



Contract Number

19-857

SAP Number

4400013241

## Department of Risk Management

|                                    |                                  |
|------------------------------------|----------------------------------|
| Department Contract Representative | LeAnna Williams                  |
| Telephone Number                   | 909-386-8621                     |
| Contractor                         | Creative Design Associates, Inc. |
| Contractor Representative          | Glenn K. Dea, Vice President     |
| Telephone Number                   | (626) 913-8101                   |
| Contract Term                      | 01/28/2020 through 01/27/2025    |
| Original Contract Amount           |                                  |
| Amendment Amount                   |                                  |
| Total Contract Amount              | Per Fee Schedule                 |
| Cost Center                        | Various                          |

### IT IS HEREBY AGREED AS FOLLOWS:

*(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)*

The County of San Bernardino – Department of Risk Management (hereinafter referred to as COUNTY) and Creative Design Associates, Inc. (hereinafter referred to as Contractor) are parties to this agreement.

**WHEREAS**, COUNTY is self-insured for its liability and workers' compensation claims and self-administers its own and other public entity programs, and it is responsible to provide Americans with Disabilities Act (ADA) Consulting Services to its Departments, Board Governed Special Districts and County Service Areas.

**WHEREAS**, Contractor is professionally qualified and competent to provide ADA Consulting Services.

**NOW, THEREFORE**, in consideration of the remuneration hereinafter set forth on Attachment A. Fee Schedule for ADA Consulting Services, Contractor agrees to provide the following ADA Consulting Services for the COUNTY or other public entities on the following terms and conditions:

#### I. CONTRACTOR AGREES TO PROVIDE SERVICES AS FOLLOWS:

ADA Consulting Services may include, but are not limited to the following:

1. Review construction design plans and drawings for County facilities, including pedestrian facilities within the public right-of-way, to confirm incorporation of State and Federal accessibility standards, codes and regulations.

2. Inspect County facilities, including pedestrian facilities within the public-right-of-way, to assess compliance with State and Federal accessibility standards, codes and regulations.
3. Issue written inspection reports documenting findings from facility inspections.
4. Conduct accessibility research and analysis, and provide recommendations to County staff.
5. Facilitate and/or coordinate training for County Staff on the requirements of State and Federal accessibility laws, standards, codes and regulations.
6. Assist with updating the ADA Self-Evaluation and/or Transition Plan for the County and/or individual County departments.

## **II. INSTRUCTIONAL AND TRAINING SERVICES**

Contractor agrees to undertake a planned effort to educate, and make available, learning opportunities to Risk Management Staff and other designated County staff on topics related to ADA Consulting Services. Contractor shall provide a maximum of four (4) days instructor led training classes per year at the premises of San Bernardino County – Department of Risk Management that may span multiple dates. Manuals or handouts must be provided for all attendees.

## **III. CONTRACTOR'S GUARANTEE**

Proposer guarantees its services will be satisfactory to the County as specified in the RFP and the contract. If the County is dissatisfied with the Proposer's services, qualifications of its staff, licenses and/or certifications, the County has the right to cancel any contract for service and be relieved of the obligation of continuing with this contract.

## **IV. CONTRACTOR'S NAME AND TAX ID NUMBER**

Proposer is required to maintain the same name and tax id for the duration of the contract. However, if a change occurs, the Proposer shall notify the COUNTY in writing of any change of name or tax identification number within ten (10) business days of the change and should provide a new IRS W9 form and promptly complete and return updated electronic fund transfer forms.

## **V. TERMS AND CONDITIONS**

### **A. General**

#### **1. Contract Amendments**

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

#### **2. Contract Exclusivity**

This is not an exclusive Contract. San Bernardino County reserves the right to enter into a Contract with other Contractors for the same or similar Services. San Bernardino County does not guarantee or represent that the Contractor 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.

#### **3. Attorney Fees and Costs**

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

#### **4. Background Checks for Contractor Personnel**

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) have not been convicted of a felony and are not proven substance abusers; and (c) are not otherwise disqualified from performing the Services under applicable Law. If requested by the County and not in violation of applicable Law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing services. If requested by the preceding requirements and County, Contractor shall review the results of the background check of each individual to verify that the individual meets Contractor's standards for employment. Such background check shall be in the form generally used by Contractor in its initial

hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet criteria acceptable to the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contractor personnel to any County facility.

**5. Change of Address**

Contractor shall notify the San Bernardino County in writing of any change in mailing address within ten (10) business days of the change.

**6. Choice of Law**

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

**7. Compliance with County Policy**

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all Laws applicable to the County facilities and/or the provision of the Services, and all additions and modifications to each of subsections (b),(c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor's personnel or may be made available to Contractor or Contractor's personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

**8. Confidentiality**

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

**9. Primary Point of Contact**

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

**10. County Representative**

The Director of the Department of Risk Management or his/her designee shall represent San Bernardino County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

#### **11. Damage to County Property**

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

If the Contractor fails to make timely repairs, San Bernardino County may make any necessary repairs. Contractor 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 Contractor from San Bernardino County, as determined at the sole discretion of the County.

#### **12. Debarment and Suspension**

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

#### **13. Drug and Alcohol-Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive workplace, as a material condition of this Contract, Contractor agrees that the Contractor and the Contractor's employees, while performing service for San Bernardino 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 a drug.
- c. Shall not sell, offer, or provide alcohol or a drug to another person. This shall not be applicable to a Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

Contractor shall inform all employees that are performing service for San Bernardino County on County property, or using County equipment, of San Bernardino 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 San Bernardino County.

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

#### **14. Duration of Terms**

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

#### **15. Employment Discrimination**

During the term of the Contract, Contractor 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. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**16. Environmental Preference**

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 Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor 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), Contractor must be able to annually report the County's environmentally preferable purchases. Contractors must also be able to report on environmentally preferable goods used in the provision of Services to the County, utilizing a County approved form.

**17. Improper Influence**

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

**18. Improper Consideration**

Contractor 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 San Bernardino County in an attempt to secure favorable treatment regarding this Contract.

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

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

**19. Informal Dispute Resolution**

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

**20. Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. 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.

**21. Licenses, Permits, and/or Certifications**

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules and regulations (e.g. business license, license(s) issued by the State Bar of California). The Contractor shall maintain these licenses, permits, and/or certifications in effect for the duration of this Contract. Contractor 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.

Contractor must possess:

- State of California Architect License and/or State of California Structural Engineer License, and
- California Certified Access Specialist (CASP) certificate.

**22. Material Misstatement/Misrepresentation**

If during the course of the administration of this Contract, the County determines that Contractor 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.

**23. Mutual Covenants**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

**24. Nondisclosure**

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by San Bernardino County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialized and includes, but is not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

**25. Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

**26. Ownership of Documents**

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of San Bernardino County upon payment for services (and product, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

**27. Participation Clause**

The County desires that Municipalities, School Districts, and other Tax Districts within the County of San Bernardino requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Contractor agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that:

- a. Such governmental body does not have and will not have in force any other contract for like purchases.
- b. Such governmental body does not have under consideration for award any other bids or quotations for like purchases.

Such governmental body shall make purchases directly through and to the Contractor. The County will not be liable for any such purchase made between the Contractor and another governmental body who avails themselves of this contract.

**28. Air, Water Pollution Control, Safety and Health**

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

**29. Relationship of the Parties**

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

**30. Release of Information**

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

**31. Strict Performance**

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

**32. Subcontracting**

Contractor agrees not to enter into any subcontracting Contracts for work contemplated under the Contract without first obtaining written approval from the County. Any subcontracting shall be subject to the same terms and conditions as Contractor. Contractor shall be fully responsible for the performance and payments of any subcontractor's contract.

Contractor shall obtain San Bernardino County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the deliverables and/or services to San Bernardino County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by San Bernardino County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in this Section. Sub-section B. Indemnification and Insurance Requirements. All approved subcontractors shall be subject to the provision of this contract applicable to Contractor Personnel, including removal pursuant to paragraph A.7 of this Section.

For any subcontractor, Contractor shall:

- 32.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 32.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 32.3** Include in the subcontractor's subcontract substantially similar terms as are provided in this Contract.

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

**33. Subpoena**

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

**34. Termination for Convenience**

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

**35. Time of the Essence**

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

**36. Venue**

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

**37. Successors and Assigns**

This Contract shall be binding upon San Bernardino County and Contractor and their respective successors and assigns.

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

**Death or Incapacity:** If the Contractor transacts business as an individual, his/her death or incapacity shall automatically terminate this Contract as of the date of such event, and neither he/she nor his/her estate shall have any further right to perform hereunder, and County shall pay him/her or his/her estate the compensation payable under paragraph 40. Fiscal Provisions, for any services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by San Bernardino County by reason of such termination. If there be more than one Contractor and any one of them die or become incapacitated and the others continue to render the services covered herein, San Bernardino County will make payment to those continuing as though there had been no such death or incapacity and San Bernardino 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 Contractor



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 Contractor.

### **38. Copyright**

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, 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 San Bernardino County as the funding agency and Contractor as the creator of the publication. No such materials or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States 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 Contract must be filed with San Bernardino County prior to publication.

### **39. Artwork, Proofs and Negatives**

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

### **40. Fiscal Provisions**

- a. Invoices for services provided under this contract will be billed to each claim or project the services were provided for. Invoicing for services shall not be combined in any way that prevents charging directly to each claim or project that utilized the services.
- b. The maximum amount of reimbursement/payment under this Contract shall be subject to availability of funds to the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.
- c. Contractor shall provide County itemized monthly invoices, in arrears, and in a format acceptable to the County, for services performed under this Contract within twenty (20) days of the end of the previous month. The County shall make payment to Contractor within sixty (60) working days after receipt of invoice or the resolution of any billing dispute. Invoices shall be:
  - i. Individually numbered,
  - ii. Identify the requester, and
  - iii. Issued with the corresponding County Service Request number and, where applicable, County claim number stated on the invoice.
- d. Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- e. County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
- f. Costs for Services under the terms of this Contract shall be incurred during the Contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.

### **41. Errors, Omissions and/or Conflicts**

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

#### **42. Conflict of Interest**

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the San Bernardino County. Contractor shall make a reasonable effort to prevent officers, employees, subcontractors, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and State Law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by San Bernardino 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 Contractor'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.

### **B. Indemnification and Insurance Requirements**

#### **1. Indemnification**

**“Contractor shall defend and indemnify County for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor. This Agreement incorporates by reference the provisions of Civil Code section 2782.8, including, but not limited to, the provisions that concern the duty and cost to defend the County.”**

Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the San Bernardino County and its authorized officers, employees, agents and volunteers (Indemnitees) 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 San Bernardino 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 Contractor indemnification obligation applies to San Bernardino County's "active" as well as "passive" negligence but does not apply to San Bernardino County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

#### **Additional Insured**

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming San Bernardino County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of Services hereunder. The additional insured endorsements shall not limit the scope of coverage for San Bernardino County to vicarious liability but shall allow coverage for San Bernardino County to the full extent provided by the policy. Such additional insured coverage shall provide at least as broad coverage and provide for the same limits of coverage to San Bernardino County as provided to the Contractor as the name insured on all such policies of insurance.

#### **Waiver of Subrogation Rights**

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

#### **Policies Primary and Non-Contributory**

All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by San Bernardino County.

**Severability of Interests**

Contractor 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 Contractor and San Bernardino County or between the San Bernardino County and any other insured or additional insured under the policy.

**Proof of Coverage**

The Contractor shall furnish Certificates of Insurance to San Bernardino County's 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 Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Contract, Contractor 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.

**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".

**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.

**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, San Bernardino 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 San Bernardino County will be promptly reimbursed by the Contractor or County payments to the Contractor(s)/Applicant(s) will be reduced to pay for County purchased insurance.

**Insurance Review**

Insurance requirements are subject to periodic review by San Bernardino 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 interest of San Bernardino 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 San Bernardino County, inflation, or any other item reasonably related to the San Bernardino County's risk.

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

Any failure, actual or alleged, on the part of San Bernardino 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 San Bernardino County.

## **2. Insurance Specifications**

Contractor agrees to provide insurance set forth in accordance with the requirements herein. If Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contracted services.

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

### **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 \$1,000,000 limits, covering all persons, including volunteers, providing services on behalf of the Contractor and all risks to such persons under this Contract.

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

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

### **Commercial/General Liability Insurance**

Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of Contractor 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

### **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 Contractor is transporting one or more non-employee passengers in performance of 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 Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

### **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.

### **Professional Services Requirements**

**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.

### **C. Right to Monitor and Audit**

#### **1. Right to Monitor**

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

#### **2. Records**

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

All records relating to the Contractor's personnel, Contractors, subcontractors, service/scope of work and expenses pertaining to this Contract 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.

All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by San Bernardino County's 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.

### **D. Correction of Performance Deficiencies**

1. 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 Contract, Contractor shall notify San Bernardino County within one (1) working day, in writing and by telephone.
2. Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

3. Contractor's Primary Contact and County representative shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of this Contract. If these representatives are unable to resolve a dispute, controversy or claim within ten (10) days after the initial request for a meeting, then the dispute shall be submitted to an executive-level performance review.

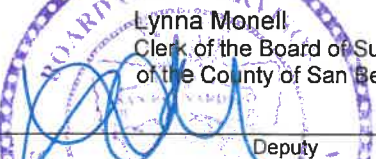
If the Primary Contact and County representative are not successful in resolving the dispute, negotiations shall be conducted by the County Executive Office, or designee, and the highest level executive for Contractor. If these representatives are unable to resolve the dispute within ten (10) days after the representatives have commenced negotiations, or 20 days have passed since the initial request for negotiations at this level, the Parties may agree in writing to submit the dispute to mediation.

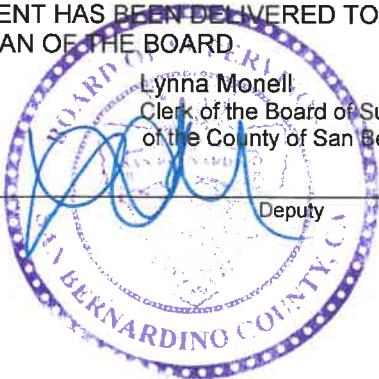
4. In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract.
  - a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County;
  - b. Withhold funds pending duration of the breach;
  - c. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery;
  - d. Offset against any monies billed by Contractor but yet unpaid by San Bernardino County;
  - e. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, San Bernardino County may proceed with the work in any manner deemed proper by San Bernardino County. The cost to San Bernardino County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.
5. Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

COUNTY OF SAN BERNARDINO

►   
Curt Hagman, Chairman, Board of Supervisors


Dated: DEC 17 2019  
SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

By   
Lynna Monell  
Clerk of the Board of Supervisors  
of the County of San Bernardino  
Deputy



CREATIVE DESIGN ASSOCIATES, INC.

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

By ►   
(Authorized signature - sign in blue ink)

Name Glenn K. Dea  
(Print or type name of person signing contract)

Title Vice President  
(Print or Type)

Dated: NOV. 26, 2019

Address 17528 Rowland St. 2<sup>nd</sup>. Floor

City of Industry, CA 91748

**FOR COUNTY USE ONLY**

Approved as to Legal Form

►   
Teresa McGowan, County Counsel

Date 12/3/2019

Reviewed for Contract Compliance

► \_\_\_\_\_

Date \_\_\_\_\_

Reviewed/Approved by Department

►   
LeAnna Williams, Director of Risk Management

Date 12/3/19

**COUNTY OF SAN BERNARDINO  
DEPARTMENT OF RISK MANAGEMENT**

**FEE SCHEDULE FOR ADA CONSULTING SERVICES  
January 28, 2020 through January 27, 2025**

|  |    |     |          |
|--|----|-----|----------|
| Field Support Technicians (non-CASp)   | \$ | 100 | per hour |
| Certified Access Specialist (CASp)   | \$ | 140 | per hour |
| Certified Access Specialist (CASp)/Licensed Architects or Structural Engineers | \$ | 180 | per hour |

These rates **must** include the following services:

- Documentation preparation
- Word processing
- Ordinary postage
- Incoming and outgoing facsimiles
- In-house courier
- Local telephone charges
- Routine photocopying
- Office supplies
- Office support staff
- \*Local area travel
- Meal expenses
- Other expenses associated with the ordinary costs of the Contractor in conducting business

\*Local travel is considered travel within 30 miles of San Bernardino City and does not include travel (mileage or time) to and from place of business to point of service. Vehicle travel outside 30 miles of San Bernardino City will be reimbursed at the current IRS mileage rate. Any expenses requiring airfare, rental vehicle, or lodging will be considered for reimbursement.