Contract in its entirety. (See Appendix A, Consultant Scope of Work.) Consultant shall not perform any services not specifically provided for in this Contract, including Appendix A, Consultant Scope of Work and an approved Work Order for a Project (Appendix E, Work Order), without prior approval of County.

Projects under this Contract may include American Rescue Plan Act (ARPA) Coronavirus Local Fiscal Recovery Fund (CLFRF) Funds and may require compliance with ARPA CLFRF requirements (Appendix F, ARPA CLFRF Requirements) and assistance with meeting federal reporting requirements as more

fully set forth in Article 3 of this Contract. Consultant's obligation to comply with the ARPA CLFRF requirements of this Contract, including but not limited to Appendix F, shall survive termination of this Contract and/or any work order issued under this Contract. To the extent that the requirements of Appendix F conflict with any other provision in this Contract including all Appendices, Appendix F shall prevail.

1.2 Total Contract Amount

The total Contract amount as determined by County shall not exceed the amount of $3,000,000 through the life of this Contract, subject to any amendments.

1.3 Schedule of Services

The Consultant shall perform services customarily and typically rendered in the field of Mechanical / Electrical / Plumbing to affect all necessary and requested tasks as assigned, including but not limited to, those services as outlined in Article 3 of this Contract and shall duly perform those tasks as diligently as practical, to the reasonable and satisfactory expectation of the County and as agreed upon in a written purchase order issued by the County for each project.

1.4 Consultant's Fees

a. County agrees to pay Consultant based on the actual work performed as requested and approved by the County through a County issued Work Order/Purchase Order. The total contract amount shall not exceed $3,000,000 for the term of this Contract. Consultant shall be paid based on Article 4 – Compensation of this Contract, Consultant's Fee Proposal Sheet (Appendix B), Consultant's Rate Sheet (Appendix C) and the completed Work Order for a Project (Appendix E, Work Order).

b. If the County terminates this Contract at any time prior to the completion of any phase, the Adjusted Consultant's fee will be determined based on the actual work completed in that phase. If Consultant is working on multiple phases simultaneously, payment shall be made based on percentage of work completed on each individual phase.

c. If the scope of an issued work order is revised (either increased or decreased), the fee shall be revised by negotiation between the County and Consultant before the revised work is performed. No additional work will be paid for by the County without prior written authorization and the total fee mutually agreed upon in advance.

ARTICLE 2. DEFINITIONS

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

2.2 Approved Final Construction Cost Estimate – The estimate of construction costs approved by the County at the time the drawings, details, and specifications are completed.

2.3 Project and Facilities Management Department (or Department) - The Department of the County authorized by the Board to administer this Contract.

2.4 Board - Board of Supervisors of the San Bernardino County.

2.5 Construction Budget - Funding in place, for the complete construction of the Project, as established by the County.

2.6 Construction Contract – A contract prepared by the County and approved by the Board to perform the actual construction of the Project.

2.7 Construction Contract Documents - The Construction Contract and all Project documents designated in the Construction Contract as part of the Construction Contract, including working drawings, addenda, specifications, general conditions and special conditions of the Construction Contract.

2.8 Construction Documents – The drawings, specifications, estimates, and other data Consultant will provide for a Project as more fully described in Article 3 or an individual purchase/work order.

2.9 County - The San Bernardino County, and its authorized representatives.

2.10 Department – Project and Facilities Management Department, San Bernardino County.

2.11 Director – Director of the Project and Facilities Management Department, San Bernardino County.

2.12 Chief of Project Management – Chief of Project Management of the Project and Facilities Management Department, San Bernardino County.

2.13 Project – The project includes all necessary design, construction, testing, inspection and management necessary to complete the project.

2.14 Project Construction Cost Estimate - The Consultant's dated, itemized estimate, including the Itemized Categories of Work, of the entire Project's current cost, escalated to the proposed mid-point of construction.

2.15 Project Manager - The County Employee, designated by the Director or Chief of Project Management, responsible for the administration of this Contract.

2.16 Project Consultant - Person, designated by Consultant and approved by County, responsible for Consultant's work.

2.17 Consultant - Entity hired by County, based on competence and related experience, to perform work described herein.

2.18 Work Order – The document describing the scope of work Consultant must provide to County, the time to complete the scope of work, and the maximum compensation to be paid Consultant for the scope of work. The work order will generally be part of the purchase order authorizing Consultant to proceed with a specific scope of work.

ARTICLE 3. BASIC SERVICES OF CONSULTANT

3.1 See Appendix A – Consultant Scope of Work

3.2 In the event ARPA CLFRF funding is included on a Project, the County will be required to provide reporting regarding compliance with ARPA CLFRF requirements and will require Consultant's cooperation to meet this requirement. Consultant agrees to cooperate with County in meeting ARPACLFRF reporting requirements and provide requested information within five (5) business days. Areas of reporting may be related to any requirement set forth in Appendix F to the Contract as well as labor compliance and general Work Order/project status.

ARTICLE 4. COMPENSATION

4.1 The County shall compensate the Consultant at a negotiated fee per project/task that is determined and authorized in advance of such work being performed based on a time and materials basis that will utilize the Consultant's Project specific Fee Proposal Sheet (see Appendix B), Consultant's Rate Sheet (see Appendix C), an approved Work Order (Appendix E, Work Order) and as presented on itemized invoices.

Each Work Order shall identify specific work required, designate the method of compensation and shall be approved by the County.

4.2 Consultant shall include in the invoice a description of work accomplished per each individual project assigned, and itemize such work accomplished to include labor hours per classification of employees performing the work, travel costs, tests performed, incidental costs and reimbursable costs (per fee schedule for a specific Project as per sample Appendix B, Fee Proposal Sheet, Appendix C - Consultant's Rate Sheet and an approved Work Order, Appendix E).

4.3 Maximum compensation under the Contract shall not exceed $3,000,000 for the term of the Contract.

4.4 **Consultant acknowledges that this Contract is for on-call services and that the Consultant serves at the pleasure of the County. Therefore, the Consultant is not guaranteed or implied to receive any minimum amount of work or compensation as a result of this Contract.**

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

4.6 Rent, utilities, word processing, in-house courier, local telephone charges, office supplies, support staff, local area travel within a 100 mile radius of the San Bernardino County's Government Center, meal expenses, lodging (unless preapproved by a Project and Facilities Management Department representative), time spent to provide necessary information for County audits or billing inquires, and all other expense items related to the provision of Consultant's services are not included in the fee negotiated per Section 4.1 and will not be reimbursed by County.

4.7 Consultant shall provide County itemized monthly invoices, in arrears, for services performed under this Contract within twenty (20) days of the end of the previous month. County will authorize payment to Consultant no later than sixty (60) calendar days after receipt of completed invoice that is acceptable and satisfactory to the County.

4.8 County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Consultant or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Agreement.

ARTICLE 5. - PAYMENT BY ELECTRONIC FUND TRANSFER

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

ARTICLE 6. RECORDS

All records relating to the Consultant's personnel, Consultants, Extra Services and reimbursable expenses, pertaining to the Project shall be kept in a generally acceptable accounting format and shall be available to the County upon request and shall be maintained by Consultant for not less than three (3) years after the Notice of Completion is filed.

Consultant shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. County shall have the right upon reasonable notice and

at reasonable hours of business to examine and inspect such records and books. For any Project involving the use of ARPA CLFRF Funds, Consultant shall comply with all records requirements set forth in Appendix F.

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

ARTICLE 7. COUNTY RESPONSIBILITIES

The County is responsible to the extent reasonable possible to provide/perform the following:

7.1 Project Budget and information relating to facility requirements, and Project scheduling.

7.2 Access to sites for the purpose of gathering or collecting date, performing tests, or inspections.

7.3 Soils investigation, topographic survey and recommendations, as deemed necessary by County.

7.4 Existing maps, boundaries, facility plans, operational or previous project reports, blank forms, and any other available documents or items required by Consultant for the satisfactory performance under this Contract that may be available.

7.5 Reproduction of final drawings and specifications for bidding.

7.6 Notify the Consultant in writing of County procedures required and name the County representative authorized to act in its behalf. County shall review documents submitted by the Consultant and shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the Project.

7.7 Nothing in this Contract nor any act or failure to act on the part of the County shall be construed as a waiver of claim by County for any defects or deficiencies in the plans, reports or interpretative conclusions drawn by tests or observations conducted and performed by Consultant. Consultant is responsible to determine the accuracy of all documents used and incorporated into its work.

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

a. Selection from On-Call List of Consultants for Services in the amount of $200,000 or less:

1) There is no requirement for a solicitation of proposals from On-Call Consultants for services.

2) The selected Consultant will be made by the Department on the basis of demonstrated competence of the On-Call Consultant, professional qualifications necessary for the satisfactory performance of the required services, availability of Consultant, and a reasonable price to the Department.

3) The selection must be made by, at a minimum, two Department employees.

b. Selection from On-Call List of Consultants for Services Greater than $200,000.

1) The Department will notify all On-Call Consultants for the professional service(s) required for a Project of the Department's need for an On-Call Consultant and seek Proposals from interested On-Call Consultants.

2) The notification will include, at a minimum, the following:

i. Any specific qualifications/experience required;
ii. The project budget;
iii. The project timeline;
iv. The deadline for interested On-Call Consultants to submit a proposal for evaluation to work on a specific project;

iv. The evaluation criteria;
v. A requirement On-Call Consultants submit their proposal in two separate sealed envelopes:
   a) Proposal for On-call professional services (Envelope "A").
   b) Fee Proposal Sheet (Envelope "B").

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

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

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

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

c. The County reserves the right to:

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

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

3) Reject services that do not meet job specifications.

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

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

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

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

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

ARTICLE 8. DOCUMENTS

All plans, specifications, data, products, graphics, computer programs, reports and other documents prepared by Consultant pursuant to this Contract shall become and remain the property of County. All such items shall be delivered to the County upon completion of the work under the Contract or termination of the Contract. Consultant and Owner shall retain reproducible copies of all documents for not less than three (3) years after the Notice of Completion is filed.

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

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans specifications, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the San Bernardino County as the funding agency and Consultant as the creator of the materials. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Consultant in the United State or in any other country without the express written consent of County.

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

For any Project involving the use of ARPA CLFRF Funds, Consultant shall comply with all document requirements set forth in Appendix F.

ARTICLE 9. TERMINATION OR SUSPENSION OF CONTRACT

9.1 County reserves and has the right and privilege of canceling, terminating, suspending or abandoning the Contract or the execution of any work in connection with this Contract at any time upon written notice to the Consultant. The Director of the Project and Facilities Management Department authorized to exercise the County's rights with respect to any termination or suspension of this Contract. The Consultant may terminate this Contract upon 30 days written notice to County, should the County substantially fail to perform in accordance with its responsibilities. Upon receipt or giving of such notice of termination, Consultant shall provide no further services to County without specific request or authorization of the County.

9.2 In the event of any termination, all finished and unfinished design and research documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant shall, at the option of the County, become the property of the County.

9.3 In the event of any termination, County shall pay to Consultant as full payment for all services performed and all expenses incurred under this Contract the sum due and payable, as determined by County. In ascertaining the services actually rendered hereunder up to the date of termination of this Contract, consideration shall be given to completed work and work in progress, whether delivered to County or in possession of Consultant.

9.4 If, after payment of the amount required to be paid under this Article 9, Termination or Suspension of Contract, following the termination of the Contract, County should decide to complete the original Project, (or substantially the same Project), County shall have the right of utilization of any original tracings, drawings, calculations, specifications, estimates and other documents and research studies prepared under this Contract by Consultant who shall make them available to County.

9.5 Consultant's obligation to comply with the ARPA CLFRF requirements of this Contract, including but not limited to Appendix F, shall survive termination of this Contract and/or any work order issued under this Contract. To the extent that the requirements of Appendix F conflict with any other provision in this Contract including all Appendices, Appendix F shall prevail.

ARTICLE 10. INDEMNIFICATION

For "design professional services" as defined in Civil Code section 2782.8, the following indemnification paragraph applies: "**Consultant shall defend and indemnify County for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional.**"

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

ARTICLE 11. INSURANCE

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

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

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

If Consultant has no employees, it may certify or warrant to the County that is 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 Consultants that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

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

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

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

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

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

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

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

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

e. **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.

f. ***Environmental Contracts - In addition to the Basic Requirements/Specifications for all Contracts, any contract that involves the use, handling, transportation, storage, abatement, containment or testing of any substance that is potentially toxic or hazardous to the environment, including but not limited to, those listed as hazardous by the United States Department of Transportation or the CAL OSHA "Director's list of Hazardous Substances" or listed as radioactive by the Nuclear Regulatory Commission, shall have the following additional requirements:***

a. 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.
b. 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.

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

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

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

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

11.6 Proof of Coverage - The Consultant shall furnish Certificates of Insurance to the County Department administering the contract evidencing the insurance coverage at the time the Contract is executed,

additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Consultant shall maintain such insurance from the time Consultant commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Consultant shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

11.7 Acceptability of Insurance Carrier - Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

11.8 Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of $10,000 shall be declared to and approved by Risk Management.

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

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

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

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

ARTICLE 12. SUCCESSORS AND ASSIGNS

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

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

12.3 Death or Incapacity: If the Consultant transacts business as an individual, his death or incapacity shall automatically terminate this Contract as of the date of such event, and neither he nor his estate shall have any further right to perform hereunder, and County shall pay him or his estate the compensation payable under Article 4, Compensation, for any services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by County by reason of such termination. If there be more than one Consultant and any one of them die or become incapacitated and the others continue to render the services covered herein, the County will make payment to those continuing as though there had been no such death or incapacity and the County will not be obliged to take any account of the person who died or became incapacitated or to make any payments to such

person or his estate. The provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Consultant herein, and if death or incapacity befalls the last one of such group before this Contract is fully performed, then the rights shall be as if there had been only one Consultant.

ARTICLE 13. NOTICES

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally, or by facsimile, or sent by prepaid, first-class mail. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

Consultant's address:	Design West Engineering 412 E. Vanderbilt Way San Bernardino, CA 92408
County's address:	Project and Facilities Management Department 385 North Arrowhead Avenue, Third Floor San Bernardino, CA 92415-0184

ARTICLE 14. FEDERAL GRANTS, STATE GRANTS, PARTICIPATION

All records pertaining to services provided by Consultant under this Contract shall be available for examination and audit by County, Federal and State representatives for a period of three years after filing of the Notice of Completion or until all pending County, State and Federal audits are completed or until all pending litigation is completed, whichever is later. All records pertaining to services provided by Consultant under this Contract shall be retained locally and made available upon the County's reasonable advance written notice to Consultant or turned over to County. Consultant shall comply with federal and/or state requirements as to work hours, overtime compensation, nondiscrimination, and contingent fees. For any Project involving the use of ARPA CLFRF Funds, Consultant shall comply with all requirements set forth in Appendix F.

ARTICLE 15. EMPLOYMENT DISCRIMINATION

During the term of the Contract, Consultant shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Consultant shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and VII of the Civil Rights Act of 1964, the California Fair 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. For any Project involving the use of ARPA CLFRF Funds, Consultant shall comply with all requirements set forth
in Appendix F.

ARTICLE 16. WAIVER

Consultant shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by Consultant, and County may withhold any payments to Consultant for the purpose of set-off until such time as the exact amount of damages due County from Consultant is determined. The waiver by either party or any breach to this Contract shall not constitute a waiver as to any succeeding breach.

ARTICLE 17. REPRESENTATIVES OF COUNTY

The Director of the Project and Facilities Management Department, or his/her designee, shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination, suspension or assignment of this Contract. The Director, or his/her designee, shall be the final authority in all matters pertaining to the Scope of Work by Consultant including reduction in the scope of work and reduction in the corresponding cost. The San Bernardino County Board of Supervisors must approve all amendments to this Contract.

ARTICLE 18. ERRORS, OMISSIONS AND/OR CONFLICTS

Consultant shall be responsible for the integrity of all design and research studies prepared or approved by the Consultant and should County suffer damages due to errors, omissions and/or conflicts within the Contract Documents, the Consultant shall be responsible to County for costs of all such damages.

ARTICLE 19. INDEPENDENT CONSULTANT

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

ARTICLE 20. FORMER COUNTY OFFICIALS

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

ARTICLE 21. MATERIAL MISSTATEMENT/ MISREPRESENTATION

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

ARTICLE 22. CONFLICT OF INTEREST

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

ARTICLE 23. IMPROPER CONSIDERATION

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

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

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

ARTICLE 24. VENUE

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning this Contract, 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.

ARTICLE 25. PREVAILING WAGE LAWS

By its execution of this Contract, Consultant certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("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 and 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, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant will also adhere to any other applicable requirements, including but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. Consultant shall defend, indemnify and hold the County, 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.

ARTICLE 26. 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 attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under the Indemnification and Insurance Requirements section.

ARTICLE 27. LAW

This Contract shall be construed and interpreted in accordance with the laws of the State of California.

ARTICLE 28. RIGHT TO MONITOR AND AUDIT

1. **Right to Monitor**
   The County, shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Consultant in the delivery of services provided under this Agreement. Consultant shall give full cooperation, in any auditing or monitoring conducted. Consultant shall cooperate with the County in the implementation, monitoring and evaluation of this Agreement and comply with any and all reporting requirements established by the County.

   In the event the County determines that Consultant's performance of its duties or other terms of this Agreement are deficient in any manner, County will notify Consultant of such deficiency in writing or orally, provided written confirmation is given five (5) days thereafter. Consultant shall remedy any deficiency within forty-eight (48) hours of such notification, or County at its option, may terminate this Agreement immediately upon written notice, or remedy deficiency and off-set the cost thereof from any amounts due the Consultant under this Agreement or otherwise.

2. **Availability of Records**
   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 the Agreement or until all pending County, State and Federal audits are completed, whichever is later.

ARTICLE 29. RESERVED

ARTICLE 30. DAMAGE TO COUNTY PROPERTY

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

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

ARTICLE 31. IRAN CONTRACTING ACT

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars ($1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Consultant certifies that at the time the Contract is signed, the Consultant signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Consultants are cautioned that making a false certification may subject the Consultant to civil penalties, termination of existing agreement, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205. **Consultant agrees that signing the Contract shall constitute signature of this Certification.**

ARTICLE 32. CALIFORNIA CONSUMER PRIVACY ACT

To the extent applicable, if Contractor is a business that collects the personal information of a consumer(s) in performing Services pursuant to this Contract, Contractor 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. Contractor 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. Contractor must not sell, market or otherwise disclose personal information of a consumer provided by the County unless specifically authorized pursuant to terms of this Contract. Contractor must immediately provide to the County any notice provided by a consumer to Contractor pursuant to Civil Code section 1798.150(b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to this Contract. Contractor 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).

ARTICLE 33. 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 Contractor 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. Contractor shall be provided advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the County.

ARTICLE 34. MISCELLANEOUS PROVISIONS

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

34.2 Consultant shall notify the County, in writing, of any change in mailing address and/or physical location within ten (10) calendar days of the change, and shall immediately notify County of changes in telephone or fax numbers.

34.3 Consultant agrees not to enter into any subcontracting agreements for work contemplated under the Contract without first obtaining written approval from the Director of the Project and Facilities Management Department, or his or her designee. Any subcontracting shall be subject to the same contract provisions as Consultant. Consultant shall be fully responsible for the performance and payments of any subconsultant.

34.4 Consultant shall notify County of any continuing vacancies and any positions that become vacant during the term of this Contract that will result in reduction of services to be provided under this Contract. Upon notice of vacancies, Consultant shall apprise County of the steps being taken to provide the services and to fill the position as expeditiously as possible. Vacancies and associated problems shall be reported to County on each periodically required report for the duration of said vacancies and/or problems.

34.5 No waiver of any of the provisions of the Contract shall be effective unless it is made in a writing which refers to provisions so waived and which is executed by the Parties. No course of dealing and no delay or failure of a Party in exercising any right under the Contract shall affect any other or future exercise of that right or any exercise of any other right. A Party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.

34.6 Any alterations, variations, modifications, or waivers of provisions of the Contract, unless specifically allowed in the Contract, shall be valid only when they have been reduced to writing, duly signed and approved by the Authorized Representatives of both parties as an amendment to this Contract. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.

34.7 If any provision of the Contract is held by a court of competent jurisdiction to be unenforceable or contrary to law, it shall be modified where practicable to the extent necessary so as to be enforceable (giving effect to the intention of the Parties) and the remaining provisions of the Contract shall not be affected.

34.8 Consultant shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County and municipal laws, ordinances, rules and regulations. The Consultant shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Consultant will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain required licenses, permits and/or certifications may result in immediate termination of this Contract. Professional Architects and Engineers shall be duly registered in the State of California.

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

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

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

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

34.12 In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under this Agreement, the Consultant shall notify the County within one (1) working day, in writing and by telephone.

34.13 Consultant agrees to comply with the provisions of Executive Orders, 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment Practice Act, Equal Employment Opportunity, and other applicable Federal, State, and County laws, regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

34.14 Consultant shall comply with all applicable laws, statutes, ordinances, administrative orders, court orders, rules or regulations relating to its duties, obligations and performance under the terms of the Contract. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

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

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

34.17 Consultant acknowledges and agrees that it will not submit a bid, or enter into any agreement with a third party, for the construction of the Project. Consultant agrees not to affiliate with, or receive financial consideration from, any third party in connection with this Project, except as specifically authorized under this Contract.

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

a. Shall not be in any way impaired because of being under the influence of alcohol or a drug.
b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
c. Shall not sell, offer, or provide alcohol or a drug to another person.

This shall not be applicable to a Consultant or Consultant's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Consultant shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

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

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

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

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

34.22 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.

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

ARTICLE 35. TERM

The Contract is effective as of May 23, 2023 and expires on May 22, 2028 or closeout/completion of the last project/work order/task assigned to Consultant within said term, whichever is later, but may be terminated earlier in accordance with the provisions of this Contract.

ARTICLE 36. CONCLUSION

36.1 This Contract, consisting of 41 pages, Appendixes A, B, C, D E, and F is the full and complete document describing services to be rendered by Consultant to County including all covenants, conditions and benefits.

36.2 The signatures of the Parties affixed to this Contract affirm that they are duly authorized to commit and bind their respective institutions to the terms and conditions set forth in this document.

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

IN WITNESS WHEREOF, the Board of Supervisors of San Bernardino County has caused this Contract to be subscribed to by the Clerk thereof, and Consultant has caused this Contract to be subscribed in its behalf by its duly authorized officers on their behalf.

SAN BERNARDINO COUNTY

► Dawn Rowe

Dawn Rowe, Chair, Board of Supervisors

Dated: MAY 23 2023

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

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By _____ Deputy

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

By ► Mark Galle
Mark Galle (May 11, 2023 15:28 PDT)
(Authorized signature - sign in blue ink)

Name Mark Galle
(Print or type name of person signing contract)

Title CFO
(Print or Type)

Dated: May 11, 2023

Address 412 E. Vanderbilt Way
San Bernardino, CA 92408

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► Katherine Hardy Katherine Hardy (May 12, 2023 07:08 PDT)	►	► Don Day Don Day (May 12, 2023 09:11 PDT)
Katherine Hardy, County Counsel	Robert Gilliam, Chief of Project Management, Project and Facilities Management Department	Don Day, Director, Project and Facilities Management Department
Date May 12, 2023	Date May 12, 2023	Date May 12, 2023

Appendix A
Consultant Scope of Work

The following are the services that will generally be required of Consultant for each Project that is assigned to Consultant under this On-Call Contract. The County reserves the right to revised the Scope of Work for specific Projects in the Work Order issued to Consultant for a specific Project.

1. General Services

The services to be rendered by the Consultant shall consist of all such services as customarily performed by an architect/engineer for the design of the Project, specifically including, but not limited to, the following:

a. Clearly indicate on the plans and in the specifications, the specific consultant license classification required to perform the work in compliance with the State Contractor's License Board.

b. Process all matters relating to this Project through a single point of contact, the Project Manager.

c. Consult with authorized employees, agents, and representatives of the County and other agencies having jurisdiction relative to the design and construction of the Project.

d. Cooperate with other Project consultants.

e. Provide recommendations to the Project Manager regarding proposed locations of soil borings and/or excavation pits/trenches for the purposes of the Project site's geotechnical investigation and soils testing.

f. Make field trips as required to review existing site conditions, and to properly prepare design and construction documents.

g. Attend design meetings as scheduled by the Project and Facilities Management Department, prepare minutes of meetings, and distribute within three (3) County working days.

h. Contract for sub-consultants, at Consultant's expense, to the extent necessary for design of the Project, including but not limited to, mechanical, electrical, structural and civil engineers, and landscape architects, all licensed or registered as such by the State of California. All plans and specifications shall be prepared by an architect/engineer currently licensed by the State of California, and shall be signed and sealed by the Consultant. Consultant will ensure all sub-consultants will attend meetings with County and/or construction contract upon request by County at no additional charge to County

i. Submit sub-consultant's names for approval by County, for each professional element of service of the Project. Nothing in the foregoing procedure shall create any relationship between County and any sub-consultant employed by the Consultant under terms of this Contract.

j. Designate a principal or member of his staff satisfactory to County as the Project architect/engineer who shall, as long as his performance continues to be acceptable to County, remain in charge of the architectural/engineering services of the Project from the beginning of preliminary design through the completion of construction.

k. Obtain and set forth requirements of Appropriate Authorities, utility companies and other governmental agencies whose jurisdiction affects the design, cost, or construction of the Project.

l. Prepare plans and specifications in such form as to comply with the latest applicable laws, building codes and ordinances, including, but not limited to, the: Department of Health Care Access and Information (HCAI); Americans with Disabilities Act (ADA); Standard Specifications for Public Works Construction, (latest edition); Public Contract Code; Division 4 of Title I of the Government Code; CAL-OSHA and the

Uniform Building Code (latest edition). All applicable energy requirements shall be met and energy calculations performed.

m. Advise County of deficiencies in construction of the Project which have developed following the acceptance of the work and prior to expiration of the guarantee period of the Project, and suggest satisfactory methods for corrections for such deficiencies.

2. Pre-Design Services

Upon written authorization by the Project Manager to proceed with Pre-Design Services, Consultant shall provide the following services for the Project, specifically including, but not limited to:

a. Finalize Project requirements as described fully in Article 1.1, Consultant's Scope of Work. Pre-design services shall include, but not be limited to, the following for County acceptance:

1. Prepare a program addressing all civil, landscape, architectural, structural, mechanical, and electrical Project requirements.

2. Furnish the Project Manager necessary documents and information for the County to use in the processing of the Project's environmental review in compliance with the California Environmental Quality Act ("CEQA").

3. Future needs assessment.

4. Written conceptual cost estimate.

b. Prepare and submit for County acceptance, five copies of Project program addressing all Project requirements including future needs assessment.

3. Schematic Design Services

Upon written authorization by Project Manager to proceed with Schematic Design Services, Consultant shall provide the following services for the Project, specifically including, but not limited to:

a. In consultation with Project Manager, prepare Schematic Documents, consisting of, but not limited to, the following for County acceptance: (1) site, architectural, structural, mechanical and electrical floor plans, elevations, cross sections and other required drawings; and (2) outline specifications describing the size, character, and quality of the entire Project in its essentials as to kinds and locations of materials, type of structural, mechanical, and electrical systems.

b. Schematic Documents shall be revised by Consultant until an acceptable design concept has been accepted by the Project Manager. Submit five sets of final Schematic Documents to Project Manager for final review and acceptance.

c. Prepare and submit for acceptance, a written itemized Project Construction Cost Estimate. The Project schedule shall be in Critical Path Method (C.P.M.) format, listing sufficient activities for proper schedule tracking.

4. Design Development Services

Upon authorization by the Project Manager to proceed with the Design Development Services, the Consultant shall provide the following services for the Project, specifically including, but not limited to:

a. Based on the accepted Schematic Documents, prepare plot plans, landscape, irrigation, civil, architectural, structural, mechanical and electrical floor, elevations, cross-sections and other required drawings; and outline specifications describing the size, character, and quality of the entire Project

in its essentials as to kinds and locations of materials, and type of structural, mechanical, and electrical system.

b. Prepare and submit for acceptance a written, Itemized Project Construction Cost Estimate listing material, labor total costs based on the Design Development Documents.

c. The information in the Design Development Documents shall be sufficiently complete to cover all matters which will materially affect the cost of the Project.

d. Revise Design Development Documents to the satisfaction of the Project Manager. Submit five sets of final Design Development Documents to Project Manager for final review and acceptance.

5. Construction Document Services

After acceptance of Design Development Documents and Project Construction Cost Estimate and upon receipt of written authorization from the Project Manager to proceed with the preparation of Construction Documents, Consultant shall provide the following services for the Project, specifically including, but not limited to:

a. Prepare from the approved Design Development Documents, Construction Documents consisting of working drawings, specifications and such standard documents and special requirements as may be furnished by County that set forth in detail the requirements for construction of the entire Project.

b. Submit for County review and acceptance, five sets of Construction Documents, consisting of working drawings and specifications at the fifty (50) percent point of completion.

c. Submit for County review and acceptance, five sets of Construction Documents, consisting of working drawings and specifications at the nine-fifty (95) percent point of completion.

d. Submit for final County review and acceptance, after obtaining all regulatory agencies' approvals, i.e., Building & Safety, Environmental Health, Planning or other required approvals, five sets of Construction Documents consisting of working drawings and specifications at the one hundred (100) percent point of completion.

e. Prepare Construction Documents in full compliance with all applicable building codes, ordinances and other regulatory requirements in force at the time of Contract award.

f. Prepare Construction Documents in such detail as may be required to obtain competitive bidding for the entire Project or any division of work. Furnish the County at no additional expense one (1) complete set of the bid drawings and specifications. The bid drawings shall be on reproducible transparent vellum with the architect's/engineer's professional stamp and signature and a recorded copy on a compact disc – recordable (CD-R) or USB. File format shall be compatible with MS-DOS and AutoCAD file format that is within two releases prior to version 2016. The specifications shall be submitted as a reproducible hard copy and a recorded copy on CD-R compatible with MS-DOS and Microsoft Word, and as a pdf.

g. Prepare and submit for County approval a list of movable furniture, panel systems, accessories and other articles not included in the construction contract.

h. Prepare and submit for County approval a written final Project Construction Cost Estimate upon 100 percent completion of Construction Documents. The Project Construction Cost Estimate shall be itemized including estimates for alternate bid items, in conformance with the form of proposal intended for bidding purposes. In the event that bids are not solicited within 100 calendar days after the Consultant submits the 100 percent complete Construction Documents and final Project Construction Cost Estimate to the Project Manager, the Consultant shall upon written direction by the Project Manager revise his final Project Construction Cost Estimate so as to reflect any changes in price due to increase or decrease in construction costs.

i. Upon written approval by Project Manager of a final approved set of drawings and specifications including all corrections required by Building and Safety, Public Health Department and other regulatory agencies, provide to the Project Manager a complete set of typed specifications on reproducible masters. Reproduction of these documents will be by County.

6. Bidding Services

Upon solicitation of bids by County, Consultant shall provide the following services for the Project, specifically including, but not limited to:

a. Attend the Pre-Bid Meeting as scheduled by the County.

b. Prepare addenda and clarification documents, interpret Construction Documents and assist County as required. The addenda drawings shall be on reproducible transparent vellum with the architect's/engineer's professional stamp and signature and a recorded copy on a CD-R or USB. File format shall be compatible with MS-DOS and AutoCAD 14 software or newer (dwg. file format). The clarification documents shall be submitted as a reproducible hard copy and a recorded copy on CD-R compatible with MS-DOS and Microsoft Word, and as a pdf.

c. If requested, assist County with review, evaluation, and recommendations for awarding construction contracts.

d. If the approved final Project Construction Cost Estimate for the Construction Document phase exceeds the Construction Budget by more than ten (10) percent, the County may, at its discretion (1) give written approval of an increase in the Construction Budget, or (2) authorize the soliciting of bids, reserving their rights under paragraph (e) below, or (3) require Consultant to revise Construction Documents to reduce construction cost to within the Construction Budget.

e. If the lowest responsible bid received exceeds the Construction Budget by more than 10 percent, the County may, at its discretion, (1) give written approval of an increase in the Construction Budget, or (2) authorize rebidding of the Project within a reasonable time, and require the Consultant, at Consultant's cost, to revise the scope of the Project or its quality, or both, so as to reduce the Project Construction Cost Estimate and to modify the Project Construction Cost Estimate to within the Construction Budget, or (3) abandon the Project.

7. Construction Administration Services:

Upon award of construction contract by County, Consultant shall provide the following services for the Project, specifically including, but not limited to :

a. Interpret the Contract Documents and furnish four (4) copies, one of which shall be in reproducible form, of all clarification drawings and other documentation required. Prepare for approval by County, change orders to construction contract which are necessary as a result of such interpretations and/or clarifications. Architectural instruction bulletins may be used by the County for the solicitation of price quotations from the construction contractors. Analyze price quotations received from the construction contractor for proposed change orders and advise County as to the acceptability of same.

b. Make all revisions and changes to the Contract Documents as directed by the Project Manager to correct errors, conflicts or omissions.

c. Make periodic visits (nominally weekly) to the Project to review and advise the Project Manager on the progress of the work, the character, scope and detail of construction, the quantity and quality of materials and equipment, and the standard of workmanship conform to the intent of the Consultant as expressed in the Contract Documents; attend Project meetings, prepare minutes of such meetings and forward to the Project Manager for distribution by the Project Manager. A

written report detailing field observations shall be submitted to the Project Manager following each weekly site visit.

d. Provide technical direction to interpret the Contract Documents for the Project Manager and inspectors of County and advise said Project Manager and inspectors of all recommendations as required.

e. Make prompt recommendations on claims, disputes, and other matters in question between the construction contractor and County relating to the execution or progress of the work or the interpretation of the Contract Documents.

f. Analyze and recommend to County as to acceptability of test reports, methods, materials, equipment and systems.

g. Review and recommend to County as to the acceptability of substitutions proposed by construction contractor.

h. Assist the Project Manager in reviewing and approving all contractor pay requests.

i. Review and advise the Project Manager as to the acceptability of schedules, shop drawings, laboratory reports, samples, fabrication, erection, and setting drawings, wiring and control diagrams, schedules, list of materials and equipment, and other descriptive data pertaining to materials, equipment or methods of construction.

j. Assemble and deliver to County written guarantees, operating and maintenance instructions books, diagrams, and chart required of the construction contractor.

k. Assemble and deliver to Project Manager three (3) copies of a summary report containing information on all approved submittals arranged by technical specification division. The report shall contain, at a minimum, information on types of equipment and/or material, model numbers, sizes, equipment ratings, and product line and color of interior finishes, etc.

l. Participate in the final inspection of the Project, write punch list, and advise County as to the acceptability of work performed by construction contractor.

m. As a requirement of Project Close Out, promptly, after recording the NOC by the County, furnish the County, at no additional expense to the County, one (1) complete set of final permanent as-built drawings printed on bond and one electronic media (USB). All construction redlines shall be incorporated into the electronic file formats of construction documents and clearing labeled "RECORD DRAWINGS" on each sheet. File formats shall be as follows:
    - Full set in AutoCAD (.dwg) with all x-references bound.
    - Full set in AutoCAD (.dwg) with x-references pathed and not bound.
    - Full set in a single PDF – drawings shall be saved as full size format.
    - If project was produced in BIM system, provide entire BIM model (RVT files) with all associated links to imported drawings, as well as, AutoCAD requirements above.
    - All files shall be labeled appropriately.
    - All other documents shall be provided as PDF files.

Appendix B
Sample Fee Proposal Sheet

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

Project No.

Project Title

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

Consultant's Design Fee $_____

Consultant's Construction Admin. Fee $_____

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

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

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

Preliminary Construction Document Phase _____ Weeks

Construction Documents Phase _____ Weeks

Bidding/Pre-Construction Phase _____ Weeks

Estimate of Construction Schedule _____ Weeks

(Optional at County's Request)
Include the hourly rate for each individual or classification that will be working on the project and the estimated number of hours each individual will work on the Project.

Appendix C
Consultant Rate Sheet

ATTACHMENT E – PROPOSER RATE SHEET(S)

Consultant Name: DESIGN WEST ENGINEERING

Discipline Category: (Each discipline category needs a separate rate sheet): MEP Engineering Services

Provide complete breakdown of hourly rates based on the following yearly increments beginning from date of award.

2023-2024 Design West will consider up to 3% increase in rates per year dependent on inflation rates. The current rate sheet included on the next page will remain in place for the 2023-2024 year

2024-2025

2025-2026

2026-2027

2027-2028

Mail or submit in person Attachment E, in a separate sealed envelope labeled "Fee Proposal Sheet" with the RFP Number and Title and the name of the Proposer clearly marked on the outside, to the address stated in Section 1, Paragraph B.

DESIGN WEST ENGINEERING

Your Partners in Mechanical, Electrical, Plumbing, Commissioning, Fire Protection, Technology, & Energy.

2023 RATE SHEET

Principal Engineering.....$240.00 per hour

Mechanical & Plumbing Engineering

Senior Engineer, Mechanical.....$220.00 per hour
Mechanical Project Manager.....$170.00 per hour
Mechanical Designer.....$130.00 per hour
Mechanical CAD Draftsperson.....$110.00 per hour

Electrical Engineering

Senior Engineer, Electrical.....$220.00 per hour
Electrical Project Manager.....$170.00 per hour
Electrical Designer.....$130.00 per hour
Electrical CAD Draftsperson.....$110.00 per hour

Commissioning Services

Director of Commissioning Services.....$220.00 per hour
Commissioning Agent.....$170.00 per hour
Commissioning Engineer.....$130.00 per hour

Energy Services

Director of Energy Services Engineering.....$220.00 per hour
Energy Services Engineer.....$170.00 per hour
Energy Services Designer.....$130.00 per hour

Fire Protection Engineering

Senior Engineer, Mechanical.....$220.00 per hour
Fire Protection Project Manager.....$170.00 per hour
Fire Protection Designer.....$130.00 per hour

Utility Coordination

Senior Engineer.....$220.00 per hour
Project Manager.....$170.00 per hour
Utility Coordinator.....$130.00 per hour
CAD Draftsperson.....$110.00 per hour

Low Voltage Engineering

Senior Engineering, Electrical.....$220.00 per hour
Low Voltage Project Manager.....$170.00 per hour
Low Voltage Designer.....$130.00 per hour

Clerical Support.....$90.00 per hour

*** Rates Effective June 1, 2022

Appendix D
Request for Project Proposal – On Call _____ Services

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

CONTRACT NUMBER:	
PROJECT NAME:	
PROJECT LOCATION:	
PROJECT NUMBER:	

AMERICAN RESCUE PLAN ACT (ARPA) CORONAVIRUS LOCAL FISCAL RECOVERY FUND (CLFRF): *(If the project is using ARPA CLFRF Funding both boxes must be checked.)*	
☐	This Project includes ARPA CLFRF Funds
☐	ARPA CLRFRF requirements, including but not limited to Article 3.2 of the Contract and Appendix F to the Contract, are required.

MANDATORY PRE-PROPOSAL CONFERENCE: (*if applicable*)
A mandatory proposal conference will be held **on: Day, Date, Time at:**
San Bernardino County
Department Name
Address
City, State, Zip Code

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

SCOPE OF WORK DESCRIPTION:

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

PROPOSAL DEADLINE:

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

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

All correspondence, **including proposals and questions**, are to be submitted to:
San Bernardino County
Project and Facilities Management Department
Attn: _____
385 North Arrowhead Avenue, 3rd Floor
San Bernardino, CA 92415-0184
(909) _____ Phone

(909) _____ Fax
_____ Email

PROPOSAL CONTENTS:

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

1. **Proposal Description**
   Provide a detailed description of the proposal being made.
   The proposal should include the following:
   a. A brief synopsis of the Proposer's understanding of the County's needs and how the Proposer plans to meet these.
   b. A concise statement of the services (and product, if applicable) proposed.
   c. An explanation of any assumptions and/or constraints.

2. **Project Team Organization Chart**
   Project Team Organization Chart shall clearly show the organization of the team and the hierarchy of the members. It must include:
   a. Organizational framework for the proposed Project team.
   b. Company name and key staff name for each role identified in the chart.

3. **Work Plan and Schedule**
   Include the following:
   a. Summary of management/work plan for this Project;
   b. Project schedule

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

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

EVALUATION OF PROPOSALS:

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

EVALUATION CRITERIA:

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

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

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

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

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

NEGOTIATIONS:

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

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

DISPUTES RELATING TO PROJECT PROPOSAL PROCESS AND AWARD:

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

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

An appeal of a denial of award of work order/purchase order can only be brought on the following grounds:
1. Failure of the County to follow the selection procedures and adhere to requirements specified in the Contract or Request for Project Proposal or any addenda or amendments.
2. There has been a violation of conflict of interest as provided by California Government Code Section 87100 et seq.
3. A violation of State or Federal law.

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

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

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

Appendix E
Work Order

CONTRACT NUMBER:	
PROJECT NAME:	
PROJECT LOCATION:	
PROJECT NUMBER:	

AMERICAN RESCUE PLAN ACT (ARPA) CORONAVIRUS LOCAL FISCAL RECOVERY FUND (CLFRF): *(If the project is using ARPA CLFRF both boxes must be checked.)*	
☐	This Project includes ARPA CLFRF Funds
☐	ARPA CLFRF requirements, including but not limited to Article 3.2 of the Contract and Appendix F to the Contract, is required.

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

Documents Attached:

☐	REQUEST FOR PROJECT PROPOSALS *(Provided by County)*
☐	DETAILED PROJECT UNDERSTANDING AND SERVICES TO BE PROVIDED *(Provided by Consultant)*
☐	FEE PROPOSAL SHEET (*Provided by Consultant*)
☐	PROJECT SCHEDULE (*Provided by Consultant*)

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

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

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

Project And Facilities Management Department

► _____

Director / Chief of Project Management

Dated: _____

_____

_____
(Print or type name of the consultant company)

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

Name _____

_____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Appendix F

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

This Contract 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): SLT0628 and Assistance Listing Number (formerly known as a CFDA number): 21.027*, and therefore Contractor 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 Contract. 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 Contractor 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 Contractor i) in excess of the amount to which Contractor 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. Contractor 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. Contractor shall provide for such compliance in any agreements with subcontractor(s).

Contractor 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: Obligating 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 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. Sections1251-1389).

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 Contractor 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 Contract.

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 Contractor 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 – Contractor 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. Contractor 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 - Contractor 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 - Contractor agrees to provide project timeline and progress updates to the County upon request, per County, and United States Treasury guidelines and timeline. Contractor agrees to routine and impromptu program and project evaluation by the County.

O. Contractor 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 Contractor or its subcontractor(s) in any manner that does not adhere to official federal guidance shall be returned to the County. Contractor agrees to comply with all official guidance regarding the ARPA CLFRF.

Contractor also agree that as additional federal guidance becomes available, an amendment to this Contract may become necessary. If an amendment is required, Contractor agrees to promptly execute the Contract amendment.

P. Contractor 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), Contractor 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 Contractor. Copies will be made and furnished by Contractor upon written request by County.

Q. Contractor shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Contractor's requests for reimbursement which segregate and accumulate costs of Contractor and produce monthly reports which clearly identify reimbursable costs, matching fund costs (if applicable), and other allowable expenditures by Contractor. Contractor shall provide a monthly report of expenditures under this Contract no later than the 20th day of the following month.

R. Contractor 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 Contractor at Contractor's expense.

S. Contractor 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 Contractor receiving notice of audit findings, which time shall include an opportunity for Contractor to respond to and/or resolve the findings. Should the findings not be otherwise resolved and Contractor 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 Contractor 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.

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. Contractor 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 SLT-0628 awarded to San Bernardino County by the U.S. Department of Treasury."

FF. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor 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), Contractor 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 Contractor 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). Contractor 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. Contractor 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. Contractor 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. Contractor shall cooperate in any enforcement or compliance review activities by the County and/or the Department of the Treasury. Contractor shall comply with information requests, on-site compliance reviews, and reporting requirements.

KK. Contractor 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 Contractor in order to conduct audits or other investigations.

MM. Contractor 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. Contractor 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 Contractor 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 Contractor acknowledge that if additional federal guidance is issued, an amendment to this Contract may be necessary. In the event any of the terms in this Exhibit conflict with any other terms in the Contract, the terms in this Exhibit shall control.