

Attachment B

Agreement for Services of Independent Contractor with  
DeWalt Corporation

# AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

**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 DeWALT CORPORATION with an address at 1930 22ND STREET, BAKERSFIELD, CA 93301 (hereafter Contractor) wherein Contractor agrees to provide and County agrees to accept the services specified herein.

**WHEREAS**, Contractor represents that it is specially trained, skilled, experienced, and competent to perform the special 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

TEÑELL MATLOVSKY at phone number (805)568-3338 is the representative of County and will administer this Agreement for and on behalf of County. JEFFREY GUTIEREZ at phone number (661)323-4600 x122 is the authorized representative for Contractor. 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 or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To County: TEÑELL MATLOVSKY, SANTA BARBARA COUNTY, 123 E. ANAPAMU STREET, CALIFORNIA, 93101, (805)568-3338, TMATLOV@COSBPW.NET

To Contractor: JEFFREY GUTIEREZ, DeWALT CORPORATION, 1930 22ND STREET, BAKERSFIELD, CA 93301, (661)323-4600 x122, JGUTIERREZ@DEWALTCORP.COM

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

## 3. SCOPE OF SERVICES

Contractor agrees to provide services to County in accordance with Exhibit A attached hereto and incorporated herein by reference.

## 4. PERFORMANCE PERIOD

- A. Contractor shall commence performance on 05/01/2020 and end performance upon completion, but no later than 05/14/2021 unless otherwise directed by County or unless earlier terminated.
- B. The Director of Public Works, or designee, may extend the period of performance of this Agreement for up to a period of one year by giving written notice of extension to Contractor.

## 5. COMPENSATION OF CONTRACTOR

In full consideration for Contractor's services, Contractor shall be paid for performance under this Agreement in accordance with the terms of Exhibit B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by County and which is delivered to the address given in Clause 2 "NOTICES" above following completion of the increments identified on Exhibit B. Unless otherwise specified on Exhibit B, payment shall be net thirty (30) days from presentation of invoice.

## 6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that Contractor (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to County and not as an officer, agent, servant, employee, joint venturer, partner, or associate of County. Furthermore, County shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its work and function. However, County shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions hereof. Contractor understands and acknowledges that it shall not be entitled to any of the benefits of a County employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. Contractor shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Contractor shall be solely responsible and save County harmless from all matters relating to payment of Contractor's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to the County or to this Agreement.

## **7. STANDARD OF PERFORMANCE**

Contractor represents that it 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 manner consistent with the standards 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.

## **8. DEBARMENT AND SUSPENSION**

- A. Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that Contractor has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (non-procurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Contractor responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.
- D. Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, which certifies that Contractor or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility for participation in any state or local government agency contracts. Contractor certifies that it shall not contract with a sub-contractor that is so debarred or suspended.

## **9. TAXES**

Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. County shall not be responsible for paying any taxes on Contractor's behalf, and should County be required to do so by state, federal, or local taxing agencies, Contractor agrees to promptly reimburse County for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

## **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, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Contractor. Contractor must promptly disclose to 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. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

County shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. Contractor shall not release any of such items to other parties except after prior written approval of County.

Unless otherwise specified in Exhibit A, Contractor hereby assigns to County all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by Contractor pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). County shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. Contractor agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. Contractor

warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. Contractor at its own expense shall defend, indemnify, and hold harmless County against any claim that any Copyrightable Works or Inventions or other items provided by Contractor hereunder infringe upon intellectual or other proprietary rights of a third party, and Contractor shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by County in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

## **12. NO PUBLICITY OR ENDORSEMENT**

Contractor shall not use County's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Contractor shall not use County's name or logo in any manner that would give the appearance that the County is endorsing Contractor. Contractor shall not in any way contract on behalf of or in the name of County. Contractor shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the County or its projects, without obtaining the prior written approval of County.

## **13. COUNTY PROPERTY AND INFORMATION**

All of County's property, documents, and information provided for Contractor's use in connection with the services shall remain County's property, and Contractor shall return any such items whenever requested by County and whenever required according to the Termination section of this Agreement. Contractor may use such items only in connection with providing the services. Contractor shall not disseminate any County property, documents, or information without County's prior written consent.

## **14. RECORDS, AUDIT, AND REVIEW**

Contractor shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Contractor's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. County shall have the right to audit and review all such documents and records at any time during Contractor's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), Contractor shall be subject to the examination and audit of the California State Auditor, at the request of the County or as part of any audit of the County, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). Contractor shall participate in any audits and reviews, whether by County or the State, at no charge to County.

If federal, state or County audit exceptions are made relating to this Agreement, Contractor shall reimburse all costs incurred by federal, state, and/or County governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from County, Contractor shall reimburse the amount of the audit exceptions and any other related costs directly to County as specified by County in the notification.

## **15. INDEMNIFICATION AND INSURANCE**

Contractor agrees to the indemnification and insurance provisions as set forth in Exhibit C attached hereto and incorporated herein by reference.

## **16. NONDISCRIMINATION**

- A. County hereby notifies Contractor 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 by this reference with the same force and effect as if the ordinance were specifically set out herein and Contractor agrees to comply with said ordinance.
- B. Statement of Compliance:
- 1) Contractor's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Contractor has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
  - 2) During the performance of this Agreement, Contractor and its sub-contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this

Agreement by reference and made a part hereof as if set forth in full. Contractor and its sub-contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

- 3) The Contractor shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- 4) The Contractor, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of sub-contractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

#### **17. NON-EXCLUSIVE 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 providing the same or similar services as those provided by Contractor as the County desires.

#### **18. NON-ASSIGNMENT**

Contractor shall not assign, transfer or sub-contract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of County and any attempt to so assign, sub-contract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

#### **19. TERMINATION**

- A. **By County.** County may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, whether for County's convenience, for non-appropriation of funds, or because of the failure of Contractor to fulfill the obligations herein.
  - 1) **For Convenience.** County may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, Contractor shall, as directed by County, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on County from such winding down and cessation of services.
  - 2) **For Non-appropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or County governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then County will notify Contractor of such occurrence and County may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. 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.
  - 3) **For Cause.** Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County may, at County's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, Contractor shall immediately discontinue all services affected (unless the notice directs otherwise) and notify County as to the status of its performance. The date of termination shall be the date the notice is received by Contractor, unless the notice directs otherwise.
- B. **By Contractor.** Should County fail to pay Contractor all or any part of the payment set forth in Exhibit B, Contractor may, at Contractor's option terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.
- C. Upon termination, Contractor shall deliver to County all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by Contractor in performing this Agreement, whether completed or in process, except such items as County may, by written permission, permit Contractor to retain. Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for satisfactory services 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 full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to County such financial information as in the judgment of County is necessary to determine the reasonable value of the services rendered by Contractor. In the event of a dispute as to the reasonable value of the services rendered by Contractor, the decision of County shall be final. The foregoing is cumulative and shall not affect any right or remedy which

County may have in law or equity.

## **20. 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.

## **21. 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.

## **22. 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.

## **23. TIME IS OF THE ESSENCE**

Time is of the essence in this Agreement and each covenant and term is a condition herein.

## **24. 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.

## **25. 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.

## **26. 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.

## **27. COMPLIANCE WITH LAW**

Contractor shall, at its 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.

## **28. CALIFORNIA LAW AND JURISDICTION**

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.

## **29. 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.

## **30. AUTHORITY**

All signatories and 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.

### **31. SURVIVAL**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

### **32. 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 of the Exhibits shall prevail over those in the numbered sections.

### **33. SUB-CONTRACTORS**

Contractor is authorized to sub-contract with sub-contractors identified in the Contractor's Proposal. Contractor shall be fully responsible for all services performed by its sub-contractor. Contractor shall secure from its sub-contractor all rights for County in this Agreement, including audit rights.

### **34. HANDLING OF PROPRIETARY INFORMATION**

Contractor understands and agrees that certain materials which may be provided by County may be classified and conspicuously labeled as proprietary confidential information. That material is to be subject to the following special provisions:

- A. All reasonable steps will be taken to prevent disclosure of the material to any person except those personnel of Contractor working on the project who have a need to use the material.
- B. Upon conclusion of Contractor's work, Contractor shall return all copies of the material direct to party providing such material. Contractor shall contact County to obtain the name of the specific party authorized to receive the material.

### **35. IMMATERIAL CHANGES**

Contractor and County agree that immaterial changes to this Agreement such as time frame and mutually agreeable work program changes which will not result in a change to the total Agreement amount or to the scope of the Statement of Work may be authorized by the Public Works Director, or designee, in writing, and will not constitute an amendment to the Agreement.

### **36. NEWS RELEASES/INTERVIEWS**

Contractor agrees for itself, its agents, employees, and sub-contractors, it will not communicate with representatives of the communications media concerning the subject matter of this Agreement without prior written approval of the County Agency Contact Person. Contractor further agrees that all media requests for communication will be referred to County's responsible personnel.

### **37. FEDERAL AND STATE PREVAILING WAGE RATES**

- A. Contractor shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any sub-contract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.
- D. No contractor or sub-contractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code § 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code § 1771.1(a)]; no contractor or sub-contractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code § 1725.5; and this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

### **38. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowable cost(s) of individual items.
- B. Contractor also agrees to comply with federal procedures in accordance with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Super or Omni Circular), which are hereby incorporated by reference.
- C. Any costs for which payment has been made to Contractor that are determined by subsequent audit to be unallowable under applicable Federal Regulations, are subject to repayment by Contractor to County.

D. All sub-contracts shall contain the above provisions.

### **39. SUB-CONTRACTING**

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between County and any sub-contractor(s), and no sub-contract shall relieve Contractor of its responsibilities and obligations hereunder. Contractor agrees to be as fully responsible to County for the acts and omissions of its sub-contractor(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Contractor. Contractor's obligation to pay its sub-contractor(s) is an independent obligation from County's obligation to make payments to the Contractor.
- B. Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be sub-contracted without written authorization by County's designated representative, except that, which is expressly identified in the approved Cost Proposal.
- C. Contractor shall pay its sub-contractors within ten (10) calendar days from receipt of each payment made to Contractor by County.
- D. Any sub-contract entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to sub-contractors.
- E. Any substitution of sub-contractor(s) must be approved in writing by County's designated representative prior to the start of work by the sub-contractor(s).

### **40. SUB-CONTRACTORS**

Contractor is authorized to sub-contract with [No authorized sub-contractor named] as identified in Exhibit [None]. Contractor shall be fully responsible for all services performed by its sub-contractor. Contractor shall secure from its sub-contractor all rights for County in this Agreement, including audit rights. Contractor shall ensure sub-contractor's compliance with California Labor Code, including but not limited to the payment of prevailing wage when required.

### **41. EQUIPMENT PURCHASES**

- A. Prior authorization in writing, by County's designated representative shall be required before Contractor enters into any un-budgeted purchase order, or sub-contract exceeding \$5,000 for supplies, equipment, or Contractor services. Contractor shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in Contractor's Cost Proposal and exceeding \$5,000 prior authorization by County's designated representative; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this Agreement is subject to the following: "Contractor shall maintain an inventory of all non-expendable property. Non-expendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Contractor may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Contractor elects to keep the equipment, fair market value shall be determined at Contractor's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Contractor, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County."

D. All sub-contracts shall contain the above provisions.

### **42. AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by County's Deputy Director - Finance and Administration for Public Works.
- B. Not later than 30 days after issuance of the final audit report, Contractor may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by County will excuse Contractor from full and timely performance, in accordance with the terms of this Agreement.
- D. Contractor and sub-contractor contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If



selected for audit or review, the Agreement, cost proposal, and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Contractor's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The Agreement, cost proposal, and ICR shall be adjusted by Contractor and approved by County designated representative to conform to the audit or review recommendations. Contractor agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by County at its sole discretion. Refusal by Contractor to incorporate audit or review recommendations, or to ensure that the federal, state, or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

#### **43. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

Contractor warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other un-lawful consideration.

#### **44. PROHIBITION OF EXPENDING COUNTY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

A. Contractor certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by-or-on behalf of Contractor to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or co-operative 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 federal 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 co-operative agreement; Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

B. 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 Section 1352, Title 31, U.S. Code. 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.

C. Contractor also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier sub-contracts which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

#### **45. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.**

Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). The Contractor shall promptly disclose, in writing, to the County office, to the Federal Awarding Agency, and to the Regional Office of the Environmental Protection Agency (EPA), whenever, in connection with the award, performance, or closeout of this Agreement or any sub-contract thereunder, the Contractor has credible evidence that a principal, employee, agent, or sub-contractor of the Contractor has committed a violation of the Clean Air Act (42 U.S.C. 7401-7671q.) or the Federal Water Pollution Control Act (33 U.S.C. 1251-1387).

#### **46. PROCUREMENT OF RECOVERED MATERIALS**

Contractor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**47. MANDATORY DISCLOSURE**

CONTRACTOR must timely disclose in writing to the COUNTY all violations of Federal criminal law involving fraud, bribery, or gratuity violations. 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.)

**48. ACKNOWLEDGEMENT OF COVID-19 PANDEMIC AS A CONSIDERATION FOR AMENDMENT**

Notwithstanding anything to the contrary herein (including without limitation any provisions pertaining to force majeure, responsibility for delay or required notice), the Parties acknowledge the ongoing COVID-19 pandemic and agree that Contractor's resources, and schedule do not account for any impacts that may arise as a result of COVID-19. The Parties will work jointly together in an effort to mitigate any such impact, it being acknowledged that Contractor shall be entitled to equitable adjustments to its schedule, for impacts caused by the COVID-19 pandemic.

## CONTRACTOR SIGNATURE PAGE

Agreement for services and work to be performed by Contractor between the County and Contractor.

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

**CONTRACTOR:**

Jeffrey Gutierrez

DeWalt Corporation

1930 22<sup>nd</sup> Street

Bakersfield, CA, 93301

License No.: 951003 / License Class: A

Business Type: Corporation

Contact Email:

jgutierrez@dewaltcorp.com

Contact Phone: (661)323-4600 x121\2

By: 

Authorized Representative

Date: 4/7/2020

# COUNTY SIGNATURE PAGE

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**ATTEST:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

**COUNTY OF SANTA BARBARA:**

Gregg Hart

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

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

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

**RECOMMENDED FOR APPROVAL:**

Scott D. McGolpin  
Director of Public Works

By: \_\_\_\_\_  
Department Head

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

**APPROVED AS TO FORM:**

Ray Aromatorio  
Risk Manager

**APPROVED AS TO ACCOUNTING FORM:**


Betsy M. Schaffer, CPA  
Auditor-Controller

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

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

**APPROVED AS TO FORM:**

Michael C. Ghizzoni  
County Counsel

By:   
Deputy County Counsel

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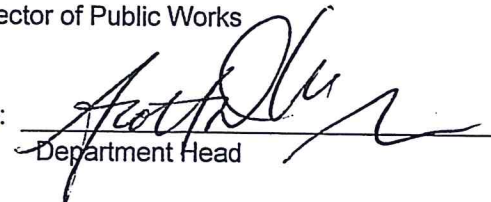
By: \_\_\_\_\_  
Deputy Clerk

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

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

**RECOMMENDED FOR APPROVAL:**

Scott D. McGolpin  
Director of Public Works

By:  \_\_\_\_\_  
Department Head

Date: 4/13/20

**APPROVED AS TO FORM:**

Ray Aromatorio  
Risk Manager

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


**APPROVED AS TO ACCOUNTING FORM:**

Betsy M. Schaffer, CPA  
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By:  \_\_\_\_\_  
Deputy

**APPROVED AS TO FORM:**

Michael C. Ghizzoni  
County Counsel

By:  \_\_\_\_\_  
Deputy County Counsel

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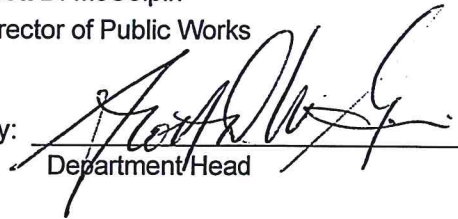
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Michael C. Ghizzoni  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

# EXHIBIT A – CONTRACT DESCRIPTION OF WORK

## DESCRIPTION OF WORK

In summary, the scope of work includes the following tasks, as described further below:

- 1) Research all available recorded and filed maps and documents, including, but not limited to County Surveyor Right of Way Indexes.
- 2) Perform coordinate geometry calculations to reconcile inconsistent records.
- 3) Conduct field observations to determine locations of found monuments that will be used as a basis for restoring lost and disturbed monuments.
- 4) Analyze found monuments relative to public road Right of Way (ROW) system records.
- 5) Replace destroyed monuments by setting new permanent monuments (and include the Hazard Mitigation measure for centerline monuments, as determined by the County Surveyor, to add monument wells to all centerline monuments found, set, & reset).
- 6) Prepare and file corresponding records of survey.

All tasks in the description of work shall be performed under the direction of a licensed land surveyor, who shall also:

- i. Manage, administer, and coordinate all work, including Quality Assurance / Quality Control (QA/QC);
- ii. Report in detail the progress of the tasks to the County Designated Representative; and
- iii. Coordinate with the County Designated Representative all proposed schedule, scope, or budget changes.

## TASKS AND DELIVERABLES

The scope of work is broken down into the following tasks and associated deliverables:

Task #	Task Description
1	Research
2	Calculations
3	Field Survey
4	Analysis of ROW system
5	Restore Monuments
6	Record of Survey

### 1. Research of County Record Maps

Contractor shall:

- Utilizing the County Surveyor's Survey Information System website in conjunction with other available indexes, research and review all available recorded and filed maps and documents relevant to the needs of the project, including, but not limited to: Parcel Maps, Tract Maps, Record Surveys, Corner Records, County Surveyor's maps, and State Highway Map Books.
- Visit the County Surveyor's Office to verify the hard copy index and records of the County Surveyor's Maps and State Highway Map Books, as well as Road Deed Books.
- Contact Caltrans District 5 to obtain any control points, land net data, and monumentation maps in the project limits.
- Research Bureau of Land Management (BLM) record maps, and original General Land Office (GLO) field notes for the sites where boundaries are tied to Public Lands Sectionalized Surveys that need to be retraced in order to re-establish the boundaries in question.
- Apply any historic recorded or unrecorded surveys and related field notes the Contractor has on file as needed for use and reference in performing boundary establishments since these records may help fill gaps in areas where additional information may be needed.
- Contractor shall provide County with a copy of all archival resources, maps, and documents used, and shall include these in an indexed hard-copy binder and digital Adobe Acrobat Portable Document Format (PDF), which shall be included in the project deliverables report.

### 2. Preliminary Calculations

Contractor shall review researched record data and perform coordinate geometry calculations to reconcile record data differences. Calculate initial search values generated for all pertinent right-of-way monuments and their witness and/or accessory monuments.



### **3. Field Survey and Data Gathering**

Contractor shall:

A. Search for monuments, which shall include:

- Preparing field packages from records and search calculations;
- Documenting all field efforts;
- Providing survey field crews researched map copies to aid in recovery of monuments needed to re-establish lost or destroyed monuments; and
- Preparing Traffic Control and Field Safety Protection Plans for field crews prior to the start of any field work.

B. Collect and process field data and field observations to determine locations of found monuments that will be used as a basis for restoring lost and disturbed monuments, which shall include:

- i. Collecting data using Global Positioning Systems (GPS) / Global Navigation Satellite Systems (GNSS) and/or conventional survey techniques. In order to meet the  $\pm 2.0$ cm horizontal accuracy requirement for the project, the Contractor shall follow procedures specified by the Caltrans Surveys Manual (CSM) Chapters 5.3 - Classifications of Accuracy and Standards, Chapter 6 - Global Positioning System (GPS) Survey Specifications, Chapter 7 - Total Station Survey System (TSSS) Survey Specifications, and Chapter 10 - Right of Way Survey Specifications, as well as those outlined in "GNSS Surveying Standards and Specifications, 1.1" Joint Publication of the California Land Surveyor's Association (CLSA) & the California Spatial Reference Center (CSRC), dated December 10, 2011. In case of any conflict, the most conservative method shall be chosen on a case-by-case basis.
- ii. Primary Control Network Densification. Contractor shall combine GNSS and conventional survey techniques, to densify all project areas, with closed traverses including cross-ties when possible, to serve as a primary backbone for all boundary searching and data collection work. This control densification shall be performed by the contractor in order to supplement the Montecito High Precision Geodetic Control Network, as the Contractor in consultation with the County determines needed, in order to meet or exceed the project horizontal accuracy requirement of  $\pm 2.0$ cm at the 95% confidence level for all boundary establishment.
- iii. Collecting right-of-way monuments and control in conformance with the above (3.B.i. & 3.B.ii.) accuracy requirement standards. Contractor shall perform the initial control densification survey throughout the entirety of the project areas employing GNSS and conventional equipment and process all data via a rigorous least squares adjustment, so as to allow this densification network to serve as a primary project control network that all data collection can be tied to directly following survey methods in data collection in order to meet or exceed the project accuracy requirements.
- iv. Making a field note record of all field recovered monuments that includes a description of the physical monument and its markings, vertical distance from ground level, and ties to adjacent surroundings/improvements.
- v. Collecting all boundary evidence in the field with direct ties to the control densification network via conventional and/or GNSS technologies following the specified accuracy guidelines. Contractor shall process all collected boundary evidence via a rigorous least squares analysis to validate the measurements and the accuracy thereof. When pertinent to the boundary resolution, Contractor shall collect topographic information of lines of occupation and/or County improvements to be a part of the boundary analysis, which shall be included on the Record(s) of Survey as deemed necessary by the Contractor, in collaboration with County, while conducting the boundary analysis and resolution.

C. Document all searched, found, and not found monuments, with geolocated photography of all searched positions, found, and set monuments with a minimum of two pictures, which shall include an overhead close-up of the searched position or monument and a horizon level view of prominent features of the area. Contractor shall deliver photographs with Exchangeable Image File format standard (EXIF) location data &/or Geographic Information System (GIS) shape file to County.

D. Process collected field data by Least-Squares Data Adjustments, as follows: Contractor shall define all supplemental control, found monument positions, and topographic feature positions by a Least Squares Adjustment. Contractor shall prepare initial positions in a minimally constrained adjustment. Contractor shall remove any data failing at this step from final adjustments and perform re-observation of field data as needed. Contractor shall generate all final positions in a fully constrained adjustment, the contents of which Contractor shall provide as part of the deliverables report.

### **4. Analysis of road ROW system**

Contractor shall:

- Analyze found monuments relative to public road Right of Way system records by comparing and correlating measured and record information, determine ROW boundary location, and calculate positions of monuments to be reset.
- Perform a detailed analysis of the accessory, ROW, and centerline monuments recovered from the field survey stage relative to the data obtained in the record research stage (maps, field notes, deeds, etc.) to determine, in collaboration with County, whether a given monument shall be accepted or not accepted via evidence-based reasoning. When deemed necessary by Contractor, in collaboration with County, Contractor shall perform additional field search efforts to locate additional evidence and search additional monuments pertinent to the boundary resolution.
- Consult with the County Surveyor's Office to review and confirm the monuments to be set or replaced and protective well monument locations to be identified and confirmed.

## 5. Restore Monuments

Contractor shall:

- Reset every destroyed or disturbed monument following Santa Barbara County Monumentation Standards for size and type of monuments set, as defined in Chapter 21 of the Santa Barbara County Code.
- Document all reset monuments with geolocated photography.
- Deliver to County geolocation and photo documentation of monuments reset.

After Contractor performs a boundary analysis of the project survey and consults with the County Surveyor's Office, Contractor shall conduct a field survey to replace destroyed monuments by setting new permanent monuments. All set monuments shall comply with Section 21-16 of the Santa Barbara County Code.

Contractor shall prepare Traffic Control and Field Safety Protection Plans for field crews and sub-contractors prior to the start of monument restoration work as necessary.

Contractor (or authorized Sub-Contractor) shall construct all well monuments and the Contractor shall place the final punch mark location on each monument.

## 6. File Record of Survey

Contractor shall:

- Prepare Record(s) of Survey and submit for review (with all documentation, Field Notes and report deliverables) to the Santa Barbara County Surveyor's Office.
- Perform required revisions and re-submit as necessary to achieve filing & recordation in the Office of the County Recorder.

## **STANDARDS AND PROJECT DELIVERABLES**

The Contractor shall be knowledgeable of and adhere to the latest editions of relevant standards in order to meet the  $\pm 2.0$ cm horizontal accuracy requirement for the project; the Contractor shall follow procedures specified by the Caltrans Surveys Manual (CSM) Chapters 5.3 - Classifications of Accuracy and Standards, Chapter 6 - Global Positioning System (GPS) Survey Specifications, Chapter 7 - Total Station Survey System (TSSS) Survey Specifications, and Chapter 10 - Right of Way Survey Specifications, as well as those outlined in "GNSS Surveying Standards and Specifications, 1.1" Joint Publication of the California Land Surveyor's Association (CLSA) & the California Spatial Reference Center (CSRC), dated December 10, 2011. In case of any conflict, the most conservative method shall be chosen on a case-by-case basis.

### Procedures:

- The survey shall include detailed survey procedures to tie the public road Right of Way survey monuments to the Montecito Survey Control Network achieving  $\pm 2.0$ cm horizontal accuracy of the Right of Way monumentation points reported at 95% confidence level. Also the survey shall include detailed descriptions and methods of setting Monuments and Right of Way Centerline Control Points. The monuments set shall conform to specifications in Santa Barbara County Code Chapter 21 requirements for subdivision monumentation.
- The Contractor must perform a thorough field survey, including, but not limited to: reconnaissance inspection for researched monuments of record, geolocated photography of inspection locations, and geolocated photography of results of survey.

- iii. A professional land surveyor licensed in the State of California responsible for the survey conducted must sign, date, & affix their Professional/Licensed Land Surveyor seal to the record of survey, field notes, and report deliverables. The Contractor must complete the Right of Way re-monumentation, prepare and file a record of survey, as well as provide geolocated photography of monument locations if found, and, if not found (before and after setting), with descriptions and recovery notes.

Contractor shall review all deliverables for completeness, compliance with standards, and accuracy before submittal to County Surveyor's Office. Additionally, Contractor shall tie the Road Right of Way survey monuments to the to the Montecito Survey Control Network CSRN cGPS stations and report coordinates in CSRS Epoch 2017.50 (NAD83), with Orthometric Heights (NAVD88) derived from Geoid Model 12B.

Contractor shall provide all of the following including but not limited to:

- Itemized description of proposed survey procedures to be utilized.
- Record of Survey filed that documents the established Right of Way for the specified survey limits area in conformance with County of Santa Barbara Surveyor Standards, the California Public Resources Code Sections §§8812-8819, and the California Professional Land Surveyors' Act (Business and Professions Code §§8700-8805)
- The source drawing file(s) (in AutoCAD Civil 3D 2017 .dwg format or compatible) used to prepare the Record(s) of Survey.
- Survey Field Note sheets (Control Point and Monument tables with traverse/GPS diagrams)
- GPS static baseline processing and network adjustment reports
- All project files supporting the survey, including, but not limited to: data collector job files, raw data collector files, un-adjusted and adjusted data files & reports, Trimble TBC project files, AutoCAD Civil 3D 2017 project files, Civil3D importable fieldbook files, and point files (.CSV / .TXT)
- Approximate Locations shown in the attachment maps, and specific locations as described above as closely as physically possible with cost effectiveness in mind.
- Latitude & Longitude for/of each monument location searched (not found, or found) with photo (photographs may contain Exchangeable Image File format standard (EXIF) location data for ease of capture and correlation).
- Latitude & Longitude for/of each monument location set/reset with photo (photographs may contain Exchangeable Image File format standard (EXIF) location data for ease of capture and correlation).

All deliverables must be prepared in accordance with the latest County, State, Federal, and Caltrans specifications, policies, procedures, guidelines, and standards. All deliverables must comply with County, State, and Federal regulations and standards. All deliverables must be in US Survey Feet units.

JEFFREY GUTIERREZ shall be the individual(s) personally responsible for providing all services hereunder. Contractor may not substitute other persons without the prior written approval of County's Designated Representative.

**Suspension for Convenience:** County may, without cause, order Contractor in writing to suspend, delay, or interrupt the services under this Agreement in whole or in part for up to 90 days. County shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this Agreement.

**EXHIBIT B – PAYMENT ARRANGEMENTS  
(ACTUAL COST-PLUS-FIXED FEE)**

- A. The method of payment for this contract will be based on actual cost plus a fixed fee. County will reimburse Contractor for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Contractor in performance of the work. Contractor will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Contractor's Cost Proposal (Exhibit 10H-1 subphase-C attached hereto and made a part hereof), unless additional reimbursement is provided for by contract amendment. In no event, will Contractor be reimbursed for overhead costs at a rate that exceeds County's approved overhead rate set forth in the Cost Proposal. In the event that County determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time or actual costs reimbursable by County shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by contract amendment.
- B. In addition to the allowable incurred costs, County will pay Contractor a fixed fee of \$ {\$14,997}. The fixed fee is non-adjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- D. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of Contractor's fixed fee will be included in the monthly progress payments.
- E. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.
- F. Contractor will be reimbursed, as promptly as fiscal procedures will permit upon receipt by the County designated representative of itemized invoices. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Contractor is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due to the County including any equipment purchased under the provisions of Section 41 Equipment Purchase of this Agreement. The final invoice should be submitted within 60 calendar days after completion of Contractor's work. Invoices shall be mailed to the County designated representative at the following address:  
  
SANTA BARBARA COUNTY / TEÑELL MATLOVSKY - CONTRACT ADMINISTRATOR  
123 E. ANAPAMU STREET, SANTA BARBARA, CA 93101 - ADDRESS
- G. The total amount payable by County including the fixed fee shall not exceed {\$ 130,400}.
- H. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by the County designated representative.
- I. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.
- J. All sub-contracts shall contain the above provisions.

## EXHIBIT C – INDEMNIFICATION AND INSURANCE REQUIREMENTS (FOR DESIGN PROFESSIONAL CONTRACTS)

### **INDEMNIFICATION**

Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless County and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, costs, expenses (including but not limited to attorneys' fees), judgments and/or liabilities that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor and its employees, sub-contractors, or agents in the performance of services under this Agreement, but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful acts of the County.

### **NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS**

Contractor shall notify County immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

### **INSURANCE**

Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or sub-contractors.

#### A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions) Insurance** appropriate to the Contractor's profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the Contractor maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

#### B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the County.
4. **Waiver of Subrogation Rights** – Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of

subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – 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 A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – Contractor shall furnish the County with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Contractor shall furnish evidence of renewal of coverage throughout the term of the Agreement. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, County has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by County as a material breach of contract.
9. **Sub-contractors** – Contractor shall require and verify that all sub-contractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from sub-contractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
  - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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

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

**EXHIBIT 10-H COST PROPOSAL (EXAMPLE #1) PAGE 1 OF 2**  
**ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS**  
**(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)**

Note: Mark-ups are Not Allowed  
 Consultant DeWalt Corporation X Prime Consultant Subphase C  
 Contract No. \_\_\_\_\_ Date \_\_\_\_\_

**DIRECT LABOR**

Classification/Title	Name	hours	Actual Hourly Rate	Total
Survey Director	Adam Stubbs	50	\$40.00	\$2,000.00
Licensed Land Surveyor	Robert Lux	180	\$40.00	\$7,200.00
Senior Survey Technician	Heath James	280	\$34.00	\$9,520.00
Administration	Alyssa Dostal	40	\$16.00	\$640.00
2-Man Crew Subphase A		0	\$123.61	\$0.00
2-Man Crew Subphase B		0	\$123.61	\$0.00
2-Man Crew Subphase C		310	\$123.61	\$38,319.10

**LABOR COSTS**

a) Subtotal Direct Labor Costs	\$57,679.10
b) Anticipated Salary Increases (see page 2 for sample)	\$0.00
<b>c) TOTAL DIRECT LABOR COSTS [(a) + (b)]</b>	<b>\$57,679.10</b>

**INDIRECT COSTS**

d) Fringe Benefits (Rate: <u>43.00%</u> )	e) Total Fringe Benefits [(c) x (d)]	\$24,802.01
f) Overhead (Rate: <u>28.00%</u> )	g) Overhead [(c) x (f)]	\$16,150.15
h) General and Administrative (Rate: <u>29.00%</u> )	i) Gen & Admin [(c) x (h)]	\$16,726.94
	<b>j) Total Indirect Costs [(e) + (g) + (i)]</b>	<b>\$57,679.10</b>

**FIXED FEE**

Rate: <u>13.00%</u> )	<b>k) TOTAL FIXED FEE [(c) + (j)] x (fixed fee)</b>	<b>\$14,996.57</b>
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**l) CONSULTANT'S OTHER DIRECT COSTS (ODC) - ITEMIZE (Add additional pages if necessary)**

Description of Item	Unit(s)	Unit Cost	Total
Mileage Costs	0	\$0.00	\$0.00
Equipment Rental and Supplies	0	\$0.00	\$0.00
Permit Fees	0	\$0.00	\$0.00
Plan Sheets	0	\$0.00	\$0.00
Test	0	\$0.00	\$0.00

**l) Total Other Direct Costs** \$0.00

**m) SUBCONSULTANT'S COSTS (Add additional pages if necessary)**

Subconsultant 1:	\$0.00
Subconsultant 2:	\$0.00
Subconsultant 3:	\$0.00
Subconsultant 4:	\$0.00

**m) Total Subconsultants' Costs** \$0.00

**n) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)]** \$0.00

**TOTAL COST [(c) + (j) + (k) + (n)]** \$130,354.77

**NOTES:**

- All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates should be based on consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

**EXHIBIT 10-H COST PROPOSAL (EXAMPLE #1) PAGE 2 OF 2**  
**ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS**  
 (SAMPLE CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

Consultant DeWalt Corporation Contract No. \_\_\_\_\_ Date \_\_\_\_\_

**1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal \$57,679.10	Total Hours per Cost Proposal 860	=	Avg Hourly Rate \$67.07	2 Year Contract Duration Year 1 Avg Hourly Rate
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**2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)**

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$67.07	+	3%	=	\$69.08	Year 2 Avg Hourly Rate
Year 2	\$69.08	+	3%	=	\$71.15	Year 3 Avg Hourly Rate
Year 3	\$71.15	+	3%	=	\$73.29	Year 4 Avg Hourly Rate
Year 4	\$73.29	+	3%	=	\$75.49	Year 5 Avg Hourly Rate

**3. Calculate estimated hours per year (Multiply estimate % each year by total hours)**

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	100.00%	*	860.0	=	860.0	Estimated Hours Year 1
Year 2	0.00%	*	0.0	=	0.0	Estimated Hours Year 2
Year 3	0.00%	*	0.0	=	0.0	Estimated Hours Year 3
Year 4	0.00%	*	0.0	=	0.0	Estimated Hours Year 4
Year 5	0.00%	*	0.0	=	0.0	Estimated Hours Year 5
Total	100%		Total	=	860.0	

**4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)**

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$67.07	*	860	=	\$57,679.10	Estimated Hours Year 1
Year 2	\$69.08	*	0	=	\$0.00	Estimated Hours Year 2
Year 3	\$71.15	*	0	=	\$0.00	Estimated Hours Year 3
Year 4	\$73.29	*	0	=	\$0.00	Estimated Hours Year 4
Year 5	\$75.49	*	0	=	\$0.00	Estimated Hours Year 5
	Total Direct Labor Cost with Escalation			=	\$57,679.10	
	Direct Labor Subtotal before Escalation			=	\$57,679.10	
	Estimated total of Direct Labor Salary Increase			=	\$0.00	Transfer to Page 1

NOTES:

- This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
- An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
- Calculations for anticipated salary escalation must be provided.



**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. Title 23 United States Code Section 112 - Letting of Contracts
4. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
5. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
6. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name:	DeWalt Corporation	Title *:	Director of Surveying
Signature :		Date of Certification (mm/dd/yyyy):	10/11/2019
Email:	<a href="mailto:astubbs@dewaltcorp.com">astubbs@dewaltcorp.com</a>	Phone Number:	661-323-4600 ext. 121
Address:	1930 22nd Street, Bakersfield, CA 93301		

\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

- |   |
|---|
| <u>Recorded Land Survey Information</u>   |
| <u>Field Survey Reconnaissance/Inspection</u>                                     |
| <u>Field Survey to Measure Found Monuments</u>                                    |
| <u>Analyze Found Monuments &amp; ROW records</u>                                  |
| <u>Field Survey for Reestablishment of ROW and Remonumentation</u>                |
| <u>Prepare and Submit Records of Survey for Review (due by 4 pm on end date)</u>  |
| <u>Revise and Resubmit Records of Survey for Recordation with County Recorder</u> |
| <u>Final Invoice Completed</u>  |