



**REQUEST FOR PROPOSALS
EXECUTIVE RECRUITMENT SERVICES**

**RESPONSES DUE by 5:00 p.m. on May 16, 2023 via
www.bidnetdirect.com**

**For complete information regarding this project, see
RFP posted at
<https://www.bidnetdirect.com/california/orange-county-power-authority> or contact OCPA at the email
address listed below.**

Thank you for your interest!

SHalligan@ocpower.org

I. INTRODUCTION

Orange County Power Authority (“OCPA”) is requesting proposals from qualified firms to seek out and recruit highly qualified candidates to serve as the Chief Executive Officer (CEO) of OCPA which will include researching the availability of suitable qualified candidates and assisting in identifying a shortlist of qualified candidates who match the requirements of the Board of Directors. The selected executive search firm may act as an intermediary to contact the individual(s). The executive search firm may also carry out or assist with initial screening of the candidates, and completing negotiations of an employment contract (“Services”) as more particularly described below.

This Request for Proposals (“RFP”) describes the requested Services, the selection process, and the minimum information that must be included in proposals. Failure to submit information in accordance with the RFP requirements and procedures may be cause for disqualification. OCPA reserves the right to: (1) reject any and all proposals; (2) waive proposal deviations, irregularities or omissions at its sole discretion; or (3) disqualify any proposal that contains false or misleading information.

II. PURPOSE

OCPA is seeking qualified proposals from executive recruitment service providers to provide assistance in identifying and hiring a Chief Executive Officer by Summer/Fall 2023. The scope of the Services is generally described as follows, and further described in this RFP:

The selected proposer will assist the Board of Directors and its ad hoc executive recruitment committee in locating, interviewing and evaluating potential candidates for the position of Chief Executive Officer. The selected proposer will meet with the Board of Directors and/or the ad hoc committee, to determine the professional qualities, experience and skills desirable in a Chief Executive Officer candidate. The selected proposer will develop an effective recruitment process, and identify potential candidates through advertising, networking and other methods. The selected proposer will assist the Board of Directors and ad hoc committee in conducting screening and initial interviews of potential candidates, evaluating each candidate, and providing a written assessment of each candidate. The selected proposer will meet with and assist the Board of Directors and/or the ad hoc committee and present suitable candidates for consideration.

III. BACKGROUND

Orange County Power Authority (OCPA) is the community choice aggregation (CCA) electricity provider for the cities of Buena Park, Fullerton, Huntington Beach, and Irvine, all located within the boundaries 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.

OCPA is governed by a Board of Directors appointed by the governing bodies of each of OCPA’s member agencies. The Board of Directors is charged with establishing OCPA policies and managing and conducting the business and affairs of OCPA.

The OCPA Joint Powers Agreement provides that the Chief Executive Officer is the chief administrative officer of OCPA and has the powers and duties delegated and/or assigned to the CEO by duly adopted action of the Board. The Chief Executive Officer may enter into and execute power purchase agreements and other contracts in accordance with the criteria and policies established by the Board. The Chief Executive Officer also has authority to employ and discharge all employees and to promulgate specific rules and regulations for such employees, subject to the policies approved by the Board. The Chief Executive Officer is appointed by and serves at the pleasure of the Board.

IV. SCOPE OF SERVICES

The selected consultant will be required to provide the following services:

- Become familiar with OCPA's Chief Executive Officer's job description and provide input on the job description (See Exhibit "A").
- Execute an Agreement for Professional Services (See Exhibit "B").
- Prepare and distribute recruitment brochure.
- Meet with the Board of Directors or ad hoc committee regarding the selection of a new Chief Executive Officer.
- Meet with the Executive Management Team regarding the selection of a new Chief Executive Officer.
- Coordinate and assist with review of applications for the Chief Executive Officer position by the Board of Directors, ad hoc committee, and/or any other reviewers identified by the Board of Directors.
- Assist with identifying at least three (3) qualified candidates to be interviewed by the Board for the Chief Executive Officer position.
- Consult with General Counsel on legal issues and documents related to the Chief Executive Officer's employment contract.
- Prepare a time schedule for the completion of services.

V. PRE-SUBMITTAL ACTIVITIES

All communications relating to the RFP are to be directed in writing, by email, to:

Steven Halligan, Management Analyst
Orange County Power Authority
SHalligan@ocpower.org

VI. SUBMISSION REQUIREMENTS

One electronic copy of the proposal including the Cost Estimate shall be submitted [via www.bidnetdirect.com](http://www.bidnetdirect.com) and must be received no later than 5:00 PM Pacific Daylight Time on May 16, 2023.

Proposals should be limited to 25 written pages (including references, resumes and/or professional curriculum vitae) providing a straightforward and concise presentation adequate to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of contents. Proposals must be signed by an individual authorized to execute legal documents on behalf of the proposer.

Failure to comply with the requirements of the RFP may result in disqualification. Proposals and/or modifications received subsequent to the hour and date specified above will not be considered. Modifications of proposals received after the deadline specified above will not be considered. Proposals should be concise, well organized, and demonstrate the proposer's qualifications and experience applicable to the services requested.

VII. EVALUATION PROCESS AND SELECTION CRITERIA

Proposals will be evaluated by the Ad Hoc Executive Recruiter Evaluation Committee, based on the information submitted in accordance with this section. At a minimum, proposals submitted in response to this RFP shall include the following:

- A. Executive Summary.** Provide a brief overview of the entire proposal describing the highlights of the proposal. In addition to the proposal overview, please provide the following basic description information regarding the proposer:
1. Legal name and address of proposer;
 2. Legal form of proposer (partnership, corporation, joint venture, etc.). If joint venture, identify the members of the joint venture and provide all information required within this section for each member;
 3. Address(es) of office(s) involved in providing the Services; and
 4. Name, title, address, and telephone number of the person to contact concerning the proposal and the proposed lead staff person for providing the Services.
- B. Proposer's Qualifications.** OCPA will accept proposals only from "qualified" proposers. To assist OCPA in comparing and selecting a proposer, proposals should address the proposer's qualifications, experience, strategy, method, and depth of capabilities and support for timely providing the following as part of the Services:
1. Developing a comprehensive profile of the ideal candidate, based on information obtained in meetings with OCPA Board of Directors, ad hoc committee, and others as directed;
 2. Recommending revisions to the Chief Executive Officer job description, if requested;
 3. Designing and implementing an effective recruitment and search strategy that ensures a highly qualified and diverse candidate pool;

4. Working with the OCPA Board of Directors and/or ad hoc committee to:
 - (a) implement a screening process that narrows the field of candidates to those that most closely match the needs of OCPA; and
 - (b) provide OCPA Board of Directors with detailed information about the background and experience of the top candidates from interviews and comprehensive reference checks;
5. Assisting OCPA Board of Directors in the interview and selection process;
6. Providing an independent evaluation and assessment of the candidates; and
7. Assisting OCPA Board of Directors in conducting legally compliant background checks and negotiating an acceptable compensation and benefits package with the selected candidate, as requested.

C. Required Information. In addition, proposals must contain the following information:

1. **INDIVIDUAL QUALIFICATIONS.** The individual qualifications of the persons proposed to provide the Services, with particular attention to experience with recruiting executives for public agencies, CCAs or other entities providing utility services similar to OCPA.
2. **FEE PROPOSAL.** The Flat Fee for the services or a Fee Estimate estimating the number of hours required to provide the Services, the billing rates of the persons proposed to provide the Services, and any other estimated costs including travel, overhead, printing, administrative and other charges for completing the work. Proposal should specify billing procedures and method of payment.
3. **REFERENCES.** A list of current references and recent clients for the persons proposed to provide the Services, with particular attention to their success rate in placing Chief Executive Officers with public agencies or other entities providing utility services similar to OCPA.
4. **OTHER INFORMATION.** Proposals should also include information regarding the proposer's method for conducting background checks of identified candidates and retention rates for executives identified and placed as a result of the proposers services.
5. **ACKNOWLEDGEMENT OF AGREEMENT AND STATEMENT OF EXCEPTIONS.** The proposer shall certify that it takes no exception(s) to this RFP, including, but not limited to, OCPA's Standard Professional Services Agreement, included as Attachment B. If the proposer does take exception(s) to any portion of the RFP and/or Standard Professional Services Agreement, the specific exception(s) shall be identified and explained. OCPA is not required to negotiate with proposer or to accept any items to which any proposer takes exception.
6. **ADDENDA TO THIS REQUEST FOR PROPOSALS.** The proposer shall confirm in its proposal the receipt of all addenda issued to this RFP. Copies of the actual addenda do not need to be included in proposals.

VIII. CONFIDENTIALITY MATTERS

Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, proposals submitted in response to this RFP may be held as confidential by OCPA and shall not be subject to disclosure under the California Public Records Act (Cal. Government Code § 7920.000 et seq.) until after either OCPA and the successful proposer have completed negotiations and entered into an Agreement or OCPA has rejected all proposals. All correspondence with OCPA including responses to this RFP will become the exclusive property of OCPA and will become public records under the California Public Records Act. Furthermore, and notwithstanding any other provision of this RFP, OCPA will have no liability to the proposer or other party as a result of any public disclosure of any proposal or the Agreement.

If a proposer believes that a portion of its proposal would be exempt from disclosure under the California Public Records Act, the proposer must mark it as such and state the specific provision in the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if a proposer submits trade secret information, the proposer must plainly mark the information as “Trade Secret” and refer to the appropriate section of the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, OCPA may not be in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked “Confidential”, “Trade Secret” or “Proprietary”, OCPA will endeavor to provide proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction at the proposer’s sole expense.

IX. SELECTION SCHEDULE

OCPA anticipates the process for selecting a proposer and awarding the agreement will be according to the following schedule (dates not firm):

Event	Date
Advertise and Issue RFP:	April 25, 2023
Proposal Due Date:	May 16, 2023, by 5:00pm PDT
Oral Interviews (if requested):	May 23, 2023
Agreement Award (subject to change):	May 31, 2023

X. SELECTION PROCESS

- A. Based upon the proposals submitted, the Ad Hoc Executive Recruiter Evaluation Committee will evaluate and identify the firm(s) deemed to be the most highly qualified to perform the required services and make a recommendation to the Board or Chief Executive Officer for approval of a professional services agreement. A limited number of firm may be invited to interview and/or present their qualifications and respond to questions from OCPA. The Ad Hoc Executive Recruiter

Evaluation Committee may, in its sole discretion, recommend any firm based upon its assessment of the qualifications. After identification of a recommended proposer, OCPA will enter into negotiations with the selected firm to finalize the scope of work, schedule, terms and conditions, technical specifications, and price. If OCPA is unable to reach an acceptable agreement with the recommended proposer, OCPA will terminate negotiations with the recommended proposer and may begin negotiations with another proposer.

- B. After negotiating a proposed agreement that is fair and reasonable, it is anticipated that OCPA will enter into an agreement with the selected proposer to commence the executive search services.

XI. EVALUATION CRITERIA

The Ad Hoc Executive Recruiter Evaluation Committee will review proposals received in response to this RFP based upon, but not limited to, the following criteria:

- Prior experience in similar executive searches;
- Depth of capabilities and support;
- Qualifications of principal staff;
- Ability to provide the requested services in a timely manner;
- Proposed cost for the scope of work (both hourly rates and/or flat fee);

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.	Experience in the areas identified in the “Proposer’s Qualifications” and “Individual Qualifications,” including previous public agency, utility, and CCA experience	60
2.	Depth of capabilities and support and ability to provide the requested services in a timely manner	20
3.	Commercial Terms (cost/rates) and Compliance with OCPA Professional Services Agreement.	20
	TOTAL	100

Some or all of the consultants submitting a proposal may be invited to an interview and/or to make a presentation before the review committee. OCPA may, or may not, choose to interview consultants, depending upon the number and quality of proposals received. The purpose of the

interview/presentation will be to discuss specific aspects of the proposal and to answer questions from the committee. A professional services agreement for the selected firm will either be presented to the Board of Directors for approval or executed by the Chief Executive Officer pursuant to delegated contracting authority.

XII. GENERAL CONDITIONS

- A. Reservation of Rights:** This RFP does not commit OCPA to award an agreement, to defray any costs incurred in the preparation of a proposal pursuant to this RFP, or to procure or contract for services.
- B. Public Records:** All proposals submitted in response to this RFP become the property of OCPA and public record, and as such may be subject to public review.
- C. Right to Cancel:** OCPA reserves the right to revise or cancel, for any or no reason, in part or in its entirety, this RFP, including, but not limited to: selection schedule, submittal date, and submittal requirements. If OCPA cancels or revises the RFP, all proposers will be notified in writing by OCPA.
- D. Protests:** A 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 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.

- E. Independent Contractor:** Services provided by consultant shall be performed as an independent contractor. All persons employed by Consultant in connection with this agreement shall not be agents or employees of OCPA. Consultant shall be solely and exclusively in charge of determining the means by which the professional services called for herein are performed, and shall be responsible for all costs incurred in connection therewith, unless OCPA agrees otherwise in a duly executed writing delivered to consultant prior to the incurring of such expense. Consultant may also retain or subcontract for the services of other necessary consultants with the approval of OCPA. Payment for such services shall be the responsibility of consultant.
- F. Non-Discrimination for Employment with Consultant:** During the performance of this agreement, Consultant will not discriminate against any employee or applicant for employment because of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability. Such action shall include, but not be limited to the following:

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selecting for training, including apprenticeship. The Consultant will ensure that all qualified applicants for employment with Consultant will receive consideration for employment without regard to race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability. Consultant will take affirmative action to ensure that employees are treated during employment, without regard to their race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability. Likewise, the Consultant will insure that all qualified applicants for OCPA Chief Executive Officer will receive consideration for employment without regard to race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability.

- G. Ownership or Work Product:** All plans, specifications, reports and other documents prepared by Consultant or that may be developed by the Consultant pursuant to this agreement shall become the property of OCPA. OCPA is entitled to full and unrestricted use of such plans, specifications, reports and other documents. OCPA may also retain the original of the documents upon request.
- H. Conflict of Interest:** Consultant shall employ no OCPA official or employee in the work performed pursuant to this agreement. No officer or employee in OCPA shall have any financial interest in this agreement in violation of California Government Code Sections 1090 and following, or Sections 87100 and following; nor shall OCPA violate any provision of its Conflict of Interest Code adopted pursuant to the provisions of California Government Code Section 87300 and following.
- I. Additional Information:** OCPA reserves the right to request additional information and/or clarification from any or all proposers to this RFP.
- J. Public Information:** Proposers who wish to release information to the public regarding selection, agreement award, or data provided by OCPA must receive prior written approval from OCPA before disclosing such information to the public.
- K. Agreement for Professional Services:** The selected proposer will be required to sign the attached Standard Professional Services Agreement and to provide the insurance certificates and all other required documentation within seven (7) calendar days of notification of selection.
- L. Insurance Requirements:** OCPA requires consultants doing business with it to obtain insurance as shown in the Standard Professional Services Agreement. The required insurance certificates must comply with all requirements of the standards as shown in the agreement and must be provided (original copy) within seven (7) days of notice of selection and prior to the commencement of any Services.
- M. Disclosure Provision/ Conflict of Interest:** OCPA complies with all California statutes and regulations related to conflicts of interest. Under the applicable conflict of interest requirements, the selected proposer may be required to complete and file Form 700 with OCPA before starting.
- N. No Express Or Implied Obligation:** There is no express or implied obligation for OCPA to reimburse proposers for any expenses incurred in preparing proposals in response to this request. Materials submitted by respondents are subject to public inspection under the California Public Records Act (Government Code Sec. 6250 et seq.), unless exempt.
- O. Proposals:** OCPA reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether the proposer is selected. Submission of a proposal indicates

acceptance by the proposer of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the agreement between OCPA and the selected proposer.

- P. 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.

XIII. ATTACHMENTS

- Exhibit "A": Chief Executive Officer Job Description
- Exhibit "B": Standard Professional Services Agreement

EXHIBIT “A”
CHIEF EXECUTIVE OFFICER JOB DESCRIPTION

The Chief Executive Officer is responsible for the day-to-day operation and management of the Orange County Power Authority (“Authority”) and its community choice aggregation (“CCA”) program. The Chief Executive Officer may exercise all powers of the Authority except those powers specifically reserved to the Board under the Authority’s Joint Powers Agreement, the Authority’s bylaws, or other enactments or directions of the Board. Responsibilities of the Chief Executive Officer include:

- **Authority Direction and Supervision.** Oversee all functions of the Authority, including administration, finance, staffing, marketing, public affairs, power planning and procurement, supply operations, local energy programs, and legislative and regulatory affairs; provide administrative direction and supervision to employees, including assigning projects and objectives; conducting performance evaluations; developing, motivating, and training; and, hiring, terminating and disciplining.
- **Board Relations; Implementation of Policies.** Foster and maintain a strong relationship with the Board; approve agendas for presentation to the Board; present briefings, policies, reports, and recommendations to the Board; administer and implement Board-adopted ordinances, resolutions, bylaws, policies, procedures, and other enactments.
- **Contracting.** Enter into and execute contracts, including power purchase agreements and other agreements, in accordance with criteria and policies established by the Board.
- **Internal Leadership.** Provide direction and assistance to staff members, including management team building and training.
- **Customer and Stakeholder Relations.** Interact with Authority customers and stakeholders regarding a variety of issues; interact with the media presenting appropriate information on programs, services, and events.
- **Inter-Agency Relations.** Foster and maintain strong relationships with external agencies, including the Authority member agencies, other local, state, and federal governments, the California Public Utilities Commission, and other key agencies and stakeholders.
- **Strategies.** Develop and implement Authority strategies in conjunction with other the Authority management staff; approve strategies and communicate to staff.
- **Reports and Correspondence.** Prepare, review, and approve a variety of reports and correspondence.
- **Other.** Perform other duties of a similar nature or level.

EXHIBIT "B"
SAMPLE PROFESSIONAL SERVICES CONTRACT

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 [] 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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