

19-239

**COUNTY OF MENDOCINO
STANDARD SERVICES AGREEMENT**

This Agreement is by and between the COUNTY OF MENDOCINO, hereinafter referred to as the "COUNTY", and Vanir Construction Management, hereinafter referred to as the "CONTRACTOR".

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, COUNTY may retain independent contractors to perform special services to or for COUNTY or any department thereof; and,

WHEREAS, COUNTY desires to obtain CONTRACTOR for its construction management services for the new SB844 Jail Expansion Project (Jail Building 3); and,

WHEREAS, CONTRACTOR is willing to provide such services on the terms and conditions set forth in this AGREEMENT and is willing to provide same to COUNTY.

NOW, THEREFORE it is agreed that COUNTY does hereby retain CONTRACTOR to provide the services described in Exhibit "A", and CONTRACTOR accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Exhibit B	Payment Terms
Exhibit C	Insurance Requirements
Exhibit D	Mendocino County ePayables Information

The term of this Agreement shall be from the date this Agreement becomes fully executed by all parties (the "Effective Date"), and shall continue through June 30, 2023.

The compensation payable to CONTRACTOR hereunder shall not exceed One million five hundred nine thousand, six hundred ninety-eight dollars (\$1,509,698.00) for the term of this Agreement.

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

[Signature] 9/1/19
DEPARTMENT HEAD DATE

Budgeted: ☒ Yes ☐ No

Budget Unit: 1712 CP 915

Line Item: 864365

Grant: ☐ Yes ☒ No

Grant No.: SB844 Reimbursed

CONTRACTOR/COMPANY NAME

By: _____

Date: _____

NAME AND ADDRESS OF CONTRACTOR:

Vanir Construction Management Inc

4540 Duckhorn Drive - STE 300

Sacramento, CA 95834

COUNTY OF MENDOCINO

By: [Signature]
CARRE BROWN, Chair
BOARD OF SUPERVISORS

Date: OCT 07 2019

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: [Signature]
Deputy
OCT 07 2019

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: [Signature]
Deputy
OCT 07 2019

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

KATHARINE L. ELLIOTT,
County Counsel

By: [Signature]
Deputy

Date: 9/12/19

INSURANCE REVIEW:

By: [Signature]
Risk Management

Date: 9/16/19

EXECUTIVE OFFICE/FISCAL REVIEW:

By: [Signature]
Deputy CEO

Date: 9/16/19

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☐

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: _____

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

DEPARTMENT HEAD _____ DATE _____

Budgeted: ☒ Yes ☐ No

Budget Unit: 1712 CP 915

Line Item: 864365

Grant: ☐ Yes ☒ No

Grant No.: SB844 Reimbursed

CONTRACTOR/COMPANY NAME

By: _____

Date: 9-12-19

NAME AND ADDRESS OF CONTRACTOR:

Vanir Construction Management Inc

4540 Duckhorn Drive - STE 300

Sacramento, CA 95834

COUNTY OF MENDOCINO

By: _____
CARRE BROWN, Chair
BOARD OF SUPERVISORS

Date: _____

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy

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Government Code section 25103, delivery of this
document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy

INSURANCE REVIEW:

By: _____
Risk Management

Date: _____

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represents that he/she executed this Agreement in
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upon behalf of which he/she acted, executed this
Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

KATHARINE L. ELLIOTT,
County Counsel

By: _____
Deputy

Date: _____

EXECUTIVE OFFICE/FISCAL REVIEW:

By: _____
Deputy CEO

Date: _____

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☐ _____

Mendocino County Business License: Valid ☐ _____

Exempt Pursuant to MCC Section: _____

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an Independent Contractor. CONTRACTOR is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONTRACTOR nor for any obligations or liabilities incurred by CONTRACTOR.

CONTRACTOR shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such amounts.

In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and County laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of COUNTY is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, COUNTY may upon two (2) week's written notice to CONTRACTOR, withhold from payments to CONTRACTOR hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. INDEMNIFICATION: To the furthest extent permitted by law (including without limitation California Civil Code sections 2782 and 2782.8, if applicable), Contractor shall assume the defense of, indemnify, and hold harmless the COUNTY, its officers, agents, and employees, from and against any and all claims, demands, damages, costs, liabilities, and losses whatsoever alleged to be occurring or resulting in connection with the CONTRACTOR'S performance or its obligations under this AGREEMENT, unless arising out of the sole negligence or willful misconduct of COUNTY. "CONTRACTOR'S performance" includes CONTRACTOR'S action or inaction and the action or inaction of CONTRACTOR'S officers, employees, agents and subcontractors.
3. INSURANCE AND BOND: CONTRACTOR shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. WORKERS' COMPENSATION: CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

CONTRACTOR affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and CONTRACTOR further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. CONTRACTOR shall furnish to COUNTY certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and CONTRACTOR shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of subcontractors' employees.

5. CONFORMITY WITH LAW AND SAFETY:
 - a. In performing services under this Agreement, CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONTRACTOR shall indemnify and hold COUNTY harmless from any and all liability, fines, penalties and consequences from any of CONTRACTOR's failures to comply with such laws, ordinances, codes and regulations.

- b. Accidents: If a death, serious personal injury or substantial property damage occurs in connection with CONTRACTOR's performance of this Agreement, CONTRACTOR shall immediately notify Mendocino County Risk Manager's Office by telephone. CONTRACTOR shall promptly submit to COUNTY a written report, in such form as may be required by COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONTRACTOR's sub-contractor, if any; (3) name and address of CONTRACTOR's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.
- c. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.

- 6. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit "B" hereto as funding permits.

If COUNTY over pays CONTRACTOR for any reason, CONTRACTOR agrees to return the amount of such overpayment to COUNTY, or at COUNTY's option, permit COUNTY to offset the amount of such overpayment against future payments owed to CONTRACTOR under this Agreement or any other agreement.

In the event CONTRACTOR claims or receives payment from COUNTY for a service, reimbursement for which is later disallowed by COUNTY, State of California or the United States Government, the CONTRACTOR shall promptly refund the disallowance amount to COUNTY upon request, or at its option COUNTY may offset the amount disallowed from any payment due or that becomes due to CONTRACTOR under this Agreement or any other agreement.

All invoices, receipts, or other requests for payment under this contract must be submitted by CONTRACTOR to COUNTY in a timely manner and consistent with the terms specified in Exhibit B. In no event shall COUNTY be obligated to pay any request for payment for which a written request for payment and all required documentation was first received more than six (6) months after this Agreement has terminated, or beyond such other time limit as may be set forth in Exhibit B.

- 7. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.

8. OWNERSHIP OF DOCUMENTS: CONTRACTOR hereby assigns the COUNTY and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the COUNTY, the CONTRACTOR, the CONTRACTOR's subcontractors or third parties at the request of the CONTRACTOR (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

CONTRACTOR shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONTRACTOR agrees to take such further steps as may be reasonably requested by COUNTY to implement the aforesaid assignment. If for any reason said assignment is not effective, CONTRACTOR hereby grants the COUNTY and any assignee of the COUNTY an express royalty – free license to retain and use said Documents and Materials. The COUNTY's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not CONTRACTOR's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

The COUNTY's rights under this Paragraph 8 shall not extend to any computer software used to create such Documents and Materials.

9. CONFLICT OF INTEREST: The CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.
10. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY: COUNTY OF MENDOCINO
851 Low Gap Rd
Ukiah, CA 95482
Attn: Dan Mazzanti

To CONTRACTOR: Vanir Construction Management Inc
4540 Duckhorn Drive Ste 300
Sacramento, CA 95834
ATTN: Steven Whitehead

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

11. USE OF COUNTY PROPERTY: CONTRACTOR shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
12. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:
CONTRACTOR certifies that it will comply with all Federal, State, and local laws, rules and regulations pertaining to nondiscrimination in employment.
 - a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, pregnancy, disability, sex, sexual orientation, gender identity, ancestry, national origin, age, religion, Veteran's status, political affiliation, or any other factor prohibited by law.

- b. CONTRACTOR shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
 - c. If requested to do so by the COUNTY, CONTRACTOR shall provide the COUNTY with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under State or Federal law.
 - d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
 - e. The CONTRACTOR shall include the provisions set forth in this paragraph in each of its subcontracts.
13. DRUG-FREE WORKPLACE: CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at a County facility or work site, the CONTRACTOR, within five days thereafter, shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
14. ENERGY CONSERVATION: CONTRACTOR agrees to comply with the mandatory standards and policies relating to energy efficiency in the State of California Energy Conservation Plan, (Title 24, California Administrative Code).
15. COMPLIANCE WITH LICENSING REQUIREMENTS: CONTRACTOR shall comply with all necessary licensing requirements and shall obtain appropriate licenses. To the extent required by law, CONTRACTOR shall display licenses in a location that is reasonably conspicuous. Upon COUNTY's request, CONTRACTOR shall file copies of same with the County Executive Office.

CONTRACTOR represents and warrants to COUNTY that CONTRACTOR and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

16. AUDITS; ACCESS TO RECORDS: The CONTRACTOR shall make available to the COUNTY, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and

other records or documents evidencing or relating to the expenditures and disbursements charged to the COUNTY, and shall furnish to the COUNTY, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONTRACTOR.

The CONTRACTOR shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the CONTRACTOR in the performance of this Agreement. If such books and records are not kept and maintained by CONTRACTOR within the County of Mendocino, California, CONTRACTOR shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within County or CONTRACTOR shall pay to the COUNTY the reasonable, and necessary costs incurred by the COUNTY in inspecting CONTRACTOR's books and records, including, but not limited to, travel, lodging and subsistence costs. CONTRACTOR shall provide such assistance as may be reasonably required in the course of such inspection. The COUNTY further reserves the right to examine and reexamine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after the COUNTY makes the final or last payment or within four (4) years after any pending issues between the COUNTY and CONTRACTOR with respect to this Agreement are closed, whichever is later.

17. DOCUMENTS AND MATERIALS: CONTRACTOR shall maintain and make available to COUNTY for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 8 of this Agreement. CONTRACTOR's obligations under the preceding sentence shall continue for four (4) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONTRACTOR shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for four (4) years following the COUNTY's last payment to CONTRACTOR under this Agreement.
18. TIME OF ESSENCE: Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
19. TERMINATION: The COUNTY has and reserves the right to suspend, terminate or abandon the execution of any work by the CONTRACTOR without cause at any time upon giving to the CONTRACTOR notice. Such notice shall be in writing and may be issued by any county officer authorized to execute or amend the contract, the County Chief Executive Officer, or any other person designated by the County Board of Supervisors. In the event that the COUNTY should

abandon, terminate or suspend the CONTRACTOR's work, the CONTRACTOR shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONTRACTOR for its Construction Management Services for the new jail project CPI916 at 951 Low Gap Rd Ukiah CA. shall not exceed \$1,509,698.00 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding.

20. NON APPROPRIATION: If COUNTY should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, COUNTY may unilaterally terminate this Agreement only upon thirty (30) days written notice to CONTRACTOR. Upon termination, COUNTY shall remit payment for all products and services delivered to COUNTY and all expenses incurred by CONTRACTOR prior to CONTRACTOR'S receipt of the termination notice.
21. CHOICE OF LAW: This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
22. VENUE: All lawsuits relating to this contract must be filed in Mendocino County Superior Court, Mendocino County, California.
23. WAIVER: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
24. ADVERTISING OR PUBLICITY: CONTRACTOR shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of COUNTY in each instance.
25. ENTIRE AGREEMENT: This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter

thereof. This Agreement may not be modified except by a written document signed by both parties. In the event of a conflict between the body of this Agreement and any of the Exhibits, the provisions in the body of this Agreement shall control.

26. HEADINGS: Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
27. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
28. ASSURANCE OF PERFORMANCE: If at any time the COUNTY has good objective cause to believe CONTRACTOR may not be adequately performing its obligations under this Agreement or that CONTRACTOR may fail to complete the Services as required by this Agreement, COUNTY may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
29. SUBCONTRACTING/ASSIGNMENT: CONTRACTOR shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the COUNTY's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Only the department head or his or her designee shall have the authority to approve subcontractor(s).
 - c. CONTRACTOR shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its subcontractors.
30. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 8), and Conflict of Interest (Paragraph 9), shall survive termination or expiration for two (2) years.

31. SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
32. INTELLECTUAL PROPERTY WARRANTY: CONTRACTOR warrants and represents that it has secured all rights and licenses necessary for any and all materials, services, processes, software, or hardware ("CONTRACTOR PRODUCTS") to be provided by CONTRACTOR in the performance of this AGREEMENT, including but not limited to any copyright, trademark, patent, trade secret, or right of publicity rights. CONTRACTOR hereby grants to COUNTY, or represents that it has secured from third parties, an irrevocable license (or sublicense) to reproduce, distribute, perform, display, prepare derivative works, make, use, sell, import, use in commerce, or otherwise utilize CONTRACTOR PRODUCTS to the extent reasonably necessary to use the CONTRACTOR PRODUCTS in the manner contemplated by this agreement.

CONTRACTOR further warrants and represents that it knows of no allegations, claims, or threatened claims that the CONTRACTOR PRODUCTS provided to COUNTY under this Agreement infringe any patent, copyright, trademark or other proprietary right. In the event that any third party asserts a claim of infringement against the COUNTY relating to a CONTRACTOR PRODUCT, CONTRACTOR shall indemnify and defend the COUNTY pursuant to Paragraph 2 of this AGREEMENT.

In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for COUNTY the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.

33. ELECTRONIC COPIES:

The parties agree that an electronic copy, including facsimile copy, email, or scanned copy of the executed Agreement, shall be deemed, and shall have the same legal force and effect as, an original document.

34. COOPERATION WITH COUNTY

Contractor shall cooperate with County and County staff in the performance of all work hereunder.

35. PERFORMANCE STANDARD

Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable Federal, State, and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release. If County determines that any of Contractor's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with County to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of paragraph 19 (Termination) or (d) pursue any and all other remedies at law or in equity.

Nothing in this Agreement shall be construed to mean that CONTRACTOR assumes any of the responsibilities or duties of the Design Professional. The Design Professional is solely responsible for the Project design and shall perform in accordance with the agreement between the Design Professional and the COUNTY. Nothing in this Agreement shall be construed to mean that CONTRACTOR assumes any of the responsibilities or duties of the construction contractor(s). The construction contractors are solely responsible for construction means, methods, sequence and procedures used in the construction of the Project and for the safety of its personnel and its operations and for performing in accordance with the construction contractors' contracts with the COUNTY.

36. ATTORNEYS' FEES

In any action to enforce or interpret the terms of this agreement, including but not limited to any action for declaratory relief, each party shall be solely responsible for and bear its own attorneys' fees, regardless of which party prevails.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

CONTRACTOR shall provide the following services:

Represent the interests of The County and the Project objectives in providing responsibility for Construction Management services during the final design phases and throughout the construction cycle of the project including close-out and commissioning.

The scope of work for the Construction Management Program for the Project includes:

DESIGN PHASE SCOPE

1. Schedule: The CM shall review and adopt the County's project schedule in consultation with the project architect. Throughout the course of the project, the CM shall notify the County of any issues or conflicts which will affect the schedule and propose options to reduce the impact of delays. The CM shall compare actual progress with scheduled progress for the Design phase and make recommendations as needed to the County for corrective actions.
2. Project and Construction Budget: The CM shall prepare a construction cost estimate at the completion of the Construction Drawings for review and discussion with the County and the Architect.
 - a. Preliminary Estimate and Budget Analysis: The CM shall analyze and report the cost of various design and construction alternatives. The CM shall provide value engineering and constructability recommendations to the County and Architect on major construction components, including cost evaluations of alternative materials and systems.
3. Management Information System: The CM shall develop, maintain and operate a Project Management Information System using Microsoft Excel as needed to complete the project, meet funding and regulatory requirements and provide for successful operation and maintenance of the completed facility. The system shall provide:
 - a. A means to identify and track issues as they arise, establish and maintain effective communication between the County, Architect and the CM on project issues and assign and track responsibility for resolving them.
 - b. Project document control and maintenance to ensure that accurate records are kept of meetings, and other decisions throughout the project life cycle.

4. Design Document Review: The CM shall attend planned design review meetings during the Construction Document phases at 50% and 95% levels of completion. The meetings will be held at the County's offices in Ukiah or at the Architect's offices in Sacramento.
 - a. The CM shall review the design documents and make recommendations to the County and the Architect regarding constructability, scheduling, phasing, clarity and consistency of the project documents.
5. Regulatory Agency Approval: The CM shall identify regulatory requirements and submission deadlines, coordinate the transmittal of documents to the state review agencies, primarily the BSCC and the State Fire Marshal. The CM shall shepherd required approvals regardless of the party responsible for submitting approval documents and advise the County of potential problems with the review or denials of approval and aid with their resolution. The CM shall be available to attend project review meetings with the BSCC at the completion of the Design Development phase and the Construction Drawings phase. The CM shall also be available to attend any necessary meetings of the Board of Supervisors or meetings with the Architect or Mendocino County Sheriff's Office to secure approvals.
6. Contract Documents: The CM shall have primary responsibility for the preparation of project Specifications related to Division 00 bidding requirements, bid packages, bid alternates and of the construction contract documents. Current County standard general conditions do not contemplate projects of this scope and character. The CM shall propose General and Supplemental Conditions of the Construction Contract appropriate to this project for review and consideration by the County.

PROJECT ADVERTISEMENT PHASE SCOPE

1. Advertisement: The CM shall assess the bidding environment for the project and develop a plan to maximize participation of prime contractors for the project consistent with the California Public Contract Code (PCC). The CM shall conduct a pre-bid bidders conference to explain the project requirements to the bidders, receive all bid related questions and coordinate responses with the Architect. When needed, the CM shall prepare a cost estimate, for all addenda for review and approval by the County. After reviewing all responses for constructability, cost impact, scheduling impact and consistency with the Bid Documents, the CM will coordinate the issuance of responses through addenda to each bidder receiving documents.
2. Bid Award: The CM shall assist the County in evaluating the Contractor bids for responsiveness and price. The CM shall evaluate the bids,

including alternate bid prices and shall make a recommendation to the County regarding the award of the construction contract(s). The CM shall compare the actual contract award prices with those costs in the construction budget and make recommendations concerning possible award or rejection of bids and assist County staff in making award recommendations to the Board of Supervisors. The CM will assure that all processes follow the California Public Contract Code in bidding, evaluation and award.

3. Contract Administration: The CM shall assist the County in preparing contract record documents and administering construction contracts including coordination of risk transfer and indemnification. The CM shall consult with the County about the advisability of the use of an Owner Controlled Insurance Program (OCIP) for this specific project.

CONSTRUCTION PHASE

1. Project Management: The CM shall conduct pre-construction conferences as necessary to review the project reporting procedures and other requirements for the performance of the work. The CM shall periodically conduct on-site coordination meetings with the Contractor(s), Architect and the County. In managing the construction of the project:
 - a. The CM shall track information requests, supplemental instructions, informational and approval submittals; track and coordinate responses, and distribute copies and decisions among the parties.
 - b. The CM shall implement a change management system to track, secure authorization and final approval of all changes to the construction contract.
 - c. The CM shall review and assess the progress of the work concerning the interpretation of the Contract Documents, compliance with building and regulatory codes, proper coordination, and conformance with the approved schedule and industry and trade standards.
 - d. The CM shall receive and organize the operation and maintenance manuals, warranties and guarantees from the Contractor(s) and deliver the originals to the County and a copy to the Architect.
 - e. The CM shall consult with the County and the Architect to determine when the Contractor's Work and the Project is complete and assist County staff in making acceptance recommendation to the Board of Supervisors and final payment to the contractor.

trainings are completed and delivered to the County.

g. The CM shall provide monthly reports on the CM fees expended against the CM's contract budget.

h. The CM shall provide detailed monthly reports of construction costs expended or pending against the contractor's approved construction contract budget including all executed Change Orders and potential Change Orders received.

2. Master Schedule: The CM shall review the project baseline schedule after submissions from and discussions with the Contractor. Over the course of the Work, the CM will notify the County of any issues or conflicts which will affect the project and/or construction schedule and propose options to reduce the impact of delays. The CM shall compare actual progress with the contractor's scheduled progress and make recommendations as needed to the County for corrective action.
3. Contract Administration: The CM shall maintain an onsite project team to provide contract administration and construction management as the County's agent. The team will consist of persons having the experience, training and skills needed to establish and maintain a partnership with the County, the architect and the contractors. The CM will provide the County with a list of the project personnel with their duties and responsibilities for the County's approval. If the CM finds it needs to replace any key members of their on-site team, they will notify the County prior to the change or immediately after in the case of an emergency. The CM shall implement coordination and communication procedures among the County, State, Architect and Contractor as a continuation of the procedures established during the Design Phase. The CM shall review and recommend approval of the Contractor's payment applications.
4. Safety: The CM shall coordinate with the General Contractor in promoting a culture of safety at the construction site and ensure that each contractor working on site has an active work safety program appropriate for their involvement in the project. The overall site safety is the responsibility of the General Contractor.
5. Change Orders: The CM shall implement and maintain a change order control system. The CM shall review and evaluate the contents of all requested changes to the contract time or price and shall make recommendations to the County regarding all proposed change orders. The CM shall observe and verify extra work performed on a time and material basis by the Contractor and the CM shall request cost records for payroll, materials and equipment. When authorized by the County, the CM shall prepare change order documents and supporting materials to be presented to the Board of Supervisors who shall have the authority to execute change orders for changes to the Contract with the Contractor.

- The CM shall also provide the Architect with copies of all approved change orders.
6. Risk Identification and Construction Claims Assessment: Throughout the course of the project it shall be the responsibility of the CM to identify and assess the likelihood of conditions or issues that may prevent the successful achievement of the project goals or present potential liability for the County and to advise the County of opportunities to mitigate these risks. The CM shall continuously assess the possibility for conflicts and disputes to affect the performance of the work.
 7. Time and Cost Control: The CM shall insure the Contract Documents contain payment and time correction methods. The CM shall review the Contractor's construction schedule and its completion dates for compliance with the requirements of the Contractor's approved Baseline Project Schedule. On a monthly basis, the CM shall evaluate the percentage of complete work and shall provide a Construction Schedule report for distribution to the County, Architect and Contractor. The CM shall negotiate with the contractor to establish an approved schedule of values and the schedule shall serve as the basis for the allocation of the Contract price to the Contractor's scheduled activities. The CM shall review the progress payment applications from the contractor and shall make adjustments to coincide with the percent of completed Work and forward applications to the County with recommendations for payment.
 8. Labor Compliance: The CM shall ensure that all contractors and subcontractors are compliant with all applicable labor law. The labor compliance program shall include the collection of certified payroll reports and retention for at least 90 days after the finalization of the project. The program shall also include random checks with onsite workers to ensure they are receiving the proper pay rate. The County supports workforce development and encourages training in the construction industry. The CM shall ensure that apprenticeship requirements of the California Labor Code are being met for this project by the contractors or obtain and retain records documenting waivers as required.
 9. Commissioning and Training: The CM shall oversee the initial operation, testing, adjusting, balancing, commissioning and training for all building systems as part of the Work and deliver the required documentation to the County.
 10. Testing and Inspections: The CM specifically excludes the fees of testing labs, IOR, special inspections and permit inspections. However, the CM shall routinely review the work for compliance with building and regulatory codes and coordinate all required testing and inspections with outside providers.

[END OF DEFINITION OF SERVICES]

EXHIBIT B

PAYMENT TERMS

COUNTY will pay CONTRACTOR for the services described in this Agreement an amount not to exceed One Million Five Hundred and Nine Thousand Six Hundred Ninety Eight Dollars and Zero Cents (\$1,509,698.00). The contract payments shall be made upon receipt of an approved invoice. The COUNTY will approve time and materials invoices for work completed prior to the invoice date based on the rate schedule included below. Reimbursable expenses will be invoiced at actual costs plus a mark-up not to exceed 15%. Commissioning Agent will be invoiced at actual costs plus a mark-up not to exceed 10%. Final invoice will be approved after all work has been completed and all required commissioning, lien releases, manuals, training, as-build drawings and warranties have been received by the COUNTY and the facility is ready for occupancy.

COST BASIS ASSUMPTIONS:

	2019	2020	2021	2022	2023	Hours per Phase			Totals	
Position Title	Rate	Rate	Rate	Rate	Rate	Design Services	Project Marketing Services	Construction Services	Total Hours per Position	CM FEE
Project Director	\$180	\$180	\$185	\$185	\$191	0	0	0	0	\$0
Senior PM	\$175	\$175	\$180	\$180	\$186	384	672	3,528	4,584	\$825,158
Project Engineer/Admin	\$120	\$120	\$124	\$124	\$127	16	672	2,940	3,628	\$448,519
BSCC/SFM Coordination	\$150	\$150	\$155	\$155	\$159	96	0	80	176	\$26,779
SB 844 Funding Specialist	\$175	\$175	\$180	\$180	\$186	32	0	0	32	\$5,600
Constructibility	\$150	\$150	\$155	\$155	\$159	484	0	0	484	\$72,600
Scheduling	\$145	\$145	\$149	\$149	\$154	24	32	168	224	\$33,386
Chief Estimator	\$150	\$150	\$155	\$155	\$159	128	40	84	252	\$38,377
Reimbursable Expns									Cost +	\$29,280
Commissioning Agent									Cost +	\$30,000
Special Inspections									Excluded	\$0
Lab Testing									Excluded	\$0
Estimated CM Fee									9,380	\$1,509,698

Estimated Cost Summary by Phase:

Phase	Total	CM Fee
Design Services	1,164	\$186,480
Project Marketing Services	1,416	\$219,498
Construction Services	6,800	\$950,416
Total	9,380	\$1,509,698

[END OF PAYMENT TERMS]

EXHIBIT C

INSURANCE REQUIREMENTS

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude COUNTY from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law. Insurance requirements shall be in addition to, and not in lieu of, Contractor's indemnity obligations under Paragraph 2 of this Agreement.

CONTRACTOR shall obtain and maintain insurance coverage as follows:

- a. Combined single limit bodily injury liability and property damage liability - \$1,000,000 each occurrence.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.

CONTRACTOR shall furnish to COUNTY certificates of insurance evidencing the minimum levels described above.

[END OF INSURANCE REQUIREMENTS]

EXHIBIT D

MENDOCINO COUNTY EPAYABLES INFORMATION

The County of Mendocino is currently making credit card payments to all of our vendors and suppliers who qualify. To qualify, vendors need to currently accept credit card payments. To achieve this more efficient form of payment, the County has partnered with Bank of America and their ePayables credit card program. This electronic initiative will yield many benefits to its participants:

- Expedited receipt of cash – electronic credit card payments provide cash flow benefits by eliminating mail and paper check float
- Elimination of check processing costs
- Remittance data transmitted with payment for more efficient back-end reconciliation
- No collection costs associated with lost or misplaced checks
- Reduced exposure to check fraud
- More efficient handling of exception items
- Fits with existing accounting software – requires no purchase of software, no modifications to existing accounts receivable system and no change to bank accounts.
- Going green with paperless electronic credit card payments help conserve the environment by eliminating printing and mailing of paper checks.

For information regarding the payment process, please contact Margaret Yates yatesm@mendocinocounty.org or 707-234-6869.

Additional information regarding the Bank of America Program is also available at:

http://corp.bankofamerica.com/business/ci/landing/epayables-vendors?cm_mmc=sb-general_-vanity_-sg01vn000r_epayablesvendors_-na