

CONSULTANT SERVICES AGREEMENT

BETWEEN THE

**OTAY MESA ENHANCED INFRASTRUCTURE FINANCING
DISTRICT PUBLIC FINANCING AUTHORITY**



AND

MACIAS, GINI & O'CONNELL, LLP

**FOR Independent Financial Audit of the Otay Mesa Enhanced
Infrastructure Financing District**

CONSULTANT SERVICES AGREEMENT

This Consultant Services Agreement (Agreement) is entered into by and between the Otay Mesa Enhanced Infrastructure Financing District Public Financing Authority (Authority), and Macias, Gini & O'Connell, LLP (Consultant) (collectively, the Parties).

RECITALS

A. Authority wishes to retain Consultant to provide an independent financial audit of the Otay Mesa Enhanced Infrastructure Financing District (EIFD) for July 1, 2018 through June 30, 2019 (Fiscal Year 2019) (the Services).

B. Consultant has the expertise, experience, and personnel necessary to provide the Services.

C. Authority and Consultant wish to enter into an agreement whereby Authority will retain Consultant to provide the Services.

D. This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3016(a), as the cost of Services are an expenditure of \$25,000 or less.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, Authority and Consultant agree as follows:

ARTICLE 1 CONSULTANT SERVICES

1.1 Scope of Services. Consultant shall provide the Services to Authority as described in Exhibit A, Scope of Services at the rate described in the Compensation and Fee Schedule, attached hereto as Exhibit B, in accordance with the General Terms and Provisions attached hereto as Exhibit C.

1.2 Contract Administrator. The City of San Diego Department of Planning (Department) is the Contract Administrator for this Agreement. Consultant shall provide the Services under the direction of a designated representative of the Department as follows:

Marco Camacho, Program Manager
9485 Aero Drive, San Diego, CA 92123
(619) 235-5216
Mcamacho@sandiego.gov

1.3 Written Authorization. Authority shall issue a written authorization to proceed before Consultant is authorized to perform Services.

1.4 Duty to Inform Authority of Changes in Scope of Services. Consultant shall immediately advise the Authority in writing of any anticipated change in the Scope of Services, Compensation and Fee Schedule, or Time Schedule, and shall obtain the Authority's written consent to the change prior to making any changes. In no event shall the Authority's consent be construed to relieve Consultant from its duty to render all Services in accordance with applicable law and industry standards.

1.5 Competitive Bidding. If applicable, Consultant shall ensure that any plans, specifications, studies, or reports prepared, required, or recommended under this Agreement allow for competitive bidding. Consultant shall prepare such plans, specifications, studies, or reports so that procurement of services, labor or materials are not available from only one source, and shall not prepare plans, specifications, studies, or reports around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by Authority. Consultant shall submit this written justification to Authority prior to beginning work on such plans, specifications, studies, or reports. Whenever Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Services.

ARTICLE 2 DURATION OF AGREEMENT

2.1 Term. This Agreement shall be for an initial term not to exceed one (1) year beginning on the Effective Date and ending upon completion of the Services by Consultant.

2.2 Effective Date. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the Authority's General Counsel (Effective Date).

ARTICLE 3 COMPENSATION

3.1 Amount of Compensation. Authority shall pay Consultant for performance of all Services rendered in accordance with this Agreement in an amount not to exceed \$19,500.

3.2 Additional Services. Authority may require Consultant to perform additional Services beyond those described in the Scope of Services (Additional Services). Before Consultant commences such work, the Parties must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with Section 3.3.

3.3 Manner of Payment. Authority shall pay Consultant in accordance with the Compensation and Fee Schedule. Consultant is not entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. Consultant shall

submit monthly invoices until completion of the Services in a form acceptable to the Contract Administrator and in accordance with the Compensation and Fee Schedule. Consultant shall include with each invoice a description of completed Services, reasonably related expenses, if any, and all other information, including but not limited to the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the Authority. Authority will pay undisputed portions of invoices within thirty calendar days of receipt.

3.4 Additional Costs. Additional Costs are costs that can be reasonably determined to be related to Consultant's errors or omissions, and may include Consultant, Authority, or Subcontractor overhead, construction, materials, demolition, and related costs. Consultant shall not be paid for the Services required due to the Consultant's errors or omissions, and Consultant shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, to Consultant. Whether or not there are any monies due, or becoming due, Consultant shall reimburse Authority for Additional Costs due to Consultant's errors or omissions.

3.5 Eighty Percent Notification. Consultant shall promptly notify Authority in writing of any potential cost overruns. Cost overruns include, but are not limited to the following: (1) where anticipated costs to be incurred in the next sixty calendar days, when added to all costs previously incurred, will exceed 80 percent of the maximum compensation for this Agreement; or (2) where the total cost for performance of the Scope of Services appears that it may be greater than the maximum compensation for this Agreement.

ARTICLE 4 WAGE REQUIREMENTS

4.1 Wage Requirements [Reserved].

ARTICLE 5 CONSULTANT'S OBLIGATIONS

5.1 Right to Audit. Authority retains the right to review and audit, and the reasonable right of access to Consultant's and any Subcontractor's premises, to review and audit Consultant's or Subcontractor's compliance with the provisions of this Agreement (Authority's Right). Authority's Right includes the right to inspect, photocopy, and retain copies of any and all books, records, documents and any other information (Records) relating to this Agreement outside of Consultant's premises if deemed necessary by Authority in its sole discretion. Authority shall keep these Records confidential to the extent permitted by law.

5.1.1 Audit. Authority's Right includes the right to examine Records of procedures and practices that Authority determines are necessary to discover and verify that Consultant or Subcontractor is in compliance with all requirements under this Agreement.

5.1.2 Cost Audit. If there is a claim for additional compensation or for Additional Services, the Authority's Right includes the right to Records that the Authority determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

5.1.3 Accounting Records. Consultant and all subcontractors shall maintain complete and accurate Records in accordance with generally accepted accounting practices. Consultant and Subcontractors shall make available to Authority for review and audit all Records relating to the Services. Upon Authority's request, Consultant and Subcontractors shall submit exact duplicates of originals of all requested records to Authority.

5.1.4 Authority's Right Binding on Subcontractors. Consultant shall include Authority's Right as described in this Section 5.1 in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subcontractors.

5.2 Subcontractors. Consultant's hiring or retaining of any third parties (Subcontractors) to perform Services (Subcontractor Services) is subject to Authority's prior written approval. Consultant shall list all Subcontractors known to Consultant on the Subcontractor List at the time this Agreement is entered. Consultant shall give written notice to the Authority of the need at least 45 days before entering into a contract for such Subcontractor Services. Consultant's notice shall include a justification, a description of the Scope of Services, and an estimate of all costs for Subcontractor Services. Consultant may request that Authority reduce the 45-day notice period. Authority agrees to consider such requests in good faith.

5.2.1 Subcontractor Contract. Consultant shall require Subcontractor to obtain and maintain insurance policies as required by Authority for the duration of this Agreement. Consultant shall determine Subcontractor policy limits and required endorsements proportionate to the services performed by Subcontractor.

5.2.1.1 Consultant is obligated to pay Subcontractor, for Consultant and Authority -approved invoice amounts, out of amounts paid by Authority to Consultant not later than fourteen working days from Consultant's receipt of payment from Authority. Nothing in this paragraph shall be construed to impair the right of Consultant and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.

5.2.1.2 If Subcontractor's performance is deficient, Consultant shall notify Authority in writing of any withholding of payment to Subcontractor, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action Subcontractor must take in order to receive the amount withheld. Once Subcontractor corrects the deficiency, Consultant shall pay Subcontractor the amount withheld within fourteen working days of the Consultant's receipt of Authority's next payment.

5.2.1.3 Authority shall not be made a party to any judicial or administrative proceeding to resolve any dispute between Consultant and Subcontractor. Consultant agrees to defend and indemnify the Authority as described in the General Terms and Provisions, attached hereto as Exhibit C, and incorporated by reference, in any dispute between Consultant and Subcontractor should Authority be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

5.2.1.4 Subcontractor must comply with the City of San Diego's Equal Opportunity Contracting Program requirements.

5.2.1.5 Authority is an intended beneficiary of any work performed by Subcontractor for purposes of establishing a duty of care between Subcontractor and Authority.

5.3 Consultant Award Tracking Form. Consultant shall submit information to Authority as requested in Consultant Award Tracking Form. The information shall include the dollar amount awarded during the period covered by the Consultant Award Tracking Form.

5.4 Consultant and Subcontractor Principals for Consultant Services. This Agreement is for unique Services. Authority has retained Consultant based on Consultant's particular professional expertise as exhibited by the members of the Consultant's organization: (the Project Team). Consultant may not delegate the performance of Services to Subcontractors without Authority's prior written consent. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Services. Authority reserves the right, after consultation with Consultant, to require any of Consultant's employees or agents to be removed from providing Services under this Agreement.

5.5 Consultant Evaluation. Authority will evaluate Consultant's performance using the Consultant Evaluation Form.

ARTICLE 6 CONTRACT DOCUMENTS

6.1 Contract Documents. This Agreement and its exhibits constitute the Contract Documents. The Contract Documents completely describes the Services to be provided. The exhibits are as follows:

- Exhibit A - Scope of Services
- Exhibit B - Compensation and Fee Schedule
- Exhibit C - General Terms and Provisions

6.2 Submittals Required with the Agreement. Consultant is required to submit the following forms and information before the Agreement is executed:

Contractor Standards Pledge of Compliance

Work Force Report
Insurance Certificates with all endorsements - Proof of Professional Liability Insurance
(Errors and Omissions)
Consultant Award Tracking Form
Contractors Certification of Pending Actions
Conflict of Interest Certification

6.3 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by Authority and Consultant acting by and through their authorized officers.

CONSULTANT
Macias Gini and O'Connell LLP

BY: *Peter George*

Print Name: *Peter George, Partner*

3/2/2020
DATE SIGNED

Otay Mesa Enhanced Infrastructure Financing
District Public Financing Authority

BY: _____

Print Name: _____
Chair
Otay Mesa Enhanced Infrastructure
Financing District Public Financing
Authority

DATE SIGNED

Approved as to form this ___ day of
_____, 20__.

MARA W. ELLIOTT, General Counsel

BY: _____
Deputy General Counsel

EXHIBIT A SCOPE OF SERVICES

A. OVERVIEW

To retain Consultant to provide an independent financial audit of the Otay Mesa Enhanced Infrastructure Financing District Public Financing Authority (Authority) for July 1, 2018 through June 30, 2019 (Fiscal Year 2019) to fulfill the obligations set forth in California Government Code section 53398.66(j)(1).

B. REQUIREMENTS AND TASKS

Financial Audit. A financial audit shall be conducted pursuant to the requirements set forth in California Government Code section 53398.66(j)(1). Audits shall meet required standards as revised by Generally Accepted Audit Standards (GAAS) guidelines and Generally Accepted Governmental Auditing Standards (GAGAS), as issued by the Comptroller General of the United States. to:

1.1. Express an opinion on the Authority's compliance requirements of the laws, regulations, contracts and grants applicable to the Enhanced Infrastructure Financing District;

1.2. Provide an accompanying schedule of findings, recommendations and questioned costs, if any.

2. Management Letter. The Consultant will issue a management letter to the extent considered appropriate. The Consultant may recommend improvement in any areas brought to its attention during the course of the audit.

2.1. Opinions Issued. The Consultant shall issue an audit opinion for Authority, including its basic financial statements and other Required Supplementary Information, combining and Individual Fund Statements, and statistical data for each fiscal year. The Consultant shall issue an opinion as to whether the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, the discretely presented component unit(s), each major fund, and the aggregate remaining fund information of the Authority, for the fiscal year audited, and the respective changes in financial position and, where applicable, cash flows in accordance with generally accepted accounting principles in the United States of America. Further, in accordance with GAGAS, the Outside Auditor shall also issue a report regarding the Authority's internal control over financial reporting and tests of compliance with applicable provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of this report shall be to describe the scope of the testing of internal control over reporting and compliance with the results of testing, and not to provide an opinion on the internal control over financial reporting or on compliance.

C. AUDIT COMPLETION REQUIREMENTS.

1. The fieldwork specified in this Exhibit A, paragraph B, item 1 and the issuance of the related written auditor's opinion shall begin upon receipt by the selected Proposer of an approved Purchase Order and shall be completed by Proposer no later than May 29, 2020.

D. ROLES AND RESPONSIBILITIES

1. Consultant's General Roles and Responsibilities

With respect to all services provided to the Department, Consultant will fulfill the following operational roles and responsibilities:

Consultant will conduct our audit in accordance with GAAS and GAGAS. Those standards require Consultant to plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the basic financial statements. The procedures selected depend on the Consultant's judgment, including the assessment of the risks of material misstatement of the basic financial statements, whether due to fraud or error, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements.

An audit also includes evaluating the appropriateness of accounting policies used, and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the basic financial statements. If appropriate, Consultant's procedures will therefore include tests of documentary evidence that support the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of cash, investments, and certain other assets and liabilities by correspondence with creditors and financial institutions. As part of our audit process, Consultant will request written representations from the City Attorney's Office. At the conclusion of our audit, we will also request certain written representations from Authority about the basic financial statements and related matters.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements (whether caused by errors, fraudulent financial reporting, misappropriation of assets, or violations of laws or governmental regulations) may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS.

In making our risk assessments, Consultant will consider internal control relevant to the Authority's preparation and fair presentation of the basic financial statements in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. However, Consultant will communicate to Authority in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the basic financial statements that we have identified during the audit. Consultant's responsibility as auditors is limited to the period covered by the audit and does not extend to any other periods.

Consultant does not provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for Consultant to modify their opinion or add emphasis-of-matter or other-matter paragraphs. If Consultant's opinion on the basic financial statements is other than unmodified, we will discuss the reasons with you in advance. If, for any reason, Consultant is unable to complete the audit or are unable to form or have not formed opinions, Consultant may decline to express an opinion or to issue a report as a result of this engagement.

2. Department's General Roles and Responsibilities

Consultant audit will be conducted on the basis that management and, when appropriate, those charged with governance acknowledge and understand that they have responsibility:

- a. For the preparation and fair presentation of the Authority's basic financial statements in accordance with accounting principles generally accepted in the United States of America;
- b. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of basic financial statements that are free from material misstatement, whether due to error, fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements; and
- c. To provide Consultant with:
 - i. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the basic financial statements such as records, documentation, and other matters;
 - ii. Additional information that we may request from management for the purpose of the audit; and
 - iii. Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.
- d. For including the Consultant's report in any document containing basic financial statements that indicates that such basic financial statements have been audited by the entity's auditor;

- e. For identifying and ensuring that the entity complies with the laws and regulations applicable to its activities;
- f. For adjusting the basic financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the current year period(s) under audit are immaterial, both individually and in the aggregate, to the basic financial statements as a whole; and
- g. For acceptance of nonattest services, including identifying the proper party to oversee nonattest work;
- h. For maintaining adequate records, selecting and applying accounting principles, and safeguarding assets;
- i. For informing us of any known or suspected fraud affecting the entity involving management, employees with significant role in internal control and others where fraud could have a material effect on the financials; and
- j. For the accuracy and completeness of all information provided.

EXHIBIT C
GENERAL TERMS AND PROVISIONS

**OTAY MESA ENHANCED
INFRASTRUCTURE
FINANCING DISTRICT PUBLIC
FINANCING AUTHORITY

GENERAL CONTRACT TERMS
AND PROVISIONS**

**ARTICLE I
SCOPE AND TERM OF CONTRACT**

1.1 Scope of Contract. The scope of contract between the Authority and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Consultant Services Agreement and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the Authority and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the Authority Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the Authority Council by ordinance.

1.3 Contract Extension. The Authority may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the Authority may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

**ARTICLE II
CONTRACT ADMINISTRATOR**

2.1 Contract Administrator. The Contract Administrator for purposes of this Contract is defined in the Consultant Services Agreement.

2.1.1 Contractor Performance Evaluations. The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. Authority will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. Authority may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the Authority shall be sent to:

Marco Camacho, Program Manager
9485 Aero Drive, San Diego, CA 92123
(619) 235-5216
MCamacho@sandiego.gov

ARTICLE III COMPENSATION

3.1 Manner of Payment. Contractor will be paid as specified in the Consultant Services Agreement.

3.2 Invoices.

3.2.1 Invoice Detail. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

3.2.2 Service Contracts. Contractor must submit invoices for services to Authority by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Goods Contracts. Contractor must submit invoices for goods to Authority within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to Authority within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to Authority, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. Authority will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 Reporting Requirements. Contractor must submit the following reports using the Authority's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the Authority's online tutorials on how to utilize the Authority's web-based contract compliance portal.

3.2.6.1 Monthly Employment Utilization Reports. Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

3.2.6.2 Monthly Invoicing and Payments. Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple Authority fiscal years, and that work and compensation under this Contract is contingent on the Authority Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. Authority is not obligated to pay Contractor for any amounts not duly appropriated and authorized by Authority Council.

3.4 Price Adjustments. Based on Contractor's written request and justification, the Authority may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which Authority may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). Authority's approval of this request must be in writing.

ARTICLE IV SUSPENSION AND TERMINATION

4.1 Authority's Right to Suspend for Convenience. Authority may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. Authority must first give ten (10) days' written notice to Contractor of such suspension. Authority will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. Authority may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

4.2 Authority's Right to Terminate for Convenience. Authority may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs

otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to Authority all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges Authority of all of Authority's payment obligations and liabilities under this Contract with regard to the affected performance.

4.3 Authority's Right to Terminate for Default. Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by Authority that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

4.3.1 If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from Authority specifying the nature of the default, Authority may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

4.3.2 If Authority terminates this Contract, in whole or in part, Authority may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to Authority for any excess costs. Contractor shall also continue performance to the extent not terminated.

4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the Authority may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

4.5.1 Termination for Convenience. If the termination is for the convenience of Authority an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

4.5.2 Termination for Default. If, after Authority gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of Authority. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. Authority's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

4.6 Remedies Cumulative. Authority's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Authority may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Inspection and Acceptance. The Authority will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the Authority department shown in the shipping address of the Purchase Order or other duly authorized representative of Authority.

5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by Authority. Authority has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

5.4 Delivery. Delivery shall be made on the delivery day specified in the Contract Documents. The Authority, in its sole discretion, may extend the time for delivery. The Authority may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify Authority in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. Authority may terminate this Contract as provided herein if Authority, in its sole discretion, determines the delay is material.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, Authority may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by Authority. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between Authority and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless Authority has received, in a timely manner, documentary proof satisfactory to Authority of Contractor's inability to obtain materials, equipment, or labor, in which case Authority's

approval must be in writing.

5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify Authority in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. Authority reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the Authority.

5.7 Warranties. All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by Authority, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to Authority for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to Authority and that services, parts, and labor are available and provided to meet Authority's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to Authority instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets Authority's operational needs.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to Authority in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by Authority, the Mayor, or other representative of Authority is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by Authority under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of Authority, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within Authority or County of San Diego at any time during normal business hours, and as often as Authority deems necessary. If records are not made available within the Authority or County of San Diego, Contractor shall pay Authority's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the Authority.

5.10 Quality Assurance Meetings. Upon Authority's request, Contractor shall schedule one or more quality assurance meetings with Authority's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), Authority's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by Authority will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The Authority Auditor may, in his sole discretion, at no cost to the Authority, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Safety Data Sheets. If specified by Authority in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

5.13 Project Personnel. Except as formally approved by the Authority, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the Authority.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on Authority premises. Such badge must be worn at all times while on Authority premises. Authority reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the Authority.

General Contract Terms and Provisions

Revised: December 18, 2017

OCA Document No. 845794_6

Page 8 of 21

5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the Authority. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 Authority Premises. Contractor's employees and agents shall comply with all Authority rules and regulations while on Authority premises.

5.14.3 Removal of Employees. Authority may request Contractor immediately remove from assignment to the Authority any employee found unfit to perform duties at the Authority. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the Authority's web-based vendor registration and bid management system. The Authority may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the Authority, the Authority reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

6.1 Rights in Data. If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of Authority. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the Authority without prior written consent of Authority. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the Authority, without the prior written consent of the Authority.

6.2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to Authority all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

General Contract Terms and Provisions

Revised: December 18, 2017

OCA Document No. 845794_6

Page 9 of 21

shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the Authority or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the Authority, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

6.3 Contractor Works. Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

6.4 Subcontracting. In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the Authority, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a “works for hire” as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the Authority. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to Authority, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. Authority shall have the right to review any such agreement for compliance with this provision.

6.5 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, Authority shall have the right, in its sole discretion, to require Contractor to produce, at Contractor’s own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the Authority under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the Authority, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other

intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, Authority shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

6.6 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to Authority, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to Authority or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

6.7 Publication. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the Authority without prior written consent from the Authority.

6.8 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the Authority, and to defend, indemnify and hold harmless the Authority, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the Authority, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

ARTICLE VII INDEMNIFICATION AND INSURANCE

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to Authority), indemnify, protect, and hold harmless Authority and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

7.2.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, Authority requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Authority.

7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.5.1 Additional Insured Status. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

7.2.5.2 Primary Coverage. For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self- insurance maintained by Authority, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

7.2.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to Authority.

7.2.5.4 Waiver of Subrogation. Contractor hereby grants to Authority a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against Authority by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Authority has received a waiver of subrogation endorsement from the insurer.

7.2.5.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

7.3 Self Insured Retentions. Self-insured retentions must be declared to and approved by Authority. Authority may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self- insured retention may be satisfied by either the named insured or Authority.

7.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to Authority.

Authority will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.5 Verification of Coverage. Contractor shall furnish Authority with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by Authority before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. Authority

General Contract Terms and Provisions

Revised: December 18,2017

OCA Document No. 845794_6

Page 13 of 21

reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7.6 Special Risks or Circumstances. Authority reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

7.8 Excess Insurance. All policies providing excess coverage to Authority shall follow the form of the primary policy or policies including but not limited to all endorsements.

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Authority is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

ARTICLE VIII BONDS

8.1 Payment and Performance Bond. Prior to the execution of this Contract, Authority may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

8.1.1 Bond Amount. The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. Authority may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

8.1.2 Bond Term. The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to Authority.

8.1.3 Bond Surety. The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

8.1.4 Non-Renewal or Cancellation. The Bond must provide that Authority and

Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or material change to the Bond terms, Contractor shall provide Authority with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

8.2 Alternate Security. Authority may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

ARTICLE IX AUTHORITY-MANDATED CLAUSES AND REQUIREMENTS

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these Authority-mandated clauses throughout the duration of the Contract.

9.1.1 Drug-Free Workplace Certification. Contractor shall comply with Authority's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the Authority's ADA Compliance/Authority Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the Authority's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with Authority's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City of San Diego's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 Compliance Investigations. Upon Authority's request, Contractor agrees to provide to Authority, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by Authority pursuant to City of San Diego's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the Authority's Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City of San Diego's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at Authority owned, leased, or managed property, or in performance of services and activities on behalf of Authority regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing City-wide programs and activities designed to prevent and reduce storm water pollution within Authority boundaries as adopted by the Authority Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City of San Diego facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the

services to minimize any negative impact to the storm water collection system and environment.

Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.8 Product Endorsement. Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to Authority as a user of a good or service will require the prior written approval of the Mayor.

9.1.9 Business Tax Certificate. Unless the Authority Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the Authority before a Contract is executed.

9.1.10 Equal Pay Ordinance. Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance throughout the duration of the Contract.

9.1.10.1 Contractor and Subcontract Requirement. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Contractor shall require subcontractors performing work for contractor under their contract with the Authority to certify compliance with the Equal Pay Ordinance in their written subcontracts.

9.1.10.2 Notice Requirement. Contractor must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. Authority may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon Authority's request, Contractor shall submit the necessary documents to Authority.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

10.3 Contractor's Financial or Organizational Interests. In connection with any task,

Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring Authority Employees. This Contract shall be unilaterally and immediately terminated by Authority if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a Authority officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and Authority shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

11.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though Authority's recommendation of settlement may be subject to the approval of the Mayor and Authority Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the Authority under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon Authority's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

12.2 Compensation for Mandatory Assistance. Authority will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse Authority for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing Authority with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

ARTICLE XIII MISCELLANEOUS

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

13.2 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without Authority's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the Authority's sole discretion. In no event shall any putative assignment create a contractual relationship between Authority and any putative assignee.

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of Authority. Any provisions of this Contract that may appear to give Authority any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of Authority concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of Authority or Contractor shall be deemed to be both covenants and conditions.

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to Authority for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

13.7 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

13.8 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

13.9 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

13.10 No Waiver. No failure of either Authority or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

13.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of Authority and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

13.15 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of Authority, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of Authority. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by Authority; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by Authority.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Authority contract numbers and contracting offices for all Authority contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than Authority and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of Authority in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of Authority in its governmental or regulatory capacity.