



AGREEMENT NUMBER MA-017-22011093

BETWEEN

COUNTY OF ORANGE

AND

SOUTHWEST STRATEGIES, LLC

FOR

ACTION FOR SPENT FUEL SOLUTIONS NOW (ASFSN)

MANAGEMENT SERVICES AT SAN ONOFRE NUCLEAR GENERATING STATION (SONGS)

This Agreement Number MA-017-22011093 (“Contract”) entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (“County”) and Southwest Strategies, LLC, with a place of business at 401 B Street, Suite 150, San Diego, CA 92101 (“Contractor”), with County and Contractor sometimes referred to individually as “Party” or collectively as “Parties”.

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are incorporated by reference into this Contract and constitute a part of this Contract:

Attachment A	Scope of Work
Attachment B	Compensation for Services

RECITALS

WHEREAS, County desires to enter into a contract with Contractor for Action for Spent Fuel Solutions Now (ASFSN) Management Services at San Onofre Nuclear Generating Station (SONGS); and

WHEREAS, Contractor represents that Contractor is specifically trained, possesses certain skills, experience, education, competency, and is qualified, willing, and able to provide such Spent Fuel Solutions Now (ASFSN) Management Services at San Onofre Nuclear Generating Station (SONGS) to County in accordance with the terms and conditions and pricing set forth herein.

NOW, THEREFORE, the Parties mutually agree as follows:

I. GENERAL TERMS AND CONDITIONS

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. **Entire Contract:** This Contract contains the entire contract between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. Electronic acceptance of any additional terms, conditions or supplemental contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Purchasing Agent or designee.

- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, the price stated in Attachment B does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed scope of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears pursuant to Attachment B after County's satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and County Indemnitees, as more fully described in Paragraph Z, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in Paragraph Z, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses and attorney's fees.
- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express prior written consent of County. Contractor shall provide County no less than sixty (60)

calendar days' written notification of its intent to assign, sell, delegate or otherwise dispose of the rights and obligations of this Contract. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express prior written consent of County shall be void and invalid and shall constitute a material breach of this Contract.

- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it shall comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to immediately terminate this Contract without penalty for cause or after thirty (30) calendar days' written notice without cause, unless otherwise specified. Cause shall include, but not be limited to, any material breach of contract, any misrepresentation or fraud on the part of Contractor, and any assignment, subcontracting or change of ownership without County's express prior written consent. County's decision to exercise its right to terminate the Contract shall relieve County of all further obligations. The Parties may mutually terminate this Contract by written agreement at any time. The rights, obligations, and conditions, that by their express terms or nature and context are intended to survive the termination or expiration of this Contract, survive any termination or expiration of this Contract.
- L. **Consent to Breach Not Waiver:** Any action or inaction by County or failure of County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to enforce any right or provision contained herein shall not be construed as a waiver or relinquishment by County of its rights hereunder and shall not prevent County from enforcing such provision or right on any future occasion. Further, no term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Requirements:**

Prior to the provision of services under this Contract, Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any SIR in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and Contractor's SIR provision shall be interpreted as though Contractor was an insurer and County was the insured.

If Contractor fails to maintain insurance acceptable to County for the full term of this Contract, County may terminate this Contract for cause pursuant to Paragraph K, Termination.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation Employers Liability Insurance	Statutory \$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claims-made \$1,000,000 aggregate

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the *County of Orange, its elected and appointed officials, officers, agents and employees* as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents and employees* or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) calendar days of any policy cancellation and ten (10) calendar days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which County may suspend or terminate this Contract for cause pursuant to Paragraph K, Termination.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy). Insurance certificates should be forwarded to the department address listed in this Contract.

If Contractor fails to provide the insurance certificates and endorsements within seven (7) calendar days of notification by County, County may immediately terminate this Contract for cause pursuant to Paragraph K, Termination.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) calendar days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- P. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's express prior written consent.
- Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.

County reserves the right to immediately terminate the Contract in the event County determines that the assignee is not qualified or is otherwise unacceptable to County for the provision of services under the Contract.

In addition, Contractor must notify County in writing of any change in Contractor's status with respect to name changes that do not require an assignment of the Contract. Contractor also must notify County in writing if Contractor becomes a party to any litigation against County, or a party to litigation that may reasonably affect Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor must provide this information without prompting from County any time there is a change in Contractor's name, conflict of interest or

litigation status, Contractor also must provide an update to County of its status in these areas whenever requested by County.

Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to Contractor, this obligation applies to Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. Contractor's efforts shall include, but not be limited to, establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract to the extent such delay is caused by any act of God, war, civil disorder, employment strike or other cause beyond Contractor's reasonable control, provided Contractor gives written notice of the cause of the delay to County within thirty-six (36) hours of the start of the delay and Contractor avails itself of any available remedies to end the delay and minimize the effects of such delay. County may terminate this Contract by written notice to Contractor if the delay continues substantially uninterrupted for a period of five (5) business days or more.
- S. **Confidentiality:** Contractor must maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Paragraph Z, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Freight:** Prior to County's express acceptance of delivery of products, Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear its own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party

has been represented by experienced and knowledgeable independent legal counsel of its own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that it has not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.

- Y. **Employee Eligibility Verification:** Contractor warrants that it is and will remain in full compliance with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor agrees to permit County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. County will provide reasonable notice of such an audit or inspection.

County reserves the right to audit and verify Contractor's records before final payment is made. Contractor must maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor must include in each subcontract a similar right to County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should Contractor cease to exist as a legal entity, Contractor’s records pertaining to this Contract shall be forwarded to County’s project manager.

- BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County’s Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. **Expenditure Limit:** Contractor shall notify the County of Orange assigned DPA in writing when the expenditures against the Contract reach seventy-five percent (75%) of the dollar limit on the Contract. County is not responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

II. ADDITIONAL TERMS AND CONDITIONS

- 1.0 **Scope of Contract:** Contractor shall provide Action for Spent Fuel Solutions Now (ASFSN) Management Services at San Onofre Nuclear Generating Station (SONGS), pursuant to Attachment A ("Scope of Work") of this Contract.
- ~~2.0 **Term of Contract:** This Contract shall commence on March 22, 2022, and continue through March 21, 2023, unless otherwise terminated by County. This Contract may be renewed by mutual agreement of the Parties for one (1) additional year in an amount not to exceed \$100,000, contingent upon Contractor’s satisfactory performance and availability of funding. County does not have to give a reason if it elects not to renew.~~

AMENDMENT NO. 2 – Renewal term for two additional years

Term of Contract: This Contract shall commence on March 22, 2022, and continue through March 21, 2026, unless otherwise terminated by County. County does not have to give a reason if it elects not to renew.

AMENDMENT NO. 1 – renewal for one additional year

Term of Contract: This Contract is renewed for one additional year, effective on March 22, 2023 through March 21, 2024, in the amount of \$100,000, for cumulative total amount not to exceed \$200,000.

- 3.0 **Compensation and Payment:** Contractor agrees to accept the specified compensation as set forth in Attachment B of this Contract, entitled “Compensation for Services”, as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder.
- 4.0 **Conflict of Interest:** The Orange County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

- 5.0 Contractor's Expense:** Contractor is responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. County will not provide free parking for any service in the County Civic Center.
- 6.0 Contractor Bankruptcy/Insolvency:** If Contractor is adjudged bankrupt or has a general assignment for the benefit of its creditors or if a receiver is appointed on account of Contractor's insolvency, County may immediately terminate this Contract for cause pursuant to Paragraph K, Termination.
- 7.0 Breach of Contract:** The failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event, County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract, do any of the following:
- 7.1 Terminate the Contract immediately for cause pursuant to Paragraph K, Termination;
- 7.2 Afford Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
- 7.3 Discontinue payment to Contractor for and during the period in which Contractor is in breach; and
- 7.4 Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the breach.
- 8.0 Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
- 9.0 Interpretation of Contract:** In the event of a conflict or question involving the provisions of any part of this Contract, interpretation, and clarification, as necessary, shall be determined by County's assigned DPA. If discrepancies in Contract exist between Contractor and County's assigned DPA in interpreting the provision(s), final interpretation and clarification shall be determined by County's Purchasing Agent or his/her designee.
- 10.0 Conflict with Existing Law:** Contractor and County agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provisions shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the Contract, the Contract shall be terminated in a manner commensurate with interests of both parties to the maximum extent reasonable.
- 11.0 Covenant Against Contingent Fees:** Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, County may immediately terminate

this Contract for cause pursuant to Paragraph K, Termination, and, in County's sole discretion, may deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee from Contractor.

12.0 Precedence: The Contract documents consist of this Contract and its attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.

13.0 Subcontracting: No performance of this Contract or any portion thereof may be subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to subcontract any performance of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

In the event that Contractor is authorized by County to subcontract, this Contract shall take precedence over the terms of Contract between Contractor and subcontractor and shall incorporate by reference the terms of this Contract. County shall look to Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

14.0 Disputes – Contract:

14.1 The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by Contractor's Project Manager and County's Project Manager, such matter shall be brought to the attention of County DPA by way of the following process:

14.1.1 Contractor shall submit to the department assigned DPA a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless County, on its own initiative, has already rendered such a final decision.

14.1.2 Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes County is liable.

14.2 Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor must diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by County DPA or designee. If County fails to render a decision within ninety (90) calendar days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. Nothing in this Paragraph shall be construed as affecting County's right to terminate the Contract for cause or for convenience as provided in Paragraph K, Termination.

15.0 Adjustments – Scope of Work: No adjustments made to the Scope of Work will be authorized without the prior written approval of County assigned DPA.

16.0 Amendments – Changes/Extra Work: Contractor shall make no changes to this Contract without County’s written consent. In the event that there are new or unforeseen requirements, County with Contractor’s concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

If County-initiated changes or changes in laws or government regulations affect price, Contractor’s ability to deliver services, or the project schedule, Contractor shall give County written notice no later than seven (7) calendar days from the date the law or regulation went into effect or the date the change was proposed by County and Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract amendment; said amendment shall be issued by County-assigned DPA, said amendment shall require the mutual consent of all Parties.

17.0 Notices: Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties’ project managers’ routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: County of Orange
 County Executive Office
 Attn: Peter DeMarco
 333 W. Santa Ana Blvd., 3rd Floor
 Santa Ana, CA 92701
 Email: peter.demarco@ocgov.com

Contractor: Southwest Strategies, LLC
 Attn: Jessica Luternauer
 401 B Street, Suite 150
 San Diego, CA 92101
 Email: jluternauer@swspr.com

18.0 Contractor’s Records: Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from County. Storage of records in another county will require written approval from the County of Orange DPA.

19.0 Gratuities: Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, County has the right to terminate the Contract, either in whole

or in part, and any loss or damage sustained by County in procuring on the open market any services which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of County provided in this paragraph are not exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

- 20.0 Investigations/Enforcements:** Throughout the term of the Contract, Contractor must provide detailed information regarding any investigations their firm is under or Party to by the Fair Political Practices Commission, or by any other state or federal regulators within forty-eight (48) hours of occurrence(s). Additionally, Contractor must disclose any prior enforcement or prior actions by the Fair Political Practices Commission, or any other state or federal regulators.
- 21.0 Debarment:** Contractor certifies that neither Contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. County has the right to terminate this Contract for cause pursuant to Paragraph K, Termination, if Contractor is or becomes the subject of any debarment or pending debarment, declared ineligible or any voluntary exclusion from participation by any state or federal department or agency.
- 22.0 Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 23.0 News/Information Release:** Contractor shall not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and written consent of said news media contact from County through the County DPA. Any requests for interviews or information received by the media should be referred directly to County. Contractors are not authorized to serve as a media spokesperson for County projects without first obtaining permission from County.
- 24.0 Promotional/Advertisement:** County owns all rights to the name, trademarks, logos and symbols of County. The use and/or reproduction of County's name, trademark, logo and/or symbol for any purpose, including commercial advertisement, promotional purposes, announcements, displays or press releases, without County's express prior written consent is expressly prohibited. No use or reproduction may state or imply that County endorses Contractor's products or services.
- 25.0 Publication:** No copies of sketches, schedules, written documents, computer-based data, photographs, maps or graphs, including graphic artwork, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without County's express prior written consent, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered by County or only after County approval.
- 26.0 Orderly Termination:** If County terminates this Contract, Contractor may submit to County a termination claim, if applicable, after receipt of the termination notice. Contractor's claim must be submitted promptly, but in no event later than sixty (60) calendar days from the effective date of the termination, unless one or more extensions in writing are granted by County upon written

request of Contractor. County agrees to pay Contractor for all services satisfactorily performed prior to the effective date of the termination that meet the requirements of the Contract according to the compensation provision(s) contained in this Contract; provided, however, that such compensation combined with previously paid compensation must not exceed the total compensation set forth in the Contract. Upon expiration or earlier termination of this Contract, each Party must promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution and performance of this Contract and transfer all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

- 27.0 California Public Records Act:** Contractor and County agree and acknowledge that all information and documents related to the award and performance of this Contract may be subject to disclosure pursuant to the California Public Records Act, California Government Code Section 6250 et seq.
- 28.0 Contractor's Project Manager:** Contractor's Project Manager, as specified in Paragraph 17.0 Notices, will direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager is subject to approval by County and shall not be changed without the written consent of County's Project Manager, which consent shall not be unreasonably withheld. Contractor's Project Manager and key personnel shall be assigned for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines.
- 29.0 County's Project Manager:** County's Project Manager, as specified in Paragraph 17.0 Notices, will act as liaison between County and Contractor during the term of this Contract.

County's Project Manager has the right, in its sole discretion, to require the removal and replacement of Contractor's Project Manager and Contractor personnel from providing services to County under this Contract. County's Project Manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal of Contractor's Project Manager and Contractor personnel within three (3) calendar days after written notice by County's Project Manager. County's Project Manager shall review and approve the appointment of the replacement for Contractor's Project Manager and Contractor personnel. Said approval shall not be unreasonably withheld. County is not required to provide any information, reason or rationale in the event it requires the removal of Contractor's Project Manager or Contractor personnel.

- 30.0 Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager, prior to submission to County. Contractor agrees that County review is discretionary and Contractor shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
- 31.0 No Third-Party Beneficiaries:** This Contract is an agreement by and between the Parties, and neither: (a) confers any rights upon any of the employees, agents, or contractors of either Party, or upon any other person or entity not a party hereto; or (b) precludes any actions or claims against, or rights of recovery from, any person or entity not a party hereto.

- 32.0 Ownership of Documents:** County has permanent ownership of all directly connected and derivative materials produced under this Contract by Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of County and may be used by County as it may require without additional cost to County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by Contractor without the express written consent of County.
- 33.0 Reports/Meetings:** Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. County's Project Manager and Contractor's Project Manager shall meet on reasonable notice to discuss Contractor's performance and progress under this Contract. If requested, Contractor's Project Manager and other project personnel shall attend all meetings. Contractor shall provide such information that is requested by County for the purpose of monitoring progress under this Contract.
- 34.0 Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

SIGNATURE PAGE FOLLOWS

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Southwest Strategies, LLC *

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

Print Name Title

Signature Date

The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.

Print Name Title

Signature Date

* If Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

County of Orange, a political subdivision of the State of California

Rick Tran Deputy Purchasing Agent
Name Title

Signature Date

Attachment A**SCOPE OF WORK****A. Overview**

Action for Spent Fuel Solutions Now (ASFSN) is a new coalition formed to advocate for the relocation of spent nuclear fuel currently stored on site at the retired San Onofre Nuclear Generating Station (SONGS) to a federally licensed offsite facility. On April 27, 2021, County's Board of Supervisors approved a resolution to participate in the coalition as a supporting member, with Supervisor Lisa Bartlett serving on ASFSN's Executive Board as a Co-Chair. County also approved County staff and resources may be used in furtherance of the coalition. This funding will help support coalition management services.

B. Contractor's Responsibilities

Contractor's responsibilities under this Contract include, but are not limited to, the following:

Month	Contractor's Prioritized Activities
March 2022	<ul style="list-style-type: none"> • At a minimum, conduct one outreach meeting with federal decision-makers including members of Congress in the House and the Senate that sit on the committees of jurisdiction for both policy and federal funding decisions. Federal decision makers may include members of the House Committee on Energy and Commerce, the Senate Committee on Energy and Natural Resources, both the House and the Senate Appropriations Committees, and the Department of Energy (DOE). • Mobilize ASFSN coalition members to advocate for federal legislation and appropriations through letter-writing, public comment or other opportunities to demonstrate support at appropriate points in the process. • Identify, network and coordinate efforts with other U.S. facilities and spent fuel advocacy organizations. • Develop coalition materials, including fact sheets, talking points, letters, PowerPoint presentation and other collateral materials needed to support coalition-building and outreach activities. • Distribute letters to a broad range of elected officials to make the deposition of spent nuclear fuel a priority. Letters shall be distributed to, among others, the California Congressional Delegation, California State Legislators with spent nuclear fuel in their districts, Secretary Granholm, the California Coastal Commission, California State Senators and Assembly members, Congressional leaders outside California and local elected officials to keep them informed about the latest developments with ASFSN and the general topic of spent fuel. • Conduct a minimum of five informational briefings with potential ASFSN coalition members. • Advocate for equity-informed, best-practice-based criteria for confirming community consent. • Maintain and expand ASFSN coalition website, including case studies on successful consent-based siting efforts in other countries as well as updates on developments at the federal level such as, but not limited to, the DOE's Request for Information (RFI) process, and other pertinent legislation and as directed from the ASFSN Executive Board. • Launch social media programs including on Facebook and Twitter, which shall include up-to-date posts and engagement with a focus on bringing greater focus to the importance of offsite storage and disposal of spent nuclear fuel. • Distribute email updates on efforts to relocate spent nuclear fuel from SONGS to ASFSN

	<p>coalition Supporting Members may include, but are not limited to, local governments, business and labor leaders, Native American leaders, environmental groups, and community members, who have opted in to receive email updates, as needed.</p> <ul style="list-style-type: none"> • Seek resolutions of support from stakeholders. • Conduct, at a minimum, one media outreach event. The nature of the event is to be determined by the ASFSN coalition members. • Participate in speaking engagements to educate elected officials, community organizations and other stakeholders about ASFSN and the importance of relocating the spent nuclear fuel from SONGS. • Hold and facilitate a minimum of one ASFSN Executive Board and Advisory Council meeting. • Develop ASFSN coalition’s Advisory Council and manage its activities such as meetings and recommendations to the ASFSN Executive Board. • Coordinate activities with the ASFSN Executive Board and keep them apprised of developments in the spent fuel space. • Continue coalition development by expanding ASFSN coalition’s membership through one-on-one meetings, presentations, and other outreach.
<p>April 2022 through Remaining Contract Period</p>	<ul style="list-style-type: none"> • Conduct a minimum of two outreach meetings with federal decision-makers including members of Congress in the House and the Senate that sit on the committees of jurisdiction for both policy and federal funding decisions. Federal decision-makers may include members of the House Committee on Energy and Commerce, the Senate Committee on Energy and Natural Resources, both the House and the Senate Appropriations Committees, and the Department of Energy. • Mobilize ASFSN coalition members to advocate for federal legislation and appropriations through letter-writing, public comment, or other opportunities to demonstrate support at appropriate points in the process. • Coordinate efforts with other U.S. facilities and spent fuel advocacy organizations. • Update ASFSN coalition website and materials to include case studies on successful consent-based siting efforts in other countries as well as updates on developments at the federal level such as, but not limited to, the DOE’s RFI process, and other pertinent legislation and as directed from the ASFSN Executive Board. • Continue social media programs including on Facebook and Twitter, which shall include up-to-date posts and engagement with a focus on bringing greater focus to the importance of offsite storage and disposal of spent nuclear fuel. • Distribute email updates on efforts to relocate spent nuclear fuel from SONGS to ASFSN coalition Supporting Members may include, but are not limited to, local governments, business and labor leaders, Native American leaders, environmental groups, and community members, who have opted in to receive email updates, as needed. • Conduct a minimum of two media outreach events. The nature of the events is to be determined by the ASFSN coalition members. • Hold and facilitate a minimum of two ASFSN Executive Board and Advisory Council meetings. • Develop ASFSN coalition’s Advisory Council and manage its activities such as meetings and recommendations to the ASFSN Executive Board. • Coordinate activities with the ASFSN Executive Board, including, but not limited to, letter-writing campaigns, briefings, and media and social media strategy. • Continue coalition development by expanding ASFSN coalition’s membership through one-on-one meetings, presentations and other outreach.

Attachment B**COMPENSATION FOR SERVICES****AMENDMENT NO 2 – REPLACING COMPENSATION LANGUAGE**

~~**A. Compensation:** In accordance with the provisions of the General and Additional Terms and Conditions, and Scope of Work herein, Contractor will be paid \$8,333.33 monthly, for a maximum total contract amount not to exceed \$100,000 under this Contract.~~

~~Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. County has no obligation to pay any sum in excess of the total Contract amount unless authorized by an amendment in accordance with paragraphs C and P of the Contract's General Terms and Conditions.~~

Compensation: In accordance with the provisions of the General and Additional Terms and Conditions, and Scope of Work herein, Contractor will be paid \$8,333.33 monthly, for a maximum total contract amount not to exceed \$400,000 under this Contract.

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. County has no obligation to pay any sum in excess of the total Contract amount unless authorized by an amendment in accordance with paragraphs C and P of the Contract's General Terms and Conditions.

B. Invoicing:

1. Contractor shall not send the first monthly invoice until after the first month of services, and then monthly invoices shall be sent thereafter through the 12-month contract period. Monthly invoices shall be provided along with a monthly activity report to County.

2. Contractor shall email invoices to: CPOInvoices@ocgov.com with Contractor's name in the subject line for reference.

Billing Address: County of Orange
County Executive Office
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701

3. Contractor shall send monthly invoices for work performed during the prior month with the following information:

- Contractor's name and address
- Contractor's remittance address, if different from the address above
- Contractor's federal taxpayer identification number
- Contract Number MA-017-22011093
- Dates of Services
- Description of services
- Total amount

4. The responsibility for providing an acceptable invoice to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to Contractor for correction.

C. Payment Terms:

1. Payment will be net thirty (30) calendar days after receipt of an invoice in a format acceptable to County and verified and approved by the department and subject to routine processing requirements.
2. As a condition of payment, County may require Contractor to furnish documentation such as detailed itemizations and receipts as may be required by County's Auditor-Controller.
3. Payments made by County shall not preclude the right of County from thereafter disputing any services invoiced/ billed under this Contract and shall not be construed as acceptance of any part of the services.