

## AGREEMENT FOR SERVICES OF CONTRACTOR ON PAYROLL

**THIS AGREEMENT** (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY), and Callie Patton Kim (hereafter CONTRACTOR), wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

**WHEREAS**, COUNTY's Contractor on Payroll Policy ("COP Policy") defines a Contractor on Payroll as an at-will employee who: (1) is employed through a contract; (2) does not fill a regular, allocated position; and (3) does not meet the Internal Revenue Service (IRS) definition of an independent contractor; and

**WHEREAS**, COUNTY's COP Policy permits hiring a COP if: (1) there is a need for specialized work to be performed; (2) the work cannot be performed by an independent contractor; (3) there is a temporary funding source for the work; and (4) the work is sporadic and does not warrant a full or part-time regular position; and

**WHEREAS**, the Office of County Counsel has a need for legal work to be performed that meets the foregoing requirements, and COUNTY has met and conferred with the Civil Attorneys Association on this subject; and

**WHEREAS**, under Section 31000 of the California Government Code, COUNTY's Board of Supervisors may contract for legal services with persons specially trained, experienced, expert, and competent to perform those services; and

**WHEREAS**, CONTRACTOR represents that CONTRACTOR is specially trained, experienced, expert, and competent to perform the legal services required by COUNTY, and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **DESIGNATED REPRESENTATIVE.** Chief Assistant County Counsel Rachel Van Mullem, at telephone number (805) 568-2950, is COUNTY's authorized representative and will administer this Agreement on COUNTY's behalf. Callie Patton Kim, at telephone number (805) 448-4076 is CONTRACTOR's authorized representative. Changes in designated representatives shall be made only after advance written notice to the other party.
2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing by personal delivery, facsimile, email, or, with postage prepaid, first class or certified mail, or express courier service, as follows:

To COUNTY:                    Rachel Van Mullem  
Office of Santa Barbara County Counsel  
105 East Anapamu Street, #201  
Santa Barbara, CA 93101  
Fax (805) 568-2982  
Email rvanmull@co.santa-barbara.ca.us

To CONTRACTOR: Callie Patton Kim  
2426 Lord Baranof Drive  
Anchorage, Alaska 99517  
Email calliepatton@gmail.com

or at such other address or to such other person as the parties may from time to time designate in accordance with this section. If sent by first class mail, notices and consents under this section shall be deemed received five (5) days following their deposit in the U.S. mail. This section shall not be construed to alter the legal requirements for service of process.

3. **SCOPE OF SERVICES.** CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A, attached hereto and incorporated by reference.
4. **TERM.** CONTRACTOR shall commence performance on July 01, 2020, and shall end performance upon completion, but no later than June 30, 2021 unless otherwise directed by COUNTY or terminated earlier.
5. **COMPENSATION OF CONTRACTOR.** CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B, attached hereto and incorporated by reference. The “not-to-exceed” maximum payment amount shall not be exceeded without written amendment of this Agreement.
6. **CONTRACTOR ON PAYROLL STATUS.** CONTRACTOR understands and agrees that CONTRACTOR’s term of work is governed solely by this Agreement; that no right of tenure is created hereby; that CONTRACTOR does not and will not, by virtue of this Agreement, hold a position in any department or office of COUNTY; and that CONTRACTOR’s services to COUNTY under this Agreement are authorized pursuant to Government Code Section 31000. The employment created by this Agreement is at-will, and shall remain at-will unless and until the parties expressly state their intention to make it otherwise, in a writing signed by CONTRACTOR and a duly-authorized representative of COUNTY. CONTRACTOR warrants that CONTRACTOR is fully licensed to perform all work contemplated in this Agreement, and CONTRACTOR agrees to submit verification of licensure.
7. **BENEFITS.**
  - A. **Standard benefits:** COUNTY shall pay the following costs: employer’s share of either Social Security (aka FICA) or the Social Security Alternative Plan (aka SSAP); employer’s share of federal Medicare health insurance; County workers’ compensation insurance; State unemployment insurance; and travel expense reimbursement for mileage claims with prior written authorization.
  - B. **Paid leave:** CONTRACTOR shall receive paid leave as specified in Exhibit B or as otherwise required by law. Paid leave shall be taken at a time determined and agreed upon in advance between CONTRACTOR and COUNTY’s designated representative. Accumulated paid leave must be taken within the contract period, as paid leave cannot be accrued to subsequent agreements; unused paid leave will be lost upon expiration of the Agreement. Prorated unused paid leave will be paid out if the contract is terminated early by COUNTY. CONTRACTOR may use his or her paid leave specified in Exhibit B for holidays, vacations, sickness, jury duty, and any other absence from work, and is not otherwise entitled to any additional paid holidays, vacation, sick leave or other leave unless otherwise required by law. Special requirements may apply to CONTRACTOR’s coding of his or her time card in order to be able to receive paid leave.
  - C. **Retirement:** CONTRACTOR shall be a member of the Santa Barbara County Employees’ Retirement System ONLY if both of these conditions are true: 1) CONTRACTOR is required to work at least forty (40) hours per bi-weekly pay period; and 2) CONTRACTOR’s assignment is not deemed by COUNTY to be temporary, intermittent, or seasonal.

D. Other:

- (i) CONTRACTOR will be offered health insurance coverage upon execution of the contract if CONTRACTOR is scheduled to work at least 30 hours per week during the contract period. CONTRACTOR will be offered health insurance coverage if CONTRACTOR works an average at least 30 hours or more per week, over a standard measurement period of 26 pay periods.
- (ii) CONTRACTOR is responsible for licensure fees, subscriptions to journals and other professional expenses not specifically detailed in this Agreement.
- (iii) CONTRACTOR may be permitted to use COUNTY vehicles as part of CONTRACTOR's assignment and shall maintain a valid California Driver's License.
- (iv) COUNTY may reimburse CONTRACTOR for necessary and pre-approved out-of-pocket expenses while performing required services for COUNTY, in accordance with COUNTY policy. All travel claims and other claim documents, when applicable, must include the Board contract number. If the invoice does not properly reference the contract number, those invoices may be returned, delaying payment.
- (v) Except as required by law, CONTRACTOR is not eligible for any other job benefits accruable to an employee in the classified service of COUNTY, unless otherwise specified herein or in Exhibit B.

- 8. STANDARD OF PERFORMANCE.** CONTRACTOR represents that CONTRACTOR has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.
- 9. TAXES.** COUNTY shall pay CONTRACTOR for professional services pursuant to this Agreement, payable upon biweekly submission of a time card, and such payment shall be subject to deductions and include withholding of state and federal taxes as specified in Section 7(A) herein.
- 10. CONFLICT OF INTEREST.** CONTRACTOR covenants that CONTRACTOR presently has no employment or interest, and shall not acquire any employment or interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR must promptly disclose to the COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.
- 11. NONAPPROPRIATION.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated and budgeted or funds are otherwise not available for payments in the fiscal year covered by the term of the Agreement, then COUNTY will immediately notify CONTRACTOR of such occurrence and the Agreement may be terminated by COUNTY, with or without the prior notice specified in the Termination section of this Agreement. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.

- 12. OWNERSHIP OF INFORMATION AND MATERIALS.** COUNTY shall be the sole owner of all information and materials, in any form whatsoever, incidental to or arising from this Agreement. For purposes of this section, "information" and "materials" include, without limitation, "writings" as defined by California Evidence Code § 250, inventions, designs, technologies, and software. COUNTY ownership shall survive expiration or termination of this Agreement, whether or not performance under this Agreement is completed or terminated prior to completion. No such information or materials shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of COUNTY. COUNTY shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part any such information or materials. CONTRACTOR shall not release any such information or materials to any other party unless authorized by COUNTY.
- 13. DEFENSE AND INDEMNIFICATION.** COUNTY will defend and indemnify CONTRACTOR against any claim, lawsuit, or judgment arising out of CONTRACTOR's performance of duties under this Agreement. CONTRACTOR agrees to notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. CONTRACTOR shall bear the cost of CONTRACTOR's own defense and liability for any act or omission not arising out of CONTRACTOR's performance of duties under this Agreement. Nothing contained herein shall be deemed to increase COUNTY's liability beyond limitations set forth by law.
- 14. NONDISCRIMINATION.** COUNTY hereby notifies CONTRACTOR, and CONTRACTOR hereby acknowledges, that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement, and is incorporated herein. CONTRACTOR agrees to comply with that ordinance, and with COUNTY's Anti-Harassment Policy.
- 15. NONEXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others for the same or similar services as those provided by CONTRACTOR, as COUNTY desires.
- 16. ASSIGNMENT.** CONTRACTOR shall not assign any of rights or transfer any obligations under this Agreement without COUNTY's prior written consent, and any attempt to do so without such consent shall be void and without legal effect, and shall constitute grounds for termination.
- 17. TERMINATION.** Either of the parties hereto may, for any reason, prior to the expiration date of this Agreement, cancel and terminate this Agreement upon thirty (30) days' written notice to the other. Upon a material breach of the terms and conditions of the Agreement by one of the parties, the non-breaching party (including Designated Representative's superiors) may terminate this Agreement upon the mailing of a written notice of termination to the breaching party. Written notification as required under this paragraph shall be given by CONTRACTOR to COUNTY's Designated Representative. Written notification by COUNTY shall be given to CONTRACTOR. In the case of material breach (including but not limited to: grossly negligent conduct, malpractice or criminal conduct, etc.) by CONTRACTOR, COUNTY's Designated Representative or designee may immediately terminate the Agreement. Upon termination, CONTRACTOR shall cease work (unless the notice directs otherwise), and deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other records, documents or papers CONTRACTOR may have accumulated or produced under this Agreement, whether completed or in process. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for service performed to the date of termination, to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the Agreement's maximum payment amount, or for unperformed services.

Expressly incorporating Cal. Gov. Code Section 53260, regardless of the term of the Agreement, if the Agreement is terminated, the maximum cash settlement that CONTRACTOR may receive shall be an amount equal to the monthly salary of CONTRACTOR under this Agreement multiplied by the number of months left on the unexpired term of the Agreement, with the following exception: If the

unexpired term of the Agreement is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the CONTRACTOR under this Agreement multiplied by 18. The cash settlement formulas described above are maximum amounts that may be paid by COUNTY to CONTRACTOR and not a target or example of the amount of the cash settlement to be paid by COUNTY in all Agreement termination cases (if any).

Expressly incorporating Cal. Gov. Code Section 53261, the cash settlement, if any, specified in Cal. Gov. Code Section 53260 shall not include any other noncash items except at the option of the COUNTY it may include health benefits if the CONTRACTOR was receiving health benefits from COUNTY hereunder, which may be continued for the same duration of time as covered in the settlement, pursuant to the same time limitations as provided in Cal. Gov. Code Section 53260, or until CONTRACTOR finds other employment, whichever occurs first.

Expressly incorporating Cal. Gov. Code Section 53243.2, regardless of the term of the Agreement, if the Agreement is terminated, any cash settlement related to the termination that CONTRACTOR may receive from COUNTY shall be fully reimbursed to COUNTY if CONTRACTOR is convicted of a crime involving an abuse of his or her office or position, as defined in Cal. Gov. Code Section 53243.4, as may be amended.

18. **SECTION HEADINGS.** The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.
19. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
20. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.
21. **NO WAIVER OF DEFAULT.** No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.
22. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.
23. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

- 24. COMPLIANCE WITH LAW.** CONTRACTOR shall, at CONTRACTOR's sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.
- 25. CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.
- 26. EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.
- 27. AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.
- 28. FEDERAL CLAUSES.** This Agreement may be subject to federal funding and incorporates the attached Exhibit C, Federal Clauses, by this reference.
- 29. PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions contained in the numbered sections shall prevail over those in the Exhibits.
- 30. SURVIVAL.** All provisions which by their nature are intended to survive the termination of this Agreement shall survive termination of this Agreement.

///

///

///

///

///

///

///

///

///

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by COUNTY.

**ATTEST:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

By: \_\_\_\_\_  
Deputy Clerk

**COUNTY OF SANTA BARBARA:**

By: \_\_\_\_\_  
Chair, Board of Supervisors

Date: \_\_\_\_\_

**RECOMMENDED FOR APPROVAL:**

County Counsel

By: \_\_\_\_\_  
Michael C. Ghizzoni, County Counsel

**CONTRACTOR:**

By: \_\_\_\_\_  
Callie Patton Kim  
Attorney at Law

**APPROVED AS TO FORM:**

Michael C. Ghizzoni  
County Counsel

By: \_\_\_\_\_  
Rachel Van Mullem, Chief Assistant

**APPROVED AS TO ACCOUNTING FORM:**

BETSY SCHAFFER, CPA  
Auditor-Controller

By: \_\_\_\_\_  
Deputy

**APPROVED AS TO FORM:**

Risk Management

By: \_\_\_\_\_  
Ray Aromatorio, Risk Manager

**EXHIBIT A  
STATEMENT OF WORK**

CONTRACTOR agrees to provide services to COUNTY comparable to those performed by incumbents in the position of Deputy County Counsel IV. Those services are described generally in the class specifications published by COUNTY’s Human Resources Department, as follows:

Under general direction, to perform professional legal work, including civil litigation; to prepare legal pleadings and give legal counsel to assigned departments, boards, and districts; and, to do related work as required.

In accordance with Government Code § 25203, COUNTY’s Board of Supervisors, acting by and through the County Counsel, directs and controls the conduct of litigation in which COUNTY is a party.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

**EXHIBIT B  
CONTRACTOR ON PAYROLL  
Compensation**

COUNTY shall pay CONTRACTOR for professional services pursuant to this Agreement upon biweekly submission by CONTRACTOR of a timesheet. Such payments shall be subject to deductions and withholding of state and federal taxes. The employment created by this Agreement is overtime-exempt.

In no event shall the amount paid pursuant to this Agreement exceed the total sum of \$208,257.37 without written amendment of this Agreement. This “not-to-exceed” amount includes the following:

- 2,080 paid hours, at a rate of \$74.00 per hour, of which up to 182 hours may be taken as paid leave, subject to approval by CONTRACTOR’s supervisor.
- \$271.89 twice monthly for health insurance coverage CONTRACTOR is eligible for should CONTRACTOR elect coverage.
- Benefits: Retirement benefits paid pursuant to this Agreement were determined using salary modeling and are valued at approximately \$47,315.01 of the total Agreement amount and are limited to those detailed in **Section 7C Retirement Benefits** of the Agreement.
- The benefit level is estimated; however, the COUNTY agrees to pay the actual amount of the benefits specified herein up to an amount, not to exceed \$53,840.37, including health insurance coverage and retirement, prorated if CONTRACTOR works less than 2,080 hours.
- COUNTY’s reimbursement to CONTRACTOR for California State Bar dues CONTRACTOR is required to pay to maintain Bar membership throughout the term of this Agreement, up to a maximum of \$ 497.00.

This Agreement incorporates by reference, as if set forth in full herein, all provisions the California Government Code requires this Agreement to contain, including (without limitation) the provisions required by Government Code sections 53260 and 53243.2.

///  
///  
///  
///  
///  
///  
///  
///  
///  
///

**EXHIBIT C  
CONTRACTOR ON PAYROLL  
Federal Clauses**

**1. REMEDIES FOR NONCOMPLIANCE**

In the event COUNTY determines, in its sole discretion, that CONTRACTOR is not in compliance with the terms and conditions set forth herein, COUNTY may:

- A. Require payments as reimbursements rather than advance payments;
- B. Withhold authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- C. Require additional, more detailed financial reports;
- D. Require additional project monitoring;
- E. Requiring CONTRACTOR to obtain technical or management assistance; or
- F. Establish additional prior approvals.

**2. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Agreement, CONTRACTOR agrees as follows:

- A. CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- C. CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- D. CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and

Accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- E. In the event of CONTRACTOR'S noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

### 3. **CLEAN AIR ACT**

- A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B. CONTRACTOR agrees to report each violation to the California Environmental Protection Agency and understands and agrees that the California Environmental Protection Agency will, in turn, report each violation as required to assure notification to the COUNTY, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

### 4. **FEDERAL WATER POLLUTION CONTROL ACT**

- A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. CONTRACTOR agrees to report each violation to the California State Water Resources Control Board and understands and agrees that the California State Water Resources Control Board will, in turn, report each violation as required to assure notification to the COUNTY, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

### 5. **DEBARMENT AND SUSPENSION**

- A. CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.
- B. This certification is a material representation of fact relied upon by COUNTY. If it is later determined that CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the California Governor's Office of Emergency Services and COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- C. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such CONTRACTOR is required to verify that none of the

contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- D. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **6. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)**

CONTRACTOR shall execute and file the required certification attached as Attachment 1, *Certification for Contracts, Grants, Loans, and Cooperative Agreement (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (As Amended))*, which is incorporated herein by this reference. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

#### **7. PROCUREMENT OF RECOVERED MATERIALS**

- A. In the performance of this Agreement, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—
  - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - ii. Meeting contract performance requirements; or
  - iii. At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designate items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

#### **8. CHANGES**

- A. Notice. The primary purpose of this clause is to obtain prompt reporting of COUNTY conduct that CONTRACTOR considers to constitute a change to this contract. Except for changes identified as such in writing and signed by COUNTY, the Contractor shall notify the COUNTY in writing promptly, within five (5) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the CONTRACTOR regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state
  - i. The date, nature, and circumstances of the conduct regarded as a change;

- ii. The name, function, and activity of each Government individual and CONTRACTOR official or employee involved in or knowledgeable about such conduct;
  - iii. The identification of any documents and the substance of any oral communication involved in such conduct;
  - iv. In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
  - v. The particular elements of contract performance for which CONTRACTOR may seek an equitable adjustment under this clause, including:
    - What line items have been or may be affected by the alleged change;
    - What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
    - To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
    - What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and
  - vi. CONTRACTOR'S estimate of the time by which COUNTY must respond to CONTRACTOR'S notice to minimize cost, delay or disruption of performance.
- B. Continued Performance. Following submission of the required notice, CONTRACTOR shall diligently continue performance of this Agreement to the maximum extent possible in accordance with its terms and conditions as construed by the CONTRACTOR.
- C. COUNTY Response. COUNTY shall promptly, within ten (10) calendar days after receipt of notice, respond to the notice in writing. In responding, COUNTY shall either --
- i. Confirm that the conduct of which CONTRACTOR gave notice constitutes a change and when necessary direct the mode of further performance;
  - ii. Countermand any communication regarded as a change;
  - iii. Deny that the conduct of which CONTRACTOR gave notice constitutes a change and when necessary direct the mode of further performance; or
  - iv. In the event the Contractor's notice information is inadequate to make a decision, advise CONTRACTOR what additional information is required, and establish the date by which it should be furnished and the date thereafter by which COUNTY will respond.
- D. Equitable Adjustments.
- i. If the COUNTY confirms that COUNTY conduct effected a change as alleged by the CONTRACTOR, and the conduct causes an increase or decrease in the

CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Agreement, whether changed or not changed by such conduct, an equitable adjustment shall be made --

- In the contract price or delivery schedule or both; and
  - In such other provisions of the Agreement as may be affected.
- ii. The Agreement shall be modified in writing accordingly. The equitable adjustment shall not include increased costs or time extensions for delay resulting from CONTRACTOR'S failure to provide notice or to continue performance as provided herein.

**9. ACCESS TO RECORDS**

The following access to records requirements apply to this Agreement:

- A. CONTRACTOR agrees to provide COUNTY, the California Governor's Office of Emergency Services, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. CONTRACTOR agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

**10. USE OF U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) LOGO**

CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval

**11. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS**

This is an acknowledgement that FEMA financial assistance will be used to fund this Agreement. CONTRACTOR will only use FEMA funds as authorized herein. CONTRACTOR will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**12. NO OBLIGATION BY FEDERAL GOVERNMENT**

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the Agreement.

**13. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR'S actions pertaining to this Agreement.

14. **MANDATORY DISCLOSURE**

CONTRACTOR must disclose, in a timely manner, in writing to the COUNTY all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award. CONTRACTOR is required to report certain civil, criminal, or administrative proceedings to the System for Award Management (SAM) located at [www.sam.gov](http://www.sam.gov). Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR part 180 and 31 U.S.C. 3321.)

**Attachment 1**

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

**(Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (As Amended))**

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

---

Signature of Contractor's Authorized Official

---

Name and Title of Contractor's Authorized Official

---

Date