OFFICE OF THE SHERIFF
COUNTY OF LOS ANGELES
HALL OF JUSTICE
JIM MCDONNELL, SHERIFF
211 WEST TEMPLE STREET, LOS ANGELES, CALIFORNIA 90012
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Since 1850

November 17, 2015

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration

Los Angeles, California 90012

Dear Supervisors:

AWARD CONSULTANT SERVICES AGREEMENT FOR FACILITY PLANNING TECHNICAL SUPPORT (ALL DISTRICTS) (3 VOTES)

SUBJECT

The Los Angeles County (County) Sheriff's Department (Department) is requesting the Board's authorization to award a Consultant Services Agreement (Agreement) for technical support services (Services) for the Department's Facilities Planning Bureau (FPB) with Vanir Construction Management, Inc. (Vanir), for a term of three years, with two one-year renewal options, for a maximum contract term of five years. The Agreement shall be for an annual amount not to exceed $1,000,000; additional funds in any one of the incremental years may be allocated by the Sheriff as needed, up to a total amount not to exceed $250,000 in any one year for a total amount not to exceed $6,250,000 over the five-year term of the Agreement.

IT IS RECOMMENDED THAT THE BOARD:

1. Find the proposed recommendations are exempt from the California Environmental Quality Act (CEQA) for the reasons stated in this Board letter and the record of the proposed Project.

2. Award and authorize the Sheriff, or his designee, to execute the Agreement with Vanir to provide Services for an annual base contract cost of $1,000,000 for a term of three years, with two additional one-year renewal options. The Agreement will be exercised at the discretion of the Sheriff, or his designee, for a maximum potential term of five years, commencing on the date of the initial Notice to Proceed.

3. Authorize the Sheriff or his designee, at the Sheriff's discretion, to increase the annual contract by up to $250,000 each year, provided that there are sufficient funds in the allocated budget, and that the Maximum Contract Sum does not exceed $6,250,000 over the term of the contract, including any contract renewal options.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the recommended actions will enable the Department to obtain specialized Services, which will enhance the Department's FPB's management capabilities.

Background

The Department has historically utilized Services for technical facilities planning and related services in order to augment existing staff for the Department's FPB. The Department's current Agreement with Vanir, approved by the Board on August 29, 2006, is scheduled to expire on December 9, 2015.

Frequent increases in workload and requests for specialized facility planning expertise creates the need for technical resources such as programming, design, furniture system modifications, and planning of new and refurbishment projects for the Department's custody facilities, patrol stations, and administrative support facilities to fulfill the Department's capital planning needs. FPB is responding to a number of high priority tasks, such as facility backfill projects resulting from the opening of the Hall of Justice, closure of long-term facility leases, recent increased space needs for mental health treatment/services within custody facilities, and planning and coordination of management activities to relocate units to and from affected facilities.

These activities have substantially increased the workload of the Department's FPB, which has created staff shortages. The ability to utilize consultant staff in high volume situations would alleviate delays and allow FPB to be more responsive to the Department's evolving needs.

The Agreement for Services with Vanir provides the Department as needed flexibility and access to a wide range of specialized services at any given time, for any length of time, that otherwise would not be available.

To ensure adequate resources with the appropriate level of training and experience to execute work on schedule and without loss of continuity, the Department is requesting an Agreement with Vanir, to supplement the Department's planning and project management activities over the next three years with two one-year extension options.

Implementation of Strategic Plan Goals

The Services provided under this Agreement support the County's Strategic Plan, Goal 1, Operational Effectiveness/Fiscal Sustainability, by managing fluctuations and increases in workload while providing quality, safe, and secure facilities for our employees, inmates, and the public.

FISCAL IMPACT/FINANCING

The base contract cost is $1,000,000 per year for a term of three years, with two one-year renewal options to be exercised at the discretion of the Sheriff, or his designee, for a maximum contract term of five years, and an anticipated Maximum Contract Sum of $5,000,000. The Department has

allocated sufficient funds within its Fiscal Year 2015-16 Operating Budget under Services and Supplies to award the Agreement.

At the discretion of the Department, additional funds in one or more of the incremental years may be allocated, at no more than $250,000 per year, not to exceed $6,250,000 over the total contract term, if all of the renewal options are exercised. Increases may only be made if there are sufficient allocated funds.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Agreement is in compliance with the Board's clauses that provide for termination, renegotiations, and hiring qualified displaced County employees. The Agreement contains terms and conditions supporting the Board's ordinances, policies, and programs.

County Counsel has reviewed and approved the Agreement as to form.

ENVIRONMENTAL DOCUMENTATION

The proposed activity is not a project pursuant to the CEQA, because it is an activity that is excluded from the definition of a project by CEQA Guidelines Section 15378(B), as it involves an administrative activity of government that will not result in direct or indirect changes to the environment.

CONTRACTING PROCESS

On September 3, 2014, the Department issued a Request for Proposal (RFP) for as needed Services. The objective of the solicitation was to identify the most qualified consultant firm that demonstrated the highest level of experience and capability to provide the required Services. Four firms responded to the RFP.

An Evaluation Committee consisting of Departmental technical staff and the Chief Executive Office evaluated the proposals. Evaluations of the firms were based on technical expertise, proposed work plan, experience, personnel, qualifications, and understanding of work requirements. These evaluations were completed without regard to race, creed, color, or gender. Based on the review and evaluation of the proposals, the Evaluation Committee recommended Vanir as the best qualified firm to perform the specified Services.

The Department has evaluated and determined that the Living Wage Program (County Code, Chapter 2.201) does not apply to the recommended Agreement.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current County services or projects during the performance of the recommended consultant services.

This contract will allow the Department to continue to manage and implement the Department's Capital Project Program with as needed Services to better manage fluctuations in workload, provide more responsive services, and ensure safer and more secure facilities.

CONCLUSION

Upon Board approval, please instruct the Executive Officer-Clerk of the Board to return two originally executed Agreements to the Department's FPB.

Sincerely,

JIM McDONNELL
Sheriff

JMD:GD:tj

Enclosures

CONTRACT

BY AND BETWEEN

COUNTY OF LOS ANGELES

AND

VANIR CONSTRUCTION MANAGEMENT, INC.

FOR

AS-NEEDED CONSTRUCTION PROJECT MANAGEMENT SERVICES

CONTRACT PROVISIONS
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CONTRACT BETWEEN
COUNTY OF LOS ANGELES
AND
VANIR CONSTRUCTION MANAGEMENT, INC.
FOR
AS-NEEDED CONSTRUCTION PROJECT MANAGEMENT AND RELATED SERVICES

This Contract and Exhibits made and entered into this ___ day of December, 2015 by and between the County of Los Angeles, hereinafter referred to as County and Vanir Construction Management, Inc., hereinafter referred to as Consultant.

RECITALS

WHEREAS, the County may contract with private businesses for As-Needed Construction Project Management Services when certain requirements are met; and

WHEREAS, the Consultant has represented that it is a private firm specializing in and highly skilled in providing As-Needed Construction Project Management Services; and

WHEREAS, the County has determined that it is legal, feasible, and cost-effective to contract As-Needed Construction Project Management Services; and

WHEREAS, this Contract is therefore authorized under Section 44.7 of the Los Angeles County Charter and Los Angeles County Codes Section 2.121.250.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:

1.0 APPLICABLE DOCUMENTS

Exhibits A, B, C, D, E, F, G, H, I, J, K L, M, and N are attached to and form a part of this Contract. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Contract and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Contract and then to the Exhibits according to the following priority.

Exhibits:

1.1 EXHIBIT A - Statement of Work

1.2 EXHIBIT B - Pricing Schedule

1.3 EXHIBIT C - Consultant's EEO Certification

1.4 EXHIBIT D - County's Administration

1.5 EXHIBIT E - Consultant's Administration

1.6 EXHIBIT F - Forms Required at the Time of Contract Execution

1.7 EXHIBIT G - Jury Service Ordinance

1.8 EXHIBIT H - Safely Surrendered Baby Law

2.0 DEFINITIONS

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

2.1 **Contract:** Agreement executed between County and Consultant. It sets forth the terms and conditions for the issuance and performance of the Statement of Work, Exhibit A.

2.2 **Consultant:** The sole proprietor, partnership, or corporation that has entered into a contract with the County to perform or execute the work covered by the Statement of Work.

2.3 **Consultant Project Manager:** The individual designated by the Consultant to administer the Contract operations after the Contract award.

2.4 **County Project Director:** Person designated by County with authority for County on contractual or administrative matters relating to this Contract that cannot be resolved by the County's Project Manager.

2.5 **County Project Manager:** Person designated by County's Project Director to manage the operations under this Contract.

2.6 **Day(s):** Calendar day(s) unless otherwise specified.

2.7 **Department or LASD:** Identifies the Los Angeles County Sheriff's Department.

2.8 **Fiscal Year:** The twelve (12) month period beginning July 1st and ending the following June 30th.

2.9 **Notice to Proceed:** The document that authorizes the Consultant to commence work on an individual work order.

2.10 **Sheriff:** Identifies the Sheriff of the Los Angeles County.

3.0 WORK

3.1 Pursuant to the provisions of this Agreement, the Scope of Services shall be outlined in Exhibit A – Statement of Work. No work shall commence on this project until a written Notice to Proceed has been issued by LASD.

4.0 TERM OF CONTRACT

4.1 The term of this Contract shall be for three (3) years commencing after execution by County, unless sooner terminated or extended, in whole or in part, as provided in this Contract.

4.2 The County shall have the sole option to extend this Contract term for up to two (2) additional one-year periods, for a maximum total Contract term of five (5) years. Each such option and extension shall be exercised at the sole discretion of the Sheriff as authorized by the Board of Supervisors.

The County maintains databases that track/monitor consultant performance history. Information entered into such databases may be used for a variety of purposes, including determining whether the County will exercise a contract term extension option.

4.3 The Consultant shall notify LASD when this Contract is within six (6) months from the expiration of the term as provided for

hereinabove. Upon occurrence of this event, the Consultant shall send written notification to LASD at the address herein provided in Exhibit E - County's Administration.

5.0 CONTRACT SUM

5.1 In consideration of the performance by Consultant in a manner satisfactory to County of the services described in Section 3, Work , including receipt and acceptance of such work by the Sheriff or his Designee, County agrees to pay Consultant up to $1,000,000.00 annually, not to exceed $6,250,000.00 over the five (5) year term of the contract. At the discretion of the County, additional funds in any one of the incremental years may be allocated.

5.2 The Consultant shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein. Assumption or takeover of any of the Consultant's duties, responsibilities, or obligations, or performance of same by any entity other than the Consultant, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, shall occur only with the County's express prior written approval.

5.3 The Consultant shall maintain a system of record keeping that will allow the Consultant to determine when it has incurred seventy-five percent (75%) of the annual contract authorization under this Contract, and when it has incurred seventy-five percent (75%) of the total contract authorization under this Contract. Upon occurrence of these events, the Consultant shall send written notification to (Department) at the address herein provided in Exhibit D - County's Administration.

5.4 **No Payment for Services Provided Following Expiration/ Termination of Contract**

The Consultant shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by the Consultant after the expiration or other termination of this Contract. Should the Consultant receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Contract shall not constitute a waiver of County's right to recover such payment from the Consultant. This provision shall survive the expiration or other termination of this Contract.

5.5 Invoices and Payments

5.5.1 The Consultant shall invoice the County only for providing the tasks, services, and work specified in Exhibit A - Statement of Work and elsewhere hereunder. The Consultant shall prepare invoices, which shall include the charges owed to the Consultant by the County under the terms of this Contract. The Consultant's payments shall be as provided in Exhibit B - Pricing Schedule, and the Consultant shall be paid only for the tasks, services, and work approved in writing by the County. If the County does not approve work in writing no payment shall be due to the Consultant for that work.

5.5.2 Supplemental Services may be required at County's direction, upon written authorization by Project Director, and will be based on Exhibit B – Pricing Schedule.

5.5.3 Consultant will not be required to perform services which will exceed the Agreement amount, scope of services, and Agreement dates without written amendment to this agreement.

5.5.4 The Consultant's invoices shall be priced in accordance with Exhibit B - Pricing Schedule.

5.5.5 The Consultant's invoices shall contain the information set forth in Exhibit A - Statement of Work describing the tasks, deliverables, goods, services, work hours, and facility and/or other work for which payment is claimed.

5.5.6 The Consultant shall submit the monthly invoices to the County by the 15th calendar day of the month following the month of service.

5.5.7 All invoices under this Agreement shall be submitted in two (2) copies to the following address:

Los Angeles County Sheriff's Department
Facilities Planning Bureau
4700 Ramona Boulevard, 4th Floor
Monterey Park, CA 91754
Attention: Michelle Janovich

5.5.8 **County Approval of Invoices**

All invoices submitted by the Consultant for payment must have the written approval of the County's Project Manager prior to any payment thereof. In no event shall the County be liable or responsible for any payment prior to such written approval. Approval for payment will not be unreasonably withheld

5.6 Cost of Living Adjustments (COLA's)

If requested by the Consultant, the contract (hourly, daily, monthly, etc.) amount may at the sole discretion of the County, be increased annually, after the initial three (3) year term, based on the most recent published percentage change in the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index (CPI) for the Los Angeles-Riverside-Orange County Area for the 12-month period preceding the contract anniversary date, which shall be the effective date for any Cost of Living Adjustment (COLA). However, any increase shall not exceed the general salary movement granted to County employees as determined by the Chief Executive Officer as of each July 1 for the prior 12-month period. Furthermore, should fiscal circumstances ultimately prevent the Board from approving any increase in County employee salaries, no COLA will be granted. Where the County decides to grant a (COLA) pursuant to this paragraph for living wage contracts, it may, in its sole discretion exclude the cost of labor (including the cost of wages and benefits paid to employees providing services under this contract) from the base upon which a COLA is calculated, unless the Consultant can show that his/her labor cost will actually increase. Further, before any COLA increase shall take effect and become part of this contract, it shall require a written amendment to this contract first, that has been formally approved and executed by the parties.

6.0 ADMINISTRATION OF CONTRACT - COUNTY

COUNTY ADMINISTRATION

A listing of all County Administration referenced in the following sub-paragraphs are designated in Exhibit E - County's Administration. The County shall notify the Consultant in writing of any change in the names or addresses shown.

6.1 County's Project Director

Responsibilities of the County's Project Director include:

- Ensuring that the objectives of this Contract are met; and

- Providing direction to the Consultant in the areas relating to County policy, information requirements, and procedural requirements.

- Making available drawings, specifications, and other records as available in the Los Angeles County Sheriff's Department Facilities Planning Bureau files. Notwithstanding the foregoing, County does not guarantee the accuracy of the contents of said materials

- Meeting with the Consultant's Project Manager on a regular basis; and

- Inspecting any and all tasks, services, and work provided by or on behalf of the consultant.

The County's Project Director is not authorized to make any changes in any of the terms and conditions of this Contract and is not authorized to further obligate County in any respect whatsoever. Such changes may only be made in the manner specified in this Agreement.

6.2 County's Project Manager

The responsibilities of the County's Project Manager include:

- meeting with the Consultant's Project Manager on a regular basis; and

- inspecting any and all tasks, services, and work provided by or on behalf of the Consultant.

The County's Project Manager is not authorized to make any changes in any of the terms and conditions of this Contract and is not authorized to further obligate County in any respect whatsoever. Such changes may only be made in the manner specified in this Agreement.

7.0 ADMINISTRATION OF CONTRACT - CONSULTANT

7.1 Consultant's Project Manager

7.1.1 The Consultant's Project Manager is designated in Exhibit F - Consultant's Administration. The Consultant shall notify the County in writing of any change in the name or address of the Consultant's Project Manager.

7.1.2 The Consultant's Project Manager shall be responsible for the Consultant's day-to-day activities as related to this Contract and shall coordinate with County's Project Manager and County's Contract Project Monitor on a regular basis.

7.1.3 The Consultant's Project Manager must have ten (10) years of experience.

7.2 Approval of Consultant's Staff

County has the absolute right to approve or disapprove all of the Consultant's staff performing work hereunder and any proposed changes in the Consultant's staff, including, but not limited to, the Consultant's Project Manager.

7.3 Consultant's Staff Identification

All of Consultant's employees assigned to County facilities are required to have a County Identification (ID) badge on their person and visible at all times. Consultant bears all expense of the badging, as may be required.

7.3.1 Consultant is responsible to ensure that employees have obtained a County ID badge before they are assigned to work in a County facility. Consultant personnel may be asked to leave a County facility by a County representative if they do not have the proper County ID badge on their person.

7.3.2 Consultant shall notify the County within one business day when staff is terminated from working under this Contract. Consultant shall retrieve and return an employee's ID badge to the County on the next business day after the employee has terminated employment with the Consultant.

7.3.3 If County requests the removal of Consultant's staff, Consultant shall retrieve and return an employee's ID badge to the County on the next business day after the employee has been removed from working on the County's Contract.

7.4 Background and Security Investigations

7.4.1 Each of Consultant's staff performing services under this Contract who is in a designated sensitive position, as determined by County in County's sole discretion, shall undergo and pass a background investigation to the satisfaction of County as a condition of beginning and

continuing to perform services under this Contract. Such background investigation must be obtained through fingerprints submitted to the California Department of Justice to include State, local, and federal-level review, which may include, but shall not be limited to, criminal conviction information. The fees associated with the background investigation shall be at the expense of the Consultant, regardless if the member of Consultant's staff passes or fails the background investigation.

7.4.2 If a member of Consultant's staff does not pass the background investigation, County may request that the member of Consultant's staff be immediately removed from performing services under the Contract at any time during the term of the Contract. County will not provide to Consultant or to Consultant's staff any information obtained through the County's background investigation.

7.4.3 County, in its sole discretion, may immediately deny or terminate facility access to any member of Consultant's staff that does not pass such investigation to the satisfaction of the County or whose background or conduct is incompatible with County facility access.

7.4.4 Disqualification of any member of Consultant's staff pursuant to this Paragraph 7.4 shall not relieve Consultant of its obligation to complete all work in accordance with the terms and conditions of this Contract.

7.5 Confidentiality

7.5.1 Consultant shall maintain the confidentiality of all records and information in accordance with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, County policies concerning information technology security and the protection of confidential records and information.

7.5.2 Consultant shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by Consultant, its officers,

employees, agents, or subcontractors, to comply with this Paragraph 7.5, as determined by County in its sole judgment. Any legal defense pursuant to Consultant's indemnification obligations under this Paragraph 7.5 shall be conducted by Consultant and performed by counsel selected by Consultant and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Consultant fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Consultant for all such costs and expenses incurred by County in doing so. Consultant shall not have the right to enter into any settlement, agree to any injunction, or make any admission, in each case, on behalf of County without County's prior written approval.

7.5.3 Consultant shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality provisions of this Contract.

8.0 STANDARD TERMS AND CONDITIONS

8.1 AMENDMENTS

8.1.1 For any change which affects the scope of work, term, Contract Sum, payments, or any term or condition included under this Contract, an Amendment shall be prepared and executed by the Consultant and by the Sheriff or his designee.

8.1.2 The County's Board of Supervisors or Chief Executive Officer or designee may require the addition and/or change of certain terms and conditions in the Contract during the term of this Contract. The County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors or Chief Executive Officer. To implement such changes, an Amendment to the Contract shall be prepared and executed by the Consultant and by the Sheriff or his designee.

8.1.3 The Sheriff, or his designee, at his sole discretion, may authorize extensions of time as defined in Paragraph 4.0 - Term of Contract. The Consultant agrees that such extensions of time shall not change any other term or condition of this Contract during the period of such

extensions. To implement an extension of time, an Amendment to the Contract shall be prepared and executed by the Consultant and by the Sheriff or his designee.

8.2 ASSIGNMENT AND DELEGATION

8.2.1 The Consultant shall not assign its rights or delegate its duties under this Contract, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this sub-paragraph, County consent shall require a written amendment to the Contract, which is formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under this Contract shall be deductible, at County's sole discretion, against the claims, which the Consultant may have against the County.

8.2.2 Shareholders, partners, members, or other equity holders of Consultant may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Consultant to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Contract.

8.2.3 Any assumption, assignment, delegation, or takeover of any of the Consultant's duties, responsibilities, obligations, or performance of same by any entity other than the Consultant, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Contract which may result in the termination of this Contract. In the event of such termination, County shall be entitled to pursue the same remedies against Consultant as it could pursue in the event of default by Consultant.

8.3 AUTHORIZATION WARRANTY

The Consultant represents and warrants that the person executing this Contract for the Consultant is an authorized agent who has actual authority to bind the Consultant to each and every term, condition, and obligation of this Contract and that all requirements of the Consultant have been fulfilled to provide such actual authority.

8.4 BUDGET REDUCTIONS

In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County Contracts, the County reserves the right to reduce its payment obligation under this Contract correspondingly for that fiscal year and any subsequent fiscal year during the term of this Contract (including any extensions), and the services to be provided by the Consultant under this Contract shall also be reduced correspondingly. The County's notice to the Consultant regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such actions. Except as set forth in the preceding sentence, the Consultant shall continue to provide all of the services set forth in this Contract.

8.5 COMPLAINTS

The Consultant shall develop, maintain and operate procedures for receiving, investigating and responding to complaints.

8.5.1 Within ten (10) business days after Contract effective date, the Consultant shall provide the County with the Consultant's policy for receiving, investigating and responding to user complaints.

8.5.2 The County will review the Consultant's policy and provide the Consultant with approval of said plan or with requested changes.

8.5.3 If the County requests changes in the Consultant's policy, the Consultant shall make such changes and resubmit the plan within ten (10) business days for County approval.

8.5.4 If, at any time, the Consultant wishes to change the Consultant's policy, the Consultant shall submit proposed changes to the County for approval before implementation.

8.5.5 The Consultant shall preliminarily investigate all complaints and notify the County's Project Manager of the status of the

investigation within ten (10) business days of receiving the complaint.

8.5.6 When complaints cannot be resolved informally, a system of follow-through shall be instituted which adheres to formal plans for specific actions and strict time deadlines.

8.5.7 Copies of all written responses shall be sent to the County's Project Manager within ten (10) business days of mailing to the complainant.

8.6 COMPLIANCE WITH APPLICABLE LAW

8.6.1 In the performance of this Contract, Consultant shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.

8.6.2 Consultant shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Consultant, its officers, employees, agents, or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to Consultant's indemnification obligations under this Paragraph 8.6 shall be conducted by Consultant and performed by counsel selected by Consultant and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Consultant fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Consultant for all such costs and expenses incurred by County in doing so. Consultant shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.

8.7 COMPLIANCE WITH CIVIL RIGHTS LAWS

The Consultant hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The Consultant shall comply with Exhibit D - Consultant's EEO Certification.

8.8 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM

8.8.1 Jury Service Program:

This Contract is subject to the provisions of the County's ordinance entitled Consultant Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as Exhibit G and incorporated by reference into and made a part of this Contract.

8.8.2 Written Employee Jury Service Policy.

1. Unless the Consultant has demonstrated to the County's satisfaction either that the Consultant is not a "Consultant" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that the Consultant qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the Consultant shall have and adhere to a written policy that provides that its Employees shall receive from the Consultant, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Consultant or that the Consultant deduct from the Employee's regular pay the fees received for jury service.

2. For purposes of this sub-paragraph, "Consultant" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Consultant and has received or will receive an aggregate sum of $50,000 or more in any

12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of the Consultant. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Consultant has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If the Consultant uses any Subcontractor to perform services for the County under the Contract, the Subcontractor shall also be subject to the provisions of this sub-paragraph. The provisions of this sub-paragraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.

3. If the Consultant is not required to comply with the Jury Service Program when the Contract commences, the Consultant shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and the Consultant shall immediately notify the County if the Consultant at any time either comes within the Jury Service Program's definition of "Consultant" or if the Consultant no longer qualifies for an exception to the Jury Service Program. In either event, the Consultant shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that the Consultant demonstrate, to the County's satisfaction that the Consultant either continues to remain outside of the Jury Service Program's definition of "Consultant" and/or that the Consultant continues to qualify for an exception to the Program.

4. Consultant's violation of this sub-paragraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract and/or bar the Consultant from the award of future County contracts for a period of time consistent with the seriousness of the breach.

8.9 CONFLICT OF INTEREST

8.9.1 No County employee whose position with the County enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Consultant or have any other direct or indirect financial interest in this Contract. No officer or employee of the Consultant who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

8.9.2 The Consultant shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The Consultant warrants that it is not now aware of any facts that create a conflict of interest. If the Consultant hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this sub-paragraph shall be a material breach of this Contract.

8.10 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST

Should the Consultant require additional or replacement personnel after the effective date of this Contract to perform the services set forth herein, the Consultant shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Contract.

8.11 CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS

8.11.1 Should the Consultant require additional or replacement personnel after the effective date of this Contract, the Consultant shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief

Opportunity for Work (GROW) Program who meet the Consultant's minimum qualifications for the open position. For this purpose, consideration shall mean that the Consultant will interview qualified candidates. The County will refer GAIN/GROW participants by job category to the Consultant.

8.11.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

8.12 CONSULTANT RESPONSIBILITY AND DEBARMENT

8.12.1 Responsible Consultant

A responsible Consultant is a Consultant who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible Consultant.

8.12.2 Chapter 2.202 of the County Code

The Consultant is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Consultant on this or other contracts which indicates that the Consultant is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Consultant from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing Contracts the Consultant may have with the County.

8.12.3 Non-responsible Consultant

The County may debar a Consultant if the Board of Supervisors finds, in its discretion, that the Consultant has done any of the following: (1) violated a term of a contract with the County or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects on the Consultant's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or

engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

8.12.4 **Consultant Hearing Board**

1. If there is evidence that the Consultant may be subject to debarment, the Department will notify the Consultant in writing of the evidence which is the basis for the proposed debarment and will advise the Consultant of the scheduled date for a debarment hearing before the Consultant Hearing Board.

2. The Consultant Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Consultant and/or the Consultant's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Consultant Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Consultant should be debarred, and, if so, the appropriate length of time of the debarment. The Consultant and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.

3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Consultant Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Consultant Hearing Board.

4. If a Consultant has been debarred for a period longer than five (5) years, that Consultant may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Consultant has adequately demonstrated one or more

of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.

5. The Consultant Hearing Board will consider a request for review of a debarment determination only where (1) the Consultant has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Consultant Hearing Board will provide notice of the hearing on the request. At the hearing, the Consultant Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Consultant Hearing Board pursuant to the same procedures as for a debarment hearing.

6. The Consultant Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Consultant Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Consultant Hearing Board.

8.12.5 **Subcontractors of Consultant**

These terms shall also apply to Subcontractors of County Consultant's.

8.13 CONSULTANT'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW

The Consultant acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Consultant understands that it is the County's policy to encourage all

County Consultant to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Consultant s place of business. The Consultant will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. The County's Department of Children and Family Services will supply the Consultant with the poster to be used. Information on how to receive the poster can be found on the Internet at www.babysafela.org.

8.14 CONSULTANT'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

8.14.1 The Consultant acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through Contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

8.14.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Consultant's duty under this Contract to comply with all applicable provisions of law, the Consultant warrants that it is now in compliance and shall during the term of this Contract maintain in compliance with employment and wage

reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

8.15 COUNTY'S QUALITY ASSURANCE PLAN

The County or its agent will evaluate the Consultant's performance under this Contract on not less than an annual basis. Such evaluation will include assessing the Consultant's compliance with all Contract terms and conditions and performance standards. Consultant deficiencies which the County determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the Board of Supervisors.

The report will include improvement/corrective action measures

taken by the County and the Consultant. If improvement does not occur consistent with the corrective action measures, the County may terminate this Contract or impose other penalties as specified in this Contract.

8.16 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS

8.16.1 The Consultant shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by the Consultant or employees or agents of the Consultant. Such repairs shall be made immediately after the Consultant has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

8.16.2 If the Consultant fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by the Consultant by cash payment upon demand.

8.17 EMPLOYMENT ELIGIBILITY VERIFICATION

8.17.1 The Consultant warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Consultant shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Consultant shall retain all such documentation for all covered employees for the period prescribed by law.

8.17.2 The Consultant shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Consultant or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

8.18 FACSIMILE REPRESENTATIONS

The County and the Consultant hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to sub-paragraph 8.1, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments to this Contract, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

8.19 FAIR LABOR STANDARDS

The Consultant shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Consultant's employees for which the County may be found jointly or solely liable.

8.20 FORCE MAJEURE

8.20.1 Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this sub-paragraph as "force majeure events").

8.20.2 Notwithstanding the foregoing, a default by a subcontractor of Consultant shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both Consultant and such subcontractor, and without any fault or negligence of either of them. In such case, Consultant shall not be liable for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Consultant to meet the required performance

schedule. As used in this sub-paragraph, the term "subcontractor" and "subcontractors" mean subcontractors at any tier.

8.20.3 In the event Consultant's failure to perform arises out of a force majeure event, Consultant agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

8.21 GOVERNING LAW, JURISDICTION, AND VENUE

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The Consultant agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

8.22 INDEPENDENT CONSULTANT STATUS

8.22.1 This Contract is by and between the County and the Consultant and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Consultant. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

8.22.2 The Consultant shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Consultant.

8.22.3 The Consultant understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the Consultant and not employees of the County. The Consultant shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the

Consultant pursuant to this Contract.

8.22.4 The Consultant shall adhere to the provisions stated in sub-paragraph 7.5 - Confidentiality.

8.23 INDEMNIFICATION

A. To the fullest extend permitted by the law, the Consultant shall indemnify, defend, and hold harmless the COUNT, its Special Districts, employees, agents, and trustees (the Indemnified Parties) from and against any and all liability, loss, injury, or damage, including, but not limited to, demands, claims, lawsuits, actions, proceedings, judgments, settlements, awards, fees, costs, and expenses (including any fees of accountants, attorneys, experts, or other professionals, and costs of investigation, mediation, arbitration, litigation, and appeal), which arise out of, pertain to, or relate to the Work, CONTRACT or Project performed by the Consultant or tis Subcontractors and Sub-consultants, or anyone directly or indirectly engaged by the Consultant relating to or in connection with the Work, CONTRACT or Project, including, but not limited to, any design-related services and/or non-design-related services (including, but not limited to, construction services). The Consultant's duty to defend, indemnify, and hold harmless the Indemnified Parties includes, but is not limited to, bodily injury, death, property damage, and other damage (including, but not limited to, economic loss, and liability arising from contract, tort, patent, copyright, trade secret, or trademark infringement).

B. In the event that California Civil Code Section 2782.8 is determined by a court of competent jurisdiction to apply to Consultant's indemnity and defense obligations under section1.A., as applied to the design-related services provided by the Consultant or its Subcontractors and Sub-consultants, then, with respect to such design-related services only, the Consultant agrees to indemnify, defend, and hold harmless the Indemnified Parties from and against any and all liability, loss, injury or damage, including, but not limited to, demands, claims, lawsuits, actions, proceedings, judgments, settlements, awards, fees, costs, and expenses (including any fees of accountants, attorneys, experts, or other professionals, and costs of investigation, mediation, arbitration, litigation, and appeal), which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant or tis Subcontractors and Sub-consultants in connection with the Work, CONTRACT, or Project. In such event, however, with respect to any non-design-related services (including, but not limited to, construction services) provided by the Consultant,

Consultant's indemnity and defense obligations under section 8.23.A, shall fully apply thereto as stated at section 8.23.A.

8.24 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE

Without limiting Consultant 's indemnification of County, and in the performance of this Contract and until all of its obligations pursuant to this Contract have been met, Consultant shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Sections 8.24 and 8.25 of this Contract. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Consultant pursuant to this Contract. The County in no way warrants that the Required Insurance is sufficient to protect the Consultant for liabilities which may arise from or relate to this Contract.

8.24.1 Evidence of Coverage and Notice to County

- Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Consultant's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Contract.

- Renewal Certificates shall be provided to County not less than 10 days prior to Consultant's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Consultant and/or Sub-Contractor insurance policies at any time.

- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Consultant identified as the contracting party in this Contract. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand ($50,000.00) dollars, and list any County required endorsement forms.

- Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Consultant, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

Los Angeles County Sheriff's Department
Facilities Planning Bureau
4700 Ramona Boulevard, 4th Floor
Monterey Park, California 91754
Attention: Michelle Janovich

Consultant also shall promptly report to County any injury or property damage accident or incident, including any injury to a Consultant employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Consultant. Consultant also shall promptly notify County of any third party claim or suit filed against Consultant or any of its Sub-Contractors which arises from or relates to this Contract, and could result in the filing of a claim or lawsuit against Consultant and/or County.

8.24.2 **Additional Insured Status and Scope of Coverage**

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Consultant's General Liability policy with respect to liability arising out of Consultant's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Consultant's acts or omissions, whether such liability is attributable to the Consultant or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured

endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

8.24.3 **Cancellation of or Changes in Insurance**

Consultant shall provide County with, or Consultant's insurance policies shall contain a provision that County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the County, upon which the County may suspend or terminate this Contract.

8.24.4 **Failure to Maintain Insurance**

Consultant 's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which County immediately may withhold payments due to Consultant, and/or suspend or terminate this Contract. County, at its sole discretion, may obtain damages from Consultant resulting from said breach. Alternatively, the County may purchase the Required Insurance, and without further notice to Consultant, deduct the premium cost from sums due to Consultant or pursue Consultant reimbursement.

8.24.5 **Insurer Financial Ratings**

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

8.24.6 **Consultant's Insurance Shall Be Primary**

Consultant's insurance policies, with respect to any claims related to this Contract, shall be primary with respect to all other sources of coverage available to Consultant. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Consultant coverage.

8.24.7 **Waivers of Subrogation**

To the fullest extent permitted by law, the Consultant hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Contract. The Consultant shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

8.24.8 **Sub-Contractor Insurance Coverage Requirements**

Consultant shall include all Sub-Contractors as insureds under Consultant s own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage. Consultant shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Consultant name the County and Consultant as additional insureds on the Sub-Contractor's General Liability policy. Consultant shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

8.24.9 **Deductibles and Self-Insured Retentions (SIRs)**

Consultant's policies shall not obligate the County to pay any portion of any Consultant deductible or SIR. The County retains the right to require Consultant to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing Consultant payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

8.24.10 **Claims Made Coverage**

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Contract. Consultant understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

8.24.11 **Application of Excess Liability Coverage**

Consultants may use a combination of primary, and excess insurance policies which provide coverage as broad as the underlying primary policies, to satisfy the Required Insurance provisions.

8.24.12 **Separation of Insureds**

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

8.24.13 **Alternative Risk Financing Programs**

The County reserves the right to review, and then approve, Consultant use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

8.24.14 **County Review and Approval of Insurance Requirements**

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

8.25 INSURANCE COVERAGE

8.25.1 **Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	$2 million
Products/Completed Operations Aggregate:	$1 million
Personal and Advertising Injury:	$1 million
Each Occurrence:	$1 million

8.25.2 **Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than $1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of

Consultant's use of autos pursuant to this Contract, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

8.25.3 **Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than $1 million per accident. If Consultant will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Consultant's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

- **Professional Liability/Errors and Omissions**

  Insurance covering Consultant's liability arising from or related to this Contract, with limits of not less than $1 million per claim and $2 million aggregate. Further, Consultant understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

8.26 LIQUIDATED DAMAGES

8.26.1 If, in the judgment of the Department Head, or his/her designee, the Consultant is deemed to be non-compliant with the terms and obligations assumed hereby, the Department Head, or his/her designee, at his/her option, in addition to, or in lieu of, other remedies provided herein, may withhold the entire monthly payment or deduct pro rata from the Consultant's invoice for work not performed. A description of the work not performed and the amount to be withheld or deducted from payments to the Consultant from the County, will be forwarded to the Consultant by the Department Head, or his/her designee, in a written notice describing the reasons for said action.

8.26.2 If the Department Head, or his/her designee, determines that there are deficiencies in the performance of this Contract that the Department Head, or his/her designee, deems are correctable by the Consultant over a certain time span, the Department Head, or his/her designee, will provide a written notice to the Consultant to correct the deficiency within specified time frames. Should the Consultant fail to correct deficiencies within said time frame, the Department Head, or his/her designee, may: (a) Deduct from the Consultant's payment, pro rata, those applicable portions of the Monthly Contract Sum; and/or (b) Deduct liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Consultant to correct a deficiency within the specified time frame. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is one hundred Dollars ($100) per day per infraction, or as specified in the Performance Requirements Summary (PRS) Chart, as defined in Appendix C, Technical Exhibit 2, hereunder, and that the Consultant shall be liable to the County for liquidated damages in said amount. Said amount shall be deducted from the County's payment to the Consultant; and/or (c) Upon giving five (5) days notice to the Consultant for failure to correct the deficiencies, the County may correct any and all deficiencies and the total costs incurred by the County for completion of the work by an alternate source, whether it be County forces or separate private consultant, will be deducted and forfeited from the payment to the Consultant from the County, as determined by the County.

8.26.3 The action noted in sub-paragraph 8.26.2 shall not be construed as a penalty, but as adjustment of payment to the Consultant to recover the County cost due to the failure of the Consultant to complete or comply with the provisions of this Contract.

8.26.4 This sub-paragraph shall not, in any manner, restrict or limit the County's right to damages for any breach of this Contract provided by law or as specified in the PRS or sub-paragraph 8.26.2, and shall not, in any manner, restrict or limit the County's right to terminate this Contract as agreed to herein.

8.27 MOST FAVORED PUBLIC ENTITY

If the Consultant's prices decline, or should the Consultant at any time during the term of this Contract provide the same goods or services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Contract, then such lower prices shall be immediately extended to the County.

8.28 NONDISCRIMINATION AND AFFIRMATIVE ACTION

8.28.1 The Consultant certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

8.28.2 The Consultant shall certify to, and comply with, the provisions of Exhibit D - Consultant's EEO Certification.

8.28.3 The Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

8.28.4 The Consultant certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.

8.28.5 The Consultant certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or

be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.

8.28.6 The Consultant shall allow County representatives access to the Consultant's employment records during regular business hours to verify compliance with the provisions of this sub-paragraph 8.28 when so requested by the County.

8.28.7 If the County finds that any provisions of this sub-paragraph 8.28 have been violated, such violation shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While

the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that the Consultant has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Consultant has violated the anti-discrimination provisions of this Contract.

8.28.8 The parties agree that in the event the Consultant violates any of the anti-discrimination provisions of this Contract, the County shall, at its sole option, be entitled to the sum of Five Hundred Dollars ($500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

8.29 NON EXCLUSIVITY

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Consultant. This Contract shall not restrict (Department) from acquiring similar, equal or like goods and/or services from other entities or sources.

8.30 NOTICE OF DELAYS

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

8.31 NOTICE OF DISPUTES

The Consultant shall bring to the attention of the County's Project Manager and/or County's Project Director any dispute between the County and the Consultant regarding the performance of services as stated in this Contract. If the County's Project Manager or County's Project Director is not able to resolve the dispute, the (Department Head), or designee shall resolve it.

8.32 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

The Consultant shall notify its employees, and shall require each Subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

8.33 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW

The Consultant shall notify and provide to its employees, and shall require each Subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in Exhibit H of this Contract and is also available on the Internet at www.babysafela.org for printing purposes.

8.34 NOTICES

All notices or demands required or permitted to be given or made under this Contract shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in Exhibits E - County's Administration and F - Consultant's Administration. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party. The (Department Head, or his/her designee) shall have the authority to issue all notices or demands required or permitted by the County under this Contract.

8.35 PROHIBITION AGAINST INDUCEMENT OR PERSUASION

Notwithstanding the above, the Consultant and the County agree that, during the term of this Contract and for a period of one year thereafter, neither party shall in any way intentionally induce or

persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

8.36 PUBLIC RECORDS ACT

8.36.1 Any documents submitted by the Consultant; all information obtained in connection with the County's right to audit and inspect the Consultant's documents, books, and accounting records pursuant to sub-paragraph 8.38 - Record Retention and Inspection/Audit Settlement of this Contract; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

8.36.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Consultant agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

8.37 PUBLICITY

8.37.1 The Consultant shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Consultant's need to identify its services and related clients to sustain itself, the County shall not inhibit the Consultant from publishing its role under this Contract within the following conditions:

- The Consultant shall develop all publicity material in a professional manner; and

- During the term of this Contract, the Consultant shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the County's Project Director. The County shall not unreasonably withhold written consent.

8.37.2 The Consultant may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this sub-paragraph 8.37 shall apply.

8.38 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

The Consultant shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The Consultant shall also maintain accurate and complete employment and other records relating to its performance of this Contract. The Consultant agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Consultant and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the Consultant at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, the Consultant shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

8.38.1 In the event that an audit of the Consultant is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by the Consultant or otherwise, then the Consultant shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of the Consultant's receipt thereof, unless otherwise provided by applicable

Federal or State law or under this Contract. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).

8.38.2 Failure on the part of the Consultant to comply with any of the provisions of this sub-paragraph 8.38 shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.

8.38.3 If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the County conduct an audit of the Consultant regarding the work performed under this Contract, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Consultant, then the difference shall be either: a) repaid by the Consultant to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Consultant from the County, whether under this Contract or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Consultant, then the difference shall be paid to the Consultant by the County by cash payment, provided that in no event shall the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract.

8.38.4 In addition to the above, the Consultant agrees, should the County or its authorized representatives determine, in the County's sole discretion, that it is necessary or appropriate to review a broader scope of the Consultant's records (including, certain records related to non-County contracts) to enable the County to evaluate the Consultant's compliance with the County's Living Wage Program, that the Consultant shall promptly and without delay provide to the County, upon the written request of the County or its authorized representatives, access to and the right to examine, audit, excerpt, copy, or transcribe any and all transactions, activities, or records relating to any of its employees who have provided services to the County under this Contract, including without limitation, records relating to work performed by said employees on the Consultant's non-County contracts. The Consultant further acknowledges that the foregoing requirement in this subparagraph relative to Consultant's employees who have provided services to

the County under this Contract is for the purpose of enabling the County in its discretion to verify the Consultant's full compliance with and adherence to California labor laws and the County's Living Wage Program. All such materials and information, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Consultant and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such materials and information prior to such time. All such materials and information shall be maintained by the Consultant at a location in Los Angeles County, provided that if any such materials and information is located outside Los Angeles County, then, at the County's option, the Consultant shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such materials and information at such other location.

8.39 RECYCLED BOND PAPER

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Consultant agrees to use recycled-content paper to the maximum extent possible on this Contract.

8.40 SUBCONTRACTING

8.40.1 The requirements of this Contract may not be subcontracted by the Consultant **without the advance approval of the County**. Any attempt by the Consultant to subcontract without the prior consent of the County may be deemed a material breach of this Contract.

8.40.2 If the Consultant desires to subcontract, the Consultant shall provide the following information promptly at the County's request:

- A description of the work to be performed by the Subcontractor;
- A draft copy of the proposed subcontract; and

- Other pertinent information and/or certifications requested by the County.

8.40.3 The Consultant shall indemnify and hold the County harmless with respect to the activities of each and every Subcontractor in the same manner and to the same degree as if such Subcontractor(s) were the Consultant employees.

8.40.4 The Consultant shall remain fully responsible for all performances required of it under this Contract, including those that the Consultant has determined to subcontract, notwithstanding the County's approval of the Consultant's proposed subcontract.

8.40.5 The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including Subcontractor employees, providing services under this Contract. The Consultant is responsible to notify its Subcontractors of this County right.

8.40.6 The County's Project Director is authorized to act for and on behalf of the County with respect to approval of any subcontract and Subcontractor employees. After approval of the subcontract by the County, Consultant shall forward a fully executed subcontract to the County for their files.

8.40.7 The Consultant shall be solely liable and responsible for all payments or other compensation to all Subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.

8.40.8 The Consultant shall obtain certificates of insurance, which establish that the Subcontractor maintains all the programs of insurance required by the County from each approved Subcontractor. The Consultant shall ensure delivery of all such documents to:

Los Angeles County Sheriff's Department
Facilities Planning Bureau
4700 Ramona Boulevard, 4th Floor
Monterey Park, California 91754
Attention: Michelle Janovich

before any Subcontractor employee may perform any work hereunder.

8.41 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

Failure of the Consultant to maintain compliance with the requirements set forth in sub-paragraph 8.14 - Consultant's Warranty of Adherence to County's Child Support Compliance Program, shall constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of the Consultant to cure such default within ninety (90) calendar days of written notice shall be grounds upon which the County may terminate this Contract pursuant to sub-paragraph 8.43 - Termination for Default and pursue debarment of the Consultant, pursuant to County Code Chapter 2.202.

8.42 TERMINATION FOR CONVENIENCE

8.42.1 This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to the Consultant specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than ten (10) days after the notice is sent.

8.42.2 After receipt of a notice of termination and except as otherwise directed by the County, the Consultant shall:

- Stop work under this Contract on the date and to the extent specified in such notice, and
- Complete performance of such part of the work as shall not have been terminated by such notice.

8.42.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Consultant under this Contract shall be maintained by the Consultant in accordance with sub-paragraph 8.38, Record Retention AND Inspection/Audit Settlement.

8.43 TERMINATION FOR DEFAULT

8.43.1 The County may, by written notice to the Consultant, terminate the whole or any part of this Contract, if, in the judgment of County's Project Director:

- Consultant has materially breached this Contract; or
- Consultant fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Contract; or
- Consultant fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

8.43.2 In the event that the County terminates this Contract in whole or in part as provided in sub-paragraph 8.43.1, the County may procure, upon such terms and in such manner as the County may deem appropriate, goods and services similar to those so terminated. The Consultant shall be liable to the County for any and all excess costs incurred by the County, as determined by the County, for such similar goods and services. The Consultant shall continue the performance of this Contract to the extent not terminated under the provisions of this sub-paragraph.

8.43.3 Except with respect to defaults of any Subcontractor, the Consultant shall not be liable for any such excess costs of the type identified in sub-paragraph 8.43.2 if its failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of the Consultant. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Consultant. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Consultant and Subcontractor, and without the fault or negligence of either

of them, the Consultant shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Consultant to meet the required performance schedule. As used in this sub-paragraph, the term "Subcontractor(s)" means Subcontractor(s) at any tier.

8.43.4 If, after the County has given notice of termination under the provisions of this sub-paragraph 8.43, it is determined by the County that the Consultant was not in default under the provisions of this sub-paragraph 8.43, or that the default was excusable under the provisions of sub-paragraph 8.43.3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to sub-paragraph 8.42 - Termination for Convenience.

8.43.5 The rights and remedies of the County provided in this sub-paragraph 8.43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.44 TERMINATION FOR IMPROPER CONSIDERATION

8.44.1 The County may, by written notice to the Consultant, immediately terminate the right of the Consultant to proceed under this Contract if it is found that consideration, in any form, was offered or given by the Consultant, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, amendment, or extension of this Contract or the making of any determinations with respect to the Consultant's performance pursuant to this Contract. In the event of such termination, the County shall be entitled to pursue the same remedies against the Consultant as it could pursue in the event of default by the Consultant.

8.44.2 The Consultant shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

8.44.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

8.45 TERMINATION FOR INSOLVENCY

8.45.1 The County may terminate this Contract forthwith in the event of the occurrence of any of the following:

- Insolvency of the Consultant. The Consultant shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Consultant is insolvent within the meaning of the Federal Bankruptcy Code;

- The filing of a voluntary or involuntary petition regarding the Consultant under the Federal Bankruptcy Code;

- The appointment of a Receiver or Trustee for the Consultant; or

- The execution by the Consultant of a general assignment for the benefit of creditors.

8.45.2 The rights and remedies of the County provided in this sub-paragraph 8.45 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.46 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE

The Consultant, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the Consultant, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the Consultant or any County Lobbyist or County Lobbying firm retained by the Consultant to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Contract, upon which the County may in its sole discretion, immediately terminate or suspend this Contract.

8.47 TERMINATION FOR NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision of this Contract, the County shall not be obligated for the Consultant's performance hereunder or by any provision of this Contract during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Contract in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify the Consultant in writing of any such non-allocation of funds at the earliest possible date.

8.48 VALIDITY

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

8.49 WAIVER

No waiver by the County of any breach of any provision of this Contract shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The rights and remedies set forth in this sub-paragraph 8.49 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.50 WARRANTY AGAINST CONTINGENT FEES

8.50.1 The Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Consultant for the purpose of securing business.

8.50.2 For breach of this warranty, the County shall have the right to terminate this Contract and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8.51 WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Consultant acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless Consultant qualifies for an exemption or exclusion, Consultant warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles County Code Chapter 2.206.

8.52 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Failure of Consultant to maintain compliance with the requirements set forth in Paragraph 8.51 "Warranty of Compliance with County's Defaulted Property Tax Reduction Program" shall constitute default under this contract. Without limiting the rights and remedies available to County under any other provision of this contract, failure of Consultant to cure such default within 10 days of notice shall be grounds upon which County may terminate this contract and/or pursue debarment of Consultant, pursuant to County Code Chapter 2.206.

8.53 TIME OFF FOR VOTING

The Consultant shall notify its employees, and shall require each subcontractor to notify and provide to its employees, information regarding the time off for voting law (Elections Code Section 14000). Not less than 10 days before every statewide election, every Consultant and subcontractors shall keep posted conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of Section 14000.

9.0 UNIQUE TERMS AND CONDITIONS

9.1 COMPLIANCE WITH THE COUNTY'S LIVING WAGE PROGRAM

9.1.1 Living Wage Program

This Contract is subject to the provisions of the County's ordinance entitled Living Wage Program as codified in Sections 2.201.010 through 2.201.100 of the Los Angeles County Code, a copy of which is attached as Exhibit J and incorporated by reference into and made a part of this Contract.

9.1.2 **Payment of Living Wage Rates**

1. Unless the Consultant has demonstrated to the County's satisfaction either that the Consultant is not an "Employer" as defined under the Program (Section 2.201.020 of the County Code) or that the Consultant qualifies for an exception to the Living Wage Program (Section 2.201.090 of the County Code), the Consultant shall pay its Employees no less than the applicable hourly living wage rate, as set forth immediately below, for the Employees' services provided to the County, including, without limitation, "Travel Time" as defined below at subsection 5 of this Subparagraph 9.1.2 under the Contract:

   a. Not less than $11.84 per hour if, in addition to the per-hour wage, the Consultant contributes less than $2.20 per hour towards the provision of bona fide health care benefits for its Employees and any dependents; or

   b. Not less than $9.64 per hour if, in addition to the per-hour wage, the Consultant contributes at least $2.20 per hour towards the provision of bona fide health care benefits for its Employees and any dependents. The Consultant will be deemed to have contributed $2.20 per hour towards the provision of bona fide health care benefits if the benefits are provided through the County Department of Health Services Community Health Plan. If, at any time during the Contract, the Consultant contributes less than $2.20 per hour towards the provision of bona fide health care benefits, the Consultant shall be required to pay its Employees the higher hourly living wage rate.

2. For purposes of this sub-paragraph, "Consultant" includes any subcontractor engaged by the Consultant to perform services for the County under the Contract. If the Consultant uses any subcontractor to perform

services for the County under the Contract, the subcontractor shall be subject to the provisions of this sub-paragraph. The provisions of this sub-paragraph shall be inserted into any such subcontract and a copy of the Living Wage Program shall be attached to the subcontract. "Employee" means any individual who is an employee of the Consultant under the laws of California, and who is providing full-time services to the Consultant, some or all of which are provided to the County under the Contract. "Full-time" means a minimum of 40 hours worked per week, or a lesser number of hours, if the lesser number is a recognized industry standard and is approved as such by the County; however, fewer than 35 hours worked per week will not, in any event, be considered full-time.

3. If the Consultant is required to pay a living wage when the Contract commences, the Consultant shall continue to pay a living wage for the entire term of the Contract, including any option period.

4. If the Consultant is not required to pay a living wage when the Contract commences, the Consultant shall have a continuing obligation to review the applicability of its "exemption status" from the living wage requirement. The Consultant shall immediately notify the County if the Consultant at any time either comes within the Living Wage Program's definition of "Employer" or if the Consultant no longer qualifies for an exception to the Living Wage Program. In either event, the Consultant shall immediately be required to commence paying the living wage and shall be obligated to pay the living wage for the remaining term of the Contract, including any option period. The County may also require, at any time during the Contract and at its sole discretion, that the Consultant demonstrate to the County's satisfaction that the Consultant either continues to remain outside of the Living Wage Program's definition of "Employer" and/or that the Consultant continues to qualify for an exception to the Living Wage Program. Unless the Consultant satisfies this requirement within the time frame permitted by the County, the Consultant shall immediately be required to pay the living wage for the remaining term of the Contract, including any option period.

5. For purposes of the Consultant 's obligation to pay its Employees the applicable hourly living wage rate under this Contract, "Travel Time" shall have the following two meanings, as applicable: 1) With respect to travel by an Employee that is undertaken in connection with this Contract, Travel Time shall mean any period during which an Employee physically travels to or from a County facility if the Consultant pays the Employee any amount for that time or if California law requires the Consultant to pay the Employee any amount for that time; and 2) With respect to travel by an Employee between County facilities that are subject to two different contracts between the Consultant and the County (of which both contracts are subject to the Living Wage Program), Travel Time shall mean any period during which an Employee physically travels to or from, or between such County facilities if the Consultant pays the Employee any amount for that time or if California law requires the Consultant to pay the Employee any amount for that time.

9.1.3 Consultant's Submittal of Certified Monitoring Reports

The Consultant shall submit to the County certified monitoring reports at a frequency instructed by the County. The certified monitoring reports shall list all of the Consultant's Employees during the reporting period. The certified monitoring reports shall also verify the number of hours worked, the hourly wage rate paid, and the amount paid by the Consultant for health benefits, if any, for each of its Employees. The certified monitoring reports shall also state the name and identification number of the Consultant's current health care benefits plan, and the Consultant's portion of the premiums paid as well as the portion paid by each Employee. All certified monitoring reports shall be submitted on forms provided by the County (Exhibit K and Exhibit L), or other form approved by the County which contains the above information. The County reserves the right to request any additional information it may deem necessary. If the County requests additional information, the Consultant shall promptly provide such information. The Consultant, through one of its officers, shall certify under penalty of perjury that the information contained in each certified monitoring report is true and accurate.

9.1.4 Consultant's Ongoing Obligation to Report Labor Law/Payroll Violations and Claims

During the term of the Contract, if the Consultant becomes aware of any labor law/payroll violation or any complaint, investigation or proceeding ("claim") concerning any alleged labor law/payroll violation (including but not limited to any violation or claim pertaining to wages, hours and working conditions such as minimum wage, prevailing wage, living wage, the Fair Labor Standards Act, employment of minors, or unlawful employment discrimination), the Consultant shall immediately inform the County of any pertinent facts known by the Consultant regarding same. This disclosure obligation is not limited to any labor law/payroll violation or claim arising out of the Consultant's contract with the County, but instead applies to any labor law/payroll violation or claim arising out of any of the Consultant's operations in California.

9.1.5 County Auditing of Consultant Records

Upon a minimum of twenty-four (24) hours' written notice, the County may audit, at the Consultant's place of business, any of the Consultant's records pertaining to the Contract, including all documents and information relating to the certified monitoring reports. The Consultant is required to maintain all such records in California until the expiration of four (4) years from the date of final payment under the Contract. Authorized agents of the County shall have access to all such records during normal business hours for the entire period that records are to be maintained.

9.1.6 Notifications to Employees

The Consultant shall place County-provided living wage posters at each of the Consultant's places of business and locations where the Consultant's Employees are working. The Consultant shall also distribute County-provided notices to each of its Employees at least once per year. The Consultant shall translate posters and handouts into Spanish and any other language spoken by a significant number of Employees.

9.1.7 Enforcement and Remedies

If the Consultant fails to comply with the requirements of this sub-paragraph, the County shall have the rights and remedies described in this sub-paragraph in addition to any rights and remedies provided by law or equity.

1. Remedies For Submission of Late or Incomplete Certified Monitoring Reports. If the Consultant submits a certified monitoring report to the County after the date it is due or if the report submitted does not contain all of the required information or is inaccurate or is not properly certified, any such deficiency shall constitute a breach of the Contract. In the event of any such breach, the County may, in its sole discretion, exercise any or all of the following rights/remedies:

    a. Withholding of Payment. If the Consultant fails to submit accurate, complete, timely and properly certified monitoring reports, the County may withhold from payment to the Consultant up to the full amount of any invoice that would otherwise be due, until the Consultant has satisfied the concerns of the County, which may include required submittal of revised certified monitoring reports or additional supporting documentation.

    b. Liquidated Damages. It is mutually understood and agreed that the Consultant's failure to submit an accurate, complete, timely and properly certified monitoring report will result in damages being sustained by the County. It is also understood and agreed that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein are the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damages are not intended as a penalty or forfeiture for the Consultant's breach. Therefore, in the event that a certified monitoring report is deficient, including but not limited to being late, inaccurate, incomplete or uncertified, it is agreed that the County may, in its sole discretion, assess against the Consultant liquidated damages in the amount of $100 per monitoring report for each day until the County has been provided with a properly prepared, complete and certified monitoring report. The County may deduct any assessed

liquidated damages from any payments otherwise due the Consultant.

c. Termination. The Consultant's continued failure to submit accurate, complete, timely and properly certified monitoring reports may constitute a material breach of the Contract. In the event of such material breach, the County may, in its sole discretion, terminate the Contract.

2. Remedies for Payment of Less Than the Required Living Wage. If the Consultant fails to pay any Employee at least the applicable hourly living wage rate, such deficiency shall constitute a breach of the Contract. In the event of any such breach, the County may, in its sole discretion, exercise any or all of the following rights/remedies:

   a. Withholding Payment. If the Consultant fails to pay one or more of its Employees at least the applicable hourly living wage rate, the County may withhold from any payment otherwise due the Consultant the aggregate difference between the living wage amounts the Consultant was required to pay its Employees for a given pay period and the amount actually paid to the employees for that pay period. The County may withhold said amount until the Consultant has satisfied the County that any underpayment has been cured, which may include required submittal of revised certified monitoring reports or additional supporting documentation.

   b. Liquidated Damages. It is mutually understood and agreed that the Consultant's failure to pay any of its Employees at least the applicable hourly living wage rate will result in damages being sustained by the County. It is also understood and agreed that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein are the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damages are not intended as a penalty or forfeiture for the Consultant's breach. Therefore, it is agreed that the County may, in its sole discretion, assess against the Consultant liquidated damages of $50

per Employee per day for each and every instance of an underpayment to an Employee. The County may deduct any assessed liquidated damages from any payments otherwise due the Consultant.

c. Termination. The Consultant's continued failure to pay any of its Employees the applicable hourly living wage rate may constitute a material breach of the Contract. In the event of such material breach, the County may, in its sole discretion, terminate the Contract.

3. Debarment. In the event the Consultant breaches a requirement of this sub-paragraph, the County may, in its sole discretion, bar the Consultant from the award of future County contracts for a period of time consistent with the seriousness of the breach, in accordance with Los Angeles County Code, Chapter 2.202, Determinations of Consultant Non-Responsibility and Consultant Debarment.

9.1.8 **Use of Full-Time Employees**

The Consultant shall assign and use full-time Employees of the Consultant to provide services under the Contract unless the Consultant can demonstrate to the satisfaction of the County that it is necessary to use non-full-time Employees based on staffing efficiency or County requirements for the work to be performed under the Contract. It is understood and agreed that the Consultant shall not, under any circumstance, use non-full-time Employees for services provided under the Contract unless and until the County has provided written authorization for the use of same. The Consultant submitted with its proposal a full-time Employee staffing plan. If the Consultant changes its full-time Employee staffing plan, the Consultant shall immediately provide a copy of the new staffing plan to the County.

9.1.9 **Consultant Retaliation Prohibited**

The Consultant and/or its Employees shall not take any adverse action which would result in the loss of any benefit of employment, any contract benefit, or any statutory benefit for any Employee, person or entity who has reported a violation of the Living Wage Program to the County or to any other public or private agency, entity or

person. A violation of the provisions of this sub-paragraph may constitute a material breach of the Contract. In the event of such material breach, the County may, in its sole discretion, terminate the Contract.

9.1.10 **Consultant Standards**

During the term of the Contract, the Consultant shall maintain business stability, integrity in employee relations and the financial ability to pay a living wage to its employees. If requested to do so by the County, the Consultant shall demonstrate to the satisfaction of the County that the Consultant is complying with this requirement.

9.2 LOCAL SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE PROGRAM

9.2.1 This Contract is subject to the provisions of the County's ordinance entitled Local Small Business Enterprise Preference Program, as codified in Chapter 2.204 of the Los Angeles County Code.

9.2.2 The Consultant shall not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a Local Small Business Enterprise.

9.2.3 The Consultant shall not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a Local Small Business Enterprise.

9.2.4 If the Consultant has obtained certification as a Local Small Business Enterprise by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this contract to which it would not otherwise have been entitled, shall:

1. Pay to the County any difference between the contract amount and what the County's costs would have been if the contract had been properly awarded;

2. In addition to the amount described in subdivision (1), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract; and

3. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Consultant Non-responsibility and Consultant Debarment).

The above penalties shall also apply to any business that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification, and fails to notify the state and Internal Services Department of this information prior to responding to a solicitation or accepting a contract award.

9.3 OWNERSHIP OF MATERIALS, SOFTWARE AND COPYRIGHT

9.3.1 County shall be the sole owner of all right, title and interest, including copyright, in and to all software, plans, diagrams, facilities, and tools (hereafter "materials") which are originated or created through the Consultant's work pursuant to this Contract. The Consultant, for valuable consideration herein provided, shall execute all documents necessary to assign and transfer to, and vest in the County all of the Consultant's right, title and interest in and to such original materials, including any copyright, patent and trade secret rights which arise pursuant to the Consultant's work under this Contract.

9.3.2 During the term of this Contract, including any Contract extensions, and for five (5) years thereafter, the Consultant shall maintain and provide security for all of the Consultant's working papers prepared under this Contract. County shall have the right to inspect, copy and use at any time during and subsequent to the term of this Contract, any and all such working papers and all information contained therein.

9.3.3 Any and all materials, software and tools which are developed or were originally acquired by the Consultant outside the scope of this Contract, which the Consultant desires to use hereunder, and which the Consultant considers to be proprietary or confidential, must be

specifically identified by the Consultant to the County's Project Manager as proprietary or confidential, and shall be plainly and prominently marked by the Consultant as "Proprietary" or "Confidential" on each appropriate page of any document containing such material.

9.3.4 The County will use reasonable means to ensure that the Consultant's proprietary and/or confidential items are safeguarded and held in confidence. The County agrees not to reproduce, distribute or disclose to non-County entities any such proprietary and/or confidential items without the prior written consent of the Consultant.

9.3.5 Notwithstanding any other provision of this Contract, the County will not be obligated to the Consultant in any way under sub-paragraph 9.4.4 for any of the Consultant's proprietary and/or confidential items which are not plainly and prominently marked with restrictive legends as required by sub-paragraph 9.4.3 or for any disclosure which the County is required to make under any state or federal law or order of court.

9.3.6 All the rights and obligations of this sub-paragraph 9.4 shall survive the expiration or termination of this Contract.

9.4 PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION

9.4.1 The Consultant shall indemnify, hold harmless and defend County from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual or alleged unauthorized trade secret disclosure, arising from or related to the operation and utilization of the Consultant s work under this Contract. County shall inform the Consultant as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure, and shall support the Consultant's defense and settlement thereof.

9.4.2 In the event any equipment, part thereof, or software product becomes the subject of any complaint, claim, or proceeding alleging infringement or unauthorized disclosure, such that County's continued use of such item is formally restrained, enjoined, or subjected to a risk of damages, the Consultant, at its sole expense, and

providing that County's continued use of the system is not materially impeded, shall either:

- Procure for County all rights to continued use of the questioned equipment, part, or software product; or
- Replace the questioned equipment, part, or software product with a non-questioned item; or
- Modify the questioned equipment, part, or software so that it is free of claims.

9.4.3 The Consultant shall have no liability if the alleged infringement or unauthorized disclosure is based upon a use of the questioned product, either alone or in combination with other items not supplied by the Consultant, in a manner for which the questioned product was not designed nor intended.

IN WITNESS WHEREOF, Consultant has executed this Contract, or caused it to be duly executed and the County of Los Angeles, by order of its Board of Supervisors has caused this Contract to be executed on its behalf by the Chair of said Board and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, the day and year first above written.

CONSULTANT: Vanir Construction Management, Inc.

By JOSEPH A. MEHOLA
Name

President
Title

COUNTY OF LOS ANGELES

By_____
JIM McDONNELL, Sheriff

APPROVED AS TO FORM:

MARY C. WICKHAM
Interim County Counsel

By_____
Deputy County Counsel