

Request for Proposals

No. 23-005

For

**Online Marketplace Services for Residential Energy Efficient Products and
Smart Home Devices**

On Behalf of

Orange County Power Authority (OCPA)

Issue Date: Friday, May 5, 2023

Response Deadline: 5:00 p.m. on Monday, May 22, 2023

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1. GENERAL INFORMATION

A. STATEMENT OF INTENT

This Request for Proposals (RFP) seeks a firm to provide an online marketplace service for residential energy efficient products and smart home devices for Orange County Power Authority (OCPA).

B. BACKGROUND

Orange County Power Authority (OCPA) is the electricity provider for the cities of Buena Park, Fullerton, Huntington Beach, and Irvine all located with the boundary of Orange County. OCPA began service to customers in 2022 serving approximately 243,000 customer accounts and 2,700 GWh of annual load. For more information, please visit OCPA's website at www.ocpower.org.

C. RFP PROCESS

OCPA intends to procure the services in this RFP in a manner that maximizes the quality of services while also maximizing the value to OCPA and, by extension, the customers of OCPA. Proposers must be able to show that they are capable of performing the services requested either within a single company or in a team approach. Such evidence includes, but is not limited to, the respondent's demonstrated competency and experience in delivering services of a similar scope as well as the local availability of the proposer's personnel, press and other professional relationships, and other requisite resources that will be needed throughout this engagement.

2. SCOPE OF WORK

Vendor will create and manage a geo-targeted, Utility-branded online marketplace platform with a dedicated URL address, hosted by a service furnished and operated by Vendor to support OCPA objectives linked to overall program strategy of rebate processing, energy savings generation, and customer engagement. OCPA will retain all rights to the dedicated URL address.

The ***Residential Product Marketplace Platform*** will include at a minimum but not be limited to the following categories: smart thermostats, power strips, smart plugs, LED bulbs, and home energy monitors.

The branding will include the OCPA logo and brand colors, subject to OCPA approval before launch. Consumer-facing information and services on the site will include:

- Product listing for products in the selected categories for sale through online and/or brick and mortar stores.
- Rebate or incentive information from OCPA's programs, with an email opt-in for customers that

will lead to the incentive redemption described below.

- Search of all currently available products based on product name, brand, product features, affordability and other categories deemed necessary by OCPA. Each search category will be listed on product information pages.
- Mobile and tablet compatible versions of website (responsive design), accessed through the customer's mobile web browser.
- Additional products may be listed on an informational basis only.
- Quality testing before platform implementation and performance checks will be performed on a pre-described basis.
- Allow space for advertising other OCPA programs.

DIGITAL ADVERTISING CAMPAIGN

Vendor will create and implement a digital marketing/advertising program to acquire OCPA customers for the incentivized products. OCPA will have the right to review and approve all advertising templates and/or materials developed by Vendor prior to implementation. Vendor will:

- Place keyword advertisements in search results and on websites using behavioral as well as context targeting.
- Create and maintain keyword list and ads.
- Create banner ads for online use utilizing OCPA's logo and brand colors.

INCENTIVE DESIGN

Vendor will participate in the design and marketing of new types of incentives, as approved by OCPA. Vendor will:

- Determine target market for new incentives using product analytics. Vendor will share its methodology with OCPA upon request.
- Calculate potential savings to determine cost-effectiveness of program updates.
- Implement new, temporary or seasonal program updates or categories using criteria provided by OCPA.
- Ensure purchase limits of new, temporary or seasonal products will remain consistent with program terms and conditions.
- Provide OCPA with metrics relating to program participation. Reporting criteria, cadence, and format will be determined by OCPA.

INCENTIVE PROCESSING

Vendor will implement a redemption and payment program including:

- Collection of the customer's email address from the customer. The address will be stored securely and will not be shared for any purpose other than use in this program.
- Collection of proof of purchase, name and service address from the customer. All data will be stored securely and will not be shared for any purpose other than use in this program.
- Validation of customer-submitted information against pre-defined criteria as provided by OCPA

determine whether the customer or product qualifies for an incentive. Qualifiers required for incentives will be provided by OCPA.

- Review of previously submitted incentives against all past claims associated with customer's service address to prevent duplication.
- Validation will begin within 24 hours of inquiry and will complete the initial validation no later than ten (10) business days after receipt of inquiry. Vendor will communicate with customers to resolve issues related to incentive redemption.
- Communicate with the customer as necessary regarding next steps in the redemption process or if the inquiry does not meet incentive criteria.
- Reporting of metrics related to the issuing of incentives. Reporting criteria, cadence, and format will be determined by OCPA.

ONLINE PURCHASING

Vendor will establish an integrated direct-sales application on program website, allowing validated customers with an active service account to purchase OCPA approved products with an instant rebate applied at the time of purchase. This direct-sales application will include:

- Purchased products through this direct-sales application will follow previously described validation process for incentives.
- Purchase limits of approved products will remain consistent with program terms and conditions.
- A dedicated toll-free telephone number and email address to provide customer support relating to product returns or other inquiries regarding their purchases.

CUSTOMER SUPPORT SERVICES

Vendor will establish customer support services, including an email address and a toll-free telephone number, to assist customers with the incentive process. Vendor will provide:

- Customer support on all business days in the year, excluding major holidays.
- Live phone support during regular business hours for inbound calls from customers regarding questions on products, to request assistance with incentive applications, or inquiries on the status of submitted applications.
- A dedicated voicemail line for customers to leave message during non-business hours and major holidays. All voice messages from customers will be returned within 24 hours, excluding major holidays and weekends.
- A dedicated email address for customers with questions on products, to request assistance with incentive applications, the status of submitted applications, or other general inquiries regarding their incentives or accounts.
- Customer survey for each customer provided email or telephone assistance within two (2) business days of inquiry.
- Follow up communication with the customer to confirm the energy savings and encourage future energy efficient purchases.
- Metrics of telephone calls or emails received, topics of calls or emails, and customer satisfaction ratings. Additional metrics may be requested by OCPA.

REPORTING AND INVOICING

Vendor will provide OCPA with an online dashboard that will allow OCPA to monitor the progress of the program and will periodically meet with OCPA to assess progress and make program adjustments if necessary.

- At OCPA's request, Vendor will provide any data it collects in addition to data provided through the online dashboard.
- Information collected through the online dashboard will include total number of impressions, sessions, users, products viewed, average pages per session, incentives redeemed, energy savings from products redeemed, among other metrics. Additional metrics regarding customer acquisition, incentive processing times, among others may be established by OCPA.
- Vendor will provide quarterly business reviews to discuss progress and results of the online platform, program performance metrics and customer surveys.
- Additional metrics in different formats such as Excel, Access, etc. may be requested by OCPA.

TERMS OF SERVICE

The respondent recommended for award under this solicitation will be subject to the terms and conditions of the OCPA Master Professional Services Agreement ("MPSA"). A pro forma copy of the MPSA has been attached hereto for reference as "Attachment A"

3. GENERAL TERMS AND CONDITIONS

- A. Confidentiality.** All data and information obtained from or on behalf of OCPA by the winning contractor(s) and its agents in this RFP including reports, specifications and data shall be treated by the contractor and its agents as confidential. The contractor and its agents shall not disclose or communicate this information to a third party or use it in advertising, publicity or in another job unless written consent is obtained from OCPA. Generally, each proposal and all documentation, including financial information, submitted by a Proposer to OCPA is confidential until a contract is awarded, when such documents become public record under State and local law, unless exempted under California Public Records Act (CPRA).
- B. California Public Records Act (CPRA).** All proposals become the property of OCPA which is a public agency subject to the disclosure requirements of the CPRA. If proprietary information is contained in documents submitted to OCPA and the Proposer claims that such information falls within one or more CPRA exceptions, Proposer must clearly mark such information 'Confidential and Proprietary' and identify the specific lines containing the information. Although the CPRA recognizes that certain confidential information or other exempt records may be protected from disclosure, OCPA is not in a position to establish that the information that a Proposer submits is exempt. In the event of a request for such information, OCPA will make its best efforts to provide notice to Proposer prior to such disclosure. **DO NOT MARK YOUR ENTIRE PROPOSAL CONFIDENTIAL.** Only mark those elements that you believe contain proprietary information if necessary. OCPA shall not, in any way, be liable or responsible for any resulting disclosure of any such record or any parts thereof pursuant to the CPRA or otherwise by law.

- C. Contract Pricing and Compensation.** The total value of this contract is not to exceed \$400,000. This amount includes all rebates and/or discounts provided to OCPA customers. The schedule of compensation will be mutually negotiated. Responders should clearly identify proposed contract duration(s) and associated costs within their proposals. The prices quoted for services must be valid for the entire period indicated unless otherwise conditioned by the proposer in its proposal.
- D. Contract Extension.** The term of the contract may be extended by mutual consent for an additional period to be negotiated six months prior to the end of the contract. In no case shall the term of a contract entered into pursuant to this RFP, including any extensions, exceed five (5) years.
- E. Incurring Cost.** This RFP does not commit OCPA to award or pay any cost incurred in the submission of the proposal.
- F. Contractor Invoices.** The Contractor shall deliver a monthly invoice to OCPA with detailed expenses to ensure that expenditures are not-over extended relative to the agreed upon budget and compensation.
- G. Addenda.** OCPA reserves the right to revise the RFP documents. Any changes to the requirements will be made by written addenda to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any contract resulting from this RFP. Addenda will be posted on the OCPA website (www.ocpower.org). It is the responsibility of the Proposers to check the OCPA website to determine if any addenda have been issued.
- H. Insurance.** Proposers should be aware of the insurance requirements for contract award. A certificate of insurance and other required insurance documentation must be provided by the successful Proposer(s) prior to contract execution in accordance with the executed contract.
- I. Ownership of Materials.** All original plan documents and other materials prepared by or in possession of the Contractor as part of the work or services under these specifications shall become the permanent property of OPCA and shall be delivered to upon demand.
- J. Release of Reports and Information.** Any reports, information, data, or other material given to, prepared by, or assembled by the Contractor as part of the work or services under these specifications shall be the property of OPCA and shall not be made available to any individual or organization by the Contractor without the prior written approval of OCPA.
- K. Copies of Reports and Information.** If OCPA requests additional copies of reports, specifications, or any other material in addition to what the Contractor is required to furnish in limited quantities as part of the work or services under these specifications, the Contractor

shall provide such additional copies as are requested, and OPCA shall compensate the Contractor for the costs of duplicating of such copies at the Contractor’s direct expense.

- L. Professional Services Agreement.** The final Scope of Work, pricing, and other terms negotiated between OPCA and the successful Proposer shall be set forth in a Professional Service Agreement (“Agreement”) executed by and between OPCA and the successful Proposer. A copy of the Agreement is attached hereto as **Attachment A**.

- M. Exceptions Certification to this RFP.** In submitting a proposal in response to this RFP, Proposer is certifying that it takes no exceptions to this RFP including, but not limited to, the Agreement. If any exceptions are taken, such exceptions must be clearly noted in the proposal and may be reason for rejection of the proposal. As such, Proposer is directed to carefully review the attached Agreement and, in particular, the insurance and indemnification provisions therein.

- N. Amendments to Proposals.** No amendment, addendum or modification will be accepted after a proposal has been submitted to OPCA. If a change to a proposal that has been submitted is desired, the submitted proposal must be withdrawn and the replacement proposal submitted to OPCA prior to the proposal due date and time.

4. REQUEST FOR PROPOSALS PROCEDURE

A. TENTATIVE SCHEDULE OF EVENTS

Event	Date
Release Request for Proposals	May 5, 2023
Questions Submitted to OPCA	May 12, 2023
OPCA Posts Response to Questions	May 16, 2023
Proposal Deadline	May 22, 2023
Contractor Recommendation/Board Approval	June 21, 2023

B. TENTATIVE SCHEDULE OF EVENTS

The RFP response will be submitted electronically to BidNetDirect.com by 5:00 pm May 22, 2023.

Questions about this RFP must be received by 5:00 pm May 12, 2023 via BidNet Direct. OPCA staff will post responses on BidNet Direct no later than May 16, 2023. When submitting questions, please specify which section of the RFP you are referencing and quote the language that prompted the question. Questions may address issues or concerns that the evaluation criteria and/or business requirements would unfairly disadvantage Proposer or, due to unclear instructions, may result in OPCA not receiving the best possible responses from Proposer.

All responses must be received by the stated date and time in order to be considered for award. OPCA will not be responsible for and may not accept late proposals due to slow internet

connection, or for any other electronic failure (including but not limited to information transmission and internet connectivity failures).

By submitting a proposal, each proposer certifies that its submission is not the result of collusion or any other activity which would tend to influence the selection process directly or indirectly. The proposal will be used to determine the proposer's capability of rendering the services to be provided. The failure of a proposer to comply fully with the instructions in this RFP may eliminate its proposal from further evaluation as determined in the sole discretion of OCPA. OCPA reserves the sole right to evaluate the contents of proposals submitted in response to this RFP and to select a contractor, if any.

Proposals received late will not be opened or given any consideration for the proposed services unless doing so is deemed to be in the best interest of OCPA, as determined in the sole discretion of OCPA.

C. PROPOSAL EVALUATION

Evaluations will be based upon the information provided in the proposals and such other information requested by OCPA as deemed appropriate by OCPA. Proposals must provide clear, concise information and sufficient detail to enable reviewers/evaluators to evaluate the responsiveness and quality of the proposals to all RFP requirements. Proposals that fail to meet the RFP requirements may be rejected; however, OCPA may waive minor irregularities in proposals if so doing would be in the best interest of OCPA. OCPA reserves the right to request additional information from any/all respondents as part of the selection process.

Proposals will be evaluated based on the following non-exhaustive factors.

	PROPOSAL EVALUATION CRITERIA	POINTS POSSIBLE
1.	<p>Overall Experience of Company and Demonstrated Results</p> <p>Our evaluation will include an assessment of the history of your company, your experience as it relates to the requirements within this RFP, evidence of past performance, quality and relevance of past work, references, and related items.</p>	35
2.	<p>Strategic Thinking/Planning Approach</p> <p>Overall approach and strategy described/outlined in the proposal and firm capacity to perform scope described in this RFP.</p>	25
3.	<p>Budget Approach/Cost Effectiveness</p> <p>Effective and efficient delivery of services. Allocation between the Marketplace and the amount of the contract that is available as rebates/discounts to OCPA</p>	40

	customers.	
	TOTAL	100

5. PROPOSAL SUBMISSION REQUIREMENTS

A. COVER LETTER

The cover letter should be brief (two pages maximum) and provide a short synopsis of the Proposer’s approach to completing tasks and delivering project products and services. Describe how the delivery of services will be provided.

B. TABLE OF CONTENTS

This section should include a clear identification of the materials by section and page numbers.

C. PROPOSER QUALIFICATIONS AND EXPERIENCE

Respondent shall clearly identify project participants and management team, including:

- Describe your firm's experience as may be applicable to this RFP, your organizational structure, management qualifications, and other contract related qualifications, including number of years firm has been in business.
- Specify key employees and describe their qualifications, experience and duties related to this RFP, including the office location(s) where work will be performed, in addition to the physical street address referenced above.
- Provide a commitment statement for the retention and use of key employees as proposed, their availability to initiate and sustain the proposal, as well as planned supplemental employees if key personnel are not available to assure project delivery.
- State whether Respondent will use subcontractors to perform services pursuant to the contract. Should the use of subcontractors be offered, the Respondent shall provide the same assurances of competence for the subcontractor, plus the demonstrated ability to manage and supervise the subcontracted work. Subcontractors shall not be allowed to further subcontract with others for work. The provisions of any contract resulting from this RFP shall apply to all subcontractors in the same manner as to the Respondent.
- Respondent shall indicate any and all pending litigation that could affect the viability of Respondent’s proposal, continuance of existing contracts, operation or financial stability.

D. PROPOSAL

Proposals must include a description of the proposed project or program, how it meets (or does not meet) each of the objectives of this RFP, and a detailed description addressing all of the Areas of Interest. Respondents may also include additional services, products, tasks, task elements and/or functions that may not be part of or included in the RFP, but are deemed by the Respondent to be pertinent and potentially valuable to OCPA. OCPA will have full

discretionary authority to consider, accept and/or reject without cause such supplemental information that is not directly requested, included in or made part of the RFP.

E. SCHEDULE

Please include a detailed schedule with lists milestones and estimated completion dates of each of the tasks and sub-tasks listed in the Scope of Work.

F. PROPOSED BUDGET AND COST OF SERVICE(S)

Pricing in all Proposals should be made based on good faith estimates of the requirements defined in this RFP. Please include all necessary details of specific examples or estimates of the fees, labor rates and service charges. Describe how the fees, rates or charges will be determined. Respondents shall also be prepared to provide a breakdown of the applicable overheads and fringe benefit costs that are part of any labor rates and other direct costs associated with the services to be performed.

G. COMPANY OVERVIEW

Please provide the following for your company:

- Official registered name (Corporate, D.B.A., Partnership, etc.), Dun & Bradstreet Number, Primary and secondary Standard Industry Classification (SIC) numbers, address, main telephone number, and toll-free number(s).
- Primary key contact name, title, address (if different from above), direct telephone number(s).
- Brief history, including year established, relevant financial information and relevant experience with CCAs.
- Provide litigation history for any claims filed by your firm or against your firm related to the provision of any services in the last five (5) years.

H. REFERENCES

Identify existing related or relevant projects or programs which Respondent developed and/or operates that would demonstrate Respondent's capabilities in this area. Describe relevant program development and implementation experience, approach, and provide a list of references for similar projects completed.

I. CERTIFICATES OF INSURANCE FOR THE FOLLOWING COVERAGES

- Commercial General Liability – for bodily injury, property damage, and personal injury \$1,000,000 – each occurrence \$2,000,000 – in aggregate
- Business Automobile Liability – “any auto” (Company Vehicles) – At least \$1,000,000

- If no Company Vehicles: Personal Automobile Liability – “any auto” (Personal Vehicles) – At least \$500,000
- Worker’s Compensation and Employer’s Liability (EPL) – injury or death, each accident At least \$1,000,000 (EPL not required for Sole Proprietor)

J. STATEMENT OF NO CONFLICT/ANTI-TRUST

Please provide a statement that describes how Proposer(s) will adhere to anti-trust and collusion laws while providing service to OCPA. Also provide a statement that confirms that Proposer(s) and any subconsultants responding to this RFP shall avoid organizational conflicts of interest which would restrict full and open competition in this procurement and subsequent procurements.

An organizational conflict of interest means that due to other activities, business units, relationships or contracts that Proposer(s) would be unable, or potentially unable, to render impartial assistance or advice to OCPA consistent with the requirements of California Government Code section 1090; or that a Proposer’s objectivity in performing the work identified in the Scope of Work is or might otherwise be impaired; or Proposers have an unfair competitive advantage.

6. OCPA RIGHTS

Any award of a contract resulting from this RFP will be based upon the most responsive Proposal whose offer will be the most advantageous to OCPA in terms of cost, functionality, effectiveness in meeting goals and objectives, and other factors as specified elsewhere in this RFP, as determined solely by OCPA decision makers. OCPA reserves the right to:

- a) Disqualify any and all Proposals that are not submitted in accordance with the required format described in this RFP
- b) Reject any and all Proposals submitted
- c) Request additional information
- d) Issue Addenda to this RFP
- e) Award all, part, or none of the work contemplated in this RFP
- f) Remedy errors in the RFP
- g) Cancel the entire RFP
- h) Issue a subsequent RFP
- i) Approve or reject the use of a particular subcontractor/supplier
- j) Negotiate with any, all, or none of the Proposers. If OCPA is unable to negotiate a final contract Terms and Conditions that are acceptable to OCPA, OCPA reserves the right to award the contract to another Proposer
- k) Accept other than the lowest priced Proposal
- l) Award a contract without interviews, discussions or negotiations
- m) Award a contract to one or more of Proposers

7. PROTESTS

Protest Contents: Proposer may protest a contract award if the Proposer believes that the award was inconsistent with OCPA policy or this RFP is not in compliance with law. A protest must be filed in writing with OCPA (email is not acceptable) within five (5) business days after receipt of notification of the contract award. Any protest submitted after 5:00 p.m. of the fifth business day after notification of the contract award will be rejected by OCPA as invalid and the Proposer's failure to timely file a protest will waive the Proposer's right to protest the contract award. The Proposer's protest must include supporting documentation, legal authorities in support of the grounds for the protest and the name, address and telephone number of the person representing the Proposer for purposes of the protest. Any matters not set forth in the protest shall be deemed waived.

OCPA Review: OCPA will review and evaluate the basis of the protest provided the protest is filed in strict conformity with the foregoing. OCPA shall provide the Proposer submitting the protest with a written statement concurring with or denying the protest. Action by OCPA relative to the protest will be final and not subject to appeal or reconsideration. The procedure and time limits set forth in this Section are mandatory and are the Proposer's sole and exclusive remedy in the event of protest. Failure to comply with these procedures will constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

8. REPORTING OF SUPPLIER DIVERSITY INFORMATION

Public Utilities Code Section 366.2(m) requires certain community choice aggregators, including OCPA, to annually submit to the California Public Utility Commission ("CPUC") a report regarding its procurement from women business enterprises ("WBEs"), minority business enterprises ("MBEs"), disabled veteran business enterprises ("DVBES"), and LGBT business enterprises ("LGBTBES"). Businesses may become certified WBEs, MBEs, DVBES, and LGBTBES through the CPUC Clearinghouse, which can be found here: www.thesupplierclearinghouse.com.

Proposers that are awarded the contract will be asked to voluntarily disclose their certification status with the CPUC Clearinghouse, as well as their efforts to work with diverse business enterprises, including WBEs, MBEs, DVBES, and LGBTBES.

OCPA will use that information solely for compliance with its reporting obligations under Public Utilities Code Section 366.2(m) and evaluation of OCPA's outreach and other activities consistent with applicable law. Pursuant to Article I, Section 31 of the California Constitution, OCPA shall not discriminate against or give preferential treatment to any individual or group based on race, sex, color, ethnicity, or national origin, except as otherwise permitted thereunder.

**ORANGE COUNTY POWER AUTHORITY
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“**Agreement**”) is made and entered into on [INSERT DATE], 20__, by and between ORANGE COUNTY POWER AUTHORITY, a California joint powers authority (“**Authority**”) and [INSERT NAME AND CORPORATE ORGANIZATION], a [REDACTED] Corporation (“**Consultant**”). Authority and Consultant are sometimes individually referred to as “**Party**” and collectively as “**Parties**.”

RECITALS

- A. Consultant desires to perform and assume responsibility for the provision of certain professional services required by Authority on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing [INSERT GENERAL DESCRIPTION OF SERVICES], is licensed in the State of California, and is familiar with the plans of Authority.
- B. Authority desires to engage Consultant to render such professional services for the [INSERT PROJECT THE SERVICES ARE FOR] (“**Project**”) as set forth in this Agreement.

AGREEMENT

1. Scope of Services and Term.

1.1 General Scope of Services. Consultant promises and agrees to furnish to Authority all labor and services and incidental and customary work necessary to fully and adequately supply assist the Authority the implementation services necessary for the Project (“**Services**”). The Services are more particularly described in Exhibit A attached hereto, and which are stated in the proposal to Authority. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

1.2 Term. The term of this Agreement shall be from [INSERT DATE] to [INSERT DATE], unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

2. Responsibilities of Consultant.

2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Authority retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees

of Authority and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit B attached hereto. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Authority shall respond to Consultant's submittals in a timely manner. Upon request of Authority, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of Authority.

2.4 Substitution of Key Personnel. Consultant has represented to Authority that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of Authority. In the event that Authority and Consultant cannot agree as to the substitution of key personnel, Authority shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to Authority, or who are determined by the Authority to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the Authority. The key personnel for performance of this Agreement are as follows:

[INSERT PERSONNEL]

2.5 Authority's Representative. Authority hereby designates the Chief Executive Officer, or designee, to act as its representative for the performance of this Agreement ("**Authority's Representative**"). Authority's Representative shall have the power to act on behalf of Authority for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than Authority's Representative, or designee.

2.6 Consultant's Representative. Consultant hereby designates **[INSERT NAME]**, or his or her designee, to act as its Representative for the performance of this Agreement ("**Consultant's Representative**"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

2.7 Coordination of Services. Consultant agrees to work closely with Authority staff in

the performance of Services and shall be available to Authority's staff, consultants and other staff at all reasonable times.

2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and sub- contractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from Authority, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subcontractors who is determined by Authority to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to Authority, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to Authority, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Authority, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

2.10 Insurance.

2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to Authority that it has secured all insurance required under this section, in a form and with insurance companies acceptable to Authority. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to Authority that the subcontractor has secured all insurance required under this section.

2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant

shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

2.10.3 Professional Liability. Consultant shall procure and maintain, and require its subcontractors to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by Authority to add the following provisions to the insurance policies:

(A) General Liability.

(i) Commercial General Liability Insurance must include coverage for (1) Bodily Injury and Property Damage; (2) Personal Injury/Advertising Injury; (3) Premises/Operations Liability; (4) Products/Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Consultants Coverage.

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by

one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(iii) The policy shall give Authority, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(iv) The additional insured coverage under the policy shall be “primary and non-contributory” and will not seek contribution from Authority’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) Authority, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects Authority, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant’s scheduled underlying coverage. Any insurance or self-insurance maintained by Authority, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant’s insurance and shall not be called upon to contribute with it in any way.

(C) Workers’ Compensation and Employers Liability Coverage.

(i) Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and Consultant will comply with such provisions before commencing work under this Agreement.

(ii) The insurer shall agree to waive all rights of subrogation against Authority, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Defense costs shall be payable in addition to the limits set forth hereunder. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to Authority, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

(i) The limits of insurance required in this Agreement may be

satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Authority (if agreed to in a written contract or agreement) before Authority's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(ii) Consultant shall provide Authority at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to Authority at least ten (10) days prior to the effective date of cancellation or expiration.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by Authority, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(v) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Authority has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Authority will be promptly reimbursed by Consultant or Authority will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Authority may cancel this Agreement. Authority may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(vi) Neither Authority nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to Authority, its directors, officials, officers, employees, agents and volunteers.

2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by Authority. Consultant shall guarantee that, at the option of Authority, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Authority, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, licensed to do business in California, and satisfactory to Authority.

2.10.8 Verification of Coverage. Consultant shall furnish Authority with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to Authority. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf and shall be on forms provided by Authority if requested. All certificates and endorsements must be received and approved by Authority before work commences. Authority reserves the right to require complete, certified copies of all required insurance policies, at any time.

2.10.9 Subcontractor Insurance Requirements. Consultant shall not allow any subcontractors to commence work on any subcontract until they have provided evidence satisfactory to Authority that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors shall be endorsed to name Authority as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, Authority may approve different scopes or minimum limits of insurance for particular subcontractors.

2.10.10 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3. Fees and Payments.

3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit C, attached hereto. The total compensation shall not exceed [INSERT CAP] without written approval of Authority's Board of Directors. Extra Work may be authorized, as described below, and, if authorized, said Extra Work will be compensated at the rates and manner set forth in this

Agreement.

3.2 Payment of Compensation. Consultant shall submit to Authority a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Authority shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by Authority.

3.4 Extra Work. At any time during the term of this Agreement, Authority may request that Consultant perform Extra Work. As used herein, “**Extra Work**” means any work which is determined by Authority to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from Authority’s Representative.

4. **Accounting Records.** Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of Authority during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

5. **General Provisions.**

5.1 Termination of Agreement.

5.1.1 Grounds for Termination. Authority may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to Authority, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, Authority may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

5.1.3 Additional Services. In the event this Agreement is terminated in whole or

in part as provided herein, Authority may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

Authority:

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

5.3 Ownership of Materials and Confidentiality.

5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for Authority to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“**Documents & Data**”). Consultant shall require all subcontractors to agree in writing that Authority is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by Authority. Authority shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at Authority’s sole risk.

5.3.2 Intellectual Property. In addition, Authority shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media (“**Intellectual Property**”) prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

Authority shall have and retain all right, title and interest in Intellectual

Property developed or modified under this Agreement whether or not paid for wholly or in part by Authority, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of Authority.

Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the Authority.

All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

Authority further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

5.3.3 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of Authority, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use Authority's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Authority.

5.3.4 Infringement Indemnification. Consultant shall defend, indemnify and hold Authority, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Authority of the Documents & Data, including any method, process, product, or concept specified or depicted.

5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

5.6 Indemnification.

5.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of Authority's choosing), indemnify and hold the Authority, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Authority, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Authority or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Authority and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the Authority, its officials, officers, employees, agents, or volunteers. This section shall survive any expiration or termination of this Agreement.

5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County, California.

5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

5.10 Authority's Right to Employ Other Consultants. Authority reserves right to employ other consultants in connection with this Project.

5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either

directly or by operation of law, this Agreement or any interest herein without the prior written consent of Authority. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to Authority include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Authority shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Authority, during the term of his or her service with Authority, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

5.19 Equal Opportunity Employment and Subcontracting. Consultant represents that it is an equal opportunity employer and it 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 applicants, employees, subcontractors, vendors,

or suppliers. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Further, Consultant shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.

5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation, or to undertake self- insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

5.23 Subcontracting. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of Authority. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have made and executed this Agreement as of the date first written above.

**ORANGE COUNTY POWER
AUTHORITY**

By : _____
Name: _____
Title: _____

By : _____
Name: _____
Title: _____

ATTEST:

Secretary, Authority Board of Directors

APPROVED AS TO FORM:

General Counsel

**A corporation requires the signatures of two corporate officers.*

One signature shall be that of the Chairman of Board, the President or any Vice President, and the second signature (on the attest line) shall be that of the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of such corporation.

If the above persons are not the intended signators, evidence of signature authority shall be provided to Authority.

EXHIBIT A
SCOPE OF SERVICES

[INSERT]

EXHIBIT B

SCHEDULE OF SERVICES

[INSERT]

EXHIBIT C

COMPENSATION BILLING RATES

<u>Name</u>	<u>Title</u>	<u>Hourly Rate</u>
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