



# BOARD PACKAGE

March 8, 2023

Regular Board Meeting – 5:00 p.m.

## REGULAR BOARD MEETING AGENDA

March 8, 2023

Phelan Community Center  
4128 Warbler Road, Phelan, CA 92371  
& Via Conference Call (see below)

### REGULAR BOARD MEETING – 5:00 P.M.

**Call to Order** – Pledge of Allegiance

#### Roll Call

#### 1) Approval of Agenda

2) **Public Comment** – Under this item, any member of the public wishing to directly address the Board on any item of interest that may or may not be within the subject matter jurisdiction of the Board, but not listed on the agenda, may do so at this time. However, the Board is prohibited by law from taking any action on any item not appearing on the agenda unless the action is otherwise authorized by the Brown Act. Any member of the public wishing to directly address the Board on any item listed on the agenda may do so when the item is being considered by the Board. *If you wish to address the Board, please do so by the method listed at the end of this agenda.* Speakers are requested to be brief in their remarks. The Chair may limit each speaker to a comment period of five (5) minutes.

a) **General Public**

b) **Community Reports**

- C.E.R.T.
- County Supervisor
- Federal Representatives
- Fire
- Mojave Water Agency
- School District
- Sheriff
- State Representatives

#### 3) Consent Items

- a) Approval of Board Minutes  
b) Acceptance of Board Stipends/Reimbursements

#### 4) Matters Removed from Consent Items

#### 5) Presentations/Appointments

#### 6) Continued/New Agenda Items

- a) Discussion & Possible Action Regarding Request for Qualifications for Construction Services for Phase 1 of the Civic Center & Phelan Park Expansion Project
- b) Discussion & Possible Action Regarding the Purchase and Programming of Tesco Telemetry Equipment for Well No. 15



#### Mission Statement:

*The Mission of the Phelan Piñon Hills Community Services District is to efficiently provide authorized services and maximize resources for the benefit of the community.*

#### Authorized Services:

- Water
- Parks & Recreation
- Street Lighting
- Solid Waste & Recycling

- c) Discussion & Possible Action Regarding Approval of Equipment Rental and Installation of 5,820 feet of 12" DI350 Ductile Iron Pipe to Service Well No. 15
  - d) Discussion & Possible Adoption of Ordinance No. 2023-03; Establishing Guidelines for the Conduct of District Public Meetings and Activities
  - e) Discussion & Possible Adoption of Resolution No. 2023-08; Establishing Policies for Board Conduct Amongst Directors and with Staff
  - f) Discussion & Possible Action Regarding Contract Between San Bernardino County and the District Related to the American Rescue Plan Act and the Coronavirus Local Fiscal Recovery Fund
  - g) Discussion & Possible Adoption of Resolution No. 2023-09; Adopting a Conflict of Interest Code
  - h) Update on the Proposed Civic Center & Phelan Park Expansion Projects
- 7) **Committee Reports/Comments**
- a) Engineering Committee (Standing)
  - b) Finance Committee (Standing)
  - c) Legislative Committee (Standing)
  - d) Parks, Recreation & Street Lighting Committee (Standing)
  - e) Waste & Recycling Committee (Standing)
- 8) **Staff and General Manager's Report**
- 9) **Reports**
- a) Director's Report
  - b) President's Report
- 10) **Correspondence/Information**
- 11) **Review of Action Items**
- a) Prior Meeting Action Items
  - b) Current Meeting Action Items
- 12) **Set Agenda for Next Meeting**
- Regular Board Meeting – March 22, 2023
- 13) **Recess to Closed Session**
- Conference with Legal Counsel
  - Initiation of Litigation Pursuant to Government Code Section 54956.9(d)(4)
  - Two Potential Cases
- 14) **Return to Open Session** – Announcement of Reportable Action
- 15) **Adjournment**

*Pursuant to Government Code Section 54954.2(a), any request for a disability-related modification or accommodation, including auxiliary aids or services, that is sought to participate in the above-agendized public meeting should be directed to the District's General Manager at (760) 868-1212 at least 24 hours prior to said meeting.*

Agenda materials can be viewed online at [www.pphcsd.org](http://www.pphcsd.org)

**Remote Viewing:**

To watch the livestream (view only – nonparticipating), visit our YouTube channel:

[PPHCSD YouTube Channel Link](#)

**Remote Participation:**

To provide public comment, or otherwise participate remotely, select the meeting you wish to attend on the District's website and then click the "Join Remote Meeting" option.

<https://www.pphcsd.org/meetings>

*Please be advised that remote participation and livestreaming options are provided as a courtesy to the public and technical issues could occur, resulting in delays or the inability to participate remotely or livestream. It is recommended that you attend in person to ensure you are able to participate.*

**Written Comments:**

You may also email your public comment to the Board Secretary at [ksevy@pphcsd.org](mailto:ksevy@pphcsd.org) by the meeting start time listed on this agenda. Your comment will be added to the record by the Board Secretary.

*Please check the District website for updates on this meeting. We encourage you to sign up for our email notifications by emailing [ksevy@pphcsd.org](mailto:ksevy@pphcsd.org) or by visiting our website and completing the signup form at [www.pphcsd.org](http://www.pphcsd.org) under the "Agendas and Minutes" tab.*



# Agenda Item 3a

Approval of Board Minutes

**SPECIAL BOARD MEETING MINUTES**  
February 15, 2023  
Phelan Community Center  
4128 Warbler Road, Phelan, CA 92371  
& Remotely Via Zoom or Conference Call

**Board Members Present:** Rebecca Kujawa, President  
Mark Roberts, Vice President  
Kathy Hoffman, Director  
Chuck Hays, Director  
Greg Snyder, Director

**Board Members Absent:** None

**Staff Present:** Don Bartz, General Manager  
Lori Lowrance, Assistant General Manager/CFO  
George Cardenas, Engineering Manager  
Kim Sevy, HR & Solid Waste Manager/District Clerk  
Sean Wright, Water Operations Manager  
Chris Cummings, Assistant Water Operations Manager  
Steve Lowrance, Parks Supervisor  
David Noland, Finance Supervisor

**District Counsel:** Steve Kennedy, General Counsel (Zoom)

**SPECIAL BOARD MEETING – 5:00 P.M.**

**Call to Order**

President Kujawa called the meeting to order at 5:06 p.m. and the Pledge of Allegiance was conducted.

**Roll Call**

All Directors were present at roll call.

1) **Approval of Agenda**

Director Hoffman moved to approve the Agenda. Director Hays seconded the motion.  
Motion carried 5-0.

2) **Public Comment** – None

3) **2023/2024 Budget Workshop**

a) **Review and Discussion Regarding Budget Policy**

Ms. Lowrance presented this item.

No action was taken; not an action item.

b) **Review and Possible Approval of Amended Strategic Plan**

Ms. Sevy presented this item.

Director Hoffman moved to approve the amended strategic plan. Vice President Roberts seconded the motion. Motion carried 5-0.

c) **Review and Possible Acceptance of Draft Capital, Maintenance, and Program Plans**

Staff presented the draft Capital, Maintenance, and Program Plans.

Director Snyder moved to accept the draft capital, maintenance, and program plans as amended. President Kujawa seconded the motion. Motion carried 5-0.

4) **Review of Action Items**

- Budget Policy Update
- Updates to Strategic Plan
- Updates to CIP/Program Plan

5) **Recess to Closed Session**

The Board recessed to closed session at 6:15 p.m.

Conference with Legal Counsel  
Initiation of Litigation Pursuant to Government Code  
Section 54956.9(d)(4)  
Four Potential Cases

6) **Return to Open Session** – Announcement of Reportable Closed Session Action

The Board returned to open session at 7:32 p.m.; there was no reportable action.

7) **Adjournment**

With no further business before the Board, the meeting was adjourned at 7:32 p.m.

Agenda materials can be viewed online at [www.pphcsd.org](http://www.pphcsd.org)

\_\_\_\_\_  
Rebecca Kujawa, President of the Board

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kim Sevy, HR & Solid Waste Manager/District Clerk

\_\_\_\_\_  
Date



## **REGULAR BOARD MEETING MINUTES**

February 22, 2023  
Phelan Community Center  
4128 Warbler Road, Phelan, CA 92371  
& Remotely Via Zoom or Conference Call

**Board Members Present:** Rebecca Kujawa, President  
Mark Roberts, Vice President  
Kathy Hoffman, Director  
Chuck Hays, Director  
Greg Snyder, Director

**Board Members Absent:** None

**Staff Present:** Don Bartz, General Manager  
George Cardenas, Engineering Manager  
Kim Sevy, HR & Solid Waste Manager/District Clerk  
Sean Wright, Water Operations Manager  
Chris Cummings, Assistant Water Operations Manager  
Jennifer Oakes, Executive Management Analyst

**District Counsel:** Steve Kennedy, General Counsel (Zoom)

### **REGULAR BOARD MEETING – 5:00 P.M.**

#### **Call to Order**

President Kujawa called the meeting to order at 5:00 p.m. and the Pledge of Allegiance was conducted.

#### **Roll Call**

All Directors were present at roll call.

#### **1) Approval of Agenda**

Mr. Bartz requested to remove Items 3e and 6b. Director Hoffman moved to approve the Agenda as amended. Director Snyder seconded the motion. Motion carried 5-0.

#### **2) Public Comment**

##### **a) General Public**

Public comment was provided by Deborah Philips, Peter Barnes, and an unidentified member of the public.

##### **b) Community Reports**

- **Sheriff** – Sergeant Rios provided the call statistics for the month of January.

- **School District** – Superintendent Ryan Holman commented on the snow day process, and student involvement in district plans.

### 3) **Consent Items**

Vice President Roberts moved to approve the Consent Items. Director Hoffman seconded the motion. Motion carried 5-0.

### 4) **Matters Removed from Consent Items**

None

### 5) **Presentations/Appointments**

None

### 6) **Continued/New Agenda Items**

#### a) **Discussion & Possible Action Regarding Teleconferencing Policy**

Staff Recommendation: For the Board to review the sample policy regarding Board teleconferencing and to authorize staff to proceed with development of a similar District policy.

Ms. Sevy presented this item.

Public comment was given on this item by Peter Barnes and Cheryl Rhoden.

Consensus of the Board was to prepare a District policy regarding teleconferencing and bring back to the Board for approval.

#### b) **Discussion & Possible Action Regarding Unclaimed Funds**

This item was removed from the agenda; no action taken.

#### c) **Discussion & Possible Adoption of Resolution No. 2023-08; Establishing a Policy for District Reserves, and Possible Approval of the 2022/2023 Reserves Schedule in Compliance with Said Policy**

Staff Recommendation: For the Board to adopt Resolution No. 2023-08; Establishing a Policy for District Reserves, and Possible Approval of the 2022/2023 Reserves Schedule in Compliance with Said Policy.

Ms. Lowrance introduced this item.

Director Snyder moved to approve the staff recommendation. President Kujawa seconded the motion. Motion carried 5-0.

#### d) **Update on the Proposed Civic Center & Phelan Park Expansion Projects**

Staff Recommendation: None

Mr. Cardenas provided an update.

No action taken; not an action item.

7) **Committee Reports/Comments**

- a) **Engineering Committee (Standing)** – Met and reviewed the budget, the well project, and pipeline project.
- b) **Finance Committee (Standing)** – Has not met.
- c) **Legislative Committee (Standing)** – Has not met; meets in March.
- d) **Parks, Recreation & Street Lighting Committee (Standing)** – Has not met.
- e) **Waste & Recycling Committee (Standing)** – Has not met; last meeting was cancelled.

8) **Staff and General Manager’s Report**

Nothing further to report.

9) **Reports**

a) **Director’s Report**

**Hoffman** – Nothing to report.

**Roberts** – Nothing to report.

**Hays** – Nothing to report.

**Snyder** – Nothing to report.

b) **President’s Report** – Nothing further to report.

10) **Correspondence/Information** – The items in the packet were noted.

11) **Review of Action Items**

a) **Prior Meeting Action Items** – Gantt chart, or similar, for Civic Center Project

b) **Current Meeting Action Items** – None

12) **Set Agenda for Next Meeting**

- Regular Board Meeting – March 8, 2023, 5:00 p.m.

13) **Adjournment**

With no further business before the Board, the meeting was adjourned at 5:28 p.m.

Agenda materials can be viewed online at [www.pphcsd.org](http://www.pphcsd.org)

\_\_\_\_\_  
Rebecca Kujawa, President of the Board

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kim Sevy, HR & Solid Waste Manager/District Clerk

\_\_\_\_\_  
Date



# Agenda Item 3b

Acceptance of Board  
Stipends/Reimbursements









# Agenda Item 4

Matters Removed from  
Consent Items

# Agenda Item 5

Presentations/Appointments

# Agenda Item 6a

Discussion & Possible Action  
Regarding Request for  
Qualifications for Construction  
Services for Phase 1 of the Civic  
Center & Phelan Park Expansion  
Project

## MEMORANDUM

**DATE:** March 8, 2023

**TO:** Board of Directors

**FROM:** Don Bartz, General Manager  
By: Kim Sevy, HR & Solid Waste Manager/District Clerk

**SUBJECT:** Discussion & Possible Action Regarding Request for Qualifications for Construction Services for Phase 1 of the Civic Center & Phelan Park Expansion Project

### STAFF RECOMMENDATION

For the Board to approve the Request for Qualifications for Construction Services for Phase 1 of the Civic Center & Phelan Park Expansion Project ("RFQ"), and to authorize staff to issue the RFQ

### BACKGROUND

Phase 1 of the Civic Center & Phelan Park Expansion Project primarily includes the construction of a new, 14,034 SF Civic Center on the west side of the project site. The scope of work in the first phase also includes extensive grading work on the 14-acre site as well as the surrounding landscape and parking areas for the Civic Center.

The District elected to hire RLB to assist with the procurement process and is utilizing a two-step procurement approach for the first phase of the Phelan Community Park. The first phase consists of this Request for Qualifications (RFQ) to allow the district to understand what parties are interested in providing construction services. The second step will be a formal Request for Proposals (RFP) that will include cost, schedule, and contractor team as well as the previous information detailed in the RFQ. The schedule for this process is as follows:

- A. Issue SOQ, RFQ Document available 3/10/2023
- B. Last Date to Submit Questions to RLB 3/17/2023.
- C. Questions answered in an addendum 3/21/2023.
- D. Qualifications Due (to RLB) 3/24/2023.
- E. Potential questions from RLB to Respondent 3/27/2023.
- F. Questions answered by Respondent 3/31/2023.
- G. RFP announced Early May

The attached documents were prepared by RLB and have been reviewed by District staff. A detailed schedule outlining the RFQ and RFP portion of the process is also attached.

### FISCAL IMPACT

None

### ATTACHMENT(S)

RFQ & Procurement Schedule

## REQUEST FOR QUALIFICATIONS Construction Services

**Phelan Pinon Hills Community Services District (PPHCSD)  
Phelan Community Park – Phase 1, Civic Center  
Sheep Creek Road, Phelan, CA 93207  
March 10, 2023**

### I. GENERAL PROVISIONS, TERMS AND CONDITIONS

A. **Introduction:** The Phelan-Pinon Hills Community Services District - **PPHCSD** (“**Owner**”) is requesting statements of qualifications (“**Qualifications**”) from select firms (“**Respondents**”) interested in providing construction services (“**Construction Services**”) as described in the scope of services attached hereto as **Exhibit A** (“**Project**”). Owner has hired Rider Levett Bucknall to assist as Project Manager for this procurement process.

B. **Contact:** Any questions, interpretations, or clarifications, either administrative or technical about this SOQ must be requested in writing. Owner will provide copies of all questions and Owner’s responses to all Respondents. The deadline for submission of questions is stated in the Schedule of Events. Please direct all questions by email to:

Project Manager: Rider Levett Bucknall,  
**ATTN: Charlie Andrews**  
The Bloc, 700 South Flower Street, Suite 630  
Los Angeles, CA 90017  
(213) 548-0569  
[charlie.andrews@us.rlb.com](mailto:charlie.andrews@us.rlb.com)

Client Contact: Phelan Pinon Hills Community Services District  
**ATTN: George Cardenas**  
4176 Warbler Road  
Phelan, CA 92371  
(760) 868-1212 Ext. 319  
[GCardenas@pphcsd.org](mailto:GCardenas@pphcsd.org)

Owner maintains a strict Statement of Qualifications (“SOQ”) process. Upon issuance of this SOQ and until the date of contract award, Respondents, and their representatives, including their employees, agents, partners, subcontractors, lobbyists or attorneys, will refrain from any direct or indirect contact with Owner, employees, consultants and contractors (other than the designated Project Manager above) regarding this SOQ. Any such attempt may be grounds for disqualification from this SOQ. This policy is intended to create a level playing field for all Respondents, assure that Qualifications are evaluated in a clear and transparent process, and protect the integrity of the selection process.

### C. **Project Information:**

#### 1. Project History:

The PPHCSD is interested in developing an expansion of Phelan Community Park for use of the community of the Phelan & Pinon Hills unincorporated areas. The new 14-acre park will host community events, district offices, and multiple sports venues. The project is being split into at least 4 phases, with the Civic Center as the first phase consisting of 5-acres of the program. This RFQ is solely for this first phase.

#### 2. Project Description:

Phase 1 of the Phelan Community Park Program primarily includes the construction of a new 14,034 SF Civic Center on the West side of the site. The scope of work in the first phase also includes extensive grading work on the 14-acre site as well as the surrounding landscape and parking areas for the civic center.

**D. Procurement Process:** The PPHCSD has elected to use a two-step procurement approach for the first phase of the Phelan Community Park. The first phase consists of this Request for Qualifications (RFQ) to allow the district to understand what parties are interested in providing construction services. The second step will be a formal Request for Proposals (RFP) that will include cost, schedule, and contractor team as well as the previous information detailed in the RFQ. The RFP will be hosted on Planet Bids or other similar public construction procurement websites which will be detailed in an addendum to this RFQ. A potential contract will be included in the RFP.

**E. Qualifications Addenda:** Owner may modify this SOQ, any of its key actions, dates, or any of its attachments, prior to the date fixed for submission of Qualifications by issuance of an addendum to all Respondents. Addenda will be numbered consecutively.

**F. Errors, Omissions and Exceptions:** If a Respondent discovers any ambiguity, conflict, discrepancy, omission, or other error in the SOQ, it immediately shall notify the Project Manager of such error in writing and request a modification or clarification. Modifications will be made by addendum. Clarification will be given by written notice to all Respondents. Interpretation of this SOQ shall be the responsibility of Owner and that interpretation shall be final. Owner reserves the right to remedy any error contained in this SOQ.

If a Respondent fails to notify Project Manager prior to the time and date fixed for submission of Qualifications of an error in the SOQ known to it, or that reasonably should have been known to it, it shall submit a Qualifications at its own risk. If Respondent is awarded the Construction Services, it shall not be entitled to additional compensation or time extension by reason of the error or its later correction.

If a Respondent takes exception to any part of this SOQ, or any addenda subsequently issued, it must do so in writing. All exceptions must be submitted with the Qualifications. Failure to do so will be construed as Respondent's acceptance of all terms of this SOQ.

**G. Withdrawal, Cancellation or Rejection:** Respondent may withdraw a Qualifications after its submission by written request, signed by the authorized representative of the firm, prior to the time and date specified for submission. Qualifications may be withdrawn and resubmitted if done so before the submission deadline. Withdrawal or modification offered in any other manner will not be considered.

Owner retains the right to cancel this SOQ at any time. No obligation, either expressed or implied, exists on the part of Owner to make an award or to pay any costs incurred in the preparation or submission of a Qualifications. Qualifications, and any other supporting materials submitted to Project Manager, will not be returned and will become the property of Owner. Owner reserves the right to make use of any information or ideas contained within a Qualifications, unless portions of the Qualifications are designated proprietary at the time of submittal and are requested to be returned.



Owner may reject any or all Qualifications and may waive any immaterial deviation in a Qualifications. Owner's waiver of an immaterial defect shall in no way modify the SOQ documents or excuse the Respondent from full compliance with the specifications if Respondent is awarded the Construction Services. Qualifications referring to terms and conditions other than Owner's terms and conditions may be rejected as being non-responsive.

Owner may make investigations as deemed necessary to determine the ability of the Respondent to perform the Construction Services, and, if requested by Owner, the Respondent shall furnish all such information and data for this purpose. Owner reserves the right to reject any Qualifications if the evidence submitted by, or investigation of, such Respondent fails to satisfy Owner that such Respondent is properly qualified to carry out the obligations of the Agreement and to complete the Construction Services as specified.

H. **Confidentiality:** If a Qualifications is accepted, the Respondent shall not issue any news releases or other statements pertaining to the award or the Agreement which state or imply Owner's endorsement of Respondent's services until approved by the Owner in writing.

I. **Authorized Signatures:** All qualifications must be signed by an individual authorized to bind the Respondent to the provisions of the RFQ.

J. **Incurred Costs:** The CSD is not obligated to pay any costs incurred by Respondent in the preparation of a Statement in response to this RFQ. Respondents agree that all costs incurred in developing a Proposal are the Respondent's responsibility.

K. **Assistance to Respondents with a Disability:** Respondents with a disability may request accommodation regarding the means of communicating this RFQ or participating in the procurement process. For more information, contact the RFQ Contact no later than ten (10) days prior to the Deadline for Proposals.

L. **Public Records Act:** All Proposals and other material submitted become the property of The CSD and are subject to release according to the California Public Records Act (Government Code §6250). All Proposal information, including cost information, will be held in confidence during the evaluation and negotiation process. Thereafter, Proposals are subject to becoming a non-exempt public record. If a Respondent believes that any portion of its Proposal is exempt from public disclosure, it must indicate the specific portions believed to be confidential and not subject to disclosure on Attachment I - Public Records Act Exemptions. The Respondent also must include a brief description that sets out the reasons for exemption from disclosure. Each stated exemption must include a citation to supporting legal authority, including statutory authority or case law, to support exemption from the Public Records Act. Requested exemptions that do not meet the requirements of this section will not be considered. The CSD will use reasonable means to ensure that such information is safeguarded but will not be held liable for inadvertent disclosure of the information. Proposals marked "Confidential" in their entirety will not be honored, and The CSD might not deny public disclosure of any portion of Proposals so marked. By submitting a Proposal with portions identified in Attachment I as "Confidential," Respondent represents that it has a good faith belief that such portions are exempt from disclosure under the Public Records Act. Respondent may be requested to obtain legal protection from disclosure should a Public Records Act request be received. In the event The CSD does not disclose the information marked "Confidential," Respondent agrees to reimburse The CSD for, and to indemnify, defend (with counsel approved by County) and hold harmless The CSD, its officers, employees, agents, and volunteers from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs and expenses, including without limitation, attorneys' fees, expenses and court costs of any nature arising from or relating to The CSD's non-disclosure of any such designated portions of a Proposal.

M. **Iran Contracting Act of 2010:** In accordance with Public Contract Code section 2204(a), the Respondent certifies that at the time the Proposal is submitted, the Respondent signing the Proposal is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as

defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable. Respondents are cautioned that making a false certification may subject the Respondent to civil penalties, termination of an existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205. Respondent agrees that signing the Proposal shall constitute signature of this Certification.

**N. Disclosure of Criminal and Civil Proceedings:** The CSD reserves the right to request the information described herein from the Respondent selected for Contract award. Failure to provide the information may result in a disqualification from the selection process and no award of Contract to the Respondent. The CSD also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The selected Respondent may also be requested to provide information to clarify initial responses. Negative information provided or discovered may result in disqualification from the selection process and no award of Contract. The selected Respondent may be asked to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Respondent will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail. In addition, the selected Respondent may also be asked to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Respondent will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail. For purposes of this provision "key employees" includes any individuals providing direct service to the CSD. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

**O. Unsatisfactory Performance:** Respondent affirms that it has no record of unsatisfactory performance with The CSD in the twenty-four (24) month period immediately preceding the date of issuance of this RFQ.

**P. Final Authority:** The final authority to award a contract(s) as a result of this procurement process rests solely with The CSD Board of Directors, or as delegated by the Board of Directors.

## II. SCHEDULE OF EVENTS:

A. Issue SOQ, RFQ Document available	3/10/2023
B. Last Date to Submit Questions to RLB	3/17/2023.
C. Questions answered in an addendum	3/21/2023.
D. <b>Qualifications Due (to RLB)</b>	<b>3/24/2023.</b>
E. Potential questions from RLB to Respondent	3/27/2023.
F. Questions answered by Respondent	3/31/2023.
G. RFP announced	Early May

**III. SCOPE OF SERVICES:** The scope of services is detailed in **Exhibit A** and the Agreement and may reference a link to downloadable documents. Owner will provide as much detail as is available for Respondents' consideration.

#### IV. QUALIFICATIONS INSTRUCTIONS

A. **Format:** To be considered responsive to this SOQ, Respondents must submit Qualifications in the format identified in this section. All requirements and questions in the SOQ must be addressed and all requested data must be supplied. Owner reserves the right to request additional information that in Owner's opinion is necessary to assure that the Respondent's competence, number of qualified employees, business organization and financial resources are adequate to perform according to the Agreement. The Qualifications must address all requirements of the SOQ even if a "no response" is appropriate.

B. **Quantity:** Respondents shall provide an electronic version of the original Qualifications, including all content, via email to the designated contact in section I.

C. **Delivery:** All Qualifications shall be sent with a subject line "Construction Services SOQ – Phelan Community Park Phase 1". Qualifications shall be sent to Project Manager (see address in Section I) on or before the date and time stated in the Schedule of Events. Please copy the client contact on all email communications and deliveries. **LATE QUALIFICATIONS MAY BE REJECTED.**

D. **Content:** Owner strongly encourages Respondents to assemble Qualifications that provide a concise, complete, and clear statement of capabilities to satisfy the SOQ requirements. Decorative bindings, elaborate displays, promotional materials, excessive pages etc., are not necessary or desired. Qualifications shall adhere to the following format for organization and content and must be divided into the individual sections listed below, indexed, and tabbed.

1. **Cover Letter:** Include a general statement of intent to perform the Construction Services and confirm that all elements of the SOQ have been reviewed and understood. Include a summary of qualifications and willingness to enter into a contract under the prescribed terms and conditions, along with the name, email and phone number of the individual to contact regarding the Qualifications. The cover letter must be signed by an individual who can contractually bind the Respondent, and prefer it not exceed 1-2 pages.
2. **Table of Contents**
3. **Firm Experience:** Provide information related to Respondent's experience and capability to perform the Construction Services for this Project. Include detailed information for at least three (3) projects of similar scope, scale, budget, and complexity for which Respondent served as General Contractor/Construction Manager-at-Risk. Highlight experience with projects involving building additions with ongoing operations. Include the following information:
  - a. Have you ever failed to complete any work awarded to your firm? If so where, when, and why?
  - b. Have you ever filed bankruptcy? If so, state details on a separate sheet.
  - c. Have you ever been cited for violation of Cal-OSHA regulation? If so, state on a separate sheet where, when, why, and whether they were a minor or major violation.
  - d. Have you ever had a lien filed against you? Have you ever had to obtain a lien against someone? If so, please provide details.
  - e. Please provide a copy of your Contractor Liability Insurance listing the district as an additionally insured for \$1,000,000.
  - f. Please provide a copy of your Contractor's Bond.
  - g. Is company currently involved in a law suit, and has company been sued? If so, provide details, what was the complaint and what was the outcome.
  - h. Has the company ever been denied General Liability Insurance?

- i. Does the company have any open complaints to the CSLB?
  - j. Does the company have any closed complaints with the CSLB?
  - k. Has the company ever been declined renewal on their General Liability insurance policy?
4. Organizational Chart describing how Respondent will staff the Project, include concise resumes of key personnel who would have direct Project responsibilities. Focus on relevant skillsets.
5. References: Provide a list of professional references, with current contact information. Minimum (3).
6. Safety: Describe your approach to onsite and fabrication safety. Include safety performance record and injury frequency rates.

## **Exhibit A – Scope of Services**

**Contractor** shall provide all labor, supervision, materials, equipment, tools, services and expertise necessary for the completion of Services, in accordance with the specifications, terms and conditions contained in the Contract Documents. Contractor shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

## **Exhibit B – Project Documents**

### Drawing Packages:

- PPHCSD-Civic Center\_Delta 4\_ 2-14-23
- Phelan Civic Center - 100% Landscape CD Set - 11-12-2021
- PPHCSD Civic Center Electrical Set 12-20-2022
- PPHCSD00000002 SHEEP CREEK ROAD STREET IMPROVEMENT PLANS\_12.20.22\_Signed

### Notes:

- These are the latest plans available at the time of the RFQ.
- A formal bid set of documents will be provided during the RFP.

ID	Task Name	Duration	Predecessors	Start	Finish	Qtr 1, 2023			Qtr 2, 2023			Qtr 3, 2023			Qtr 4, 2023			Qtr 1, 2024			Qtr 2, 2024			Qtr 3, 2024			Qtr 4, 2024			Qtr 1, 2025		
						Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
1	<b>Phelan Community Park - Phase 1, Civic Center</b>	<b>527 days</b>		<b>Wed 2/8/23</b>	<b>Thu 2/13/25</b>	[Timeline bar from 2/8/23 to 2/13/25]																										
2	Procurement Report Delivery	0 days		Wed 2/8/23	Wed 2/8/23	[Timeline bar from 2/8/23 to 2/8/23]																										
3	<b>Request for Qualifications (RFQ)</b>	<b>38 days</b>		<b>Wed 2/8/23</b>	<b>Fri 3/31/23</b>	[Timeline bar from 2/8/23 to 3/31/23]																										
4	RFQ Assembly	14 days		Wed 2/8/23	Mon 2/27/23	[Timeline bar from 2/8/23 to 2/27/23]																										
5	RFQ Team Review (prior to release)	9 days	4	Tue 2/28/23	Fri 3/10/23	[Timeline bar from 2/28/23 to 3/10/23]																										
6	RFQ Release	0 days	5	Fri 3/10/23	Fri 3/10/23	[Timeline bar from 3/10/23 to 3/10/23]																										
7	RFI Process during RFQ	5 days	6	Mon 3/13/23	Fri 3/17/23	[Timeline bar from 3/13/23 to 3/17/23]																										
8	RFQ Submissions	10 days	6	Mon 3/13/23	Fri 3/24/23	[Timeline bar from 3/13/23 to 3/24/23]																										
9	RFQ Reviews	5 days	8	Mon 3/27/23	Fri 3/31/23	[Timeline bar from 3/27/23 to 3/31/23]																										
10	RFQ Recommendation	0 days	9	Fri 3/31/23	Fri 3/31/23	[Timeline bar from 3/31/23 to 3/31/23]																										
11	<b>Request for Proposals (RFP)</b>	<b>84 days</b>		<b>Mon 3/13/23</b>	<b>Thu 7/6/23</b>	[Timeline bar from 3/13/23 to 7/6/23]																										
12	RFP Assembly	30 days	6	Mon 3/13/23	Fri 4/21/23	[Timeline bar from 3/13/23 to 4/21/23]																										
13	RFP Draft Review	6 days	12	Mon 4/24/23	Mon 5/1/23	[Timeline bar from 4/24/23 to 5/1/23]																										
14	County Project Approval	0 days		Wed 5/17/23	Wed 5/17/23	[Timeline bar from 5/17/23 to 5/17/23]																										
15	RFP Board Review	6 days	14	Wed 5/17/23	Wed 5/24/23	[Timeline bar from 5/17/23 to 5/24/23]																										
16	RFP Release	0 days	15	Fri 5/26/23	Fri 5/26/23	[Timeline bar from 5/26/23 to 5/26/23]																										
17	RFP Submissions	20 days	16	Fri 5/26/23	Thu 6/22/23	[Timeline bar from 5/26/23 to 6/22/23]																										
18	RLB Review and Recommendation	4 days	17	Fri 6/23/23	Wed 6/28/23	[Timeline bar from 6/23/23 to 6/28/23]																										
19	Board Confirm Bidder	4 days	18	Thu 6/29/23	Tue 7/4/23	[Timeline bar from 6/29/23 to 7/4/23]																										
20	Winner Announced	2 days	19	Wed 7/5/23	Thu 7/6/23	[Timeline bar from 7/5/23 to 7/6/23]																										
21	<b>Preconstruction</b>	<b>60 days</b>		<b>Fri 7/7/23</b>	<b>Thu 9/28/23</b>	[Timeline bar from 7/7/23 to 9/28/23]																										
22	Contract Negotiations	60 days	20	Fri 7/7/23	Thu 9/28/23	[Timeline bar from 7/7/23 to 9/28/23]																										
23	<b>Construction</b>	<b>360 days</b>		<b>Fri 9/29/23</b>	<b>Thu 2/13/25</b>	[Timeline bar from 9/29/23 to 2/13/25]																										
24	Civic Center Construction	18 mons	22	Fri 9/29/23	Thu 2/13/25	[Timeline bar from 9/29/23 to 2/13/25]																										

Project: Phelan Civic Center Pro Date: Thu 3/2/23	Task		Project Summary		Manual Task		Start-only		Deadline	
	Split		Inactive Task		Duration-only		Finish-only		Progress	
	Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
	Summary		Inactive Summary		Manual Summary		External Milestone			

# Agenda Item 6b

Discussion & Possible Action  
Regarding the Purchase and  
Programming of Tesco Telemetry  
Equipment for Well No. 15



## MEMORANDUM

**DATE:** March 8, 2023

**TO:** Board of Directors

**FROM:** Don Bartz, General Manager  
By: Sean Wright, Water Operations Manager

**SUBJECT:** Discussion & Possible Action Regarding the Purchase and Programming of Tesco Telemetry Equipment for Well #15

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### STAFF RECOMMENDATION

Staff recommends for the Board to approve the proposal from Tesco Controls to program and furnish SCADA controls to operate Well #15.

### BACKGROUND

To meet the current and future water demand for the District, an additional water supply has been drilled. Well #15 will require telemetry controls to operate within the distribution system. SCADA controls the operation of the well, records flow levels, water levels, and all other essential functions of the well. The programming and automation of the new equipment with integration into the existing SCADA system will ensure a seamless operation of the District's new well.

Well #15's telemetry was budgeted for in the 2022-2023 fiscal year. The expected lead time to receive submitted purchases ranges from 16-20 weeks.

Per Section 4209.04 of the District's Purchasing Policy, "Exemptions to Competitive Bidding" this item was not advertised for bids because staff deemed advertisement for competitive bidding would be undesirable, impractical, or impossible. Staff feels that advertising is impossible as Tesco is the sole source of telemetry equipment for the District, with all District equipment being supplied and programmed by Tesco Controls.

### FISCAL IMPACT

Budgeted: \$1,555,000 (Total Project)

Total: \$143,000

### ATTACHMENT(S)

Tesco Controls Quotation

To: Phelan Piñon Hills Community Services District  
Attn: Sean Wright  
Re: Phelan Piñon Hills Community Services District  
Well 15 Control Panel and Integration

Quote Date: 12/20/2022  
Quote No.: 22D093Q02

Dear Sean:

Thank you for your continued interest in TESCO products, services, and solutions. We are pleased to quote the following scope of work pertaining to the above-referenced project.

### Project Background

Tesco Controls supplied Phelan Piñon Hills Community Service District (PPHCSD) with a new control infrastructure for their water distribution system under Tesco job T-43889. This infrastructure included Tesco L3000 PLCs, new SCADA, and telemetry. PPHCSD has requested quotation to provide a new control panel for a new well, Well 15, and integrate it into SCADA. This quotation is for the equipment and services required to automate Well 15 and bring it onto SCADA.

### Scope of Work

The District would like Well 15 to be identical to Well 14. Tesco will design the new control panel identical to the panel at Well 14. This will include a Tesco L3000 PLC with HDIO Card and small Tesco faceplate OIT. Tesco will program this PLC to operate like Well 14 with flow and well level. The control strategy of this well will mimic Well 14 also.

In order bring this new site onto SCADA, Tesco will need to perform a radio survey to determine the best communication path and needs criteria to get this site onto the existing radio network. A Tesco Field Service Engineer and Networking and Telemetry Engineer will perform this onsite RF survey. The results of the study will determine the radio link and the antenna height requirements. Tesco will be providing the antenna within this project, however, antenna mast and installation to be performed by others.

Once the radio link is verified, Tesco will build and program the new control panel. Tesco will also modify the existing SCADA application with a new screen for Well 15. The SCADA points that the District wants to have programmed is identical to Well 14. Tesco will perform the programming of this site remotely.

After the control panel has been built, the PLC has been programmed, SCADA modifications have been performed, and the radio has been configured, Tesco will perform factory testing on the new control panel and programming. The District is welcome to witness this testing in Sacramento if they choose. Upon successful testing the panel will be shipped to the District to be installed by the District or others.

It is understood that the instrumentation at the site is to be performed by others. During the installation of the panel, the installer will run all field wiring and connect to the panel.

Once the panel is installed, Tesco will perform startup on the panel. At startup, Tesco Engineers will ensure proper installation, power on the panel, perform function checks, ensure connectivity to SCADA, scale analog signals, test, and commission the panel. A brief training will be provided to District personnel. O&M Manuals will be provided for all Tesco supplied Equipment.

Scope of Supply

Item	Qty	Description
1	1	<b>RTU Control Panel:</b> <ul style="list-style-type: none"> <li>▪ NEMA 3R Enclosure</li> <li>▪ Main Disconnect</li> <li>▪ Power Supply</li> <li>▪ Tesco L3000 PLC to Include:                             <ul style="list-style-type: none"> <li>▪ Power Supply</li> <li>▪ L3000 CPU</li> <li>▪ HDIO Card</li> <li>▪ HDIO Terminal Board</li> <li>▪ HDIO Cable</li> <li>▪ Small Tesco OIT</li> </ul> </li> <li>▪ Ethernet Switch</li> <li>▪ Radio Transceiver</li> <li>▪ RF Lightning Surge Arrestor and RF Pigtail Jumper</li> <li>▪ Backup Battery with Charger</li> <li>▪ Panel Light with Switch</li> <li>▪ Panel Fan with Filtered Louver</li> <li>▪ Duplex Convenience Receptacle</li> <li>▪ Nameplates, Din Rails, Fuses, Relays, Terminal Blocks, Ground Bus Bar, Wires, and Labels as Required</li> </ul>
2	1	<b>Loose Equipment/Components:</b> <ul style="list-style-type: none"> <li>▪ Antenna and Mounting Bracket</li> <li>▪ RF Feedline with connectors</li> </ul>
3	2	<b>Spare Parts:</b> <ul style="list-style-type: none"> <li>▪ RTU</li> <li>▪ Antenna</li> </ul>
4	Lot	<b>Professional Services:</b> <ul style="list-style-type: none"> <li>▪ Project Management</li> <li>▪ Engineering – engineered shop drawings, equipment schematics, engineered submittals, technical data, as-built documentation, and project records</li> <li>▪ Manufacturing Services – fabrication, manufacturing, assembly, equipment wiring, and factory testing</li> <li>▪ PLC Programming</li> <li>▪ OIT Programming</li> <li>▪ SCADA Programming</li> <li>▪ Networking/Communications/Telemetry – radio study, radio configuration</li> <li>▪ Product Startup Services – product quality review, verification of product installation, product parameter adjustments, product programming, software upload/download as required, instrument/device signal spanning, product/equipment reconfiguration as required, product function checks, and product startup.</li> <li>▪ Onsite Training</li> <li>▪ O&amp;M Manuals</li> </ul>
		<b>TOTAL (including applicable sales tax):</b>
		<b>\$143,000.00</b>

## Project Clarifications

- Unless otherwise indicated by the Scope of Work above, quote is to **furnish only** and does not include any trade labor, trade work, construction work, site improvement, contractor services, or any trade installation services. Any trade labor and/or related trade work shall be performed by others/contractor.
- Unless otherwise indicated by the Scope of Work above, the following is **not** included within this quotation:
  - Conduit, field wire, tubing, or basic trade installation materials (brackets, screws, bolts, j-box, stanchions, pull-box, etc.)
  - Instrumentation mounting components, brackets, stanchions, sunshields, etc.
  - Local control stations and/or field mounted disconnects.
  - Instrumentation, devices, components, or equipment not specifically identified in the above quotation.
  - Fiber optic patch panels, cable, splicing or terminations.
  - Networking infrastructure or architecture modifications to existing facilities.
  - Any 3<sup>rd</sup> party testing, harmonic testing/analysis, protective device coordination study, short-circuit analysis, or Arc-Flash Risk Assessment (AFRA) services.
  - Electrical interconnection diagrams for equipment not furnished by TESCO
  - ISA process control loop diagrams.
  - Signal loop diagrams for equipment not furnished by TESCO.

## Clauses, Terms and Conditions

- Quote is firm for 30 days unless otherwise stated.
- Intellectual Property and Confidentiality Notice: The scope of work and price quotation shall not be construed as a formal design or recommendations on design for the related project. All content contained within this quotation is the intellectual property under the proprietorship of Tesco Controls and is subject to applicable copyright laws. Such intellectual property shall not be duplicated, replicated, copied, or shared without explicit written consent from Tesco Controls as it contains confidential information and work product developed exclusively for use by Tesco Controls.
- Submittals: Initial equipment submittal(s) to be provided approximately **12-16** weeks after receipt of purchase order or written notice of intent; however, generation of submittal(s) will be contingent on supply-chain availability and variability for material components which may impact material item selections affecting submittal lead-times, therefore lead-times are subject to change without notice.
- Delivery: Initial shipment(s) anticipated to commence approximately **16-20** weeks minimum after submittal approval; however, delivery schedule(s) will be contingent on supply-chain availability and variability for material components, therefore, lead-times are subject to change without notice.
- Lead-Time & Supply Chain Impacts: Due to the supply chain impacts imposed by the pandemic, all quoted lead-times are subject to change without notice.
- Unless otherwise stated above, price does not include any sales tax, use tax, or applicable fees; please apply any taxes and/or fees as appropriate. Please note that all invoices will include sales tax where applicable.
- TESCO price is FOB factory, full freight allowed.
- TESCO warranties against defect in design, workmanship, and materials for a period of one year from date of installation, and does not exceed 18 months from the date of shipment from the factory.
- TESCO carries liability insurance, with full workman's compensation coverage.
- Terms are net 30 days on approved credit accounts.
- Interest will be applied to all past due invoices.
- All merchandise sold is subject to lien laws.
- Final retention to be paid within 10 days after the project notice of completion.

Please feel free to contact us at (916) 395-8800 to discuss any questions or comments you may have regarding this quotation.

Sincerely,

TESCO CONTROLS

A handwritten signature in black ink, appearing to read "Caleb Ernst". The signature is fluid and cursive, with the first name "Caleb" being more prominent than the last name "Ernst".

Caleb Ernst  
Technical Sales Estimator  
cernst@tescocontrols.com

# Agenda Item 6c

Discussion & Possible Action  
Regarding Approval of Equipment  
Rental and Installation of 5,820 feet of  
12" DI350 Ductile Iron Pipe to Service  
Well No. 15



A. 4176 Warbler Road  
P.O. Box 294049  
Phelan, CA 92329  
P. (760) 868-1212  
F. (760) 868-2323  
W. www.pphcsd.org

## MEMORANDUM

**DATE:** March 8, 2023

**TO:** Board of Directors

**FROM:** Don Bartz, General Manager  
By: Sean Wright, Water Operations Manager

**SUBJECT:** Discussion & Possible Action Regarding Approval of Equipment Rental and Installation of 5,820 feet of 12" DI350 Ductile Iron Pipe to Service Well No. 15

### STAFF RECOMMENDATION

Staff recommends for the Board to authorize equipment rental from Apex Rental and to complete the construction necessary to install 5,820' of 12" DI350 Ductile Iron Pipe on Azalea Road continuing East on South Road, connecting Well #15 to Reservoirs 2-1 & 2-2.

### BACKGROUND

The District needs to install 5,820 feet of pipeline to bring water from Well #15 to the storage tanks located at Well 2-1 & Well 2-2. As part of the budget for FY 2022/23, \$1,555,000 is allocated for material purchase, pipeline installation, electrical installation, and equipping of Well #15.

The District's Water Operations staff will accrue valuable knowledge, experience, and education as part of the installation process. Staff will be responsible for the installation and construction necessary for 5,820 feet of 12" DI350 ductile iron pipe to be installed in accordance with the District standards. This first-hand knowledge will benefit the District in the future when emergency situations arise.

In order to install the pipe, certain equipment must be utilized, requiring equipment rental. Multiple bids were sought in accordance with section 4206.03 of the District's Purchasing Policy which produced bids (attached) from Apex Rentals, United Rentals, and Herc Rentals.

Apex Rentals	United Rentals	Herc Rentals
\$35,950.00	\$52,680.78	\$54,212.55

### FISCAL IMPACT

Budgeted: \$1,555,000

Materials: \$310,455.67 (Already Purchased)

Equipment Rental: \$35,950.00 Per Month  
Labor: \$132,224.00 (Estimated)  
Total: \$204,124.00

**ATTACHMENT(S)**

- Quotation from Apex Rentals @ \$35,950.00 Per Month
- Quotation from United Rentals @ \$52,680.78 Per Month
- Quotation from Herc Rentals Works @ \$54,212.55 Per Month
- Well #15 Pipeline Exhibit





9262 C Avenue  
 Hesperia, CA 92345  
 www.apexhesperiarentals.com  
 760-244-9349 Phone  
 760-244-2901 Fax

**Status: Quote**

Quote #: q222

Quote To: Fri 2/17/2023 7:00AM

Operator: CODY LEIS

Terms: On Account

Customer #: 3995

PHELAN PINON HILLS C.S.D.

Phone 760-868-1212  
 Mobile 760-810-1516

P.O. BOX 294049  
 Phelan, CA 92329

**PLUS FUEL TO REFILL @\$7.00 PER GALLON**

Qty	Key	Items	Replacement Cost	Status	Quote Date	Price
1	MSRR	50K EXCAVATOR	\$0.00 each	Rental	Fri 3/17/2023 7:00AM	\$7,500.00
1	MSRR	50K EXCAVATOR	\$0.00 each	Rental	Fri 3/17/2023 7:00AM	\$7,500.00
1	MSRR	COMPACTION WHEEL	\$0.00 each	Rental	Fri 3/17/2023 7:00AM	\$5,600.00
1	MSRR	4,000 GALLON WATER TRUCK	\$0.00 each	Rental	Fri 3/17/2023 7:00AM	\$6,800.00
1	3927	TRACTOR-SKIPLOADER	\$0.00 each	Rental	Fri 3/17/2023 7:00AM	\$2,600.00
3Hrs \$243.00 1day \$345.00 1week \$1,200.00 4weeks \$2,600.00 PLUS DIESEL FUEL TO REFILL @ \$7.00 PER GAL. A CHARGE OF \$34.50 PER HOUR IN EXCESS OF 8 HRS.PER DAY / 40 HRS. PER WEEK / 160 HRS. PER 4 WEEKS  TIRE REPAIR IF NECESSARY.						
1	MSNOT	DELIVERY & PICKUP	\$0.00 each	Retail		\$2,950.00

**Quote valid for 30 days.**

This is a Quote Only

**Quote**

Rental:	\$30,000.00
Damage Waiver:	\$3,000.00
Sales:	\$2,950.00
Subtotal:	\$35,950.00
Total:	\$35,950.00
Paid:	\$0.00
Amount Due:	\$35,950.00

Signature:

PHELAN PINON HILLS C.S.D.

*CLeis*

BRANCH 25M  
 350 MAPES RD  
 PERRIS CA 92570-9316  
 951-443-1917  
 951-443-1662 FAX

# 216132777

**Job Site**

PHELAN ROADS  
 14826 AZALEA RD  
 PHELAN CA 92371

Office: 760-868-1212 Cell: 760-885-7255

Customer # : 1319172  
 Quote Date : 02/14/23  
 Estimated Out : 02/20/23 07:00 AM  
 Estimated In : 04/17/23 07:00 AM  
 UR Job Loc : 14826 AZALEA RD , PH  
 UR Job # : 10  
 Customer Job ID:  
 P.O. # : TBD  
 Ordered By : SEAN WRIGHT  
 Written By : NADIA HAMDAN  
 Salesperson : NADIA HAMDAN

PHELAN PINON HILLS C S D  
 4176 WARBLER RD  
 PHELAN CA 92371-8819

**This is not an invoice  
 Please do not pay from this document**

RENTAL ITEMS:							
Qty	Equipment	Description	Minimum	Day	Week	4 Week	Estimated Amt.
2	9051060	EXCAVATOR 43000-49999#		750.00	2,295.00	5,495.00	21,980.00
1	905/5045	EXCAVATOR BUCKET 48"					N/C
1	9057105	EXCAVATOR COMPACTION WHEEL 36"		175.00	525.00	1,050.00	2,100.00
Rental Subtotal:							24,080.00
SALES/MISCELLANEOUS ITEMS:							
Qty	Item		Price		Unit of Measure		Extended Amt.
1	CA PERSONAL PROP TAX REIMB CHARGE	[DRSURCA/MCI]	180.600		EACH		180.60
1	ENVIRONMENTAL SERVICE CHARGE	[ENV/MCI]	198.000		EACH		198.00
1	DELIVERY CHARGE		700.000		EACH		700.00
1	PICKUP CHARGE		700.000		EACH		700.00
Sales/Misc Subtotal:							1,778.60
Agreement Subtotal:							25,858.60
Rental Protection:							3,612.00
Tax:							1,949.80
Estimated Total:							31,420.40

COMMENTS/NOTES:

CONTACT: SEAN WRIGHT  
 CELL#: 760-885-7255  
 DLV/PKU LOC SELECTED BY MAP PIN OPTION

This proposal may be withdrawn if not accepted within 30 days. The above referenced Rental Protection Plan, environmental, and tax charges are estimates and are subject to change.

NOTICE: This is not a rental agreement. The rental of equipment and any items listed above is subject to availability and subject to the terms and conditions of the Rental and Service Agreement, which are available at <https://www.unitedrentals.com/legal/rental-service-terms-US> and which are incorporated herein by reference. A COPY OF THE RENTAL AND SERVICE AGREEMENT TERMS ARE AVAILABLE IN PAPER FORM UPON REQUEST.

BRANCH 510  
11612 MARIPOSA AVE  
HESPERIA CA 92345-4504  
760-947-4810

**# 216132971**

**Job Site**

PHELAN ROADS  
14826 AZALEA RD  
PHELAN CA 92371

**Office:** 760-868-1212 **Cell:** 760-885-7255

**Customer #** : 1319172  
**Quote Date** : 02/14/23  
**Estimated Out** : 02/20/23 07:00 AM  
**Estimated In** : 04/17/23 07:00 AM  
**UR Job Loc** : 14826 AZALEA RD , PH  
**UR Job #** : 10  
**Customer Job ID:**  
**P.O. #** : TBD  
**Ordered By** : SEAN WRIGHT  
**Written By** : NADIA HAMDAN  
**Salesperson** : NADIA HAMDAN

PHELAN PINON HILLS C S D  
4176 WARBLER RD  
PHELAN CA 92371-8819

**This is not an invoice  
Please do not pay from this document**

RENTAL ITEMS:							
Qty	Equipment	Description	Minimum	Day	Week	4 Week	Estimated Amt.
1	9043020	LOADER LANDSCAPER 4WD MUST HAVE POWER REAR GANNON AND FRONT BUCKET		359.00	1,430.00	2,993.00	5,986.00
1	9532227	TRUCK WATER 4000-4999 GAL		895.00	2,385.00	5,205.00	10,410.00
Rental Subtotal:							16,396.00
SALES/MISCELLANEOUS ITEMS:							
Qty	Item		Price	Unit of Measure	Extended Amt.		
1	CA PERSONAL PROP TAX REIMB CHARGE	[DRSURCA/MCI]	44.895	EACH	44.90		
1	ENVIRONMENTAL SERVICE CHARGE	[ENV/MCI]	198.000	EACH	198.00		
1	DELIVERY CHARGE		420.000	EACH	420.00		
1	PICKUP CHARGE		420.000	EACH	420.00		
Sales/Misc Subtotal:							1,082.90
Agreement Subtotal:							17,478.90
Rental Protection:							2,459.40
Tax:							1,322.08
Estimated Total:							21,260.38

**COMMENTS/NOTES:**

CONTACT: SEAN WRIGHT  
CELL#: 760-885-7255  
TWO TRUCK LOADS

TO SCHEDULE EQUIPMENT FOR PICKUP, CALL 800-UR-RENTS (800-877-3687)  
WE ARE AVAILABLE 24/7 TO SUPPLY YOU WITH A CONFIRMATION #  
IN ORDER TO CLOSE THIS CONTRACT

This proposal may be withdrawn if not accepted within 30 days. The above referenced Rental Protection Plan, environmental, and tax charges are estimates and are subject to change.

NOTICE: This is not a rental agreement. The rental of equipment and any items listed above is subject to availability and subject to the terms and conditions of the Rental and Service Agreement, which are available at <https://www.unitedrentals.com/legal/rental-service-terms-US> and which are incorporated herein by reference. A COPY OF THE RENTAL AND SERVICE AGREEMENT TERMS ARE AVAILABLE IN PAPER FORM UPON REQUEST.

**QUOTE**



**R.A. No. 54856102**

Page 1 of 2

BRANCH: <b>645</b>	BILL TO CUSTOMER: <b>2865792</b>	SHIPPING ADDRESS
<b>HERC LANCASTER</b> 45710 NORTH 23RD ST. WEST LANCASTER, CA 93536 661-945-1180	<b>PHELAN PINON HILLS COMMUNITY S</b> PO BOX 294049 PHELAN, CA 92329-4049	<b>JOB</b> 14826 AZALEA RD PHELAN, CA 92371  760-868-1212

DESCRIPTION/CHARGES

<b>EST START:</b> 2/14/23 16:08	<b>EST RETURN:</b> 4/11/23 16:08	DROP DATE: _____
SHIPPED BY:	ORDERED BY: SHAWN WHITE	DROP TIME: _____
ORDER DATE: 2/14/23	SALESPERSON: 689	SALES COORDINATOR:
PO# / JOB#: / 2 - JOB - JOB		<b>Rates subject to availability</b>
Qty	Equipment #	Hrs/ Min Hour Day Week Month Amount
1	TRUCK WATER 4000 GALLON DSL 6596050	8/ 622.00 103.67 622.00 2090.00 4650.00 9300.00
	MIL CHG: .25	
	CA PROPERTY TAX RECOVERY FEE 2217999001	69.75
1	TRACTOR SKIPLOADER 60-90HP 4WD DSL 2752200	8/ 331.00 55.17 331.00 920.00 2150.00 4300.00
	MIL CHG: .25	
	CA PROPERTY TAX RECOVERY FEE 2217999001	32.25
	DELIVERY CHARGE	350.00
	PICKUP CHARGE	350.00
	Taxable Sub-total: 14402.00	Sub-total: 14402.00
		Tax: 1116.17
		Total: 15518.17

**CAREFULLY READ THE TERMS AND CONDITIONS THAT APPEAR BELOW AND ON REVERSE SIDE OF THIS PAGE ("TERMS")**

**RENTAL PROTECTION PLAN.** Herc Rentals Inc. or its affiliate ("Herc") may offer the Rental Protection Plan ("RPP") for a fee to Customer on certain Equipment and for certain types of loss or damage to limit Customer's liability for property loss or damage. Customer must either show proof of property insurance as required in Section 8 on reverse side hereof or purchase RPP. In return for the RPP fee, if RPP covers such repair or replacement at time of claim, Herc agrees to waive certain claims for accidental damages to or theft of such covered Equipment occurring during normal and careful use. Customer remains liable for all other damages as set forth in the Terms. RPP IS NOT INSURANCE. If Customer accepts RPP and pays Herc the RPP fee, Herc will limit Customer's responsibility for the Equipment repair or replacement cost to \$500 or 10% of the repair or replacement cost per item, including tax, whichever is less. Upon accepting RPP, Customer agrees to pay an RPP fee equal to 15%. Customer must review the RPP Terms and Conditions posted on Herc's website at <https://www.hercrentals.com/us/programs/rental-protection-plan/terms-and-conditions.html> before deciding whether to accept RPP. TO THE EXTENT HERC DOES NOT OFFER RPP TO CUSTOMER, OR CUSTOMER DOES NOT ACCEPT RPP, CUSTOMER MUST MAINTAIN THE INSURANCE COVERAGE REQUIRED BY PARAGRAPH 8. PLEASE BE AWARE THAT IF CUSTOMER DOES NOT ELECT TO TAKE RPP AND IT ELECTS TO MAINTAIN INSURANCE COVERAGE, AND IF THE CERTIFICATE OF INSURANCE PROVIDED TO HERC TO EVIDENCE SUCH INSURANCE COVERAGE IS UNACCEPTABLE TO HERC OR THE APPLICABLE POLICIES EXPIRE, CUSTOMER AGREES THAT HERC MAY CHARGE RPP FOR ALL APPLICABLE RENTALS UNTIL SUCH TIME AS AN ACCEPTABLE AND VALID CERTIFICATE OF INSURANCE IS PROVIDED AND SUCH MATTERS ARE CORRECTED TO HERC'S REASONABLE SATISFACTION. NOTWITHSTANDING ANY NOTATION ON THE RENTAL RECORD, RPP IS NOT OFFERED ON OR AVAILABLE FOR THE RENTAL OF A PASSENGER MOTOR VEHICLE. NOTWITHSTANDING PAYMENT OF THE RPP FEE, RPP DOES NOT APPLY, AND CUSTOMER IS LIABLE FOR ALL DAMAGES TO OR REPLACEMENT COST OF, THE EQUIPMENT, AS APPLICABLE, AND ANY ADMINISTRATIVE FEES AND EXPENSES OF HERC; (1) CAUSED BY THE EQUIPMENT BEING USED OR OPERATED IN VIOLATION OF ANY OF THE TERMS; (2) IN CASE OF NEGLIGENCE, AS DETERMINED IN HERC'S SOLE DISCRETION; AND/OR (3) IF COVERAGE IS EXCLUDED UNDER THE RPP TERMS AND CONDITIONS POSTED ON HERC'S WEBSITE.

A detailed description of fees and surcharges that may be applicable to Customer's rental can be found on Herc's website at <https://www.hercrentals.com/us/programs/services-and-associated-charges.html>. Customer agrees to pay, in addition to all rental charges, all fees and charges set forth [above] and, the following charges as applicable: (i) based on Customer's possession and/or use of the Equipment, all consumables, fees, licenses, present and future taxes and any other governmental charges, (ii) additional charges for more than one shift use; (iii) freight, delivery, pick up, transportation charges, (iv) transportation service surcharges (v) repairs and replacement per this contract, (vi) cleaning charge for Equipment returned with excessive dirt, concrete and/or paint; (vii) fees for lost keys (viii) refueling service charges, (viii) fines for use of dyed diesel fuel in on road Equipment; (ix) preventative maintenance charges and (x) emissions and environmental surcharges and fees, (xi) vehicle license fees. HERC COLLECTS THESE FEES AND CHARGES AS REVENUE AND USES THEM AT ITS DISCRETION.

THE EQUIPMENT IS RENTED BY HERC TO THE CUSTOMER PURSUANT TO THE TERMS. CUSTOMER REPRESENTS HAVING READ AND AGREED TO SAME.  
**PARAGRAPH 11 ON THE BACK OF THIS PAGE IS IN LIEU OF (i) ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; AND (ii) ALL OBLIGATIONS ON THE PART OF HERC TO CUSTOMER FOR DAMAGES.**  
**CUSTOMER WAIVES ALL INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE RENTAL, MAINTENANCE, USE, OPERATION, STORAGE, ERECTION, DISMANTLING OR TRANSPORTATION OF THE EQUIPMENT.**

Customer is obligated to return the Equipment in a good, clean, and uncontaminated condition, free of any and all hazardous substances.

**Quote Valid For 30 Days From Order Date**

Customer Name \_\_\_\_\_ Title \_\_\_\_\_  
 Customer Signature \_\_\_\_\_ Date \_\_\_\_\_

**Terms are due upon receipt** Not valid without Barcode



## RESERVATION AND RENTAL CONTRACT - HERC RENTALS INC. AND AFFILIATES ("HERC")

This Agreement ("Agreement") is for the rental of the vehicles and equipment and related services described on the other side of this page ("Front"), including all parts of and attachments and accessories to such equipment ("Equipment"). This Agreement is between the customer identified on the Front ("Customer") and Herc. Both parties acknowledge that this Agreement consists of the terms written or printed on this page and the Front.

- NATURE OF THIS AGREEMENT.** This Agreement is solely for the purpose of creating a rental transaction, which allows Customer to use the Equipment as permitted by this Agreement. CUSTOMER REPRESENTS THAT THE EQUIPMENT IS TO BE USED SOLELY AND EXCLUSIVELY FOR BUSINESS OR COMMERCIAL PURPOSES. The Equipment is owned by Herc. Customer acknowledges that no one other than Herc may transfer or assign the Equipment or any rights or obligations under this Agreement. Neither Customer nor any Authorized Operators (as defined below) are agents of Herc. No one may repair or alter the Equipment without Herc's prior written approval. Customer will not suffer any liens or encumbrances to attach to the Equipment and will defend, indemnify, and hold Herc harmless from all loss, liability, and expense by reason thereof.
- WHO MAY OPERATE THE EQUIPMENT.** Only Customer and the following persons with Customer's permission ("Authorized Operators") may operate the Equipment: Customer's employer, employees, fellow employees in the course of such employer's regular employment, or persons approved by Herc in writing. Customer and all Authorized Operators must: hold a valid driver's license to operate a motor vehicle and be of legal age, and be properly qualified to operate the Equipment; and have a valid operator's license with respect to the Equipment where required by law. Customer is responsible for any person that operates, uses, stores or moves the Equipment regardless of whether that person is an Authorized Operator.
- RENTAL FEES AND OTHER CHARGES.** Customer will pay Herc on demand to the address and by the date specified in the applicable invoice, all charges, including without limitation, rental, time, mileage, service, transportation, refueling service, surcharges, sales and use taxes, and tax reimbursements imposed with respect to the Equipment and this Agreement, and all expenses, including reasonable attorney's fees and costs incurred in collecting same, all in accordance with this Agreement. A detailed description of all fees and surcharges that may be applicable to Customer's rental can be found on Herc's website at <https://www.hercrentals.com/us/programs/services-and-associated-charges.html>. Customer must notify Herc in writing of any disputed charge within 30 days of receipt of such invoice or Customer shall be deemed to have irrevocably waived such amounts. The basic daily, weekly and 4 week rental rates will entitle Customer to a maximum of one-shift use (i.e., a maximum of 8 hours per day; 40 hours per week; 160 hours per 4 weeks). Use in excess of one shift will be payable at the hourly rate of 1/8 of the daily charge (for a daily rental), 1/40 of the weekly charge (for a weekly rental) and 1/160 of the 4 week charge (for a 4 week rental), plus applicable taxes. All charges are subject to final audit by Herc. Herc will have a lien as allowed by law for charges incurred hereunder upon the premises and improvements upon which the Equipment is employed. Rentals are F.O.B. the Herc Branch unless otherwise specified. Shipping charges from such Branch to the Customer's destination and return and all loading, unloading, assembling and dismantling will be paid by Customer. All rates for rentals in excess of 4 weeks are subject to change on 30 days' written notice to the Customer with respect to any portion of the rental period then remaining. Charges not paid on time, as required by this Agreement, may be subject to a late payment fee as provided in this Agreement. Customer may also be charged a reasonable fee for any check used for payment hereunder that is returned unpaid. Customer agrees in the event of a default, that any deposit made by Customer shall be used by Herc for unpaid rent and other charges, damages and costs incurred due to the default.
- CUSTOMER'S RESPONSIBILITIES.** Customer is responsible to Herc for all loss or damage to the Equipment, and for its return in the same condition it was received, except for ordinary wear, and free of any hazardous materials and/or contaminants. Such responsibility is limited to the full value of the Equipment at the time it is lost or damaged, less its salvage value, plus any administrative fees and Herc's related expenses, such as loss of use, appraisal fees or recovery costs ("Full Value"). The Equipment must be returned to Herc at the renting Herc Branch by the Estimated Return Date (EST RETURN) specified on the Front, or sooner if demanded by Herc. Customer must notify Herc if it desires to change the EST RETURN for all or some of the Equipment. Customer acknowledges that it must confirm return receipt of the Equipment by Herc at the expiration or earlier termination of the rental. Until such time as Herc receives actual possession of the Equipment, Customer agrees to hold said Equipment in a safe and secure manner. The Equipment will be used and kept only at Customer's place of business or the job site at which the Equipment is used and will not be moved without the prior written consent of Herc. The Equipment will be used only in accordance with the manufacturer's instructions within its rated capacity. Customer will perform or cause to be performed and pay for all normal periodic and other basic service, adjustments and lubrication of the Equipment, including but not limited to: checking of the Equipment before each shift; checking and maintaining crankcase, transmission, cooling and fluid systems daily; and checking tire pressures and battery fluid and charge levels weekly. If the Equipment fails to operate properly or becomes in need of repair, Customer will immediately cease using same and will immediately notify Herc. Customer is responsible for providing a secure and safe work environment for all parties, including Herc and its employees, and for ensuring that the possession, storage, use and operation of the equipment is carried out in compliance with applicable laws, (including but not limited to those relating to worker safety and the environment).
- RISK OF LOSS.** All loss of or damage to the Equipment from any cause whatsoever while on rental and whether or not due to the fault of Customer, including, but not limited to, fire, flood, theft, comprehensive losses, collision and rollover, and Acts of God, will be the sole responsibility of Customer and will be paid to Herc promptly upon Customer's receipt of an invoice therefor. Such responsibility is limited to the full value of the Equipment at the time it is lost or damaged, less its salvage value, plus an administrative fee and Herc's related expenses, such as loss of use, appraisal fees or recovery costs. THE COST OF LABOR FOR REPAIRS WILL BE EITHER HERC'S THEN PREVAILING HOURLY RATE FOR LABOR, POSTED AT THE HERC BRANCH WHERE THE EQUIPMENT IS TO BE REPAIRED, OR THE REPAIRER'S HOURLY RATE FOR LABOR CHARGED TO HERC FOR REPAIRS AS THE CASE MAY BE. PARTS WILL BE CHARGED AT HERC'S COST PLUS A RETAIL MARKUP. Use of the Equipment by persons other than Customer or Authorized Operators will be at Customer's sole risk.
- EVENTS OF DEFAULT.** Customer shall be in default of this Agreement if Customer fails to pay any amount when due hereunder, or if Customer breaches any of the other terms of this Agreement, or if Customer becomes insolvent or ceases to do business as a going concern, or if a petition in bankruptcy is filed by or against Customer, or if Customer is in default pursuant to the provisions of any other agreement by and between Customer and Herc. Customer will further be deemed to be in default if the Equipment is obtained from Herc through fraud or misrepresentation or is stored or used: (A) in violation of any law or ordinance including without limitation, any local, state or federal law or regulation involving "Hazardous Materials," including "DOT Hazardous Materials," as set forth in 49 C.F.R. 171-180; (B) in a reckless, negligent or abusive manner, or is damaged while being rented by Customer; (C) in violation of Paragraph 4 above, (D) in any fashion or manner for which the Equipment was not designed or beyond the manufacturer's rated capacity for the Equipment.
- REMEDIES OF HERC.** In case of default by Customer, or if Herc deems itself insecure, Herc may, but is not required to, peacefully enter the premises where the Equipment is located and render it inoperative or remove same with or without process of law and without any notice to Customer or liability. Customer hereby waives any right to any hearing or to receive any notice of legal process, as a pre-condition for Herc recovering the Equipment. Customer agrees to permit such entry and action by Herc. In such case Herc may also terminate this Agreement without notice to Customer or prejudice to any remedies or claims which Herc might otherwise have for any amount due hereunder, expense of retaking, court costs and reasonable attorneys' fees. Customer will remain liable for the Equipment or for any loss or injury to the Equipment, any property and/or persons, notwithstanding such termination. Herc shall have the right to issue and circulate theft notices, cause warrants to be issued and take any other steps which Herc may reasonably deem necessary to recover the Equipment, if the Equipment is not returned on the date specified on the Front or sooner as permitted by the terms of this Agreement. The remedies provided herein in favor of Herc are not exclusive but shall be cumulative and in addition to all other remedies existing at law or in equity, any one or more of which may be exercised simultaneously or successively.
- INSURANCE.** Liability Insurance for Injury/Damage to Third Parties - Customer agrees to maintain and carry, at its own expense and at all times during the term of this Agreement, the following insurance: (1) commercial automobile insurance, with at least a per occurrence limit of \$1 million, which includes coverage for owned and non-owned motor vehicles. Herc shall be named as an additional insured for all claims arising out of the maintenance, operation, or use of the vehicle. All insurance, whether issued on a primary or umbrella/excess basis, afforded to Herc shall be primary to, and non-contributory with, any other insurance on which Herc is a named insured, whether such other insurance is primary, excess, self-insurance, or insurance on any other basis, to the furthest extent permitted by law. Further, such primary and non-contributory protection shall not exceed the minimum limits required by the automobile financial responsibility laws of the applicable state. Such protection will conform to the basic requirements of the applicable No-Fault law, BUT DOES NOT INCLUDE UNINSURED/UNDERINSURED MOTORIST, SUPPLEMENTARY NO FAULT OR ANY OTHER OPTIONAL COVERAGE. TO THE EXTENT PERMITTED BY LAW, HERC AND CUSTOMER REJECT THE INCLUSION OF ANY SUCH COVERAGE. If such coverage is imposed by operation of law, then the limits of such coverage will be the minimum required by the law of the applicable state noted above; (2) commercial general liability insurance (providing coverage equal to or greater than the standard ISO CG 00 01 12 04 form) with limits of insurance not less than \$1 million per occurrence and \$2 million in the aggregate. Customer shall name Herc as an additional insured for all claims and liability arising out of the maintenance, operation, or use by the Customer of equipment leased to Customer by Herc (providing coverage equal or greater than the standard ISO CG 20 28 11 85). Such insurance shall be primary and non-contributory to any other insurance maintained by Herc. Customer further agrees that the amount of insurance available to Herc shall be for the full amount of the loss up to policy limits of liability and shall not be limited to the minimum requirements of this agreement. In the event any policy provided in compliance with this agreement states that the insurance afforded to an additional insured will not be broader than that required by contract, or words of similar meaning, Customer agrees that nothing in this agreement is intended to restrict or limit the breadth of such insurance; and (3) property insurance for the full replacement cost of the Equipment, including coverage for all risks of loss or damage to the Equipment. The policy must expressly cover owned and non-owned Equipment, including motor vehicles (if applicable), while in your care, custody and control. Customer shall carry workers compensation and employers' liability insurance with at least a per occurrence limit of \$1 million. Customer shall name Herc as an additional insured for all claims arising out of the maintenance, operation or use of the equipment, and as an additional loss payee. Any deductibles or self-insured retentions shall be the sole responsibility of the Customer. All insurance required by this Rental Agreement shall include a waiver of rights of recovery against Herc or its insurers by the Customer and its insurers, as well as a waiver of subrogation against Herc or its insurers. The policies required hereunder shall provide that Herc must receive not less than 30 days' notice prior to any cancellation. **Customer shall provide Herc with documented proof of all required insurance coverage. FOR RENTAL OF EQUIPMENT NOT LICENSED FOR ROAD USE, CUSTOMER MUST EITHER (i) ELECT TO NAME HERC AS LOSS PAYEE EVIDENCING PROPERTY INSURANCE COVERAGE, OR (ii) ELECT TO PURCHASE THE RENTAL PROTECTION PLAN.**
- INDEMNIFICATION.** To the fullest extent permitted by law, and for and in additional consideration of providing the Equipment herein, CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS HERC, ITS PARENT COMPANY AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY "HERC INDEMNIFIED PARTIES"), FROM AND AGAINST ANY AND ALL ACTUAL, ALLEGED, POTENTIAL OR PERCEIVED RISKS OF INJURY, DEMANDS, CLAIMS, SUITS, LIABILITIES, LOSSES, SETTLEMENTS, JUDGMENTS, DAMAGES, ENVIRONMENTAL SPILLS (including but not limited to costs, expenses, delays, deductible amounts of insurance, and liquidated, consequential and punitive damages), ATTORNEYS' FEES AND DISPUTE RESOLUTION COSTS, WHETHER OR NOT SUCH LOSSES, LIABILITIES, CLAIMS OR DAMAGES ARE BASED, IN WHOLE OR IN PART UPON ANY OF THE HERC INDEMNIFIED PARTIES' ALLEGED NEGLIGENCE OR PARTICIPATION IN THE WRONG OR UPON ANY ALLEGED BREACH OF A STATUTORY OR REGULATORY DUTY OR OBLIGATION ON THEIR PART, ARISING OUT OF OR ALLEGED TO HAVE ARISING OUT OF ANY ACT OR OMISSION IN CONNECTION WITH THE CUSTOMER'S MAINTENANCE, USE, POSSESSION, OPERATION, ERECTION, DISMANTLING, SERVICING OR TRANSPORTATION OF THE EQUIPMENT OR MOTOR VEHICLE OR CUSTOMER'S FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT BY REASON OF BODILY INJURY, INCLUDING DEATH, AND PROPERTY DAMAGE, SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING BUT NOT LIMITED TO EMPLOYEES OF CUSTOMER. CUSTOMER WILL, AT ITS SOLE EXPENSE, COMPLY WITH ALL FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS AFFECTING THE EQUIPMENT AND ITS USE, OPERATION, ERECTION, DESIGN AND TRANSPORTATION, INCLUDING WITHOUT LIMITATION, LICENSING AND BUILDING CODE REQUIREMENTS, AND WILL DEFEND, INDEMNIFY AND HOLD HERC INDEMNIFIED PARTIES HARMLESS FROM ALL LOSS, LIABILITY OR EXPENSE RESULTING FROM ACTUAL OR ALLEGED VIOLATIONS OF ANY SUCH LAWS, REGULATIONS OR REQUIREMENTS.
- NOTICE OF LOSS OR ACCIDENT.** In the event of an accident, loss of, theft of, or damage to, spill or leak of hazardous materials from, the Equipment, Customer agrees to notify Herc as soon as possible by telephone and, thereafter, to immediately report in writing to Herc and to the public authorities (where required by law or by Herc) all necessary information relating to the loss or accident.
- CONDITION OF THE EQUIPMENT.** Customer acknowledges having examined the Equipment upon its delivery to Customer. The Equipment shall be deemed to be accepted by Customer upon delivery and subject to the terms and conditions of this Agreement. Customer shall notify Herc in writing within 24 hours of delivery of the Equipment of any problem with the Equipment. If the Equipment is found by Customer not to be in good mechanical condition, as a result of conditions not the responsibility of Customer, nor caused by the fault or negligence of Customer or Customer's employees or agents, Customer will so notify Herc, whereupon Herc will then, at its option and without any other liability or responsibility by Herc to Customer: (a) repair or suitably replace the Equipment within a reasonable time during Herc's normal working hours, with the commencement or running of the terms of this Agreement to be tolled for the period the Equipment is "down"; or (b) remove the Equipment and terminate this Agreement and refund payments of rental charges, if any, for the unexpired term of the Agreement, less whatever is due Herc for damage to or maintenance of Equipment which is the responsibility of Customer. Customer agrees to provide full access to the Equipment to Herc's representatives to enable Herc to meet its responsibilities hereunder.
- LATE PAYMENT FEE.** Should Customer fail to pay any invoice to Herc in accordance with the terms of such invoice, Customer will pay a late payment fee to Herc on such delinquent payment until fully paid, at the maximum rate allowed by the laws of the jurisdiction in which the Herc location specified on the Front is located.
- FUELING SERVICE CHARGE.** Herc agrees to provide the Equipment to Customer with full fuel tanks. Customer agrees to return the Equipment with full fuel tank(s). If Customer returns the Equipment with the fuel tank(s) less than full, Customer will pay to Herc a sum equal to Herc's then applicable refueling service charge posted at Herc's location where the Equipment is returned for the number of gallons required to refill the tank(s) at the time of return.
- MERGER/MODIFICATION/SEVERABILITY.** This Agreement expresses the entire agreement between the parties with respect to the subject matter hereof. No modification or alteration of the terms hereof will be effective as against Herc unless same is in writing and signed by a duly authorized officer of Herc. Customer's execution of this Agreement and acceptance of the Equipment in accordance with Section 11 hereof shall constitute Customer's acceptance of all of the Terms contained on the Front hereof and herein, and the exclusion of any terms and conditions otherwise stated by Customer or contained in any of Customer's documents. The paragraph headings contained in this Agreement are for convenience only and will not be used to expand or limit the actual terms and conditions hereof. Customer and the person signing this Agreement represent that: (a) they both have full authority to execute, deliver and perform this Agreement; and (b) this Agreement is a legal, valid and binding obligation of Customer, enforceable in accordance with its terms.
- GOVERNING LAW/JURISDICTION/JURY TRIAL WAIVER/LIMITATION OF LIABILITY.** This Agreement shall be governed by and construed in accordance with the laws of the state of Delaware without regard to its rules of conflict of laws. Customer irrevocably and unconditionally consents to submit to the jurisdiction of the state and federal courts within the State of Delaware (the "Delaware Courts") or Florida ("Florida Courts") for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby, and waives any objection to the laying of venue and forum in the Delaware Courts and/or the Florida Courts. If any provision, or any part of any provision of this Agreement or the application thereof is thereafter held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and to this end the provisions of this Agreement are declared severable. Each party hereby waives and releases all rights to trial by jury in any action, proceeding or counterclaim brought by either party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on any matters whatsoever arising out of or in any way connected with this Agreement. THE MAXIMUM LIABILITY OF HERC, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR AFFILIATES UNDER THIS AGREEMENT (REGARDLESS OF WHETHER A CLAIM IS BASED UPON WARRANTY, CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAID TO HERC BY CUSTOMER UNDER THIS AGREEMENT.
- ELECTRONIC SIGNATURES.** Customer agrees that this Agreement may be signed manually or by scanning and sending .pdf or other copies thereof via email or via any other electronic means and in one or more counterparts, each of which shall be an original, and all of which together shall constitute the entire agreement. (i) a valid and binding agreement and fully admissible under state and federal rules of evidence; and (ii) enforceable under the applicable Uniform Commercial Code Section 2A-204, Section 3-309 and under any other similar statute applicable to this Agreement.
- FAMILIARIZATION.** All familiarization requests must be made in writing not less than five (5) calendar days before scheduled delivery date or at time of purchase. Request(s) must be submitted to the location in which the Equipment was rented. If requested, the User as defined by ANSI A92/CSA B354 agrees to have a designated person present at time of delivery to receive the equipment familiarization. Familiarization will be made in accordance to ANSI A92 & CSA B354. Familiarization is not considered training or certification.



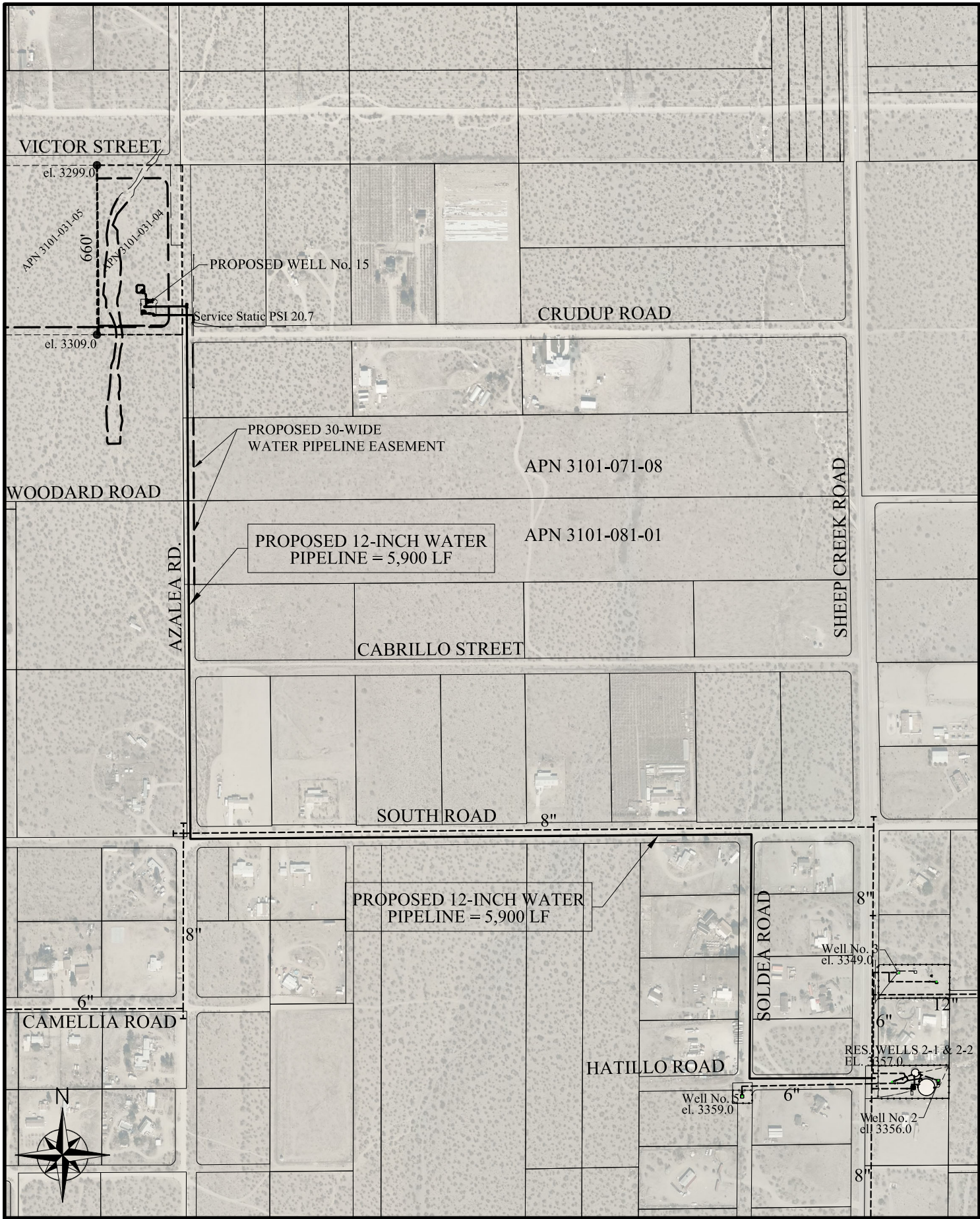


## RESERVATION AND RENTAL CONTRACT - HERC RENTALS INC. AND AFFILIATES ("HERC")

This Agreement ("Agreement") is for the rental of the vehicles and equipment and related services described on the other side of this page ("Front"), including all parts of and attachments and accessories to such equipment ("Equipment"). This Agreement is between the customer identified on the Front ("Customer") and Herc. Both parties acknowledge that this Agreement consists of the terms written or printed on this page and the Front.

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- WHO MAY OPERATE THE EQUIPMENT.** Only Customer and the following persons with Customer's permission ("Authorized Operators") may operate the Equipment: Customer's employer, employees, fellow employees in the course of such employer's regular employment, or persons approved by Herc in writing. Customer and all Authorized Operators must: hold a valid driver's license to operate a motor vehicle and be of legal age, and be properly qualified to operate the Equipment; and have a valid operator's license with respect to the Equipment where required by law. Customer is responsible for any person that operates, uses, stores or moves the Equipment regardless of whether that person is an Authorized Operator.
- RENTAL FEES AND OTHER CHARGES.** Customer will pay Herc on demand to the address and by the date specified in the applicable invoice, all charges, including without limitation, rental, time, mileage, service, transportation, refueling service, surcharges, sales and use taxes, and tax reimbursements imposed with respect to the Equipment and this Agreement, and all expenses, including reasonable attorney's fees and costs incurred in collecting same, all in accordance with this Agreement. A detailed description of all fees and surcharges that may be applicable to Customer's rental can be found on Herc's website at <https://www.hercrentals.com/us/programs/services-and-associated-charges.html>. Customer must notify Herc in writing of any disputed charge within 30 days of receipt of such invoice or Customer shall be deemed to have irrevocably waived such amounts. The basic daily, weekly and 4 week rental rates will entitle Customer to a maximum of one-shift use (i.e., a maximum of 8 hours per day; 40 hours per week; 160 hours per 4 weeks). Use in excess of one shift will be payable at the hourly rate of 1/8 of the daily charge (for a daily rental), 1/40 of the weekly charge (for a weekly rental) and 1/160 of the 4 week charge (for a 4 week rental), plus applicable taxes. All charges are subject to final audit by Herc. Herc will have a lien as allowed by law for charges incurred hereunder upon the premises and improvements upon which the Equipment is employed. Rentals are F.O.B. the Herc Branch unless otherwise specified. Shipping charges from such Branch to the Customer's destination and return and all loading, unloading, assembling and dismantling will be paid by Customer. All rates for rentals in excess of 4 weeks are subject to change on 30 days' written notice to the Customer with respect to any portion of the rental period then remaining. Charges not paid on time, as required by this Agreement, may be subject to a late payment fee as provided in this Agreement. Customer may also be charged a reasonable fee for any check used for payment hereunder that is returned unpaid. Customer agrees in the event of a default, that any deposit made by Customer shall be used by Herc for unpaid rent and other charges, damages and costs incurred due to the default.
- CUSTOMER'S RESPONSIBILITIES.** Customer is responsible to Herc for all loss or damage to the Equipment, and for its return in the same condition it was received, except for ordinary wear, and free of any hazardous materials and/or contaminants. Such responsibility is limited to the full value of the Equipment at the time it is lost or damaged, less its salvage value, plus any administrative fees and Herc's related expenses, such as loss of use, appraisal fees or recovery costs ("Full Value"). The Equipment must be returned to Herc at the renting Herc Branch by the Estimated Return Date (EST RETURN) specified on the Front, or sooner if demanded by Herc. Customer must notify Herc if it desires to change the EST RETURN for all or some of the Equipment. Customer acknowledges that it must confirm return receipt of the Equipment by Herc at the expiration or earlier termination of the rental. Until such time as Herc receives actual possession of the Equipment, Customer agrees to hold said Equipment in a safe and secure manner. The Equipment will be used and kept only at Customer's place of business or the job site at which the Equipment is used and will not be moved without the prior written consent of Herc. The Equipment will be used only in accordance with the manufacturer's instructions within its rated capacity. Customer will perform or cause to be performed and pay for all normal periodic and other basic service, adjustments and lubrication of the Equipment, including but not limited to: checking of the Equipment before each shift; checking and maintaining crankcase, transmission, cooling and fluid systems daily; and checking tire pressures and battery fluid and charge levels weekly. If the Equipment fails to operate properly or becomes in need of repair, Customer will immediately cease using same and will immediately notify Herc. Customer is responsible for providing a secure and safe work environment for all parties, including Herc and its employees, and for ensuring that the possession, storage, use and operation of the equipment is carried out in compliance with applicable laws, (including but not limited to those relating to worker safety and the environment).
- RISK OF LOSS.** All loss of or damage to the Equipment from any cause whatsoever while on rental and whether or not due to the fault of Customer, including, but not limited to, fire, flood, theft, comprehensive losses, collision and rollover, and Acts of God, will be the sole responsibility of Customer and will be paid to Herc promptly upon Customer's receipt of an invoice therefor. Such responsibility is limited to the full value of the Equipment at the time it is lost or damaged, less its salvage value, plus an administrative fee and Herc's related expenses, such as loss of use, appraisal fees or recovery costs. THE COST OF LABOR FOR REPAIRS WILL BE EITHER HERC'S THEN PREVAILING HOURLY RATE FOR LABOR, POSTED AT THE HERC BRANCH WHERE THE EQUIPMENT IS TO BE REPAIRED, OR THE REPAIRER'S HOURLY RATE FOR LABOR CHARGED TO HERC FOR REPAIRS AS THE CASE MAY BE. PARTS WILL BE CHARGED AT HERC'S COST PLUS A RETAIL MARKUP. Use of the Equipment by persons other than Customer or Authorized Operators will be at Customer's sole risk.
- EVENTS OF DEFAULT.** Customer shall be in default of this Agreement if Customer fails to pay any amount when due hereunder, or if Customer breaches any of the other terms of this Agreement, or if Customer becomes insolvent or ceases to do business as a going concern, or if a petition in bankruptcy is filed by or against Customer, or if Customer is in default pursuant to the provisions of any other agreement by and between Customer and Herc. Customer will further be deemed to be in default if the Equipment is obtained from Herc through fraud or misrepresentation or is stored or used: (A) in violation of any law or ordinance including without limitation, any local, state or federal law or regulation involving "Hazardous Materials," including "DOT Hazardous Materials," as set forth in 49 C.F.R. 171-180; (B) in a reckless, negligent or abusive manner, or is damaged while being rented by Customer; (C) in violation of Paragraph 4 above, (D) in any fashion or manner for which the Equipment was not designed or beyond the manufacturer's rated capacity for the Equipment.
- REMEDIES OF HERC.** In case of default by Customer, or if Herc deems itself insecure, Herc may, but is not required to, peacefully enter the premises where the Equipment is located and render it inoperative or remove same with or without process of law and without any notice to Customer or liability. Customer hereby waives any right to any hearing or to receive any notice of legal process, as a pre-condition for Herc recovering the Equipment. Customer agrees to permit such entry and action by Herc. In such case Herc may also terminate this Agreement without notice to Customer or prejudice to any remedies or claims which Herc might otherwise have for any amount due hereunder, expense of retaking, court costs and reasonable attorneys' fees. Customer will remain liable for the Equipment or for any loss or injury to the Equipment, any property and/or persons, notwithstanding such termination. Herc shall have the right to issue and circulate theft notices, cause warrants to be issued and take any other steps which Herc may reasonably deem necessary to recover the Equipment, if the Equipment is not returned on the date specified on the Front or sooner as permitted by the terms of this Agreement. The remedies provided herein in favor of Herc are not exclusive but shall be cumulative and in addition to all other remedies existing at law or in equity, any one or more of which may be exercised simultaneously or successively.
- INSURANCE.** Liability Insurance for Injury/Damage to Third Parties - Customer agrees to maintain and carry, at its own expense and at all times during the term of this Agreement, the following insurance: (1) commercial automobile insurance, with at least a per occurrence limit of \$1 million, which includes coverage for owned and non-owned motor vehicles. Herc shall be named as an additional insured for all claims arising out of the maintenance, operation, or use of the vehicle. All insurance, whether issued on a primary or umbrella/excess basis, afforded to Herc shall be primary to, and non-contributory with, any other insurance on which Herc is a named insured, whether such other insurance is primary, excess, self-insurance, or insurance on any other basis, to the furthest extent permitted by law. Further, such primary and non-contributory protection shall not exceed the minimum limits required by the automobile financial responsibility laws of the applicable state. Such protection will conform to the basic requirements of the applicable No-Fault law, BUT DOES NOT INCLUDE UNINSURED/UNDERINSURED MOTORIST, SUPPLEMENTARY NO FAULT OR ANY OTHER OPTIONAL COVERAGE. TO THE EXTENT PERMITTED BY LAW, HERC AND CUSTOMER REJECT THE INCLUSION OF ANY SUCH COVERAGE. If such coverage is imposed by operation of law, then the limits of such coverage will be the minimum required by the law of the applicable state noted above; (2) commercial general liability insurance (providing coverage equal to or greater than the standard ISO CG 00 01 12 04 form) with limits of insurance not less than \$1 million per occurrence and \$2 million in the aggregate. Customer shall name Herc as an additional insured for all claims and liability arising out of the maintenance, operation, or use by the Customer of equipment leased to Customer by Herc (providing coverage equal or greater than the standard ISO CG 20 28 11 85). Such insurance shall be primary and non-contributory to any other insurance maintained by Herc. Customer further agrees that the amount of insurance available to Herc shall be for the full amount of the loss up to policy limits of liability and shall not be limited to the minimum requirements of this agreement. In the event any policy provided in compliance with this agreement states that the insurance afforded to an additional insured will not be broader than that required by contract, or words of similar meaning, Customer agrees that nothing in this agreement is intended to restrict or limit the breadth of such insurance; and (3) property insurance for the full replacement cost of the Equipment, including coverage for all risks of loss or damage to the Equipment. The policy must expressly cover owned and non-owned Equipment, including motor vehicles (if applicable), while in your care, custody and control. Customer shall carry workers compensation and employers' liability insurance with at least a per occurrence limit of \$1 million. Customer shall name Herc as an additional insured for all claims arising out of the maintenance, operation or use of the equipment, and as an additional loss payee. Any deductibles or self-insured retentions shall be the sole responsibility of the Customer. All insurance required by this Rental Agreement shall include a waiver of rights of recovery against Herc or its insurers by the Customer and its insurers, as well as a waiver of subrogation against Herc or its insurers. The policies required hereunder shall provide that Herc must receive not less than 30 days' notice prior to any cancellation. **Customer shall provide Herc with documented proof of all required insurance coverage. FOR RENTAL OF EQUIPMENT NOT LICENSED FOR ROAD USE, CUSTOMER MUST EITHER (i) ELECT TO NAME HERC AS LOSS PAYEE EVIDENCING PROPERTY INSURANCE COVERAGE, OR (ii) ELECT TO PURCHASE THE RENTAL PROTECTION PLAN.**
- INDEMNIFICATION.** To the fullest extent permitted by law, and for and in additional consideration of providing the Equipment herein, CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS HERC, ITS PARENT COMPANY AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY "HERC INDEMNIFIED PARTIES"), FROM AND AGAINST ANY AND ALL ACTUAL, ALLEGED, POTENTIAL OR PERCEIVED RISKS OF INJURY, DEMANDS, CLAIMS, SUITS, LIABILITIES, LOSSES, SETTLEMENTS, JUDGMENTS, DAMAGES, ENVIRONMENTAL SPILLS (including but not limited to costs, expenses, delays, deductible amounts of insurance, and liquidated, consequential and punitive damages), ATTORNEYS' FEES AND DISPUTE RESOLUTION COSTS, WHETHER OR NOT SUCH LOSSES, LIABILITIES, CLAIMS OR DAMAGES ARE BASED, IN WHOLE OR IN PART UPON ANY OF THE HERC INDEMNIFIED PARTIES' ALLEGED NEGLIGENCE OR PARTICIPATION IN THE WRONG OR UPON ANY ALLEGED BREACH OF A STATUTORY OR REGULATORY DUTY OR OBLIGATION ON THEIR PART, ARISING OUT OF OR ALLEGED TO HAVE ARISING OUT OF ANY ACT OR OMISSION IN CONNECTION WITH THE CUSTOMER'S MAINTENANCE, USE, POSSESSION, OPERATION, ERECTION, DISMANTLING, SERVICING OR TRANSPORTATION OF THE EQUIPMENT OR MOTOR VEHICLE OR CUSTOMER'S FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT BY REASON OF BODILY INJURY, INCLUDING DEATH, AND PROPERTY DAMAGE, SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING BUT NOT LIMITED TO EMPLOYEES OF CUSTOMER. CUSTOMER WILL, AT ITS SOLE EXPENSE, COMPLY WITH ALL FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS AFFECTING THE EQUIPMENT AND ITS USE, OPERATION, ERECTION, DESIGN AND TRANSPORTATION, INCLUDING WITHOUT LIMITATION, LICENSING AND BUILDING CODE REQUIREMENTS, AND WILL DEFEND, INDEMNIFY AND HOLD HERC INDEMNIFIED PARTIES HARMLESS FROM ALL LOSS, LIABILITY OR EXPENSE RESULTING FROM ACTUAL OR ALLEGED VIOLATIONS OF ANY SUCH LAWS, REGULATIONS OR REQUIREMENTS.
- NOTICE OF LOSS OR ACCIDENT.** In the event of an accident, loss of, theft of, or damage to, spill or leak of hazardous materials from, the Equipment, Customer agrees to notify Herc as soon as possible by telephone and, thereafter, to immediately report in writing to Herc and to the public authorities (where required by law or by Herc) all necessary information relating to the loss or accident.
- CONDITION OF THE EQUIPMENT.** Customer acknowledges having examined the Equipment upon its delivery to Customer. The Equipment shall be deemed to be accepted by Customer upon delivery and subject to the terms and conditions of this Agreement. Customer shall notify Herc in writing within 24 hours of delivery of the Equipment of any problem with the Equipment. If the Equipment is found by Customer not to be in good mechanical condition, as a result of conditions not the responsibility of Customer, nor caused by the fault or negligence of Customer or Customer's employees or agents, Customer will so notify Herc, whereupon Herc will then, at its option and without any other liability or responsibility by Herc to Customer: (a) repair or suitably replace the Equipment within a reasonable time during Herc's normal working hours, with the commencement or running of the terms of this Agreement to be tolled for the period the Equipment is "down"; or (b) remove the Equipment and terminate this Agreement and refund payments of rental charges, if any, for the unexpired term of the Agreement, less whatever is due Herc for damage to or maintenance of Equipment which is the responsibility of Customer. Customer agrees to provide full access to the Equipment to Herc's representatives to enable Herc to meet its responsibilities hereunder.
- LATE PAYMENT FEE.** Should Customer fail to pay any invoice to Herc in accordance with the terms of such invoice, Customer will pay a late payment fee to Herc on such delinquent payment until fully paid, at the maximum rate allowed by the laws of the jurisdiction in which the Herc location specified on the Front is located.
- FUELING SERVICE CHARGE.** Herc agrees to provide the Equipment to Customer with full fuel tanks. Customer agrees to return the Equipment with full fuel tank(s). If Customer returns the Equipment with the fuel tank(s) less than full, Customer will pay to Herc a sum equal to Herc's then applicable refueling service charge posted at Herc's location where the Equipment is returned for the number of gallons required to refill the tank(s) at the time of return.
- MERGER/MODIFICATION/SEVERABILITY.** This Agreement expresses the entire agreement between the parties with respect to the subject matter hereof. No modification or alteration of the terms hereof will be effective as against Herc unless same is in writing and signed by a duly authorized officer of Herc. Customer's execution of this Agreement and acceptance of the Equipment in accordance with Section 11 hereof shall constitute Customer's acceptance of all of the Terms contained on the Front hereof and herein, and the exclusion of any terms and conditions otherwise stated by Customer or contained in any of Customer's documents. The paragraph headings contained in this Agreement are for convenience only and will not be used to expand or limit the actual terms and conditions hereof. Customer and the person signing this Agreement represent that: (a) they both have full authority to execute, deliver and perform this Agreement; and (b) this Agreement is a legal, valid and binding obligation of Customer, enforceable in accordance with its terms.
- GOVERNING LAW/JURISDICTION/JURY TRIAL WAIVER/LIMITATION OF LIABILITY.** This Agreement shall be governed by and construed in accordance with the laws of the state of Delaware without regard to its rules of conflict of laws. Customer irrevocably and unconditionally consents to submit to the jurisdiction of the state and federal courts within the State of Delaware (the "Delaware Courts") or Florida ("Florida Courts") for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby, and waives any objection to the laying of venue and forum in the Delaware Courts and/or the Florida Courts. If any provision, or any part of any provision of this Agreement or the application thereof is thereafter held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and to this end the provisions of this Agreement are declared severable. Each party hereby waives and releases all rights to trial by jury in any action, proceeding or counterclaim brought by either party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on any matters whatsoever arising out of or in any way connected with this Agreement. THE MAXIMUM LIABILITY OF HERC, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR AFFILIATES UNDER THIS AGREEMENT (REGARDLESS OF WHETHER A CLAIM IS BASED UPON WARRANTY, CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAID TO HERC BY CUSTOMER UNDER THIS AGREEMENT.
- ELECTRONIC SIGNATURES.** Customer agrees that this Agreement may be signed manually or by scanning and sending .pdf or other copies thereof via email or via any other electronic means and in one or more counterparts, each of which shall be an original, and all of which together shall constitute the entire agreement. (i) a valid and binding agreement and fully admissible under state and federal rules of evidence; and (ii) enforceable under the applicable Uniform Commercial Code Section 2A-204, Section 3-309 and under any other similar statute applicable to this Agreement.
- FAMILIARIZATION.** All familiarization requests must be made in writing not less than five (5) calendar days before scheduled delivery date or at time of purchase. Request(s) must be submitted to the location in which the Equipment was rented. If requested, the User as defined by ANSI A92/CSA B354 agrees to have a designated person present at time of delivery to receive the equipment familiarization. Familiarization will be made in accordance to ANSI A92 & CSA B354. Familiarization is not considered training or certification.





**PHELAN PINON HILLS**  
**COMMUNITY SERVICES DISTRICT**  
 PROPOSED WELL No. 15  
 TRANSMISSION PIPELINE  
 Exhibit "B"



# Agenda Item 6d

Discussion & Possible Adoption  
of Ordinance No. 2023-03;  
Establishing Guidelines for the  
Conduct of District Public  
Meetings and Activities

## MEMORANDUM

**DATE:** March 8, 2023

**TO:** Board of Directors

**FROM:** Don Bartz, General Manager  
By: Kim Ward, HR & Solid Waste Manager/District Clerk

**SUBJECT:** Discussion & Possible Adoption of Ordinance No. 2023-03; Establishing Guidelines for the Conduct of District Public Meetings and Activities

### RECOMMENDATION

For the Board to adopt Ordinance No. 2023-03; Establishing Guidelines for the Conduct of District Public Meetings and Activities.

### BACKGROUND

The District's "Sunshine Ordinance" is reviewed annually to determine its effectiveness and the necessity for its continued operation. The last review and update of this policy took place on January 18, 2023, where the Board meeting days and times were changed and a section regarding remote participation was added.

At the February 22, 2023, Board meeting, the Board reviewed a sample policy regarding teleconferencing and authorized staff to proceed with development of a similar policy for the District. The logical incorporation of this policy is in the District's Sunshine Ordinance where the policy has been attached as an exhibit.

This policy includes a global teleconferencing policy for employees, consultants, vendors, and individuals without requiring compliance in the same manner as members of the Board.

### FISCAL IMPACT

None

### ATTACHED

Ordinance No. 2023-03  
Exhibit A – Board Member Teleconferencing Policy

**ORDINANCE NO. ~~2023-02~~2023-03**  
**AN ORDINANCE OF THE BOARD OF DIRECTORS**  
**OF THE PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT**  
**ESTABLISHING GUIDELINES FOR THE**  
**CONDUCT OF ITS PUBLIC MEETINGS AND ACTIVITIES**

**WHEREAS**, the Board of Directors of the Phelan Piñon Hills Community Services District finds as follows:

A. The Phelan Piñon Hills Community Services District (“the District”) is a community services district organized and operating pursuant to California Government Code Section 61000 et seq.

B. The District is governed by an elected Board of Directors (“the Board”) whose meetings are subject to the requirements of the Ralph M. Brown Act, California Government Code Section 54950 et seq. (“the Brown Act”) pursuant to California Government Code Section 61044.

C. The Board is authorized by Government Code Section 54953.7 to impose requirements upon itself which allow greater access to its meetings than prescribed by the Brown Act.

D. The purpose of this Ordinance is to ensure that the Board’s deliberations are open to the public to the fullest extent permitted by law and its activities are performed in a manner that reflects a dedication to the highest standards of integrity and accountability so as to continue to earn the trust and confidence of the public served by the District.

**THEREFORE, THE BOARD OF DIRECTORS** of the Phelan Piñon Hills Community Services District does hereby adopt and ordain as follows:

Section 1. **COMPLIANCE WITH STATUTORY REQUIREMENTS.**

All meetings of the Board and all committees thereof shall be conducted in



compliance with all applicable requirements of the Brown Act.

Section 2. **ADDITIONAL REQUIREMENTS.**

2.1. **Regular Meetings.** Pursuant to Government Code Section 54954(a), all regular meetings of the Board shall be held at 5:00 p.m. on the second and fourth Wednesdays of each month at the Phelan Community Center located at 4128 Warbler Road in Phelan, California, and/or by teleconference in accordance with the requirements of the Brown Act, with the intent for meetings to last no more than three (3) hours, and to be adjourned by Board consensus.

2.2. **Special Meetings.** Special meetings of the Board shall be called and conducted in accordance with Government Code Section 54956 and other applicable provisions of the Brown Act. The Board shall not add any non-agendized item to the agenda of a special meeting.

2.3. **Agendas.**

2.3.1. Descriptions.

(a) *Open Session.* The agenda for all Board meetings and all committee meetings that are open to the public shall contain a brief, general description of each item of business to be transacted or discussed during the meeting and shall avoid the use of undefined abbreviations or acronyms not in common usage and terms whose meaning are not known to the general public. The description of an agenda item is adequate if it is sufficiently clear and specific to alert a person whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information about the item.

(b) *Closed Session.* In addition to the brief general description of items to be discussed or acted upon in open and public session, the permissive

provisions of Government Code Section 54954.5 pertaining to closed session item descriptions are mandatory under this Ordinance with respect to closed sessions.

2.3.2. Public Comment. The agenda for all meetings of the Board shall include an item for Public Comment so as to provide an express opportunity for members of the public to directly address the Board in accordance with the requirements of Government Code Section 54954.3(a) prior to the Board's consideration of the merits of any item placed on the agenda. In the event that a motion is made to reorder the agenda, or add an item to the agenda, or otherwise take any Board action prior to the Public Comment portion of the agenda, the President of the Board shall ask any members of the public in attendance at the meeting whether they wish to comment on the motion that is pending before the Board. During the Board's consideration of items discussed after the Public Comment portion of the agenda, the President of the Board should exercise best efforts to recognize any member of the public who wishes to speak on that issue prior to any action thereon that is taken by the Board. While testimony and input received from the public during Board meetings is a valuable part of the Board's decision-making process, the Board President is nevertheless authorized pursuant to Government Code Section 54954.3(b) to limit the total amount of time allocated for public testimony on particular issues to a reasonable length of time, to limit public testimony to five (5) minutes or less for each individual speaker (although individual speakers will be permitted on a reasonable basis to transfer their unused allotment of time to another speaker), and to prevent a person who is unduly repetitive from continuing to speak.

2.3.5. Background Material. Staff material, consisting of agendas, staff reports, and other material prepared and forwarded by staff which provide background

information and recommendations, regarding agenda items, when distributed to all or to a majority of the members of the Board in connection with a matter which is subject to discussion or consideration in open session at a public meeting, shall be made readily available to the public on the District's website, at the District's offices, and upon request. If a member of the public requests that a copy of such material be delivered by e-mail, District staff shall e-mail a copy of, or website link to, the documents as requested unless District staff determines that delivery by e-mail or by other electronic means is technologically infeasible, in which case District staff must send the documents by mail in accordance with the mailing requirements of the Brown Act.

2.4. **Posting.** The agendas of all Board meetings and all committee meetings that are open to the public shall be posted in the following locations: (1) an exterior window or bulletin board situated outside the location of the Piñon Hills Community Center which is accessible twenty-four (24) hours a day; (2) an exterior window or bulletin board situated outside the location of the Phelan Community Center which is accessible twenty-four (24) hours a day; (3) an exterior window or bulletin board situated outside the location of the District office which is accessible twenty-four (24) hours a day; and (4) the District website. The District will also post the full agenda packet for all such meetings on the District website and will provide five (5) copies thereof at the physical location of all Board meetings in which the public has in-person access.

2.5. **Remote Participation.** A Board member wishing to participate in a meeting from a remote location pursuant to Government Code Sections 54953(b) or 54953(f) must notify District staff at the earliest opportunity as soon as possible so that the agenda for the meeting can be prepared and/or amended accordingly and that all other necessary accommodations can be arranged and the meeting conducted, in a

manner generally consistent with the policy attached hereto as Exhibit A and incorporated herein by this reference.

2.6. **Cancellation of Meetings.** Regular meetings of the Board may be cancelled by the President of the Board, after consultation with the District's General Manager, upon at least 72 hours' notice given in accordance with the applicable requirements of the Brown Act and Section 2.4 above.

Section 3. **ANNUAL REVIEW.**

Each year the Board shall review this Ordinance to determine its effectiveness and the necessity for its continued operation. The District's General Manager shall report to the Board on the operation of this Ordinance, and make any recommendations deemed appropriate, including proposals to amend the Ordinance. Upon conclusion of its review, the Board may take any action it deems appropriate concerning this Ordinance. Nothing herein shall preclude the Board from taking action on the Ordinance at times other than upon conclusion of the annual review.

Section 4. **SEVERABILITY.**

If any provision of this Ordinance, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 5. **EFFECTIVE DATE.**

The provisions of this Ordinance shall supersede Ordinance No. ~~2022-01~~2023-02 adopted by the Board on January ~~19~~18, 202~~23~~, and shall take effect immediately upon adoption.



Adopted this ~~18th~~8th day of ~~January~~March, 2023.

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
President, Board of Directors

ATTEST:

\_\_\_\_\_  
Secretary, Board of Directors

## EXHIBIT A

### Board Member Teleconferencing Policy

#### **Article I. Policy:**

The policy set forth herein ("Policy") shall govern the Agency's use of Teleconferencing for the attendance at Meetings of the Members of its Legislative Bodies. The Global Teleconferencing Policies (Article III) and Standard Teleconferencing Procedures (Article IV) shall apply in all instances, except when (1) a Board member has either "just cause" or an "emergency circumstance" so as to permit the use the Expanded Teleconferencing Procedures (Article V) or (2) a State of Emergency issued by the California Governor is in effect sufficient to trigger the use of the Emergency Teleconferencing Procedures (Article VI).

#### **Article II. Definitions:**

Unless otherwise defined herein, the following definitions shall apply to this Policy:

Agency – shall refer to the Phelan Pinon Hills Community Services District.

Brown Act / Ralph M. Brown Act – shall refer to Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the California Government Code, known as the "Ralph M. Brown Act" pursuant to Government Code section 54950.5, as such shall be amended from time to time.

Legislative Body – shall have the same meaning as provided by Government Code Section 54952, including the Agency's governing board.

Member – shall have the same meaning as provided by Government Code Section 54952.1.

Meeting – shall have the same meaning as provided by Government Code Section 54952.2.

State – shall mean the State of California.

State of Emergency – shall mean a state of emergency proclaimed by the California Governor or such others as may be empowered pursuant to Section 8625 of the California Emergency Services Act, as set forth in Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2 the California Government Code.

Teleconferencing – attendance from different locations, other than the physical location of a meeting, by way of an audio device, whether it be telephone, audio-only internet connection, or otherwise.

Videoconferencing – attendance from different locations, other than the physical location of a meeting, by way of a dual audio and visual device, whereby participants

can be both seen and heard. For purposes of this Policy, Videoconferencing may include attendance by way of a single device or software package, or attendance via an audio-device with synced camera or webcasting.

### **Article III. Global Teleconferencing Policies:**

At the discretion of the Legislative Body and/or the Agency's General Manager, any employee, consultant, vendor, or individual presenting or attending a Meeting of a Legislative Body, other than a Member of the Legislative Body, shall be permitted to attend via teleconference or videoconference without compliance with the rules or conditions set forth herein. Members of the Legislative Body, inclusive of the governing board Members and committee or bodies required to comply with the Brown Act, may only participate via teleconference or videoconference as permitted by this Policy.

To the extent a Member desires to attend a Meeting via teleconference or videoconference, the Member shall generally be required to comply with the foregoing "Standard Teleconferencing Procedures" (Article IV) unless the circumstances exist to justify the use of the "Expanded Teleconferencing Procedures" (Article V) or "Emergency Teleconferencing Procedures" (Article VI).

A Member not in compliance with any such procedures, as applicable, shall not be permitted to attend a Meeting via teleconference or videoconference for any purpose, whether to participate in or listen to such Meeting.

In all instances in which a Member is attending a Meeting via Teleconferencing or Videoconferencing, the Legislative Body shall:

1. Take all votes by roll-call;
2. Conduct the Meeting in a manner that protects the statutory and constitutional rights of the parties and public appearing before the Legislative Body;
3. Provide notice and post agendas as otherwise required by the Brown Act; and
4. Permit members of the public access to the Meeting and an opportunity to address the Legislative Body as required by the Brown Act.

### **Article IV. Standard Teleconferencing Procedures:**

A Member may attend a Meeting via Teleconferencing or Videoconferencing if the following conditions are satisfied:

1. At least a quorum of the Members of the Legislative Body participate in the Meeting from locations within the boundaries of the Agency;
2. The agenda posted for the Meeting is posted at all teleconference locations, each of which are identified in the notice and the agenda for the Meeting; and

3. Each teleconference location is accessible to the public, and the public is permitted to comment at each teleconference location.

**Article V. Expanded Teleconferencing Procedures (Effective Thru January 1, 2026):**

A Member may attend a Meeting via videoconference only (Teleconferencing will not be permitted under these procedures), without the need to comply with the Standard Teleconference Procedure requirements to notice and post at the agenda locations or make such locations accessible to the public, if the following conditions are satisfied:

1. At least a quorum of the Members of the Legislative Body participate in-person from a single physical location accessible to the public, which is within the boundaries of the Agency and clearly identified in the posted agenda;
2. The public is permitted to attend the Meeting either by teleconference or videoconference in a manner such that the public can remotely attend and offer real-time comment during the Meeting;
3. Notice of the means by which the public can remotely attend the Meeting via teleconference or videoconference and offer comment during the Meeting is included within the posted agenda;
4. The Member(s) attending remotely have either “just cause” or an “emergency circumstance” that justifies their attendance via videoconference.
  - a. A Member shall only have “just cause” for remote attendance if such participation is for one of the following reasons:
    - i. To provide childcare or caregiving need to a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, with such terms having the same meaning as those terms are defined in Government Code Section 12945.2;
    - ii. Due to a contagious illness that prevents the Member from attending in-person;
    - iii. Due to a need related to a physical or mental disability as defined in Government Code Sections 12926 and 12926.1 not otherwise accommodated; and
    - iv. Due to travel while on official business of the Legislative Body or another state or local agency;
  - b. A Member shall have an “emergency circumstance” if such participation is due to a physical or family medical emergency that prevents the Member from attending in person.
5. The Member(s) have not attended a Meeting remotely on the basis of “just cause” for more than two Meetings in the current year; and
6. The Member(s) have not attended a Meeting remotely on the basis of “just cause” or “emergency circumstance” for more than three consecutive months or more than four in a calendar year.
7. The Legislative Body has, and has implemented, a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act

of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the Meeting is otherwise given or the agenda for the Meeting is otherwise posted, the Legislative Body shall also give notice of the procedure for receiving and resolving requests for accommodation.

In order to utilize the Expanded Teleconference Procedures, a Member shall:

1. For a “just cause” circumstance, notify the Legislative Body at the earliest opportunity, including at the start of a regular Meeting, of their need to participate remotely for just cause, including a general description of the circumstance relating to their need to appear remotely at the given Meeting;
2. For an “emergency circumstance,” request to participate at a Meeting due to an “emergency circumstance” as soon as possible, preferably before the posting of the agenda but up to the start of the Meeting, with such request including a general description of the circumstances relating to their need to appear remotely at the given Meeting, though any description for emergency circumstances need not exceed 20 words and need not include any medical diagnosis or disability or personal medical information exempt from disclosure by law;
3. The Member shall publicly disclose at the Meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the Member, and the general nature of the Member’s relationship with such individuals; and
4. Participate through Videoconferencing, with both audio and visual technology.

Upon receipt of a request from a Member to utilize the Expanded Teleconference Procedure, the Legislative Body shall:

1. Take action by majority vote on a request to participate remotely due to an “emergency circumstance” at its earliest opportunity, which may be taken as a noticed agenda item or as an added item if sufficient time was not provided to place the proposed action on the agenda; and
2. In the event of a disruption that prevents the broadcast of the Meeting to members of the public, or in the event of a disruption within the Agency’s control that prevents members of the public from offering public comment using the Teleconferencing or Videoconferencing options, take no further action during a Meeting until such access is restored.

**Article VI. Emergency Teleconferencing Procedures (Effective Thru January 1, 2024):**

Notwithstanding the Standard Teleconferencing Procedures, a Legislative Body may elect to use these “Emergency Teleconferencing Procedures” to allow Teleconferencing if any of the following circumstances apply:

1. The Legislative Body holds a Meeting during a proclaimed State of Emergency and State or local officials have imposed or recommended measures to promote social distancing;

2. The Legislative Body holds a Meeting during a proclaimed State of Emergency for the purpose of determining, by a majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or
3. The Legislative Body holds a Meeting during a proclaimed State of Emergency and the Legislative Body had determined, by majority vote, that as a result of the emergency, meeting in person would present imminent risks to the health and safety of attendees.

If utilizing the Emergency Teleconferencing Procedures, the Legislative Body shall:

1. Give notice in the agenda for such Meeting of the means by which members of the public may access the Meeting and offer public comment via a Teleconferencing or Videoconferencing option, which shall include an opportunity for public comment in real-time;
2. In the event of a disruption that prevents the broadcast of the Meeting to members of the public, or in the event of a disruption within the Agency's control that prevents members of the public from offering public comment using the Teleconferencing or Videoconferencing options, take no further action during a Meeting until such access is restored; and
3. Not close the public comment period, or the opportunity to register to comment, until the time that the general public comment period has elapsed.

The Legislative Body may continue use of the Emergency Teleconferencing Procedures for as long as the State of Emergency remains active, provided that, not later than 30 days after Teleconferencing for the first time, and every 30 days thereafter, the Legislative Body finds by majority vote that:

1. The Legislative Body has reconsidered the circumstances of the State of Emergency; and
2. Any of the following circumstances exist:
  - a. The State of Emergency continues to directly impact the ability of the Members to meet safely in person; or
  - b. State or local officials continue to impose or recommend measures to promote social distancing.

In the event of the use of these Emergency Teleconferencing Procedures, it shall not be necessary for the Agency to provide a physical location from which the public may attend or comment.

#### **Article VII. Miscellaneous Provisions:**

With respect to the Standard Teleconferencing Procedures, Expanded Teleconferencing Procedures, and Emergency Teleconferencing Procedures set forth herein, such are intended to comply with Government Code Sections 54953(b), (f), and (e), respectively, and, as such, in the event of a conflict between this Policy and such statutory provisions, the statutory provisions shall control and be implemented as if set forth in full in this Policy.

# Agenda Item 6e

Discussion & Possible Adoption  
of Resolution No. 2023-08;  
Establishing Policies for Board  
Conduct Amongst Directors and  
with Staff



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## MEMORANDUM

**DATE:** March 8, 2023

**TO:** Board of Directors

**FROM:** Don Bartz, General Manager  
By: Kim Ward, HR Manager/Executive Secretary

**SUBJECT:** Adoption of Resolution No. 2023-08; Establishing Policies for Board Conduct Amongst Directors and with Staff

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### RECOMMENDATION

Staff recommends for the Board to adopt Resolution No. 2023-08; Establishing Policies for Board Conduct Amongst Directors and with Staff.

### BACKGROUND

Periodically, the District's policy concerning relations among Board members and staff is reviewed to determine if changes are necessary. At the February 8, 2023, Board meeting, the Board reviewed the policy and had no changes.

Upon further review of the policy, staff updated the formatting, proposed changes to the date of the election of officers, and updated references to the District's Sunshine Ordinance.

### FISCAL IMPACT

None

### ATTACHED:

Resolution No. 2023-08



**RESOLUTION NO. 2023-08**  
**A RESOLUTION OF THE BOARD OF DIRECTORS OF**  
**THE PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT**  
**ESTABLISHING POLICIES FOR BOARD CONDUCT**  
**AMONGST DIRECTORS AND WITH STAFF**

**WHEREAS**, the Board of Directors of the Phelan Pinon Hills Community Services District finds as follows:

A. The Phelan Pinon Hills Community Services District (“the District”) is a community services district organized and operating pursuant to California Government Code Section 61000 et seq.

B. The District is governed by an elected Board of Directors (“the Board”) whose meetings are subject to the requirements of the Ralph M. Brown Act, California Government Code Section 54950 et seq. (“the Brown Act”), pursuant to California Government Code Section 61044.

C. The Board adopted Ordinance No. ~~2019-01~~2023-03 on ~~January 2, 2019~~March 8, 2023, establishing guidelines for the conduct of its public meetings and activities and imposing requirements upon itself which allow greater access to its meetings than prescribed by the Brown Act.

D. The purpose of this Resolution is to supplement Ordinance No. ~~2019-01~~2023-03 and to ensure that the Board’s deliberations are conducted honorably and that its activities are performed in a manner that reflects a dedication to the highest standards of integrity so as to continue to earn the trust and confidence of the public served by the District.

**THEREFORE, THE BOARD OF DIRECTORS** of the Phelan Pinon Hills Community Services District does hereby resolve as follows:

Section 1. **RELATIONS BETWEEN DIRECTORS.**

1.1. **Duties.** The Board shall govern the District. The Board shall establish policies, direction, procedures and oversight for the operation of the District. The Board shall provide for the implementation of those policies, which is the responsibility of the District’s General Manager. All members of the Board shall exercise their independent judgment on behalf of the entire District, including the residents, property owners, and the public as a whole in furthering the purposes and intent of the District.

1.2. **Officers.**

1.2.1. Within 45 days after each general District or unopposed election, the Board shall meet and elect the officers of the Board. The Board shall elect its officers annually at its ~~second~~first meeting in December, or first meeting following certification of election during Board election years.

1.2.2. The officers of the Board are President and Vice-President. The President shall preside over meetings of the Board and the Vice-President shall serve in the President's absence or inability to serve. The Board may create additional offices and elect members to those offices, provided no members of the Board shall hold more than one office.

1.3. **Parliamentary Procedure.**

1.3.1. A majority of the total membership of the Board shall constitute a quorum for the transaction of District business. Except as otherwise specifically provided by law, a majority of the total membership of the Board is required for the Board to take action. The Board shall act only by ordinance, resolution, or motion. The Board President shall have the same rights and obligations of the other Directors concerning voting procedures. The minutes of the Board shall record the aye and no votes taken by the members of the Board for the passage of all ordinances, resolutions, or motions. The Board shall keep a record of all its actions, including financial transactions.

1.3.2. Meetings of the Board shall be subject to the Brown Act and Ordinance No. ~~2019-01~~2023-03 (as may be amended from time to time). Rosenberg's Rules of Order shall provide general guidance for the conduct of the Board's business, except where otherwise provided by law, ordinance, resolution, or motion of the District, or otherwise inconsistent with the intent of the Board. The Board President (or committee chair) shall preserve order and decorum and will rule on all matters of procedure, with the advice of legal counsel. Questions of law may be referred to the District's legal counsel for opinion.

1.4. **Committees.** Any matter brought before the Board may, if deemed necessary, be referred to District staff or a committee of the Board composed of less than a quorum of the Board for review and recommendation. The Board may establish such standing and ad hoc committees as it deems necessary. The selection of the

Board members to serve on such committees shall be recommended by the Board President and approved by a majority of the Board. A review of the Board's committees shall be conducted on an annual basis.

1.4.1. Pursuant to Section 1 of Ordinance No. ~~2019-01~~2023-03, all meetings of standing committees of the Board shall be conducted in compliance with all applicable requirements of the Brown Act. Non-committee Board members may attend standing committee meetings, but shall not participate in the meetings.

1.4.2. Meetings of ad hoc committees of the Board may be exempt from the notice, agenda, and public participation requirements of the Brown Act as long as the committees substantially comply with the following guidelines: (1) The committee's duration should be restricted to a relatively short period of time; (2) The committee's purpose should be limited to a single and specific task; (3) The committee shall not be given any independent discretionary authority to make ultimate decisions on behalf of the Board with respect to the final resolution of the task; (4) The committee's charge should not be automatically renewed upon completion of its particular assignment or expiration of its fixed term; (5) The committee's meeting schedule should not be on a regular basis or established by formal action of the Board; (6) Public notice of the formation of the committee shall be given in a timely manner; and (7) Neither non-committee Board members nor select outside parties shall be invited or permitted to attend the committee meetings.

1.4.3 Disputes arising regarding the selection of a committee chairperson shall be settled by the Board President.

1.5. **Personal Conduct**. The business of the District is a team effort. All Board members should work together in a collaborative manner, assisting each other in conducting the affairs of the District. Directors shall, at all times, conduct themselves with courtesy to each other, to staff, and to members of the audience present at Board meetings. Directors shall defer to the President concerning the conduct of Board meetings, but shall be free to question and discuss items on the agenda. In turn, the Board President shall not exercise the privileges of the office in such a manner as to unfairly advance his or her own personal opinions or unduly prejudice the positions of other Board members. When responding to requests and concerns from the public and other District customers, Board members should be courteous, responding to

individuals in a positive manner and routing their questions through appropriate channels and to responsible management personnel. Board members should develop a working relationship with the District's General Manager wherein current issues, concerns, and District projects can be discussed comfortably and openly. Board members should function as a part of the whole. Issues should be brought to the attention of the entire Board, rather than to individual members selectively. Board members are responsible for monitoring the District's progress in attaining its goals and objectives, while pursuing its mission.

1.6. **Communication of Views and Positions.** The Board is committed to providing excellence in legislative leadership necessary to furnish the highest quality of government services to the public and to the District's customers. In order to achieve this goal, cooperative interaction between and among Board members is encouraged. As such, the following rules shall be observed:

1.6.1. Board members should refrain from discussing or commenting on District business on social media.

1.6.2. The dignity, style, values, and opinions of each Board member shall be respected. Responsiveness and attentive listening in communication is encouraged.

1.6.3. The needs of the public and the District's customers should be the priority of the Board.

1.6.4. Board members should commit themselves to emphasizing the positive, avoiding double talk, hidden agendas, gossip, backbiting, and other negative forms of interaction.

1.6.5. Board members should commit themselves to focusing on issues and not personalities. The presentation of the opinions of others should be encouraged. Cliques and voting blocks based on personalities, rather than issues, will be avoided.

1.6.6. Differing viewpoints are healthy in the decision-making process. Individuals have the right to disagree with ideas and opinions in a constructive and forthright manner. However, once the Board has taken action, individual Board members should commit to support said action and not create barriers to the implementation thereof.

1.7. **Board Discipline.** In the exercise of its discretion, the Board, by affirmative vote of four (4) of its members, may censure any of its members for a period of time

deemed appropriate by said supermajority of the Board. Unless otherwise prohibited by law, the maximum penalty that may be imposed upon the censured member by said supermajority of the Board during the period of such censure shall be the following:

1.7.1. The suspension of all spending of District funds by the censured Board member and of all reimbursement from District funds of any costs incurred by the censured Board member, unless otherwise allowed by the Board.

1.7.2. The removal of the censured Board member from service as an officer of the Board, and/or on all committees and other assignments on behalf of the District and/or the Board, unless subsequently authorized by the Board.

1.7.3. The withholding of all compensation by the District to the censured Board member except as otherwise allowed for attending meetings of the Board and other meetings subsequently authorized by the Board.

## Section 2. **RELATIONS WITH STAFF.**

### 2.1. **Interaction with Staff.**

2.1.1. **General.** The Board will deal with the administrative service of the District only through the General Manager. The General Manager is the Board's only link to operational achievement and conduct; all authority and accountability of staff is considered the authority and accountability of the General Manager. In the event the General Manager is unavailable, the next designated staff member would be accountable. Members of the Board will refrain from making requests directly to District employees (other than the General Manager) to undertake analyses, perform work assignments, or change the priority of work assignments. Additionally, Directors are to refrain from having open discussions regarding the District's operations or topics of a potentially sensitive nature with any staff member other than the General Manager, as doing so could undermine management, jeopardize the District's credibility, or even put the District at risk legally. The Board, as a whole, will not evaluate, either formally or informally, any staff member other than the General Manager. In seeking clarification on informational items, Directors should contact the General Manager to obtain information needed to supplement, upgrade, or enhance their knowledge to improve legislative decision-making. Any Board member requests that require substantial work, as determined by the General Manager, will be addressed with the Board President.

2.1.2. **Division of Responsibilities.** The Board is responsible for setting

District policy and procedures since each individual Director is accountable to the public as an elected official. The Board appoints the General Manager and defines the duties of the position. The Board is not to instruct management on the implementation of District policies.

a. The Board is responsible for: (1) Establishing policies, direction, procedures, and oversight, and approving programs to implement policies, during open public meetings; (2) Appointing a General Manager, who will be responsible for the management of all operations and affairs of the District; and (3) Delegating certain powers to the General Manager in the operation of District affairs.

b. The General Manager is responsible for: (1) Recommendation of policies, direction, procedure, and oversight to the Board; (2) Recommendation of programs and systems to the Board for implementation of District policies; (3) Carrying out policies and projects approved by the Board; (4) Arranging an orientation of District departments and facilities for all new Board members (and re-orientation for current Board members indicating interest) within 60 days of the Board member being sworn as a Director of the District; and (5) Serving as the District's official spokesperson unless the Board specifically directs otherwise.

### 2.1.3. **Board of Directors/General Manager**

a. The Board sets the policy, direction, procedure, and oversight for the District. The District's General Manager shall be responsible for all of the following: (1) The implementation of the policies established by the Board for the operation of the District; (2) The appointment, supervision, discipline, and dismissal of the District's employees, consistent with the employee relations system established by the Board; (3) The supervision of the District's facilities and services; and (4) The supervision of the District's finances. The Administrative Services Manager will oversee and maintain a system of auditing and accounting that will completely, and at all times, show the financial condition of the District in accordance with generally accepted accounting principles and legal requirements. The Board will retain and periodically review the work of an auditor as an independent contractor of the District (other than the Administrative Services Manager), who will report to the Board on an annual basis the results of an audit of the District's books, records, and financial affairs.

b. The District's General Manager serves at the pleasure of the

Board. The Board will provide policy, procedure, oversight, direction, and instructions to the General Manager on matters within the authority of the Board by majority vote of the Board during duly convened meetings of the Board of Directors.

c. Members of the Board will deal with matters within the authority of the General Manager through the General Manager, and not through other District employees. Members of the Board will refrain from making requests directly to District employees (other than the General Manager) to undertake analyses, perform other work assignments, or change the priority of work assignments.

2.1.4. **General Manager Performance Evaluation.** The Board will evaluate the General Manager's performance qualitatively in conjunction with the annual anniversary of the General Manager's hire date, using as guidelines the General Manager's stated annual objectives. Adjustments in the General Manager's remuneration or contract will be consistent with the Board's evaluation of performance and achievement of stated objectives.

2.2. **Treasurer.** Pursuant to Resolution No. 08-12 adopted by the Board on August 13, 2008, the Board has designated an alternative depository for District funds in place of the San Bernardino County Treasury and has appointed a District Treasurer to serve in place of the County Treasurer. The same person may be appointed by the Board to serve as both the General Manager and the District Treasurer. The District Treasurer shall serve at the pleasure of the Board. The Board shall set the compensation of the District Treasurer. The Board shall require the District Treasurer to be bonded. The District shall pay the cost of the bonds.

Section 3. **REVIEW AND AMENDMENT.**

Each year the Board shall review this Resolution to determine its effectiveness and the necessity for its continued operation. The District's General Manager shall report to the Board on the operation of this Resolution, and make any recommendations deemed appropriate, including any proposed amendments. Upon conclusion of its review, the Board may take any action it deems appropriate concerning this Resolution. Nothing herein shall preclude the Board from taking action on the Resolution at times other than upon conclusion of the annual review. Any of the within rules not required by law may be suspended or changed by a majority of the members of the Board.

Section 4. **SEVERABILITY.**

If any provision of this Resolution, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are declared to be severable.

Section 5. **EFFECTIVE DATE.**

The provisions of this Resolution shall supersede Resolution No. ~~2019-15~~2022-01, adopted by the Board on ~~September 4, 2019~~January 5, 2022, and shall take effect immediately upon adoption.

ADOPTED this ~~22nd day 8th day~~ of ~~January~~March, ~~2022~~2023.

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
President, Board of Directors

ATTEST:

\_\_\_\_\_  
Secretary, Board of Directors



# Agenda Item 6f

Discussion & Possible Action  
Regarding Contract Between  
San Bernardino County and the  
District Related to the American  
Rescue Plan Act and the  
Coronavirus Local Fiscal  
Recovery Fund



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## MEMORANDUM

**DATE:** March 8, 2023

**TO:** Board of Directors

**FROM:** Don Bartz, General Manager  
By: Kim Sevy, HR & Solid Waste Manager/District Clerk

**SUBJECT:** Discussion & Possible Action Regarding Contract Between San Bernardino County and the District Related to the American Rescue Plan Act and the Coronavirus Local Fiscal Recovery Fund

### STAFF RECOMMENDATION

For the Board to approve the Contract Between San Bernardino County and the District Related to the American Rescue Plan Act and the Coronavirus Local Fiscal Recovery Fund and authorize the General Manager to execute the Contract.

### BACKGROUND

Staff submitted a request to the County of San Bernardino seeking American Rescue Plan Act ("ARPA") funds to construct a portion of the Phelan Park Expansion Project, specifically outdoor exercise equipment, a community garden, and a tennis/pickleball court. At the budget workshop on February 15, 2023, staff provided an overview of the proposed project utilizing ARPA funds provided by the County of San Bernardino.

Costs for this project have been incorporated in the capital budget for FY 2023/2024 (pending final Board approval in June). The Contract authorizes reimbursement of \$457,194 in construction and material costs for the project; construction and material costs in excess of the authorized amount, soft-costs, and other costs will be paid directly by the District. Funds must be expended by December 31, 2024.

The amount requested has been pre-approved by the County. The attached Contract is a form approved by the County Board of Supervisors; any material modifications to the Contract shall need to be approved by the Board of Supervisors. Absent any material modifications, and approval by the District's Board, the contract will be executed by the District's General Manager and submitted to the County for ratification.

### FISCAL IMPACT

District match of up to \$457,194 towards project costs.

### ATTACHMENT(S)

Contract & Exhibit



Contract Number

SAP Number  
ARPA21-PRJD-027-PPH

### County Administrative Office

<b>Department Contract Representative</b>	Matthew Erickson, County Chief Financial Officer
<b>Telephone Number</b>	(909) 387-5423
<b>Contractor</b>	Phelan Pinon Hills Community Services District DUNS No. 967330668 UEI No. NCJAAV4E63M5
<b>Contractor Representative</b>	Donald Bartz, General Manager
<b>Telephone Number</b>	760-868-1212 x306
<b>Contract Term</b>	February 1, 2023 through December 31, 2026
<b>Original Contract Amount</b>	Based on actual project costs not to exceed \$457,194.00
<b>Amendment Amount</b>	
<b>Total Contract Amount</b>	Based on actual project costs not to exceed \$457,194.00
<b>Cost Center</b>	110-001-1078
<b>Internal Order (If Applicable)</b>	

### CONTRACT BETWEEN SAN BERNARDINO COUNTY AND PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT RELATED TO THE AMERICAN RESCUE PLAN ACT AND THE CORONAVIRUS LOCAL FISCAL RECOVERY FUND

**WHEREAS**, on March 4, 2020, the State of California declared a state of emergency as a result of the Coronavirus Disease 2019 (COVID-19) outbreak and on March 13, 2020, by Proclamation 9994, the President declared a national emergency concerning the COVID-19 pandemic. The COVID-19 pandemic continues to cause significant risk to the public health and safety of the United States; and

**WHEREAS**, on March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President and the law is intended to combat the COVID-19 pandemic, including the public health and economic impacts; and

**WHEREAS**, pursuant to Section 9901 of the ARPA, San Bernardino County (County) received a disbursement from the United States Department of the Treasury of money associated with the Coronavirus Local Fiscal Recovery Fund (CLFRF) for Local Governments under Section 603(a) [see 42 U.S.C. Section 803]; and

**WHEREAS**, the County agreed to comply with the United States Department of the Treasury Coronavirus State Fiscal Recovery Fund Award Terms and Conditions (Terms and Conditions), including Assurance of Compliance with Title VI of the Civil Rights Act of 1964 (Assurance of Compliance with Civil Rights Requirements), identified in the United States Department of the Treasury and San Bernardino County Agreement (OMB Approved No. 1505-0271) (United States Department of the Treasury Agreement), which is on file with the County and incorporated herein by this reference; and

**WHEREAS**, the Assistance Listing Number (ALN)/Federal Assistance Identification Number (FAIN) for the ARPA CLFRF is 21.027/SLT-0628 respectively; and

**WHEREAS**, the ARPA provides that payments from the CLFRF may be used for the following: i) to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; ii) to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work; iii) for the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; or iv) to make necessary investments in water, sewer, or broadband infrastructure; and

**WHEREAS**, funding provided under ARPA CLFRF must be obligated by December 31, 2024 and expended by December 31, 2026; and

**WHEREAS**, the County desires to transfer and Phelan Pinon Hills Community Services District (Contractor) desires to accept a transfer from ARPA CLFRF in the not-to-exceed amount of \$457,194.00 for expenditures identified in Exhibit "A" related to Phelan Community Park improvements.

**NOW, THEREFORE**, in consideration of the above, the County and Contractor agree as follows:

#### **1. THE ARPA CLFRF**

**A.** This Contract applies to the following ARPA CLFRF transfers:

The transfer by the County of an amount not to exceed \$457,194.00 to Contractor on a reimbursement basis for expenditures identified in Exhibit "A". Exhibit "A" is attached hereto and incorporated herein by this reference. County acknowledges and agrees that Contractor will be administering the transfer of funds for the expenditures identified in Exhibit "A" by separate contracts. Contractor shall provide the County quarterly reports of actual cash expenditures to date under this Contract, and estimated cash expenditures through December 31<sup>st</sup> of each year. County, through its Chief Executive Officer (CEO), in the CEO's sole discretion, reserves the right to reduce the transfer amount identified in this Contract with fifteen (15) days advance written notice provided to Contractor. The reduction would be based: A) on Contractor's estimated cash expenditures through December 31<sup>st</sup> of each year; B) a later determination by the United States Department of the Treasury, or County, that the costs identified in this Contract are ineligible for ARPA CLFRF; or C) a determination by CEO the funds should be utilized in a different manner.

**B.** Contractor certifies that the use of funds that will be submitted for reimbursement from the CLFRF under Paragraph 1.A. and Exhibit "A" of this Contract will be used only to cover those costs that: i) are related to the public health or negative economic impact eligible use;

and ii) were incurred during the period that begins February 1, 2023, and will end December 31, 2026. For purposes of this Contract and pursuant to federal guidance, expended or obligated costs are costs incurred by Contractor during the time period referenced above that are allowable for reimbursement. Any cost obligated by Contractor as of December 31, 2024, must be expended by December 31, 2026, to meet the eligible costs timeframe as defined by the United States Department of the Treasury.

- C. Contractor agrees that the funds provided pursuant to this Contract cannot be used: i) as a revenue replacement for lower than expected tax or other revenue collections; ii) for expenditures for which Contractor has received any other emergency COVID-19 supplemental funding (whether federal, state, or private in nature) for that same expense; or iii) as a deposit into any pension fund.
- D. Contractor shall prepare and submit to County an invoice for reimbursement of eligible funding expenses identified in Paragraph 1.A., above. Invoices may be submitted to County as frequently as monthly. Invoices will be reviewed and approved for compliance with terms of this Contract. County shall reimburse to Contractor the amount of approved invoices submitted within sixty (60) days of receipt. If an invoice is rejected, or revisions are requested, Contractor will work with County to submit the required revisions.
- E. Both County and Contractor agree to comply with any and all ARPA CLFRF requirements, including but are not limited to the terms included in this Contract, as well as any and all applicable County, Contractor, State, and Federal laws, regulations, policies and procedures pertaining to the funding described in this Contract. County and Contractor shall comply with Title 2 Code of Federal Regulations (C.F.R.) Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), including, but not limited to, Title 2 C.F.R. Section 200.303 (internal control), Title 2 C.F.R. Sections 200.331 through 200.333 (subrecipient monitoring and management), and Title 2 C.F.R. Part 200 Subpart F (audit requirements), as these sections currently exist or may be amended. The use of funds must also adhere to official federal guidance issued or to be issued on what constitutes an eligible expenditure. Any funds expended by Contractor or its subcontractor(s) in any manner that does not adhere to official federal guidance shall be returned to the County. Contractor agrees to comply with all official guidance regarding the ARPA CLFRF. County and Contractor also agree that as additional federal guidance becomes available, an amendment to this Contract may become necessary. If an amendment is required, Contractor agrees to promptly execute the Contract amendment.
- F. Contractor shall retain documentation of all uses of the funds, including but not limited to invoices and/or sales receipts in a manner consistent with Title 2 C.F.R. Section 200.334 (retention requirements for records). Such documentation shall be produced to County upon request and may be subject to audit. Unless otherwise provided by Federal or State law (whichever is the most restrictive), Contractor shall maintain all documentation connected with its performance under this Contract for a minimum of five (5) years from the date of the last payment made by County or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of the County, the State or the United States Government during normal business hours at Contractor. Copies will be made and furnished by Contractor upon written request by County.
- G. Contractor shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Contractor's requests for

reimbursement which segregate and accumulate costs of Contractor and produce monthly reports which clearly identify reimbursable costs, matching fund costs (if applicable), and other allowable expenditures by Contractor. Contractor shall provide a monthly report of expenditures under this Contract no later than the 20<sup>th</sup> day of the following month.

- H. Contractor shall cooperate in having an audit completed by County, at County's option and expense. Any audit required by ARPA CLFRF and its regulation and United States Treasury guidance will be completed by Contractor at Contractor's expense.
- I. Contractor shall repay to County any reimbursement for ARPA CLFRF funding that is determined by subsequent audit to be unallowable under the ARPA CLFRF within the time period required by the ARPA CLFRF, but no later than one hundred twenty (120) days of Contractor receiving notice of audit findings, which time shall include an opportunity for Contractor to respond to and/or resolve the findings. Should the findings not be otherwise resolved and Contractor fail to reimburse moneys due County within one hundred twenty (120) days of audit findings, or within such other period as may be agreed between both parties or required by the ARPA CLFRF, County reserves the right to withhold future payments due Contractor from any source under County's control.
- J. Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- K. County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
- L. Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- M. **County shall only reimburse costs incurred through the dates identified in Exhibit "A"**. Contractor requirements in Sections 1, 2 and 5 of this Contract shall survive the termination of this Contract. The costs to be reimbursed under this Contract do not include Research and Development as defined in Title 2 Code of Federal Regulations (C.F.R.) Section 200.1, nor do they include indirect costs.

## 2. AMERICAN RESCUE PLAN ACT REQUIREMENTS

- A. This Contract may be funded in whole or in part with funds provided by the American Rescue Plan Act - Coronavirus Local Fiscal Recovery Fund (ARPA), *Federal Award Identification Number (FAIN): SLT-0628 and Assistance Listing Number (formerly known as a CFDA number): 21.027*, and therefore Contractor agrees to comply with any and all ARPA requirements in addition to any and all applicable County, State, and Federal laws, regulations, policies, and procedures pertaining to the funding of this Contract. The use of the funds must also adhere to official federal guidance issued or to be issued on what

constitutes a necessary expenditure. Any funds expended by Contractor or its subcontractor(s) in any manner that does not adhere to the ARPA requirements shall be returned or repaid to the County. Any funds paid to Contractor: i) in excess of the amount to which Contractor is finally determined to be authorized to retain; ii) that are determined to have been misused; or iii) that are determined to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid, shall constitute a debt to the federal government. Contractor agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to the Act, and guidance issued by Treasury regarding the foregoing. Contractor shall provide for such compliance in any agreements with subcontractor(s).

- B.** Contractor agrees to comply with all applicable federal laws and regulations, including but not limited to all laws and regulations identified in Section 2 of the Contract.
- C.** In accordance with Title 2 C.F.R. Section 200.322, the non-Federal Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- D.** In accordance with Title 2 C.F.R. Section 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances: Obligating or expending covered telecommunications and video surveillance services or equipment or services (as described in 2 C.F.R. Section 200.216) to: 1) Procure or obtain, extend or renew a contract to procure or obtain; 2) Enter into a contract (or extend or renew a contract) to procure; or 3) Obtain the equipment, services, or systems, as described in Title 2 C.F.R. Section 200.216 that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) and: (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (ii) Telecommunications or video surveillance services provided by such entities or using such equipment; and (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses,

institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

- E.** A non-Federal Contractor that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at Title 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- F.** Byrd Anti-Lobbying Amendment (31 U.S.C. Section 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by Title 31 U.S.C. Section 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- G.** Clean Air Act (42 U.S.C. Sections 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. Sections 1251-1389), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. Sections 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. Sections 1251-1389).
- H.** Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under Title 37 C.F.R. Section 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Title 33 U.S.C. Sections 1251-1387 recipient or subrecipient must comply with the requirements of Title 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- I.** Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 3701-3708). Where applicable, all contracts awarded by the non-Federal Contractor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with Title 40 U.S.C. Sections 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under Title 40 U.S.C. Section 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a



half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of Title 40 U.S.C. Section 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to health or safety. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- J. Davis-Bacon Act, as amended (40 U.S.C. Sections 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. Sections 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal contractor must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal Contractor must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. Section 874 and 40 U.S.C. Section 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal contractor must report all suspected or reported violations to the Federal awarding agency.
  - i. The Contractor and all Subcontractors and Sub-subcontractors are required to pay their employees and workers a wage not less than the minimum wage for the work classification as specified in both the Federal and California wage decisions. See Exhibit "B" for additional information regarding California Prevailing Wage Rate Requirements and the applicable general prevailing wage determinations which are on file with the County and are available to any interested party on request. The higher of the two applicable wage determinations, either California prevailing wage or Davis-Bacon Federal prevailing wage, will be enforced for all applicable work/services under this Contract.
- K. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by Title 41 U.S.C. Section 1908, must address administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- L. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal Contractor including the manner by which it will be effected and the basis for settlement.

**M. Equal Employment Opportunity.** Except as otherwise provided under Title 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in Title 41 C.F.R. Section 60-1.3 must include the equal opportunity clause provided under Title 41 C.F.R. Section 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The identified clause is below and Contractor shall comply with the clause and all legal requirements and include the equal opportunity clause in each of its nonexempt subcontracts.

- i. The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at Title 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision

of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

- N.** Data Collection Requirements – Contractor agrees to collect pre-post data per County, and United States Treasury guidelines and timeline, for project tracking and monitoring and various reporting purposes. Data including, but not limited to: Required Project Demographic Distribution Data; Required Performance Indicators and Programmatic Data; Required Expenditure Report Data; and Required Program Evaluation Data. Contractor agrees to track and monitor data in a quantifiable and reportable database - retrievable collective data that needs to be available to County, State or Federal governments upon request.
- O.** Data Submission Requirements - Contractor agrees to furnish data to the County upon request, per County, and United States Treasury guidelines and timeline, for project tracking and monitoring and various reporting purposes. Data including, but not limited to: Required Project Demographic Distribution Data; Required Performance Indicators and Programmatic Data; Required Expenditure Report Data; Required Program Evaluation Data. Contractor agrees to track and monitor data in a quantifiable and reportable database - retrievable collective data that needs to be available at request.
- P.** Project Progress Reporting - Contractor agrees to provide project timeline and progress updates to the County upon request, per County, and United States Treasury guidelines and timeline. Contractor agrees to routine and impromptu program and project evaluation by the County.
- Q.** Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Title 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply.
- R.** Universal Identifier and System for Award Management (SAM), Title 2 C.F.R. Part 25.
- S.** Reporting Subaward and Executive Compensation Information, Title 2 C.F.R. Part 170.

- T.** OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (nonprocurement), title 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to Title 2 C.F.R. Part 180 and Treasury's implementing regulation at Title 31 C.F.R. Part 19. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR Section 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at Title 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- U.** Recipient Integrity and Performance Matters, pursuant to which the award terms set forth in Title 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- V.** Government Requirements for Drug-Free Workplace, Title 31 C.F.R. Part 20.
- W.** New Restrictions on Lobbying, Title 31 C.F.R. Part 21.
- X.** Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. Sections 4601-4655) and implementing regulations.
- Y.** Applicable Federal environmental laws and regulations.
- Z.** Statutes and regulations prohibiting discrimination include, without limitation, the following:
  - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d et seq.) and Treasury's implementing regulations at Title 31 C.F.R. Part 22, which prohibits discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.
  - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Sections 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.
  - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.
  - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. Sections 6101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
  - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sections 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
- AA.** Contractor understands that making false statements or claims in connection with the ARPA funded activities is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

- BB.** Any publications produced with ARPA funds must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLT-0628 awarded to San Bernardino County by the United States Department of Treasury.”
- CC.** Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is being encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.
- DD.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is being encouraged to adopt and enforce policies that ban text messaging while driving and establishing workplace safety policies to decrease accidents caused by distracted drivers.
- EE.** As a recipient of federal financial assistance, the Civil Rights Restoration Act of 1987 applies, and Contractor and all subrecipients assures that it:
- i. Ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal funds, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. Sections 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at Title 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda and/or guidance documents.
  - ii. Acknowledges that Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Contractor understands that denying a person access to its programs, services, and activities, because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury’s implementing regulations. Contractor shall initiate reasonable steps, or comply with the Department of the Treasury’s directives, to ensure LEP persons have meaningful access to its programs, services, and activities. Contractor understands and agrees that meaningful access may entail provide language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication.
  - iii. Agrees to consider the need for language services for LEP persons during development of applicable budgets and when conducting programs, services, and activities.
  - iv. Agrees to maintain a complaint log of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome.
- FF.** The Contractor must include the following language in every contract or agreement subject to Title VI and its regulations:

“The sub-grantee, contractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or nation origin (42 U.S.C. Section 2000d et seq.), as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a

part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. Sections 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement."

**GG.** Contractor shall cooperate in any enforcement or compliance review activities by the County and/or the Department of the Treasury. Contractor shall comply with information requests, on-site compliance reviews, and reporting requirements.

**HH.** Contractor shall maintain records and financial documents sufficient to evidence compliance with section 603(c), regulations adopted by Treasury implementing those sections, and guidance issued by Treasury regarding the foregoing.

**II.** County has the right of access to records (electronic or otherwise) of Contractor in order to conduct audits or other investigations.

**JJ.** Contractor shall maintain records for a period of five (5) years after the completion of the contract or a period of five (5) years after the last reporting date the County is obligated with the Department of the United States Treasury, whichever is later.

**KK.** Contractor must disclose in writing any potential conflict of interest in accordance with Title 2 C.F.R. Section 200.112.

**LL.** In accordance with Title 41 U.S.C. Section 4712, subrecipient or Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The list of persons and entities referenced in the paragraph above includes the following: (i) A member of Congress or a representative of a committee of Congress; (ii) An Inspector General; (iii) The Government Accountability Office; (iv) A Treasury employee responsible for contract or grant oversight or management; (v) An authorized official of the Department of Justice or other law enforcement agency; (vi) A court or grand jury; or (vii) A management official or other employee of recipient, subrecipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct. Subrecipient or Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

**MM.** County and Contractor acknowledge that if additional federal guidance is issued, an amendment to this Contract may be necessary. In the event any of the terms in this Section 2 conflict with any other terms in the Contract, the terms in this Section 2 shall control.

### **3. GENERAL CONTRACT REQUIREMENTS**

#### **A. Recitals**

The recitals set forth above are true and correct and incorporated herein by this reference.

**B. Contract Amendments**

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

**C. Contract Assignability**

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

**D. Contract Exclusivity**

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

**E. Attorney's Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

**F. Background Checks for Contractor Personnel**

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform services; (d) do not use legal or illegal substances in any manner which will impact their ability to provide services; and (c) are not otherwise disqualified from performing the services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

**G. Change of Address**

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

**H. Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

**I. Confidentiality**

Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this Contract, except for statistical information not identifying any participant. Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's



obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.

**J. Primary Point of Contact**

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

**K. Rule of Construction**

The parties agree that this Contract and all agreements or documents incorporated herein shall not be subject to the rule of construction that a written agreement is construed against the party preparing or drafting that agreement.

**L. County Representative**

The Chief Executive Officer or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the services/scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

**M. Damage to County Property**

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

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

**N. Debarment and Suspension**

Contractor certifies that neither it nor its principals or subcontracts is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State. An subcontracts funded by this Contract shall be with vendors that meet this certification and registration requirement.

**O. Drug and Alcohol Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- i. Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- ii. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- iii. Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

**P. Duration of Terms**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

**Q. Discrimination**

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**R. Improper Influence**

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

**S. Improper Consideration**

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

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any

officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

#### **T. Informal Dispute Resolution**

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

#### **U. Legality and Severability**

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

#### **V. Licenses, Permits and/or Certifications**

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

#### **W. Material Misstatement/Misrepresentation**

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

#### **X. Mutual Covenants**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

#### **Y. Nondisclosure**

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the

performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

**Z. Notice of Delays**

Except as otherwise provided herein, 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 twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

**AA. Ownership of Documents**

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and products, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

**BB. Air, Water Pollution Control, Safety and Health**

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

**CC. Records**

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

All records relating to the Contractor's personnel, consultants, subcontractors, services/scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

**DD. Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

**EE. Release of Information**

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

**FF. Representation of the County**

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

**GG. Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

**HH. Subcontracting**

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section 5. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

- i. Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- ii. Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- iii. Include in the subcontractor's subcontract substantially similar terms as are provided in this Contract.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

**II. Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the goods or services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

**JJ. Termination for Convenience**

The County reserves the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. The County's Chief Executive Officer is authorized to terminate this Contract. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon

receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

**KK. Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions.

**LL. Venue**

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

**MM. Conflict of Interest**

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

**NN. Copyright**

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the San Bernardino County as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

**OO. Iran Contracting Act**

IRAN CONTRACTING ACT OF 2010, Public Contract Code Sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code Section 2204(a), the Contractor certifies that at the time of the

Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person (as defined in Public Contract Code Section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code Section 2205.

**PP. California Consumer Privacy Act**

To the extent applicable, if Contractor is a business that collects the personal information of a consumer(s) in performing services pursuant to this Contract, Contractor must comply with the provisions of the California Consumer Privacy Act (CCPA). (Cal. Civil Code Sections 1798.100, et seq.). For purposes of this provision, “business,” “consumer,” and “personal information” shall have the same meanings as set forth at Civil Code Section 1798.140. Contractor must contact the County immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the County, including but not limited to, providing a list of disclosures or deleting personal information. Contractor must not sell, market or otherwise disclose personal information of a consumer provided by the County unless specifically authorized pursuant to terms of this Contract. Contractor must immediately provide to the County any notice provided by a consumer to Contractor pursuant to Civil Code Section 1798.150(b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to this Contract. Contractor must immediately notify the County if it receives a notice of violation from the California Attorney General pursuant to Civil Code Section 1798.155(b).

**QQ. Prevailing Wage Laws**

By its execution of this Contract, Contractor certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. Section 1720 of the California Labor Code states in part: “For purposes of this paragraph, ‘construction’ includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction including, but not limited to, inspection and land surveying work...” If the services/scope of Work are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the Contractor’s principal place of business and at the project site. Contractor will also adhere to any other applicable requirements, including but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. Contractor shall defend, indemnify and hold the County, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws. See Exhibit “B”, which is attached and incorporated by reference, for additional information regarding Prevailing Wage Laws. Contractor shall comply with all applicable terms and conditions in Exhibit “B”. The applicable general prevailing wage determinations are on file

with the County and are available to any interested party on request. Contractor shall post a copy of the applicable prevailing wage determinations at the job site.

#### **4. TERM OF CONTRACT**

This Contract is effective as of the date last signed by authorized representatives of any party (Effective Date), requires all incurred obligations by December 31, 2024, and expires on December 31, 2026, but may be terminated earlier in accordance with the provisions of this Contract.

#### **5. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

##### **A. Indemnification**

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

##### **B. Insurance**

Contractor agrees to provide insurance set forth in accordance with the requirements herein. If Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Contractor agrees to amend, supplement, or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, Contractor shall secure and maintain throughout the Contract term the following types of insurance with limits as shown:

- i. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this Contract.

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

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- ii. Commercial/General Liability Insurance – Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:



- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

iii. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Contractor is transporting one or more non-employee passengers in performance of Contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

iv. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

v. Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

**or**

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

vi. Additional Insured – All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

vii. Waiver of Subrogation Rights – Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors, and subcontractors. All general or auto liability

insurance coverage provided shall not prohibit Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. Contractor hereby waives all rights of subrogation against the County.

- viii. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.
- ix. Severability of Interests – Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Contractor and the County or between the County and any other insured or additional insured under the policy.
- x. Proof of Coverage – Contractor shall furnish Certificates of Insurance to the Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Contract, Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
- xi. Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
- xii. Deductibles and Self-Insured Retention – Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
- xiii. Failure to Procure Coverage – In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the Contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by Contractor or County payments to Contractor will be reduced to pay for County purchased insurance.
- xiv. Insurance Review – Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

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

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

## **6. RIGHT TO MONITOR AND AUDIT**

- A.** The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.
- B.** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

## **7. CORRECTION OF PERFORMANCE DEFICIENCIES**

- A.** Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
- B.** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
  - i. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
  - ii. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
  - iii. Withhold funds pending duration of the breach; and/or
  - iv. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "B" of this paragraph; and/or
  - v. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

## **8. NOTICES**

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*San Bernardino County  
County Administrative Office – 4th Floor  
385 N. Arrowhead Avenue  
San Bernardino, CA 92415*

*Phelan Pinon Hills Community Services  
District  
4176 Warbler Road  
Phelan, CA 92371*

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

#### **9. ENTIRE AGREEMENT**

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

#### **10. CONTRACT EXECUTION**

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

**IN WITNESS WHEREOF**, the San Bernardino County and Phelan Pinon Hills Community Services District have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

▶ \_\_\_\_\_  
Leonard X. Hernandez, Chief Executive Officer

Dated: \_\_\_\_\_

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

By \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

Name \_\_\_\_\_  
*(Print or type name of person signing contract)*

Title \_\_\_\_\_  
*(Print or Type)*

Dated: \_\_\_\_\_

Address \_\_\_\_\_

**FOR COUNTY USE ONLY**

Approved as to Legal Form  
▶ \_\_\_\_\_  
**County Counsel**  
Date \_\_\_\_\_

Reviewed for Contract Compliance  
▶ \_\_\_\_\_  
Date \_\_\_\_\_

Reviewed/Approved by Department  
▶ \_\_\_\_\_  
Date \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF EXPENDITURES**  
[SEPARATELY ATTACHED]

## EXHIBIT B

### PREVAILING WAGE REQUIREMENTS

**A. All or a portion of the Scope of Work in the Contract requires the payment of prevailing wages and compliance with the following requirements:**

**1. Determination of Prevailing Rates:**

Pursuant to Labor Code sections 1770, et seq., the County has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Scope of Work is to be performed. Copies of said rates are on file with the County, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Scope of Work, and are also available online at [www.dir.ca.gov](http://www.dir.ca.gov). The wage rate for any classification not listed, but which may be required to execute the Scope of Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

**2. Payment of Prevailing Rates**

Each worker of the Contractor, or any subcontractor, engaged in the Scope of Work, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

**3. Prevailing Rate Penalty**

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Scope of Work. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

**4. Ineligible Contractors:**

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the County. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Scope of Work.

## **5. Payroll Records:**

- a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
  - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
  - ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement of the DIR;
  - iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;
  - iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
  - v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.
- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

## **6. Limits on Hours of Work:**

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as



provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

**7. Penalty for Excess Hours:**

The Contractor shall pay to the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Scope of Work by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

**8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:**

a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:

- i. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
- ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.
- iii. This project is subject to compliance monitoring and enforcement by the DIR.
- iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
- v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all public works projects.
  - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
  - 2) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
  - 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
- vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.

b. Labor Code section 1725.5 states the following:

“A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, “contractor” includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

c. Labor Code section 1771.1 states the following:

"(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code 909

Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the

registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.”

d. Labor Code section 1771.4 states the following:

“(a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not

required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.”

## **B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS**

### **1. State Public Works Apprenticeship Requirements:**

- a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.
- b. Any apprentices employed to perform any of the Scope of Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

### **2. Compliance with California Labor Code section 1777.5 requires all public works contractors to:**

- a. Submit Contract Award Information (DAS-140):

- i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
  - ii. The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—*it is not a request for the dispatch of an apprentice*.
  - iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
  - iv. Contractors who are already approved to train apprentices (i.e. check “Box 1” on the DAS-140) shall only be required to submit the form to their approved program.
  - v. Contractors who are NOT approved to train apprentices (i.e. those that check either “Box 2” or “Box 3” on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.
- b. Employ Registered Apprentices
- i. Labor Code section 1777.5 requires that a contractor performing work in an “apprenticeable” craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor’s completion of work on the project. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
  - ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
  - iii. Contractors may use the “DAS-142” form for making a request for the dispatch of an apprentice.
  - iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
  - v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
  - vi. Only “registered” apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. Make Training Fund Contributions
- i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
  - ii. Contractors may use the “CAC-2” form for submittal of their training fund contributions.
  - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.



- iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
- v. The “training” contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

### **3. Exemptions to Apprenticeship Requirements:**

- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
  - i. When the Contractor holds a sole proprietor license (“Owner-Operator”) and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
  - ii. Contractors performing in non-apprenticeable crafts. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
  - iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
  - iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
  - v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

### **4. Exemption from Apprenticeship Ratios:**

- a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
  - i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
  - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
  - iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
  - iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

**5. Contractor's Compliance:**

- a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.

**EXHIBIT A – SCOPE OF EXPENDITURES**

**APPLIES TO AGREEMENT ARPA21-PRJD-027-PPH BETWEEN SAN BERNARDINO COUNTY AND PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT RELATED TO THE CORONAVIRUS LOCAL FISCAL RECOVERY FUND FOR LOCAL GOVERNMENTS**

1. The following is the mutually agreed upon scope of expenditures to be funded by the American Rescue Plan Act of 2021 (ARPA) Coronavirus Local Fiscal Recovery Fund (CLFRF) received by San Bernardino County:

*Construction of an exercise loop and site park trail enhancements, community garden, and tennis/pickleball court in Phelan Community Park.*

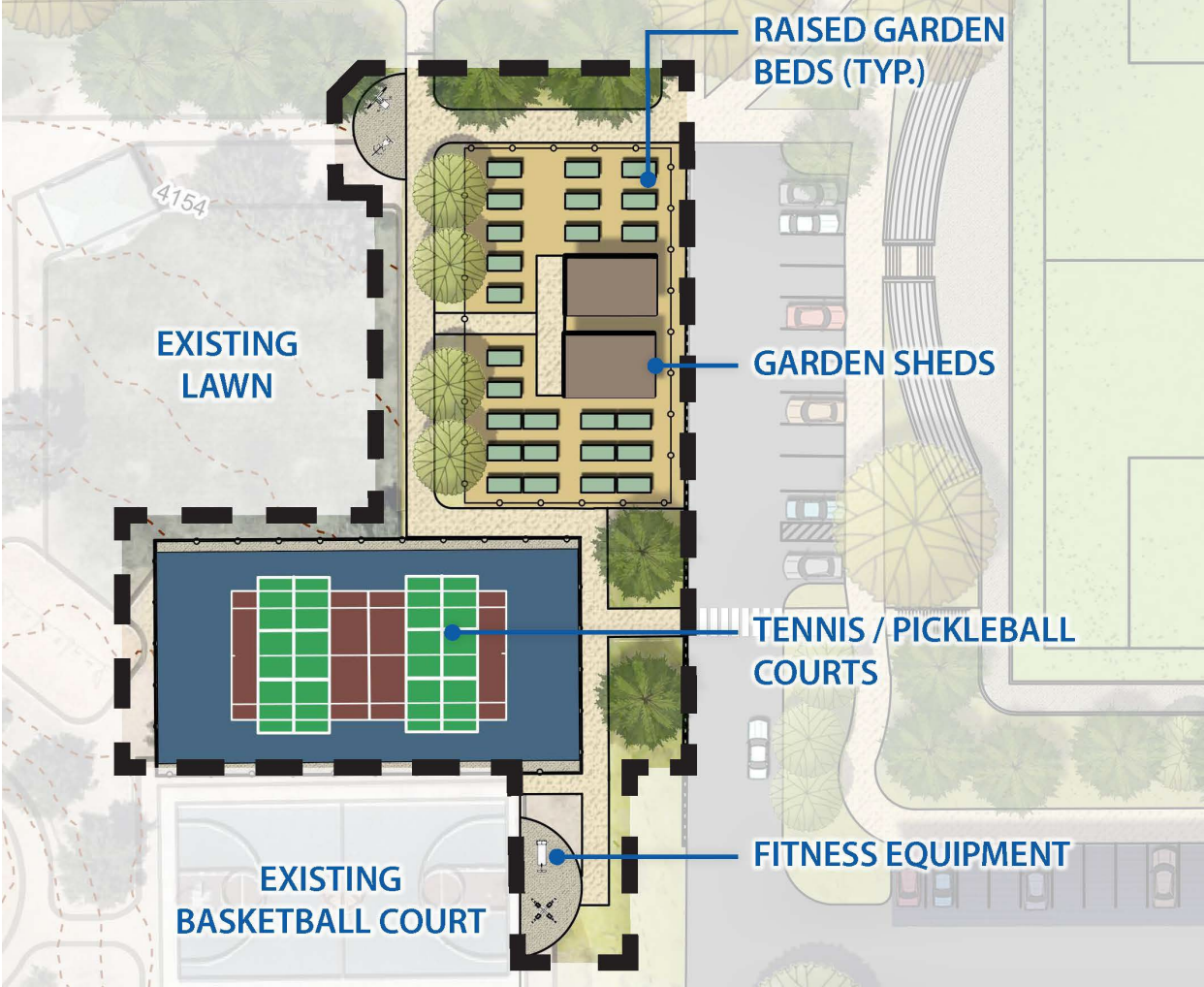
2. Not-to-exceed amount of expenditures described in 1, above, obligated during the period of February 1, 2023 and December 31, 2024, and expended on or before December 31, 2026 is \$457,194.00.
3. The following is the list of projected expenditures that will be funded by the CLFRF and each of these expenditures satisfy the findings in 1, above:

<b>Expenditure Type (e.g., Payroll)</b>	<b>Projected Expenditures*</b>
Construction & Material Costs	457,194
<b>Total Expenditure</b>	<b>\$457,194</b>

\*Note: Projected expenditures may differ from the actual costs but a total amount of expenditure shall not exceed the amount as specified in Section 2, above.

4. The Contractor is responsible for ensuring that any procurement using CLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at Title 2 C.F.R. Sections 200.317 - 200.327, as applicable. The Uniform Guidance establishes in Title 2 C.F.R. Section 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in Title 2 C.F.R. Section 200.320. If the full and open procurement is not applicable, provide a reason for its exemption:

*There is no exemption needed.*



# Agenda Item 6g

Discussion & Possible Adoption  
of Resolution No. 2023-09;  
Adopting a Conflict of Interest  
Code

## MEMORANDUM

**DATE:** March 8, 2023

**TO:** Board of Directors

**FROM:** Don Bartz, General Manager  
By: Kim Ward, HR Manager/Executive Secretary

**SUBJECT:** Discussion & Possible Action Regarding Resolution No. 2023-09; Establishing a Conflict of Interest Code

### STAFF RECOMMENDATION

For the Board to adopt Resolution No. 2023-09; Establishing a Conflict of Interest Code.

### BACKGROUND

A local agency's conflict of interest code must reflect the current structure of the organization and properly identify officials and employees who should be filing Statements of Economic Interests (Form 700s). A code tells public officials, governmental employees, and consultants what financial interests they must disclose on their Form 700s. It helps provide transparency in local government as required under the Political Reform Act.

To ensure conflict of interest codes remain current and accurate, each local agency is required to review its code at least every even-numbered year. The County Board of Supervisors is the code reviewing body for county agencies. This Resolution was last updated on March 2, 2022.

Section 7.05 of the Appendix was modified to raise the gift limitation to \$590 per statute. Exhibit B was modified to update a title change.

### FISCAL IMPACT

None

### ATTACHMENT(S)

Resolution No. 2023-09 & Appendix

**RESOLUTION NO. 2023-09**  
**A RESOLUTION OF THE BOARD OF DIRECTORS OF**  
**THE PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT**  
**ADOPTING A CONFLICT OF INTEREST CODE**

**WHEREAS**, the Phelan Pinon Hills Community Services District (“the District”) is a community services district organized and operating pursuant to California Government Code Section 61000 et seq., and a local government agency subject to the requirements of the Political Reform Act of 1974 (“the Act”), California Government Code Section 81000 et seq.;

**WHEREAS**, Section 87300 of the Act requires all local government agencies to adopt and promulgate conflict of interest codes pursuant to the provisions of the Act;

**WHEREAS**, the Fair Political Practices Commission (“the FPPC”) has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard conflict of interest code which can be incorporated by reference, and which may be amended by the FPPC after public notice and hearings to conform to amendments in the Act; and

**WHEREAS**, the District desires to comply with its statutory requirements under the Act and to provide a method to ensure that its Conflict of Interest Code is current and consistent with the prevailing provisions of the Act and the regulations of the FPPC.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Phelan Pinon Hills Community Services District as follows:

Section 1.

The terms of 2 Cal. Code of Regs. Section 18730, and any amendments to it duly adopted by the FPPC, are hereby incorporated herein by this reference and, along with the attached Appendix in which members and employees are designated and disclosure categories are set forth, shall constitute the District’s Conflict of Interest Code. In the event of any inconsistency between the attached Appendix and the prevailing provisions of the Act and/or the applicable regulations of the FPPC, the Act and the FPPC regulations shall control.

Section 2.

Designated officials shall file statements of economic interest with the District which will then be made available to the public for inspection and reproduction. Upon receipt of the statements from the District’s Board of Directors and General Manager, the Secretary of the District shall make and retain a copy and forward the original of said statements to the County Clerk of the County of San Bernardino. Statements for all other designated officials will be retained by the District Secretary.

Section 3.

This Resolution supersedes Resolution No. 2022-09 adopted by the District's Board of Directors on March 2, 2022, and shall take effect immediately upon its adoption.

**ADOPTED** this 8th day of March 2023, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
President, Board of Directors

ATTEST: \_\_\_\_\_  
Board Secretary



## APPENDIX

### **CONFLICT OF INTEREST AND DISCLOSURE CODE**

#### **SECTION 1. TABLE OF CONTENTS**

	<u>Page</u>
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Section 2 Adoption of Code	1
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#### **SECTION 2. ADOPTION OF CODE**

The Phelan Pinon Hills Community Services District ("the District") in the County of San Bernardino hereby adopts this Conflict of Interest and Disclosure Code ("Code"). The provisions of this Code are additional to the requirements of the Political Reform Act of 1974, California Government Code Section 81000 et seq. ("the Act"), the regulations of the Fair Political Practices Commission adopted in connection therewith, 2 California Code of Regulations Section 18109 et seq. ("the Regulations"), and other laws pertaining to conflicts of interest. Except as otherwise indicated, the definitions of the Act, the Regulations, and any amendments thereto, are incorporated herein and this Code shall be interpreted in a manner consistent therewith.

#### **SECTION 3. DESIGNATED POSITIONS**

The positions listed on Exhibit "B" are designated positions. Persons holding those positions are deemed to participate in the making of decisions which may foreseeably have a material effect on a financial interest.

#### **SECTION 4. ECONOMIC DISCLOSURE STATEMENTS**

Designated positions are assigned to one or more of the disclosure categories set forth on Exhibit "A." Each person holding a designated position shall file a statement disclosing his/her interest in investments, business positions, real property, and income, designated as reportable under the category to which his/her position is assigned on Exhibit "B."

## **SECTION 5. PLACE AND TIME OF FILING**

5.01 Persons holding designated positions which are added to the Code shall file an initial statement within 30 days after the effective date of the Code.

5.02 Persons appointed, promoted, or transferred to designated positions shall file an assuming office statement with the District within 30 days after assuming the position.

5.03 Annual statements shall be filed with the District by April 1st by all persons holding designated positions. Such statements shall cover the period of the preceding calendar year or from the date of the last statement filed.

5.04 Leaving office statements shall be filed with the District within 30 days of leaving a designated position. Such statements shall cover the period from the closing date of the last statement filed to the date of leaving the position.

5.05 An individual who resigns a designated position within 12 months following initial appointment or within 30 days of the date of a notice mailed by the filing officer of the individual's filing obligation, whichever is earlier, is not deemed to assume or leave office, provided that during the period between appointment and resignation, the individual does not make, participate in making, or use the position to influence any decision of the District, or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position. Within 30 days of the date of a notice mailed by the filing officer, the individual shall do both of the following:

- A. File a written resignation with the appointing power.
- B. File a written statement with the filing officer signed under the penalty of perjury stating that the individual, during the period between appointment and resignation, did not make, participate in the making or use the position to influence any decision of the District or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

## **SECTION 6. CONTENTS OF ECONOMIC DISCLOSURE STATEMENTS**

Statements shall be made on forms supplied by the District, and shall contain the following information.

6.01 When an investment, or an interest in real property, is required to be reported, the statement shall contain:

- A. A statement of the nature of the investment or interest;
- B. The name of the business entity in which each investment is held, and a general description of the business activity in which the business is engaged;
- C. The address or other precise location and the use of the real property;
- D. A statement whether the fair market value of the investment or interest in

real property equals or exceeds two thousand dollars (\$2,000) but does not exceed ten thousand dollars (\$10,000), whether it exceeds ten thousand dollars (\$10,000) but does not exceed one hundred thousand dollars (\$100,000), whether it exceeds one hundred thousand dollars (\$100,000) but does not exceed one million dollars (\$1,000,000) or whether it exceeds one million dollars (\$1,000,000); and

- E. If any otherwise reportable investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the date of acquisition or disposal shall be reported.

6.02 When income is required to be reported, the statement shall contain:

- A. The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any of each source;
- B. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was at least five hundred dollars (\$500) but did not exceed one thousand dollars (\$1,000), whether it was in excess of one thousand dollars (\$1,000) but not greater than ten thousand dollars (\$10,000), whether it was greater than ten thousand dollars (\$10,000) but not greater than one hundred thousand dollars (\$100,000), or whether it was greater than one hundred thousand dollars (\$100,000);
- C. A description of the consideration, if any, for which the income was received;
- D. In the case of a gift, the amount or value and the date on which the gift was received and the name, address, and business activity, if any, of the intermediary or agent and the actual donor;
- E. In case of a loan, the annual interest rate and security, if any, given for the loan; and
- F. The first report filed by a person holding a designated position shall disclose any reportable investments, interests in real property, business positions, and income received during the previous 12 months.

6.03 When the filer's pro rata share of income to a business entity or trust, including income to a sole proprietorship, is required to be reported, the statement shall contain:

- A. The name, address, and a general description of the business activity of the business entity; and
- B. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such persons was equal to or

greater than ten thousand dollars (\$10,000) during a calendar year.

6.04 When business positions are required to be reported, the statement shall contain:

- A. The name, address, and a general description of the business entity;
- B. The filer's job title or position; and
- C. A statement whether the position was held throughout the entire reporting period and the dates the position was commenced or terminated, if not held during the entire reporting period.

### **SECTION 7. DISQUALIFICATION**

Persons holding designated positions shall disqualify themselves from making or participating in the making or in any way attempting to use their official position to influence a governmental decision when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

7.01 The financial status of the person holding a designated position or that of his or her spouse or dependent children;

7.02 Any business entity located in, doing business in, owning real property in, or planning to do business in the jurisdiction of the person holding a designated position, in which said person, or his or her spouse or dependent child, has a reportable investment of \$2,000 or more;

7.03 Any real property located in the jurisdiction of the person holding a designated position and said person, or his or her spouse or dependent child, has a reportable interest of \$2,000 or more in that real estate;

7.04 Any person, business entity, or nonprofit entity located in, doing business in, owning real property in, or planning to do business in, the jurisdiction of the person holding a designated position, from which said person or his or her spouse has received reportable income, other than loans by a commercial lending institution in the regular course of business, aggregating five hundred dollars (\$500) or more in value within twelve months prior to the time the decision is made;

7.05 Any person, business entity, or nonprofit entity from which the person holding a designated position has received a reportable gift aggregating five hundred ~~twenty~~ ~~ninety~~ dollars (~~\$520~~~~590~~) or more in value within twelve months prior to the time the decision is made; and

7.06 Any business entity, other than a nonprofit organization, in which the person holding a designated position is a director, officer, partner, trustee, employee, or holds any position of management.

**SECTION 8. ADOPTION BY INCORPORATION**

Adoption by incorporation by reference of the terms of this Code along with the designation of employees and the formulation of disclosure categories in the Exhibits referred to above constitute the adoption and promulgation of a Conflict of Interest and Disclosure Code.

## CONFLICT OF INTEREST AND DISCLOSURE CODE

### Exhibit "A"

#### **CATEGORY 1**

Persons in this category shall disclose all interest in real property within the jurisdiction. Real property shall be deemed to be within the jurisdiction if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the District.

#### **CATEGORY 2**

Persons in this category shall disclose all investments and business positions.

The Act defines investment as follows:

"Investment" means any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments, and any partnership or other ownership interest owned directly, indirectly, or beneficially by the public official, or other filer, or his or her immediate family, if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this title. No asset shall be deemed an investment unless its fair market value equals or exceeds two thousand dollars (\$2,000). The term "investment" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or in a common trust fund created pursuant to Section 1564 of the Financial Code, interest in a government defined-benefit pension plan, or any bond or other debt instrument issued by any government or government agency. Investments of an individual include a pro rata share of investments of any business entity, mutual fund, or trust in which the individual or immediate family owns, directly, indirectly, or beneficially, a 10-percent interest or greater.

According to the Act, a business position is a position of director, officer, partner, trustee, employee, or any position of management in any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

#### **CATEGORY 3**

Persons in this category shall disclose all income as defined in Government Code Section 82030.

**CATEGORY 4**

Persons in this category shall disclose all business positions, investments in, or income (including gifts and loans) received from business entities that manufacture, provide or sell service and/or supplies of a type utilized by the District and associated with the job assignment of designated positions assigned to this disclosure category.

**CATEGORY 5**

Consultants who are not employed as full-time staff members of the District shall nonetheless be included as a designated employee and subject to the disclosure requirements herein. However, those consultants whose positions are marked with an asterisk (\*) in Exhibit "B" of this Code, or any other consultants which may be hired, may not be required to fully comply with the disclosure requirements herein where the range of duties which they are hired to perform is limited in scope. Such determination shall be made in writing by the General Manager of the District and shall include a description of the consultant's duties and, based upon that description, a statement of the extent of the consultant's disclosure requirements, if any. This determination is a public record and shall be retained for public inspection in the same manner and location as this Code.

## CONFLICT OF INTEREST AND DISCLOSURE CODE

### Exhibit "B"

#### DESIGNATED POSITIONS

#### DISCLOSURE CATEGORIES

Director	1-3
General Manager	1-3
Treasurer	1-3
Assistant General Manager/CFO	4
Water Operations Manager	4
<u>HR &amp; Solid Waste Manager/District Clerk</u>	4
Engineering Manager	4
Executive Management Analyst	4
Consultant*	5



# Agenda Item 6h

Update on the Proposed Civic  
Center & Phelan Park Expansion  
Projects



A. 4176 Warbler Road  
P.O. Box 294049  
Phelan, CA 92329  
P. (760) 868-1212  
F. (760) 868-2323  
W. [www.pphcsd.org](http://www.pphcsd.org)

## MEMORANDUM

**DATE:** March 8, 2023  
**TO:** Board of Directors  
**FROM:** Don Bartz, General Manager  
By: Kim Sevy, HR & Solid Waste Manager/District Clerk  
**SUBJECT:** Update on the Proposed Civic Center & Phelan Park Expansion Project

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### STAFF RECOMMENDATION

None

### BACKGROUND

Staff will update the Board on the Proposed Civic Center and Phelan Park Expansion Project.

### FISCAL IMPACT

None

### ATTACHMENT(S)

None

# Agenda Item 7

Committee Reports/Comments

# Agenda Item 8

Staff & General Manager's Report

**Phelan Pinon Hills Community Services District**  
**Engineering Manager's Report**  
**March 8, 2023**

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***Alternative Energy - 1.16 MW Solar Photovoltaic***

Screw drives for tracking have failed on two sections of the solar panels. The parts are now available and schedule for March 6<sup>th</sup>. Corrective maintenance site visit is scheduled for February 6<sup>th</sup> to replace one broken panel and IP configuration on all 58 inverters.

The district will have its solar generation, Renewable Energy Credits (REC's), registered with the U.S. Department of Energy, Energy Information Administration (EIA) by March 3, 2023. Data report was manually provided by TotalEnergies. The new Portal access will be available in late March.

2022 registered 2,692.88 MWh (2,692,880 kWh)  
2021 registered 2,639 MWh (2,638,614 kWh)  
2020 registered 2,658 MWh (2,657,613 kWh)

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***Geographic Information System (GIS)***

Staff is currently updating all tanks and wells site with drone imagery and with latest photos of all booster stations. Staff has completed a draft reporting GIS portal for solid waste. This will be reviewed internally and possibly expand the portal to CR&R.

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***Pressure Zone 6 Improvements***

Water Master Plan (WMP) validated improving pressure at the west end of Maria Road in pressure zone (PZ) 6 with expanding PZ 7 with 1,300 lineal feet of 8-inch pipeline on Pinon Hills Road, between Nielson Road and Maria Road. Connections in pressure zone 6 would see the increase in pressure. Field testing for PZ6 in November of 2022 results determined the 2<sup>nd</sup> proposed alignment as Mescalero and Quail was not required.

The WMP proposes increasing capacity at Tank site 6A with an additional 2.2 MG capacity tank adding additional storage from its existing 0.42 MG tank. Pending federal appropriations, the draft CIP table is proposing a 1.5 MG tank and moving the project up to the 2023-2024 budget year.

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***Civic Center / Community Center and Future Phelan Park Expansion***

Status for phase 1 – (APN 3066-261-10) Civic Center Project

1. Preliminary COA (Conditions of Approval) Received-PRAA-2021-00040 – Warbler Road Improvement moved to Phase 2
2. Construction Documents for Phase 1 - 14,034 SF Civic Center Building Resubmitted January 27,2023 for removal of posts to replace with Beams, per District Request. (NEWNR-2021-00230)
3. Sheep Creek Street Improvement Plans - Approved (SIP-2021-00031)

4. WQMP plan check – corrections received January 19, 2023. Revised retention basin design per County comments (WQMP-2021-00153)
5. Preliminary Drainage – Approved (DRNSTY-2021-0005)
6. Grading Plan – 3<sup>rd</sup> plan check received Nov. 17, 2022. Revised retention basin for 4<sup>th</sup> submittal Feb. 27<sup>th</sup> for final (GRAD-2021-00235)
7. Landscape Plans – Review since Nov. 19, 2021 – (PLP-2021-00018)
8. Edison service upgrade – Formal application Edison submittal on January 18, 2023
9. Incidental Intake Permit – in process by RCA Assoc. -Draft ITP Application Ready to Submit to CDFW. Invoice for CDFW \$34,585.25 paid Dec 2022 (for phase 2 and phase 3)
10. Vector Clearance – Approved.
11. Filed Preliminary Acoustical Info application with County, Acoustical Study is not required.
12. Electrical Light Standard Plans – plan check submittal
13. Percolation Test Updated report – Merrell Johnson – submittal to EHS January 24, 2023
14. Waste Management Plan (part 1) – Approved (WMP-2022-00646)

Phase 2 – Phelan Community Park [event plaza, splash pad, multi-use field (soccer), restrooms, concession, playground, native garden, community garden, and tennis court]

Phase 3 – Phelan Community Park [equestrian, multi-use (baseball), skate park, pump track]

Status for Phase 2 and Phase 3

1. Formal application, with studies, submitted to County Planning with deposit. (PROJ-2022-00184)
2. Traffic Study – Approved (TRSTY-2021-00016)
3. Percolation Study – Approved (SR0112960)
4. Geotechnical Report – conditionally approved (GTR-2022-00128)
5. Biological Assessment – complete
6. Joshua Tree Study completed Submitted ITP Application (Incidental Take Permit)
7. Cultural and Paleo Report – complete

8. Infiltration Report – complete
9. Hydrology Study – Pending
10. Preliminary Grading and Street Improvements (Warbler Road) – Pending
11. Noise Study – Pending
12. Draft CEQA IS/MND – Lilburn Corporation – anticipated draft early 2023

Fish and Game Commission proposed consideration of a Conservation Plan for the Joshua tree. The meeting was held on February 8, 2023, to consider listing the Western Joshua Tree as an endangered species. Native American tribes to draft a conservation plan for the Joshua Trees by 2024. Mitigations, permitting and fees to be paid through County. The proposal to include fees reasonable to its current required mitigations.

Comments from Van Dam were received for the ingress/egress and grading easements for APN 3066-251-05 and -06. Signatures for both easements will be modified to the mitigated Title Report. Easements are required to abandon Sahara Road. Also conditioned is a written permission from the Van Dam to proceed with the abandonment process with the County of San Bernardino.

Rider Levett Bucknall (RLB) has prepared the Request for Qualifications (RFQ) for the Civic Center Project. Item will be brought to the Board for authorization. Following the RFQ the issuance of Request for Proposal (RFP) is tentatively scheduled for early May.

### ***Future Well No. 15, 16 and 17***

#### **Well No. 15 – Azalea Road**

A planner with Edison has been assigned. Pending yield, the Edison design could be completed within 90-days and Edison install to follow. Transmission pipeline design is prepared in-house and is currently at 95% complete. There is approximately 5,000 feet of 12” DIP transmission pipeline. Pipeline alignment from Well No. 15 to Reservoir Site on Sheep Creek Road and Hatillo Road.

## ***Water Mainline Extension Projects***

### ***Pinon Road - to serve APN 3067-111-21 (nothing new to report)***

Proposed 353 Linear Feet of 8-inch PVC water pipeline, located on Pinon Road west from Ponderosa Road. Plans prepared by TRLS Engineering for Joel Jacoby. Second plan check completed. Pending pre-construction meeting.

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### ***Joshua St. - to serve APN 3038-131-08 (nothing new to report)***

Proposed 665 Linear Feet of 8-inch PVC water pipeline, located on Joshua Street east of Caughlin Road. Owner: Donovan Homes. Plans prepared by TRLS Engineering. Second plan check completed on April 27, 2021. Pending County Fire Department approval.

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### ***Coyote Road - to serve APN 3068-621-06 (Update)***

Proposed 320 linear feet of 8-inch PVC water pipeline, from Yucatan Road east 320. Plans prepared by Merrell-Johnson Companies. First plan check submitted on September 19, 2022. Received final plans signature. Pending pre-construction.

---

### ***Schlitz Road - to serve APN 3101-571-02 (nothing new to report)***

Proposed 320 Linear Feet of 8-inch PVC water pipeline, located on Schlitz Road from Palmdale Road south 320 feet. Owner: So. Cal Services. Plans were prepared by TRLS Engineering. Second plan check complete. Pending County Fire Department approval.

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### ***Salerno Road - to serve APN 3101-431-08 (nothing new to report)***

Proposed 950 Linear Feet of 8-inch PVC water pipeline, located on Salerno Road from Bambi Court west to 350 west of Johnson Road. Plans prepared by Merrell Johnson Companies Owner: Perez / Valdillez. First plan check completed March 30, 2021

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### ***Acanthus Street - to serve APN 3066-681-13 (nothing new to report)***

Proposed 300 Linear Feet of 8-inch PVC water pipeline, located on Acanthus Street south from McAllister Road for Arturo Mata. Plans were prepared by Ludwig Engineering and approved in July of 2018. 2<sup>nd</sup> plan check completed April 14, 2021

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### ***Sequoia Road - to serve APN 3069-331-10 (nothing new to report)***

Proposed 340 Linear Feet of 8-inch PVC water pipeline, located on Sequoia Road east of Johnson Road. Owner: ZAB LLC, Luis Benites. Plans were prepared by Capstone Engineering Inc. Plans approved. Pending pre-construction meeting.



***Smoke Tree Road - to serve APN 3070-631-03 (nothing new to report)***

Proposed 740 Linear Feet of 8-inch PVC water pipeline, located on Smoke Tree Road east of Beaver Road. Plans prepared by Rodriguez Brothers Engineering for Maria Sandoval. First plan check completed (June 8, 2022)

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***Beekley Road - to serve APN 3100-551-13 (nothing new to report)***

Proposed 300 Linear Feet of 8-inch PVC water pipeline, located on Beekley Road north from Begonia Road. Plans prepared by TRLS Engineering. Final check complete on June 6, 2018. Pending County Fire Department approval.

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***La Mirada Road - to serve APN 3098-471-18 (New)***

Proposed 375 Linear Feet of 8-inch PVC water pipeline, located on LA Miranda Road beginning north from Cayucos Drive. Plans prepared by ServiTop Engineering. Received for 1<sup>st</sup> plan check on February 24<sup>th</sup>.

***San Bernardino County Public Works Projects***

***Phelan Road Widening Project***

Work to include mill/overlay, leveling course, isolated areas of full depth reconstruction and the installation of a traffic signal at Clovis Road. Improvements from State Highway 138 to Los Banos Road. Work is tentatively scheduled for July 2023. This is phase 1 of 2.

Phase 2 will include road widening, from 2 lanes to 5 lanes, including drainage improvements, and the realignment of intersection Highway 138 and Phelan Road.

The tentative schedule is as follows:

- Project Approval/Environmental Document: Spring 2024
- Final Plans & Right of Ways Acquisitions: Fall 2025
- Construction: Spring 2026

# Agenda Item 9

Director Reports

# Agenda Item 10

Correspondence/Information

Spring Fitness



# STRENGTH &

Conditioning

Join us for Strength and Conditioning Training at the

Piñon Hills  
Community Center

10433 Mountain Road  
Piñon Hills

Fridays @ 10 AM

- March 3, March 10, March 17, and March 24 (no class March 31)
- April 14, April 21, and April 28 (no class April 7)
- May 5, May 12, May 19, and May 26

RSVP Required: [www.pphcsd.org/sign-up-for-classes](http://www.pphcsd.org/sign-up-for-classes)

\*All attendees must bring a yoga mat, towel, and water bottle. All ages welcome. Adult must accompany minor children.

4176 Warbler Road  
Phelan, CA 92371  
760-868-1212  
[www.pphcsd.org](http://www.pphcsd.org)



Go Play  
at the Park

Phelan Piñon Hills CSD Parks and Recreation



Phelan Piñon Hills CSD

Established 2008

Spring Fitness

Stretch &



# Balance

Join us for Strength and Balance Training at the

Piñon Hills  
Community Center

10433 Mountain Road  
Piñon Hills

Tuesdays @ 11 AM

- March 7, March 14, March 21, and March 28
- April 11, April 18, and April 25 (no class April 4)
- May 2, May 9, May 16, May 23, and May 30

RSVP Required: [www.pphcsd.org/sign-up-for-classes](http://www.pphcsd.org/sign-up-for-classes)

\*All attendees must bring a yoga mat, towel, and water bottle. All ages welcome. Adult must accompany minor children.



4176 Warbler Road  
Phelan, CA 92371  
760-868-1212  
[www.pphcsd.org](http://www.pphcsd.org)



Go Play  
at the Park  
Phelan Piñon Hills CSD Parks and Recreation

137  
Phelan Piñon Hills CSD  
Established 2008

Spring fitness



# Mommy & Me Ballet

Join us for Mommy and Me Ballet Classes at the

Piñon Hills  
Community Center

10433 Mountain Road  
Piñon Hills

Every Friday @ 9 AM

- March 3, March 10, March 17, and March 24 (no class March 31)
- April 14, April 21, and April 28 (no class April 7)
- May 5, May 12, May 19, and May 26

RSVP Required: [www.pphcsd.org/sign-up-for-classes](http://www.pphcsd.org/sign-up-for-classes)

\*All attendees must bring a yoga mat, towel, and water bottle. Adult must accompany participating children.



4176 Warbler Road  
Phelan, CA 92371  
760-868-1212  
[www.pphcsd.org](http://www.pphcsd.org)



Go Play  
at the Park

Phelan Piñon Hills CSD Parks and Recreation



138

Phelan Piñon Hills CSD

Established 2008



*Spring Fitness*

# CARDIO & STRENGTH



Join us this Spring for Cardio and Strenth Training at the

## Piñon Hills Community Center

10433 Mountain Road  
Piñon Hills

Every Tuesday @ 10 AM

- March 7, March 14, March 21, and March 28
- April 11, April 18, and April 25 (no class April 4)
- May 2, May 9, May 16, May 23, and May 30

**RSVP Required: [www.pphcsd.org/sign-up-for-classes](http://www.pphcsd.org/sign-up-for-classes)**

\*All attendees must bring a yoga mat, towel, and water bottle. All ages welcome. Adult must accompany minor children.



4176 Warbler Road  
Phelan, CA. 92371  
760-868-1212  
[www.pphcsd.org](http://www.pphcsd.org)



**Go Play  
at the Park**  
Phelan Piñon Hills CSD Parks and Recreation



**Phelan Piñon Hills CSD**  
Established 2008



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# The Way We Dispose of Trash is Changing

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Join Us to Learn More  
Solid Waste Community Information Meeting  
March 16, 2023  
7:00 PM - 8:30 PM



Join us at the  
Phelan Community Center  
4128 Warbler Road  
Phelan, CA 92371  
or use the Zoom QR code below



[www.pphcsd.org](http://www.pphcsd.org)  
760-868-1212





# COMMUNITY CLEANUP & FREE TIRE DAY

March 11, 2023

8 AM - 12 PM  
Drop Off Location:  
9828 Buckwheat Rd  
Phelan, CA



*\*District residents only. Must show proof of residency. Limit of 9 tires per residence. Must be off rim. NO COMMERCIAL.*

- ✓ Free Residential Trash & Yard Waste Collection
- ✓ Free Tire Collection
- ✓ Free Recyclable Materials Collection
- ✗ No Hazardous Waste or E-waste
- ✗ No Commercial Waste or Commercial Tires

**Questions? Call 760-868-1212**

**CR&R**  
INCORPORATED  
environmental services

**CalRecycle**



**PHELAN PIÑON HILLS CSD  
SOLID WASTE  
SERVICES**





# BERRY SWEET BAKING CLASS



Come learn how to make  
Strawberry Shortcake at our  
**Kid's Baking Class**

**Ages 5 - 17**

**APRIL 1, 2023**  
**10:00 AM - 12:00 PM**

Phelan Senior Center  
4128 Warbler Road  
Phelan, CA

RSVP Required: [www.pphcsd.org/sign-up-for-classes](http://www.pphcsd.org/sign-up-for-classes)

\*All minors must be accompanied by an adult.



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Learn How To:

# Perform Swamp Cooler Maintenance *Spring/Summer*

Learn how to save water and operate your swamp cooler efficiently by using the following tips. Use these tips in the spring and summer to ensure your swamp cooler works efficiently and keeps you cool.

## Spring Cleaning

- Uncover cooler, remove panels, and clean debris from water pan.
- Check motor fan belt tension. It should move about 1/2" when pressed.
- Oil the bearing on the blower assembly and motor if it has an oil receptacle.
- Install new cooler pads.
- Reconnect water line and turn on water supply. Check and adjust float.
- Switch on motor and pump. Make sure pads are being evenly saturated with water.
- Check for split seams in swamp cooler body and for rusted areas in tray.

## Cool Rules

- Delay turning on your cooler until the outside temperature reaches 86 degrees. You will save 50% more water.
- Turn on the water pump a few minutes before turning on the fan. This saturates the pads first, making your cooler more efficient.
- Crack a window in the rooms you are cooling.
- In the evenings, operate your cooler fan without the water pump.

## Mid-Summer Checkup

- Check water level in tray. It should be one inch below top of tray and below top of overflow pipe. If level is too high/low, adjust float arm.
  - Check float valve. If the valve sticks, water will run continuously.
    - Check all other parts including pump, motor, and fan belt. Check the pads. The cleaner the pads, the more efficient the cooler.
    - Some coolers have a "bleed-off valve" to drain water to prevent mineral buildup. Make sure it is adjusted to not drain too much.

For more information and other useful tips, visit our website at [www.pphcsd.org](http://www.pphcsd.org) or follow us on Facebook and Instagram.

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# Agenda Item 11

Review of Action Items

# Agenda Item 12

Set Agenda for Next Meeting