

ITEM #74⁽²⁾

(Term Sheet, Exhibit 1)

**ADDITIONAL MATERIAL
REGULAR MEETING**

SEPTEMBER 20, 2022

**SUBMITTED AT THE REQUEST OF
OFFICE OF THE COUNTY ATTORNEY**

Term Sheet

1. This term sheet is proposed to establish a policy regarding consideration of federal forgiveness of Paycheck Protection Program (“PPP”) loans received by consultants and subconsultants under the Coronavirus Aid, Relief, and Economic Security Act in the calculation of rates payable for consultant service agreements.
2. “Overhead and Fringe factors without PPP” in this term sheet means the overhead and fringe benefit rates referenced in the FAR Audit submitted by a vendor with its original contract proposal shown prior to a reduction in expenses for PPP loan forgiveness.
3. Federally funded or pass-through funded projects – Continue to use PPP forgiveness rates (or Safe Harbor rate if elected in original agreement/work authorization). This policy change will not impact federally funded or pass-through funded projects and contracts solicited to comply with federal requirements.
4. Non-Federally funded or non-pass-through funded projects (i.e., “County only” funded):
 - a. New RFPs and contracts that have not yet been signed - will utilize the Overhead and Fringe factors without PPP forgiveness in the calculation of Maximum Billing Rates. Nothing herein precludes a vendor from electing to take the safe harbor rate established in the BCF202 contract template.
 - b. Executed contracts - to the extent a vendor agrees in writing to amend the contract within 30 days of the County notifying it of this new County Policy, the following will occur as applicable:
 - i. Overhead and Fringe factors without PPP will be utilized in the calculation of Maximum Billing Rates.
 - ii. To the extent a vendor received PPP loan forgiveness, had an applicable FAR Audit from the time of contracting, but elected to take the safe harbor multiplier established in the BCF202 contract template, the vendor shall be provided a one-time opportunity to modify its Maximum Billing Rate based on this new policy, utilizing Overhead and Fringe factors without PPP.
 - iii. Work authorizations:
 1. Maximum Not to Exceed – Work Authorizations that have been executed and utilize a maximum not-to-exceed (“NTE”) pricing structure shall be amended to utilize the Overhead and Fringe factors without PPP only for billings going forward (from date of amendment execution) and the NTE figure shall remain the same. Accordingly, the vendor will be responsible for completing the scope of work set forth in the work authorization for the originally agreed upon NTE regardless of a potential increase to its Maximum Billing Rate.
 2. Lump Sum Pricing - Work authorizations that have been executed and utilize a lump sum pricing structure are not impacted.
 - c. Note: Any vendor decision to amend the contract (or not) applies to the vendor and all subconsultants in the same fashion. Subconsultants do not have the ability to elect a different option from the vendor.
5. For each of the foregoing:
 - a. The applicable overhead and fringe benefits factors will be based on the applicable FAR Audit at the time of negotiating the original contract (e.g., a contract negotiated with a 2020 FAR Audit will be based on that same 2020 FAR Audit but without PPP forgiveness and any contract

originally negotiated with a 2021 FAR Audit will be based on that same 2021 FAR audit but without PPP forgiveness).

- b. Vendors will no longer be permitted to adjust the overhead and fringe benefit rates upon exhaustion of PPP loan forgiveness or future PPP loan forgiveness.
- c. The only change to the Maximum Billing Rates will be to the overhead and fringe benefit factors used to calculate the multiplier. Vendors will not be permitted to renegotiate any other figures that comprise the Maximum Billing Rates.
- d. Any Maximum Billing Rate 'caps' applied during original negotiations shall continue to apply.
- e. Vendors that have not received, or do not receive, PPP Loan forgiveness will continue to use the Maximum Billings Rates previously negotiated with the County.
- f. In the event the state, federal government, or any other authority seeks any recovery from the County through offset or any other means of PPP forgiven funds received by a vendor following this new policy, the respective Vendor agrees to defend and indemnify the County and hold the County harmless.