



Request for Proposal AE2012-1

**For The Following
ON-CALL PROFESSIONAL
SERVICE CONTRACTS:**

**ARCHITECTURAL
LANDSCAPE ARCHITECTURAL
CIVIL ENGINEERING
STRUCTURAL ENGINEERING
MECHANICAL/ELECTRICAL ENGINEERING
SURVEYING
COST ESTIMATING/CONSTRUCTION MANAGEMENT
COMMISSIONING
AIR BALANCING
GEOTECHNICAL/MATERIALS TESTING/INSPECTION
ENVIRONMENTAL CONSULTING
AND
LABOR COMPLIANCE PROVIDER**

**County of San Bernardino
ARCHITECTURE & ENGINEERING DEPARTMENT
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0184
March 2012**

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I. Introduction

A. Purpose

The County of San Bernardino Architecture & Engineering Department, hereafter referred to as the "County" or "Department", is seeking proposals from interested and qualified Proposers to provide on-call professional services for the following:

- Architectural,
- Landscape Architectural,
- Civil Engineering,
- Structural Engineering,
- Mechanical/Electrical Engineering,
- Surveying,
- Cost Estimating/Construction Management,
- Commissioning,
- Air Balancing,
- Geotechnical/Materials Testing/Inspection,
- Environmental Consulting
- Labor Compliance Provider

The firms will provide services for various new construction and modernization projects within the County Capital Improvement Program (CIP) on an as-needed basis. The County's objective through this Request for Proposals (RFP) is to establish a shortlist of Vendors, at the sole discretion of the County, eligible to provide Services for various County construction projects.

B. San Bernardino County Website

An electronic copy of this Request For Proposals, Attachments A-J, and any addendums or addenda's for this Proposals are available on the San Bernardino County Purchasing Department's website at www.sbcounty.gov/purchasing.

C. Term of Agreement

Specific services to be provided under this Request for Proposals (RFP) are outlined under Section IV, Scope of Work. The Agreement period will be for no more than three (3) years following the date of contract approval by the Board.

D. Minimum Proposer Requirements

All Proposers must:

1. Have no record of unsatisfactory performance. Proposers who are or have been seriously deficient in current or recent Agreement performance, in the absence of circumstances properly beyond the control of the Proposer, shall be presumed to be unable to meet this requirement.
2. Have the ability to maintain adequate files and records and meet statistical reporting requirements.
3. Have the administrative and fiscal capability to provide and manage the proposed services and to ensure an adequate audit trail.
4. Have a minimum of three (3) continuous years of experience providing this type of service.
5. Provide references of a minimum of three (3) other customers, one (1) of which should be a government agency, involving the Proposer's delivery of services that demonstrate the ability of the Proposer to provide the design, consulting and testing services as outlined in this RFP. All references must have names, titles and current phone numbers.
6. Meet other presentation and participation requirements listed in this RFP.

E. Questions

Questions regarding the contents of this RFP must be submitted in writing on or before 5:00 p.m. on March 21, 2012 and directed to the individual listed in Section I, Paragraph F - Correspondence. Questions should be concise and include references to sections of the RFP when applicable. All questions will be answered and both the question and answer will be posted on the County's Web-Sites listed in Section I, Paragraph B.

F. Correspondence

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

County of San Bernardino
Architecture & Engineering Department
Attn: Arcie Cummings
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0184
(909) 387-5227 Phone
(909) 387-5050 Fax
acummings@ae.sbcounty.gov

Fax number and e-mail address may be used to submit questions only. Proposals will not be accepted by email or facsimile.

G. Admonition to Proposers

Once this RFP has been issued, the individual identified above is the sole contact point for any inquiries or information relating to this RFP. Failure to adhere to this policy may result in disqualification of the Proposer. All questions regarding this RFP can be presented in writing as indicated in Section I, Paragraph E.

H. Proposal Submission Deadline

All proposals must be received at the address listed in Section I, Paragraph F - Correspondence, no later than 5:00 p.m. on April 4, 2012. For the purposes of this proposal, the time specified will be as defined by the official time clock located at the address listed in Section I, Paragraph F - Correspondence. 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.

II. PROPOSAL TIMELINE

Release of RFP	March 1, 2012
Deadline for Submission of Questions	5:00 p.m. on March 21, 2012
Deadline for Proposals	5:00 p.m. on April 4, 2012
Tentative Date for Awarding Agreement	June 5, 2012

The above dates are subject to change as

III. PROPOSAL CONDITIONS

A. Contingencies

This RFP does not commit the County of San Bernardino to award an Agreement(s). The County reserves the right to accept or reject any or all proposals if the County determines it is in the best interest of the County to do so. The County will notify all Proposers in writing, if the County rejects all proposals. The County also reserves the right to terminate this RFP process at any time.

B. Submission Packages

Proposers are allowed to submit on multiple professional service disciplines (qualifications permitting); however, each submission shall be in a packaged separately clearly identifying which professional service the proposal applies to. Possible list of services:

ARCHITECTURAL
LANDSCAPE ARCHITECTURAL
CIVIL ENGINEERING
STRUCTURAL ENGINEERING
MECHANICAL/ELECTRICAL ENGINEERING
SURVEYING
COST ESTIMATING/CONSTRUCTION MANAGEMENT
COMMISSIONING
AIR BALANCING
GEOTECHNICAL/MATERIALS TESTING/INSPECTION
ENVIRONMENTAL CONSULTING
LABOR COMPLIANCE PROVIDER

C. Acceptance or Rejection of Proposals

Proposals shall remain open, valid and subject to acceptance anytime within one hundred eighty (180) days after the proposal opening and up to the end of the Agreement period. The County reserves the right to reject any or all proposals.

D. Evaluation Process

Proposals will be evaluated in compliance with the procedure described in Section VII of this RFP.

E. Modifications

The County reserves the right to issue addenda or amendments to this RFP if the County considers that additional clarifications are needed. The addenda or amendments will be posted on the County's Web-Sites listed in Section I, Paragraph B.

F. Proposal Submission

To be considered, all proposals must be submitted in the manner set forth in this RFP. It is the Proposer's responsibility to ensure that its proposal arrives on or before the specified time.

G. Incurred Costs

The County is not obligated to pay any costs incurred by Proposers in the preparation of a proposal in response to this RFP. Proposers agree that all costs incurred in developing this proposal are the Proposer's responsibility.

H. Negotiations

The County may require the potential Proposer(s) selected to participate in negotiations. This may include cost, technical, or other clarifications needed to make a decision.

I. Formal Agreement

Proposer will be required to enter into a formal Agreement with the County. This RFP sets forth some of the general provisions which will be included in the final Agreement. In submitting a response to this RFP, Proposer will be deemed to have agreed to each clause unless the proposal identifies an objection and County agrees to a change of language in writing. All objections to any provisions of the final Agreement should be listed on Attachment C – Exceptions to RFP.

J. Use of Proposals Received

All proposals received shall become the property of the County.

K. Final Authority

The final authority to award Agreements as a result of this RFP rests solely with the County of San Bernardino Board of Supervisors (Board). In certain situations, the Board may authorize the Chief Executive Officer (CEO) and/or the Purchasing Agent to award Agreements.

IV. SCOPE OF SERVICES

A. Introduction and overview

The Department is responsible for managing the design and construction process for CIP projects. Typical projects include new construction, building additions, remodels, tenant improvements, renovation of mechanical and electrical systems, roofs and parking lots. County client departments include Probation, Regional Parks, Facilities Management, the Sheriff, Airports, Museums and the County Medical Center.

Services required under this contract will be provided only on an as-needed/as-requested basis. The period of performance and Vendor's lump-sum fee of any specific project undertaken by the Vendor shall be mutually determined by the County and the Vendor prior to the time that notice to proceed on such work is given by the County. No minimum amount of work, or any work, is guaranteed to selected Vendor(s).

Individual tasks (projects) will be negotiated as stand-alone assignments terminating when the task budget is exhausted or the task time frame has expired. The County will negotiate with selected Vendors to enter not-to-exceed contracts of up to three (3) years duration. Multiple Vendors may be selected for each type of consulting service.

B. Required Services

The establishment of On-Call Service contracts with each of the applicable Architectural, Landscape Architectural, Civil Engineering, Structural Engineering, Mechanical/Electrical Engineering, Surveying, Cost Estimating/Construction Management, Commissioning, Air Balancing, Geotechnical/Material Testing/Inspection, Environmental Consulting services and Labor Compliance consulting firms. It is the intent of the County to obtain at least one, and probably multiple, contracts for each type of service. Vendor professional services shall provide the special expertise and design support to include, but not limited to the following:

1. ARCHITECTURAL / LANDSCAPE / CIVIL / STRUCTURAL / MECHANICAL & ELECTRICAL (MEP) VENDOR(S)

Services will consist of the following services as applicable:

- Consult with authorized employees, agents and representatives of the County and other agencies having jurisdiction relative to the design and construction of the project.
- Make field trips as required to review existing site conditions, and to properly prepare design and construction documents.
- Attend design meetings as scheduled by the Department, and prepare and distribute minutes.
- Prepare plans and specifications in such form as to comply with the latest applicable laws, building codes and ordinances. All applicable energy requirements shall be met and energy calculations performed.
- Prepare design documents, construction documents, and other required drawings, as well as technical specifications describing the size, character, and quality of the entire project. Revise documents to the satisfaction of the department.
- Prepare and submit itemized project cost estimates at the design and construction document phases.

- Prepare addenda, interpret the construction documents, and prepare clarification documents.
- Attend construction meeting as scheduled, and prepare and distribute minutes.
- Make regular visits to the project site during construction to assure that 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 architect or Vendor as expressed in the construction documents.
- Provide technical direction, interpret the construction documents, and make recommendations regarding claims, disputes and other matters in question between the construction contractor and the County.
- Analyze substitutions, test reports, materials, equipment, systems, schedules, shop drawings, laboratory reports, samples, etc. and make recommendations to the County.
- Assist the County in reviewing and approving all contractor pay requests.
- Participate in the final inspection of the project, compile the punch list, and advise the County as to the acceptability of the work performed by the construction contractor.
- Prepare and furnish final record drawings and specifications including such revisions that may have been made in the course of construction.

2. SURVEYING VENDOR(S) Professional capabilities must include a demonstrable expertise in the surveying discipline necessary to accomplish the following services:

- Property boundary surveying;
- Topography mapping for various design projects;
- Right-of-way surveying; and
- Construction surveying, including, slope staking, roadway surfacing, ditches, structures, curbs, gutters, sidewalks, walls, site utilities and reference points for County construction projects.
- Aerial mapping

3. COST ESTIMATING/CONSTRUCTION MANAGEMENT VENDOR(S)

Cost Estimating Services will consist of the following services as applicable:

- Consult with authorized employees, agents and representatives of the County and other Vendors relative to the cost estimating services for the project.
- Attend meetings as scheduled by the County for the purpose of obtaining data pertaining to the projects for which cost estimates services are to be provided.
- Prepare cost estimates for CIP and other miscellaneous construction projects. Provide cost estimates, as directed, for any or all stages of the design and construction document preparation process, from the conceptual phase through the construction document phase.
- Evaluate contractor change order requests during the construction process.
- Prepare and submit cost estimates in CSI format for review by the County.

Construction Management Services might consist of any or all services as applicable to:

- Review contract design plans as requested for constructability, consistency, and adherence to County standards.
- Assist in obtaining any necessary permits as required.
- Coordinate construction activities with other County departments, utilities, and municipalities for the duration of any project.
- Attend pre-construction conferences if required.
- Visit sites as required during the construction period.

- Attend Requested progress meetings.
- Review shop drawings as directed by the Department.
- Review the construction schedule as directed by the Department.
- Prepare drawings and estimates for any required field change as requested.
- Provide resident inspection services if requested.
- Assist Department in project closeout.

4. COMMISSIONING VENDOR(S)

Must have a highly qualified team of engineers and technicians to inspect the building mechanical, electrical and plumbing systems to insure that the operational capacities and capabilities of the systems and equipment are consistent with the projects program documents and the design intent of the County, architect and engineer.

The County is committed to adhering to its Sustainable Building Policy as adopted by the Board. The Policy requires pursuit of sustainable building practices when fiscally sensible in the project's design, construction and operation, using the U.S. Green Building Council's LEED rating system. Services might consist of any or all services necessary to:

- Provide fundamental commissioning or enhanced commissioning as determined for LEED projects.
- Depending on the complexity of the project, additional commissioning requirements may include: Storm water management systems, irrigation systems, chemical water treatment systems, fire protection systems, security systems and information technology systems.
- Air Balancing

5. AIR BALANCING SERVICES

Vendor/technicians are expected to furnish all necessary field equipment, survey equipment, and other supporting equipment and possess a strong ability to provide any or all services necessary to provide a diverse professional expertise in, but not limited to, any or all services as applicable to:

- Be versed with both air and hydronic testing.
- Perform air flow tests of building heating, cooling and ventilating systems (HVAC) to record and assist the adjustment of the systems to maximize system effectiveness.
- Measure total airflow on all HVAC and exhaust systems.
- Troubleshoot and evaluate mechanical systems and equipment.
- Perform leak tests of ductwork.
- Measure sound and vibration of mechanical equipment and ductwork.
- Perform air flow test to determine particle counts.

6. GEOTECHNICAL, MATERIALS TESTING and INSPECTION SERVICES

Vendors are expected to furnish all necessary field equipment, survey equipment, and other supporting equipment and consumables and possess a strong ability to provide any or all services necessary to provide a diverse professional expertise in, but not limited to, any or all services as applicable to:

- Consult with authorized employees, agents and representatives of the County and other agencies having jurisdiction relative to the geotechnical/materials testing and inspection of the project.
- Attend meetings as scheduled by the County for the purpose of obtaining data pertaining to the project.

- Obtain and test soil samples. Prepare and submit preliminary geotechnical investigation and recommendations prior to the beginning of construction.
- Provide geotechnical/materials/ testing and/or inspection services during the construction of the project.
- Test designated construction materials for compliance with project plans and specifications. Report all work observed on a daily basis and report material test results immediately upon completion of testing.
- Promptly prepare and submit written reports documenting all geotechnical/materials testing and inspection services performed.
- Advise County as to the acceptability of materials tested and inspected.
- Participate in final inspection of the project and advise County as to acceptability of work performed by construction contract.
- Prepare final geotechnical report.
- Services shall be performed as requested by the County and shall conform to the contract documents, Title 24 of the California Administrative Codes, Underwriter's Laboratories, American Society of Testing and Materials, and other code authorities.

7. HAZARDOUS MATERIAL/ENVIRONMENTAL VENDOR(S)

Vendors are expected to furnish all necessary field equipment, survey equipment, and other supporting equipment and consumables and possess a strong ability to provide any or all services necessary to provide a diverse professional expertise in, but not limited to, any or all services as applicable to:

- Consult with authorized employees, agents and representatives of the County and other agencies having jurisdiction relative to the geotechnical/materials testing and inspection of the project.
- Attend meetings as scheduled by the County for the purpose of obtaining data pertaining to the project.
- Provide asbestos, mold and/or lead testing as necessary to categorize the existence and amount prior to construction, remodel or demolition projects. Prepare and submit results and recommendations immediately upon completion of testing.
- Prepare Procedure 5 documentation for abatement of asbestos to meet air quality requirements when necessary.
- Provide site inspection of abatement activities.

8. LABOR COMPLIANCE PROVIDER SERVICES

The Vendor or team of Vendors shall satisfy all legal and programmatic requirements associated with Labor Compliance Services, including oversight, filings, reports and other deliverables in accordance with the respective local, state and federal requirements. Though the following list is not all-inclusive, Vendor shall be responsible for the following Labor Compliance and Monitoring tasks:

- Audit Certified Payroll records and related documentation to assure compliance with prevailing wage laws. Monitor and audit contractor payroll to ensure compliance with labor wage requirements.
- Review invoices submitted by Contractor(s) to ensure that all proper documentation has been received.
- Identify potential labor compliance claim issues before they arise and investigate probable violations and complaints of underpayment. Conduct on-site investigative activities to resolve worker complaints and other identified prevailing wage violations.
- Verify the registration of apprentices with the U.S. Department of Labor, Employment and Training Administration, in the craft or trade being performed. All apprentices must be properly registered (or certified) in an apprenticeship program registered

with the Bureau of Apprenticeship and Training, or with a State Apprenticeship Program recognized by the Bureau.

- Confirm proof of payment from employer of training fund contributions.
- Conduct job site inspections and interview workers for labor compliance.
- Provide monthly reports on the status of the Contractors submission of payroll records, and recommend retention for delinquent and/or inadequate certified payroll records.
- Prepare or obtain necessary labor compliance documentation (i.e., current wage determinations, labor posters, agenda, forms, etc.) to be distributed at pre-bid meetings and/or job sites.
- Assist the County, Contractors, and Subcontractors with the completion of required labor compliance documentation.
- Provide monthly reports containing sufficient data and narrative content to enable evaluation of both progress and problems.
- Complying with all requirements made by the Director of Industrial Relation pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773, 1773.1, 1774, 1775, 1776, 1777, and 1777.5, and any other applicable local, state and federal regulations.

C. Contract Limits: The Vendor contract(s) will be on an on call basis not to exceed amount of:

Type of Service	Tentative Number of Vendors to be selected	Estimated Contract Amount
Architectural	6 - 8	\$250,000 per vendor per year not to exceed \$750,000 (\$100,000 max. per project)
Landscape Architectural	1 - 2	\$150,000 per vendor per year not to exceed \$450,000 (\$75,000 max. per project)
Civil Engineering	2 - 4	\$150,000 per vendor per year not to exceed \$450,000 (\$75,000 max. per project)
Structural Engineering	1 - 2	\$150,000 per vendor per year not to exceed \$450,000 (\$75,000 max. per project)
Mechanical/Electrical/Plumbing	3 - 5	\$150,000 per vendor per year not to exceed \$450,000 (\$75,000 max. per project)
Surveying	2 - 3	\$75,000 per vendor per year not to exceed \$225,000 (\$50,000 max. per project)
Cost Estimating/ Construction Management	2 - 4	\$150,000 per vendor per year not to exceed \$450,000 (\$75,000 max. per project)
Commissioning	3 - 4	\$150,000 per vendor per year not to exceed \$450,000 (\$75,000 max. per project)
Air Balancing	2 - 3	\$75,000 per vendor per year not to exceed \$225,000 (\$25,000 max. per project)
Geotechnical/Materials Testing/ Inspection	3 - 5	\$250,000 per vendor per year not to exceed \$750,000 (\$75,000 max. per project)
Environmental Consulting	2 - 3	\$75,000 per vendor per year

		not to exceed \$225,000 (\$75,000 max. per project)
Labor Compliance Provider	2 - 4	\$150,000 per vendor per year not to exceed \$450,000 (\$50,000 max. per project)

D. County Responsibilities:

The County shall make available to the Vendor all pertinent data that is in the County's possession in the condition it exists.

The County shall pay for publishing costs for advertisements of notices for public hearings or other similar items. The Vendor will pay for all draft and final report printing.

Proposal preparation and associated direct costs are the sole responsibility of the Vendor and will not be reimbursed by the County.

V. AGREEMENT REQUIREMENTS

It is the County's intent that the contractual relationship between the Proposer and the County shall be substantially as set forth in the attached sample Agreement (Attachment J). In developing the proposal, the Proposer should carefully review the sample Agreement and the contractual requirements listed in Section V and take into consideration the rights, obligations, and costs associated therewith. Any change in the sample Agreement or the contractual requirements in Section V, which the Vendor desires, must be specified in the proposal or the requested change will be deemed to have been waived.

A. General

1. Legality and Severability

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

2. Iran Contracting Act of 2010 (Applicable for all RFP/Bids of one million dollars (\$1,000,000) or more).

In accordance with Public Contract Code section 2204(a), the Vendor certifies that at the time the proposal is submitted, the Vendor signing the proposal is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 (<http://www.dgs.ca.gov/pd/Resources/PDLegislation.aspx>) 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.

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

3. Taxes

County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Vendor 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.

4. Representation of the County

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

5. 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 rights, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

6. Vendor Primary Contact

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

7. Change of Address

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

8. Subcontracting

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

9. Agreement Assignability

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

10. Agreement Modifications

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

11. Termination for Convenience

The County for its convenience may terminate this Agreement in whole or in part upon ten (10) calendar day's written notice. Such adjustment shall provide for payment to the Vendor for services rendered and expenses incurred prior to the effective date of termination. Upon receipt of termination notice Vendor shall promptly discontinue services unless the notice directs otherwise. Vendor 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.

12. 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 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.

13. Venue

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

14. Electronic Fund Transfer Program

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

15. Licenses, Permits and/or Certifications

Vendor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Vendor shall maintain these licenses, permits and/or certifications in effect for the duration of this Agreement. Vendor 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 Agreement.

16. Equal Employment Opportunity Program

Vendor agrees to comply with the provisions of the Equal Employment Opportunity Program of the County of San Bernardino and rules and regulations adopted pursuant thereto: Executive Order 11246, as amended by Executive Order 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other applicable Federal, State, and County laws, regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

17. Prevailing Wage Laws

By its execution of this Agreement, Vendor 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, Vendor agrees to fully comply with such Prevailing Wage Laws. Vendor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services/Scope of Work available to interested parties upon request, and shall post copies at the Vendor's principal place of business and at the project site. Vendor 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. Vendor 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.

18. Notification Regarding Performance

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 Vendor shall notify the County within one (1) working day, in writing and by telephone.

19. Conflict of Interest

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

20. Improper Consideration

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

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

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

21. Employment of Former County Officials

Vendor agrees to provide or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Vendor. 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 Vendor. 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.

22. Inaccuracies or Misrepresentations

If in the administration of an Agreement, the County determines that Vendor has made a material misstatement, misrepresentation, or omission that materially inaccurate information has been provided to the County during the RFP process, the Agreement may be immediately terminated. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

23. Ownership of Documents

All documents, data, products, graphics, computer programs, and reports prepared by the Vendor pursuant to this Agreement shall be considered property of the County upon payment for services (and product, if applicable). All such items shall be delivered to the County at the completion of work under this Agreement, subject to the requirements of Section V, Paragraph A, 9 (Termination for Convenience). Unless otherwise directed by the County, Vendor may retain copies of such items.

24. 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, systems, and any other materials or properties developed under this Agreement 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 Agreement shall acknowledge the County of San Bernardino as the funding agency and Vendor as the creator of the publication. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyright or patent right by Vendor 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 Agreement must be filed with the County prior to publication.

25. Invoices

Vendor shall provide County itemized monthly invoices, in arrears, for services performed under this Agreement within twenty (20) days of the end of the previous month.

26. Release of Information

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

27. Section Not Used

28. Damage to County Property, Facilities, Buildings or Grounds

The Vendor 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 Vendor or its employees or agents of the Vendor. Such repairs shall be made immediately after Vendor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

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

29. Air, Water Pollution Control, Safety and Health

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

30. Drug and Alcohol-Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Agreement, the Vendor agrees that the Vendor and the Vendor'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 Vendor or Vendor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Vendor 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 Vendor has with the County, if the Vendor or Vendor's employees are determined by the County not to be in compliance with above.

31. Disclosure of Criminal and Civil Proceedings

The County reserves the right to request the information described herein from the Vendor selected for Agreement award. Failure to provide the information may result in a disqualification from the selection process and no award of Agreement to the Vendor. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The selected Vendor also may be requested to provide information to clarify initial responses. Negative information provided or discovered may result in disqualification from the selection process and no award of Agreement.

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

In addition, the selected Vendor may also be asked to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the

response is affirmative, the Vendor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

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

32. Artwork, Proofs and/or Negatives

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

33. Environmental Requirements

In accordance with County Policy 11-10, 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 Vendors to use recycled paper for proposals and for any printed or photocopied material created as a result of an Agreement with the County. The policy also requires Vendors 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 (AB939), Vendor must be able to annually report the County's environmentally preferable purchases using Attachment I. Service providers are asked to report on environmentally preferable goods and materials used in the provision of their service to the County.

34. Employment Discrimination

During the term of the Contract, Vendor shall not willfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, gender, marital status, age, political affiliation, disability or sexual orientation. Vendor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 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.

35. Debarment and Suspension

The Vendor 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 as required by Executive Order 12549.

36. Records

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

All records relating to the Vendor's personnel, Vendors, subcontractors, Services/Scope of Work, and expenses pertaining to this Contract shall be kept in a generally acceptable

accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

**37. American-Recovery and Reinvestment Act Funding (ARRA)
Use of ARRA Funds and Requirements**

This Agreement may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the construction, alteration, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three limited circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or (iii) Applying the domestic preference would be inconsistent with the public interest. This is referred to as the "Buy American" requirement. Request for a waiver must be made to the County for an appropriate determination.

Section 1606 of ARRA requires that laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 31). This is referred to as the "wage rate" requirement.

The above described provisions constitute notice under ARRA of the Buy American and wage rate requirements. Vendor must contact the County contact if it has any questions regarding the applicability or implementation of the ARRA Buy American and wage rate requirements. Vendor will also be required to provide detailed information regarding compliance with the Buy American requirements, expenditure of funds and wages paid to employees so that the County may fulfill any reporting requirements it has under ARRA. The information may be required as frequently as monthly or quarterly. Vendor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Agreement.

Vendor may also be required to register in the Central Contractor Registration (CCR) database at <http://www.ccr.gov> and may be required to have its subcontractors also register in the same database. Vendor must contact the County with any questions regarding registration requirements.

Schedule of Expenditure of Federal Awards

In addition to the requirements described in "Use of ARRA Funds and Requirements," proper accounting and reporting of ARRA expenditures in single audits is required. Vendor agrees to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by the Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the

Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512 (c).

In addition, Vendor agrees to separately identify to each subcontractor and document at the time of subcontract and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

Vendor may be required to provide detailed information regarding expenditures so that the County may fulfill any reporting requirements under ARRA described in this section. The information may be required as frequently as monthly or quarterly. Vendor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Agreement.

Whistleblower Protection

Vendor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-Federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of an Agreement relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to the implementation or use of recovery funds; or (5) a violation of law, rule, or regulation related to an agency Agreement (including the competition for or negotiation of an Agreement) awarded or issued relating to ARRA funds.

Vendor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Division A, Title XV of the ARRA.

B. Indemnification and Insurance Requirements

1. Indemnification

For "design professional services" as defined in Civil Code section 2782.8, the following indemnification paragraph applies: **"Vendor 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 Vendor services, the following indemnification paragraph applies: "The Vendor 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 Agreement 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 indemnities. The Vendor'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."

2. Basic Insurance Requirements Additional Insured

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional insured with respect to

liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

Waiver of Subrogation Rights

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

Severability of Interests

The Vendor 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 Vendor and the County or between the County and any other insured or additional insured under the policy.

Proof of Coverage

The Vendor shall furnish certificates of insurance to the County Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department(s) and Vendor shall maintain such insurance from the time Vendor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, the Vendor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and all 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 Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Vendor or County payments to the Vendor(s)/Applicant(s) will be reduced to pay for County purchased insurance.

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 interest of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Vendor 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.

Insurance Specifications

The Vendor agrees to provide insurance set forth in accordance with the requirements herein. If the Vendor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Vendor 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 Vendor shall secure and maintain throughout the Agreement 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 \$250,000 limits, covering all persons including volunteers providing services on behalf of the Vendor and all risks to such persons under this Agreement.

If Vendor 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 County's Director of Risk Management.

With respect to Vendors 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

The Vendor shall carry General Liability Insurance covering all operations performed by or on behalf of the Vendor 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 the Vendor is transporting one or more non-employee passengers in performance of Agreement 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 Vendor 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

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 Agreement work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after Agreement completion.

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.

C. Right to Monitor and Audit

1. Right to Monitor

The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Vendor in the delivery of services provided under this Agreement. Vendor shall give full cooperation, in any auditing or monitoring conducted. Vendor 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 Vendor's performance of its duties or other terms of this Agreement are deficient in any manner, County will notify Vendor of such deficiency in writing or orally, provided written confirmation is given five (5) days thereafter. Vendor 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 offset the cost thereof from any amounts due the Vendor 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.

VI. PROPOSAL SUBMISSION

A. General

1. All interested and qualified Proposers are invited to submit a proposal for consideration. Submission of a proposal indicates that the Proposer has read and understands the entire RFP, to include all appendixes, attachments, exhibits, schedules, and addendum (as applicable) and all concerns regarding the RFP have been satisfied.
2. Vendors must demonstrate professional capability to perform the tasks assigned, and at a minimum, must have professional and business licenses required by the State of California and a demonstrable expertise in one or more of the disciplines necessary to accomplish the services.
3. Vendors must specify which service from the list established in Section IV B they are submitting a proposal. **A Vendor shall submit a separate proposal for each category of contract should the Vendor wish to be considered for multiple types of services.**
4. Proposals must be submitted in the format described below. Proposals are to be prepared in such a way as to provide a straightforward, concise description of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are neither necessary nor desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
5. Proposals must be completed in all respects as required in this section. A proposal may not be considered if it is conditional or incomplete.
6. All information submitted in the proposal or in response to request for additional information is subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. and the following. Proposals may contain

financial or other data that constitutes a trade secret. To protect such data from disclosure, Proposer should specifically identify the pages that contain confidential information by properly marking the applicable pages and inserting the following notice on the front of the response:

NOTICE

The data on pages_____ of this proposal response, identified by an asterisk (*) or marked along the margin with a vertical line, contains information which are trade secrets. We request that such data be used only for the evaluation of our response, but understand that disclosure will be limited to the extent that the County of San Bernardino determines is proper under federal, state, and local law.

The proprietary or confidential data shall be readily separable from the Proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

The County assumes no responsibility for disclosure or use of unmarked data for any purpose. In the event disclosure of properly marked data is requested, the Proposer will be advised of the request and may expeditiously submit to the County a detailed statement indicating the reasons it has for believing that the information is exempt from disclosure under federal, state, and local law. The County will exercise care in applying this confidentiality standard but will not be held liable for any damage or injury, which may result from any disclosure that may occur.

B. Proposal Presentation

1. All proposals must be submitted on 8 ½ x 11 paper, neatly typed, double-sided on recycled paper, with normal (1-inch) margins and single-spaced. Typeface must be at least 11 characters per inch. Each page, including attachments, must be clearly and consecutively numbered at the bottom center of each page. Proposals shall be no more than twenty (20) pages excluding cover page (Attachment A) and Table of Contents and other required attachments at the end of this proposal - **submittals containing more than 20 pages will not be considered.**
2. One (1) original, three (3) copies, and one CD (containing PDF file of the original) of the complete proposal must be received by the deadline for receipt of proposal specified in Section I, Paragraph H (Proposal Timeline). The original, copies and CD must be in a sealed envelope or container stating on the outside: Proposer Name, Address, Telephone Number, RFP number, RFP Title, and Proposal due date. It is the Proposer's responsibility to ensure that its proposal arrives on or before its specified time. **PROPOSER MUST ALSO COMPLETE THE ATTACHED FEE PROPOSAL SHEET (ATTACHMENT F), AND ENCLOSE IT IN A SEPARATE SEALED ENVELOPE TO BE SUBMITTED AS PART OF THE PROPOSAL.**
3. Hand carried proposals may be delivered to the address identified in Section I, Paragraph F, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays observed by the County. Proposers are responsible for informing any commercial delivery service, if used, of all delivery requirements, and for ensuring that the address information appears on the outer wrapper or envelope used by such service.

The County reserves the right to accept or reject any or all proposals if the County determines it is in the best interest of the County to do so.

C. Proposal Format

Proposal should be straightforward, concise and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. Proposals, which appear unrealistic in the terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected. Response to this RFP must be in the form of a proposal package, which must be submitted in the following form adhering to the following order and content of sections:

1. **Cover Page** – Attachment A is to be used as the cover page for the proposal. This form must be fully completed and signed by an authorized individual or officer of the firm who has the power to bind the firm contractually.
2. **Table of Contents** – All pages of the proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the Table of Contents.
3. **Statement of Experience**
Include the following in this section of the proposal:
 - a. Business name of the prospective Proposer and legal entity such as corporation, partnership, etc.
 - b. Number of years the prospective Proposer has been in business under the present business name, as well as related prior business names.
 - c. A brief summary of the relevant qualifications and experience in providing the services solicited in this RFP for public entities or major construction projects, including a brief description of similar projects on which the Proposer and its team members have performed services within the past five (5) years.
4. **Minimum Proposer Requirements**
Complete, initial, and sign Attachment B.
5. **Exceptions to RFP**
Complete Attachment C.
6. **Statement of Certification** (Attachment D) - Include the following in this section of the Proposal:
 - a. A statement that the offer made in the proposal is firm and binding for 180 days from the date the proposal is opened and recorded.
 - b. A statement that all aspects of the proposal, including the fee proposal, have been determined independently, without consultation with any other prospective Proposer or competitor for the purpose of restricting competition.
 - c. A statement that all declarations in the proposal and attachments are true and that this shall constitute a warranty, the falsity of which will entitle the County to pursue any remedy by law.
 - d. A statement that the Proposer agrees that all aspects of the RFP and the proposal submitted shall be binding if the proposal is selected and an Agreement awarded.
 - e. A statement that the Proposer agrees to provide the County with any other information the County determines is necessary for an accurate determination of the Proposer's ability to perform the services as proposed; and
 - f. A statement that the prospective Proposer, if selected will comply with all applicable rules, laws and regulations.

7. **References**

Provide a list of references with which the 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 on Attachment E. Please include a contact person who the County can call in order to verify the quality of services your organization/firm has provided.

8. **Proposal Description**

Provide a detailed description of the proposal being made.

- a. The proposal should address, but is not limited to, all terms in Section IV.
- b. The proposal should include the following:
 - i. A brief synopsis of the Proposer's understanding of the County's needs and how the Proposer plans to meet these.
 - ii. A concise statement of the services (and product, if applicable) proposed.
 - iii. An explanation of any assumptions and/or constraints.

9. **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.
- c. Registered/Licensed individual(s) responsible to perform and/or oversee and "stamp" the work.

Upon award and during the contract period, if the Vendor chooses to assign different personnel to the project, the Vendor must submit their names and qualifications including information listed above to the Department for approval before they begin work.

10. **Work Plan and Schedule**

Proposer shall provide examples of how the Vendor provided services timely and per anticipated schedules.

11. **Statement of Qualifications**

In order to demonstrate professional capability to perform the tasks assigned with the expertise in one or more of the disciplines necessary to accomplish the services, include the following in this section of the proposal:

- a. Number of years the prospective Proposer has been in business under the present business name, as well as related prior business names.
- b. Statement that the Proposer does not have any commitments or potential commitments which may impact the Proposer's ability to perform this Agreement.
- c. Abbreviated resumes of key Project team members indicating applicable work experience.
- 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.

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

Provide copies of all licenses, permits and/or certifications as required under Section V, Paragraph A.15.

13. **Cost**

Complete proposed pricing on Attachment F that includes direct labor, overhead and fee hourly billing rates and enclose it in a separate sealed envelope to be submitted as part of the proposal.

14. Employment of Former County Officials

Provide information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent your business. The information provided must include 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 and should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of your business. For purposes of this section, "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.

Failure to provide this information may result in the response to the request for proposal being deemed non-responsive.

15. Insurance

Submit evidence of ability to insure as stated in Section V, Paragraph B, Indemnification and Insurance Requirements.

VII. PROPOSAL EVALUATION AND SELECTION

A. Initial Review

All proposals will be initially evaluated by Department staff to determine if they meet the following minimum requirements:

1. The proposal must be complete, in the required format, and be in compliance with all the requirements of this RFP.
2. Prospective Proposers must meet the requirements as stated in the Minimum Proposer requirements as outlined in Section I, Paragraph C. Failure to meet all of these requirements will result in a rejected proposal. No proposal shall be rejected, however, if it contains a minor irregularity, defect or variation and if the irregularity, defect or variation is considered by the County to be immaterial or inconsequential, the County may choose to accept the proposal. 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.

B. Evaluation Committee

The County will establish an Evaluation Committee with responsibility for reviewing all proposals that meet the Minimum Proposer requirements outlined in Section I, Paragraph C and conducting the reviews, evaluations, and scoring described in Section VII. In addition, the Evaluation Committee, may, in its sole discretion, utilize outside experts and financial consulting or reporting services to assist in the evaluation process.

C. Evaluation of Proposals

Proposals meeting the requirements of Section VII, Paragraph A, will be evaluated by the Evaluation Committee as follows:

1. **Qualifications Evaluation** – The Evaluation Committee will conduct an evaluation of all proposals under the criteria set forth in Section VII, Paragraph D. The Evaluation Committee will rank all proposals and reject any proposals that do not meet the minimum qualifications as stated in this RFP.
2. **Fee Proposals** – Following a ranking of the proposals, the Evaluation Committee will open all fee proposals. The Evaluation 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(s).

Recommendation – Following the completion of evaluations by the Evaluation Committee and the scoring of Proposals in accordance with this Section, the Evaluation Committee will make a recommendation for award of a Proposer Agreement(s) and Department Staff will enter into negotiations with the Proposer(s). The final decision to award any Agreement(s) as a result of this RFP process rests solely with the County of San Bernardino Board of Supervisors.

D. Evaluation Criteria

1. 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.
2. 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 County will use the criteria listed in Exhibit G, Vendor Selection Worksheet in its evaluation and comparison of proposals submitted.
3. The Evaluation Committee may contact any of the Proposer's client 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.
4. 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.

E. Negotiations

1. Following the evaluation process, the most qualified firms will be selected and negotiations will be held with those Vendors. If negotiations are not successful, the County will so notify the firm, and commence negotiations with the next rated firm, and so on.
2. After negotiations are complete, the Agreement(s) will be presented to the County of San Bernardino Board of Supervisors for approval. In certain situations, the Board may authorize the Chief Executive Officer (CEO) and/or the Purchasing Agent to award Agreements. Once the Board has taken action, the selected Proposer(s) will be notified in writing.

F. Award

Agreement(s) will be awarded based on a competitive selection of proposals received. The contents of the proposal of the successful Proposer(s) will become contractual obligations and failure to accept these obligations in a contractual Agreement may result in cancellation of the award.

G. Disputes Relating to Proposal Process and Award

In the event a dispute arises concerning the proposal process prior to the award of the Agreement(s), 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 ten (10) calendar days of the date of the recommended award or denial of award letters.

An appeal of a denial of award 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 RFP 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:

Laurie Rozko, Director
County of San Bernardino
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 tentatively scheduled date for awarding the Agreement. The decision of the County Purchasing Agent shall be deemed final.

ATTACHMENT A – COVER PAGE

TYPE OF SERVICE CONTRACT (SEPARATE PROPOSAL REQUIRED FOR EACH DISCIPLINE)

PROPOSER'S NAME (*name of firm, entity, or organization*):

FEDERAL EMPLOYER IDENTIFICATION NUMBER:

NAME AND TITLE OF PROPOSER'S CONTACT PERSON:

MAILING ADDRESS:

Street Address:

City, State, Zip:

TELEPHONE NUMBER:

FAX NUMBER:

EMAIL ADDRESS:

PROPOSER'S ORGANIZATIONAL STRUCTURE

☐ Corporation ☐ Partnership ☐ Proprietorship ☐ Joint Venture

☐ Other (explain):

If Corporation, Date Incorporated: State Incorporated:

States Registered in as foreign corporation:

PROPOSER'S SERVICES OR BUSINESS ACTIVITIES OTHER THAN WHAT THIS RFP REQUESTS:

PROPOSER'S AUTHORIZED SIGNATURE:

The undersigned hereby certifies that this proposal is submitted in response to this solicitation.

SIGNED:

DATE:

PRINT NAME:

TITLE:

ATTACHMENT B – MINIMUM PROPOSER REQUIREMENTS

The following requirements apply to all prospective Proposers.

	Requirement	Agree (initial)	Agree with qualification (initial and attach explanation)
1.	Have no record of unsatisfactory performance. Proposers who are or have been seriously deficient in current or recent Agreement performance, in the absence of circumstances properly beyond the control of the Proposer, shall be presumed to be unable to meet this requirement.		
2.	Have the ability to maintain adequate files and records and meet statistical reporting requirements.		
3.	Have the administrative and fiscal capability to provide and manage the proposed services and to ensure an adequate audit trail.		
4.	Have a minimum of three (3) continuous years of experience providing this type of service.		
5.	Provide references of a minimum of three (3) other customers, one (1) of which should be a government agency, involving the Proposer's delivery of services that demonstrate the ability of the Proposer to provide the design, consulting and testing services as outlined in this RFP. All references must have names, titles and current phone numbers.		
6.	Meet other presentation and participation requirements listed in this RFP.		

ATTACHMENT C – EXCEPTIONS TO RFP

PROPOSER NAME _____

ADDRESS _____

TELEPHONE# () _____ FAX # () _____

EMAIL _____

I have reviewed the RFP, General Agreement Terms and Sample Agreement in their entirety and have the following exceptions: (Please identify and list your exceptions by indicating RFP, the Section or Paragraph number, and Page number, as applicable. Be specific about your objections to content, language, or omissions. Add as many pages as required.)

Name of Authorized Representative _____

Signature of Authorized Representative _____

Date _____

ATTACHMENT D – STATEMENT OF CERTIFICATION

The following statements are incorporated in our response to the County of San Bernardino.

	Statement	Agree (initial)	Agree with qualification (initial and attach explanation)
1.	The offer made in the proposal is firm and binding for 180 days from the date the proposal is opened and recorded.		
2.	All aspects of the proposal, including the fee proposal, have been determined independently, without consultation with any other prospective Proposer or competitor for the purpose of restricting competition.		
3.	All declarations in the proposal and attachments are true and that this shall constitute a warranty, the falsity of which will entitle the County to pursue any remedy by law.		
4.	Proposer agrees that all aspects of the RFP and the proposal submitted shall be binding if the proposal is selected and an Agreement awarded.		
5.	Proposer agrees to provide the County with any other information the County determines is necessary for an accurate determination of the Proposer's ability to perform the services as proposed; and		
6.	Proposer, if selected will comply with all applicable rules, laws and regulations.		

ATTACHMENT E – REFERENCES

Name of Agency	Contact Name/Address	Phone Number	Dates services provided (from/through*)

Provide a minimum of three (3) customer references you have contracted with, providing the same service as requested in this RFP.

*Enter “**Present**” if still providing the services (Example: 10/08/03/present).

ATTACHMENT F – FEE PROPOSAL SHEET(S)

Provide complete breakdown of hourly rates (provide in a separate sealed envelope for each discipline you are proposing on).

Signature & Title

(Firm)

ATTACHMENT G - VENDOR SELECTION WORKSHEET

Project Name: ON-CALL SERVICES

Discipline: _____

Vendor: _____

CRITERIA	Available Points	Actual Points	Comments
Firm Analysis			
1. Professional reputation of firm	5		
2. Depth and breadth of experience relative to this RFP	5		
3. Adequacy of firm's support staff.	5		
Firms Experience			
4. Experience with similar projects	5		
5. Recent applicable experience	5		
6. Public sector experience	5		
7. Satisfaction of current/past clients	5		
Personnel Analysis			
8. Experience with Public Entities, e.g. Environmental Health, Planning and Building & Safety	5		
9. Capability of assigned staff	5		
Responsiveness to RFP			
10. Total Proposal Completeness	5		
TOTAL	50		

Ranking

ATTACHMENT H – PROPOSAL CHECKLIST

Use this checklist to ensure that all items requested have been included.

Items Completed		Page (s)
1.	Attachment A – Cover Page	
2.	Attachment B – Minimum Proposer Requirements	
3.	Attachment C – Exceptions to RFP	
4.	Attachment D – Statement of Certification	
5.	Attachment E – References	
6.	Attachment F – Fee Proposal Sheet (in separate sealed envelope)	
7.	Attachment G – Vendor Selection Worksheet	
8.	Attachment H – Proposal Checklist	
9.	Attachment I - Licenses/Certifications	
10.	Attachment J – Sample Contracts	

ATTACHMENT I - LICENSES/CERTIFICATIONS

ATTACHMENT J - SAMPLE AGREEMENT

FOR COUNTY USE ONLY



County of San Bernardino

F A S

STANDARD CONTRACT

☐ New ☐ Change ☐ Cancel	Vendor Code	SC	Dept.	Contract Number	
County Department		Dept.	Orgn.	Contractor's License No.	
County Department Contract Representative			Telephone () -	Total Contract Amount \$	
Contract Type ☐ Revenue ☐ Encumbered ☐ Unencumbered ☐ Other:					
If not encumbered or revenue contract type, provide reason:					
Commodity Code		Contract Start Date	Contract End Date	Original Amount \$	Amendment Amount \$
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No. Amount \$
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No. Amount \$
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No. Amount \$
Project Name		FY	Estimated Amount	Payment Total by Fiscal Year	I/D

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and

Name

hereinafter called

Vendor

Address

Telephone

Federal ID No. or Social Security No.

IT IS HEREBY AGREED AS FOLLOWS:

ARTICLE 1. THE PROJECT

1.1 Scope of Work

County does hereby engage Vendor to perform for the County of San Bernardino under the terms and conditions in this Contract all Vendor services relative to _____ per the County's Request for Proposal dated _____, and Appendix A, Vendor Scope of Work (the Project). The Vendor Scope of Work shall be incorporated into this Contract in its entirety. (See

Appendix A, Vendor Scope of Work.) Vendor shall not perform any services not specifically provided for in this Contract, including Appendix A, Vendor Scope of Work, without prior approval of County.

1.2 Total Contract Amount

The total Contract amount as determined by County shall not exceed _____ per project and _____ per year with a total aggregate not-to-exceed amount of _____ through the life of this Contract, subject to any amendments.

1.3 Schedule of Services

The Vendor shall perform services customarily and typically rendered in the field of _____ to affect all necessary and requested tasks as assigned, including but not limited to, those services as outlined in Section 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 Vendor's Fees

- a. County agrees to pay Vendor, based on the fee schedule submitted with their proposal, made a part of this Contract as Appendix B, Fee Schedule, and the actual work performed as requested and approved by the County through a County issued purchase order. The total contract amount shall not exceed _____ per project and _____ per year with a total aggregate not-to-exceed amount of _____ for the term of this contract. Vendor shall be paid based on Article 4 – Compensation of this Contract and the attached fee schedule (Appendix B, Fee Schedule).
- b. If the County terminates this Contract at any time prior to the completion of any phase, the Adjusted Vendor's fee will be determined based on the actual work completed in that phase. If Vendor 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 Vendor 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 cost approved by the County at the time the completed drawings, details, specifications
- 2.3 Architecture & Engineering Department (or Department) - The Department of the County authorized by the Board to administer this Contract.
- 2.4 Board - Board of Supervisors of the County of San Bernardino.

- 2.5 Construction Budget - Funding in place, for the complete construction of the Project, as established by the County.
- 2.6 Vendor - Entity hired by County, based on competence and related experience, to perform work described herein.
- 2.7 Construction Contract – A contract prepared by the County and approved by the Board with the lowest responsive bidder to perform the actual construction of the Project.
- 2.8 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.
- 2.9 Construction Documents – All services relative to drawings, specifications, estimates, and other data more fully described in Article 3 or an individual purchase/task order.
- 2.10 County - The County of San Bernardino, and its authorized representatives.
- 2.11 Director – Director of the Architecture & Engineering Department, County of San Bernardino.
- 2.12 Project – The project includes all necessary design, construction, testing, inspection and management necessary to complete the project.
- 2.13 Project Construction Cost Estimate - The Vendor'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.
- 2.14 Project Vendor - Person, designated by Vendor and approved by County, responsible for Vendor's work.
- 2.15 Project Manager - The County Employee, designated by the Director, responsible for the administration of this Contract.

ARTICLE 3. BASIC SERVICES OF VENDOR

See Appendix A – Vendor Scope of Work

ARTICLE 4. COMPENSATION

- 4.1 The County shall compensate the Vendor 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 Vendor's fee schedule (Appendix B, Fee Schedule) 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. Invoices shall be submitted once monthly on on-going projects or upon satisfactory completion of a work phases.
- 4.2 Vendor shall include in his 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 as shown in Appendix B, Fee Schedule).

- 4.3 Maximum compensation under the Contract shall not exceed _____ per project and _____ per year with a total aggregate not-to-exceed amount of _____ for the term of the Contract.
- 4.4 **Vendor acknowledges that this Contract is for on-call services and that the Vendor serves at the pleasure of the County. Therefore, the Vendor is not guaranteed or implied to receive any minimum amount of work or compensation as a result of this Contract.**
- 4.5 Rent, utilities, word processing, in-house courier, local telephone charges, office supplies, support staff, local area travel, meal expenses, time spent to provide necessary information for County audits or billing inquiries, and all other expense items related to the provision of Vendor's services are not included in the fee negotiated per Section 4.1 and will not be reimbursed by County.

ARTICLE 5. - PAYMENT BY ELECTRONIC FUND TRANSFER

Vendor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Vendor's designated checking or other bank account. Vendor 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 Vendor's personnel, Vendors, 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 Vendor for not less than three (3) years after the Notice of Completion is filed.

Vendor 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.

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 also 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 shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records per the preceding requirements shall be considered grounds for withholding of payments for billings submitted and for termination of the Contract.

ARTICLE 7. COUNTY RESPONSIBILITIES

The County is responsible to the extent reasonable possible to provide 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 data, 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 Vendor 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 Vendor in writing of County procedures required and name the County representative authorized to act in its behalf. County shall review documents submitted by the Vendor 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 Vendor. Vendor is responsible to determine the accuracy of all documents used and incorporated into its work.

ARTICLE 8. DOCUMENTS

All plans and specifications and other documents prepared by Vendor shall become and remain the property of County. Vendor and Owner shall retain reproducible copies of all documents for not less than three (3) years after the Notice of Completion is filed.

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 Vendor. The Director of the County Architecture and Engineering Department is authorized to exercise the County's rights with respect to any termination or suspension of this Contract. The Vendor 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, Vendor 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 Vendor 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 Vendor 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 Vendor.
- 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 Vendor who shall make them available to County.

ARTICLE 10. INDEMNIFICATION

The Vendor 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 Vendor'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 Vendor agrees to provide insurance set forth in accordance with the requirements herein. If the Vendor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Vendor 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 Vendor 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 Vendor and all risks to such persons under this contract.

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

With respect to Vendors 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 Vendor shall carry General Liability Insurance covering all operations performed by or on behalf of the Vendor 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 Vendor 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 Vendor 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:***
- Environmental Liability Insurance*** with a combined single limit of not less than five million (\$5,000,000) per claim or occurrence and a separate aggregate for the contract project. The required additional insured endorsement shall protect the County without any restrictions.
 - If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

- 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 Vendor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Vendor and Vendor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Vendor 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 Vendor 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 Vendor and the County or between the County and any other insured or additional insured under the policy.
- 11.6 **Proof of Coverage** - The Vendor 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 Vendor shall maintain such insurance from the time Vendor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Vendor 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 Vendor or County payments to the Vendor 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. Vendor 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 Vendor 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 Vendor without the prior written consent and approval of County.
- 12.3 Death or Incapacity: If the Vendor 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 Vendor 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 Vendor 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 Vendor.

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.

Vendor's address: As shown on page one of this Contract.

County's address: Architecture & Engineering 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 Vendor 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 Vendor under this Contract shall be retained locally and made available upon the County's reasonable advance written notice to Vendor or turned over to County. Vendor shall comply with federal and/or state requirements as to work hours, overtime compensation, nondiscrimination, and contingent fees.

ARTICLE 15. NONDISCRIMINATION

In connection with the performance of Vendor pursuant to this Contract, Vendor will not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, marital status, sexual orientation, age, political affiliation, disability or national origin. Vendor will take action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, ancestry, gender, marital status, sexual orientation, age, political affiliation, disability or national origin. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer; recruitment or recruitment advertisement; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

ARTICLE 16. WAIVER

Vendor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by Vendor, and County may withhold any payments to Vendor for the purpose of set-off until such time as the exact amount of damages due County from Vendor 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 Architecture & Engineering Department shall represent the County in all matters pertaining to the services to be rendered under this Contract including termination or assignment of this contract and shall be the final authority in all matters pertaining to the Project.

ARTICLE 18. ERRORS, OMISSIONS AND/OR CONFLICTS

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

ARTICLE 19. INDEPENDENT CONTRACTOR

The parties hereto, in the performance of this Contract, will be acting in their individual capacities and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Neither party shall have any right, power or authority to create any obligation, express or implied, on behalf of the other except as defined in this Agreement or as mutually agreed to under the terms of this Contract.

ARTICLE 20. FORMER COUNTY OFFICIALS

Vendor agrees to provide or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Vendor. 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 Vendor. 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. INACCURACIES OR MISREPRESENTATIONS

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

Vendor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Vendor shall make a reasonable effort to prevent employees, Vendors, 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, the County may disallow any increase in costs associated with the conflict of interest situation, and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Vendor'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

Vendor 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.

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

ARTICLE 25. PREVAILING WAGE LAWS

By its execution of this Agreement, Vendor 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 is 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, Vendor agrees to fully comply with such Prevailing Wage Laws. Vendor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services/Scope of Work available to interested parties upon request, and shall post copies at the Vendor's principal place of business and at the Project site. Vendor 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. Vendor 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 or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against the County, including such costs and attorneys' fees payable under Article 10, INDEMNIFICATION.

ARTICLE 27. LAW

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

ARTICLE 28. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Use of ARRA Funds and Requirements

This Contract may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the construction, alteration, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three limited circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or (iii) Applying the domestic preference would be inconsistent with the public interest. This is referred to as the "Buy American" requirement. Request for a waiver must be made to the County for an appropriate determination.

Section 1606 of ARRA requires that laborers and mechanics employed by Vendors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 31). This is referred to as the "wage rate" requirement.

The above described provisions constitute notice under ARRA of the Buy American and wage rate requirements. Vendor must contact the County contact if it has any questions regarding the applicability or implementation of the ARRA Buy American and wage rate requirements. Vendor will also be required to provide detailed information regarding compliance with the Buy American requirements, expenditure of funds and wages paid to employees so that the County may fulfill any reporting requirements it has under ARRA. The information may be required as frequently as monthly or quarterly. Vendor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

Vendor may also be required to register in the Central Vendor Registration (CCR) database at <http://www.ccr.gov> and may be required to have its subcontractors also register in the same database. Vendor must contact the County with any questions regarding registration requirements.

Schedule of Expenditure of Federal Awards

In addition to the requirements described in "Use of ARRA Funds and Requirements," proper accounting and reporting of ARRA expenditures in single audits is required. Vendor agrees to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by the Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512 (c).

In addition, Vendor agrees to separately identify to each subcontractor and document at the time of subcontract and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

Vendor may be required to provide detailed information regarding expenditures so that the County may fulfill any reporting requirements under ARRA described in this section. The information may be required as frequently as monthly or quarterly. Vendor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

Whistleblower Protection

Vendor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-Federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to the implementation or use of recovery funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.

Vendor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Division A, Title XV of the ARRA.

ARTICLE 29. MISCELLANEOUS PROVISIONS

- 29.1 Vendor will designate an individual to serve as the primary point of contact for the Contract. Vendor shall notify County when the primary contact will be unavailable/out of the office for one (1) or more workdays. Vendor shall not change the primary contact without written acknowledgement to the County. Vendor or designee must respond to the County inquiries within two (2) County business days.
- 29.2 Vendor 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.
- 29.3 Vendor agrees not to enter into any subcontracting agreements for work contemplated under the Contract without first obtaining written approval from the Director of the Architecture and Engineering Department. Any subcontracting shall be subject to the same contract provisions as Vendor. Vendor shall be fully responsible for the performance and payments of any subcontractor.

- 29.4 Vendor 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, Vendor 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.
- 29.5 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.
- 29.6 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.
- 29.7 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.
- 29.8 Vendor will ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County and municipal laws, ordinances, rules and regulations. The Vendor shall maintain these licenses, permits and/or certifications in effect for the duration of this Agreement. Vendor 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.
- 29.9 Vendor, its agents and employees shall be bound by and comply with all applicable provisions of the Labor Code and such federal, state and local laws which affect the conduct of the work.
- 29.10 In accordance with County Policy 11-10, 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 Vendors to use recycled paper for proposals and for any printed or photocopied material created as a result of a contract with the County. The policy also requires Vendors 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 (AB939), Vendor must be able to annually report the County's environmentally preferable purchases using a County provided form. Service providers are asked to report on environmentally preferable goods and materials used in the provision of their service to the County.

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

- 29.12 In the event of a problem or potential problem that will impact the quality or quantity of work or the level of performance under this Contract, notification will be made within one working day, in writing and by telephone to the County.
- 29.13 Vendor 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.
- 29.14 Vendor shall comply with all applicable laws, statutes, ordinances, administrative orders, rules or regulations relating to its duties, obligations and performance under the terms of the Contract.
- 29.15 Vendor 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.
- 29.16 The Director of the Architecture and Engineering 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 Vendor including reduction in the scope of work and reduction in the corresponding cost. The County of San Bernardino Board of Supervisors must approve all amendments to this Contract.
- 29.17 Time is of the essence in performance of this Contract and of each of its provisions.
- 29.18 If any provision of this Contract shall be declared illegal, void, voidable, or unenforceable, the other provisions shall not be affected but shall remain in full force and effect unless the resulting interpretation of the Contract shall materially alter the obligations of either party so as to work an unfair hardship on such party (the "Burdened Party"), in which case the Burdened Party shall have the option to request a re-negotiation of the Contract and/or to terminate this Contract upon at least ninety (90) days advance written notice to the other party. By way of clarification of, and not as a change to, the original intent of the parties, no such termination shall be deemed a termination for the convenience of the County.
- 29.19 Vendor 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. Vendor 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.
- 29.20 County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Vendor 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.
- 29.21 In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Agreement, the Vendor agrees that the Vendor and the Vendor'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.

[illegible]

ARTICLE 31. CONCLUSION

31.1 This Contract, consisting of ____ pages, Appendix A and B, is the full and complete document describing services to be rendered by Vendor to County including all covenants, conditions and benefits.

31.2 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.

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

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COUNTY OF SAN BERNARDINO

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

► _____
Josie Gonzales, Chair, Board of Supervisors

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

Dated: _____

Name _____
(Print or type name of person signing contract)

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

Title _____
(Print or Type)

Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino

Dated: _____

By _____
Deputy

Address _____

Approved as to Legal Form

Reviewed by Contract Compliance

Presented to BOS for Signature

► _____
County Counsel

► _____

► _____
Department Head

Date _____

Date _____

Date _____

Appendix A, Vendor Scope of Work

Appendix B, Fee Schedule