

REQUEST FOR QUOTES
For
Orange County Power Authority

External Audit Services

Solicitation Number: 25-003

RESPONSE DUE
by
5:00 p.m. Pacific Time
on
June 13, 2025

For complete information regarding this project, see solicitation posted at www.ocpower.org or contact OCPA at the email address listed below.

Thank you for your interest!

Sviramontes@ocpower.org

A. BACKGROUND AND INTRODUCTION

Orange County Power Authority (“OCA”) is seeking proposals from qualified firms (“Consultants”) to provide External Auditing Services (“Services”).

1. BACKGROUND

OCA is a California Joint Powers Authority (“JPA”) established in November 2020, for the purpose of operating as a Community Choice Aggregator (“CCA”) in Orange County, California. OCA provides clean, competitively priced electricity and related services to its member jurisdictions. Key goals of OCA include:

- Providing electric power at competitive costs with reduced carbon emissions
- Procuring energy with a priority on the use and development of local renewable resources
- Stimulating local job creation through various program development
- Promoting personal and community ownership of renewable resources
- Stabilizing long-term electricity rates for residents and businesses

OCA is governed by a Board of Directors, comprised of elected officials representing each participating jurisdiction. The JPA Agreement that established OCA grants OCA authority to set rates, incur debt, and issue bonds or other financial obligations in support of its mission. OCA began delivering retail electricity in April 2022 to the cities of Buena Park, Fullerton, and Irvine, offering an alternative to Southern California Edison. Service is scheduled to begin in Fountain Valley in October 2026.

2. TERM OF AGREEMENT

The Agreement (as hereafter defined) is expected to have a term of one (1) year, with the option to extend for up to two (2) additional one (1) year terms. OCA is not required to state a reason if it elects not to extend.

3. MINIMUM QUALIFICATIONS AND GENERAL EXPECTATIONS OF THE CONSULTANT

Proposing firms must meet the following minimum qualifications and general expectations:

- Consultants must be currently certified and authorized to provide external auditing services for government agencies in California. All personnel assigned to the engagement must hold current and valid licenses in accordance with California law.
- Proposals should demonstrate the Consultant’s extensive experience working with public agencies and municipal governments in California, with a strong preference for prior work with CCAs and familiarity with California’s Investor-Owned Utilities (“IOUs”), such as: Southern California Edison Company (“SCE”), Pacific Gas and Electric Company (“PG&E”), and/or San Diego Gas & Electric Company (“SDG&E”).
- Consultants must be in good standing, recognized for the integrity and independence of their audit work, and free from current investigations or litigation. Firms must meet the independence requirements as defined by Generally Accepted Auditing Standards

- (“GAAS”).
- The awarded Consultant will be expected to work cooperatively with OCPA’s accounting service provider and internal FinTech team, maintaining clear and professional communication throughout all phases of the engagement.
- Due to the sensitivity of OCPA’s customer and operational data, the awarded Consultant will be required to execute a Non-Disclosure Agreement (NDA), and must ensure the protection and confidentiality of all proprietary and privileged information accessed during the engagement.

B. SERVICES REQUESTED

The services requested through this solicitation are described in detail in **Exhibit A**, which is attached hereto and incorporated by reference (“Services”). While **Exhibit A** provides an outline of the requested Services, the final scope of work will be negotiated and included in the Professional Services Agreement (“Agreement”) to be executed by OCPA and the selected Consultant. A draft copy of the Agreement is provided as **Exhibit B** and is also incorporated herein by reference.

C. PROPOSAL SUBMISSION REQUIREMENTS

OCPA will evaluate all submitted proposals. Proposals will be assessed solely on the information provided in response to this solicitation and in accordance with the evaluation criteria outlined in Section D (to be added or referenced).

Only digital submissions will be accepted. All proposals must be submitted via www.bidnetdirect.com. This is a free platform for applicants. If the use of bidnetdirect.com presents a hardship, proposers may alternatively submit their proposals in PDF format via email to: Sviramontes@ocpower.org. Submissions in any other digital format will not be accepted.

To ensure consistent evaluation and demonstrate a clear understanding of OCPA’s needs, all proposals must include, at a minimum, the following:

1. CONTENT AND FORMAT OF PROPOSAL

- a. Executive Summary: Provide a concise summary of your firm’s proposal, highlighting key qualifications, understanding of the project, and unique strengths.
- b. Identification of Proposer:
 - i. Legal name and address of the firm.
 - ii. Legal structure of the firm (e.g., corporation, partnership, sole proprietorship).
 - iii. Name, title, phone number, and email address of the primary contact person.
 - iv. California Business License Number.

c. Staffing Resources:

- i) Provide the number of staff assigned to the project, including names, job titles, and roles.
- ii) Describe the team organization, including roles and responsibilities of key personnel. Include one-page resumes for each team member.

d. Experience and Technical Competence:

i. Experience

- i) Describe the firm's qualifications, experience, and technical capabilities as they relate to the scope of Services.
- ii) Indicate the number of years in business and confirm at least four (4) years of experience providing auditing services to public sector clients.
- iii) Provide five (5) client references, including contact name, phone number, email address, and a brief description of the project and services provided.
- iv) Describe the firm's familiarity with and experience related to OCPA's operations and service area.
- v) If any of the following occurred in the past five (5) years, please describe in detail:
 - (1) Failure to enter into a contract after selection.
 - (2) Proposal withdrawal due to error.
 - (3) Early termination of a contract.
 - (4) Debarment by any agency.
 - (5) Litigation, arbitration, or mediation involving the firm.
 - (6) Conviction or finding of bid/proposal rigging or fraudulent activity.
 - (7) Knowingly concealing performance deficiencies.
 - (8) Willful disregard for applicable regulations.

OCPA reserves the right to consider any of the above as indicators of unsatisfactory performance.

- e. Fee Proposal: Please provide a lump-sum, not-to-exceed fee proposal for the scope of Services. The fee proposal shall include hourly rates for all personnel for "Additional Services" (as such term is defined in the Agreement attached hereto as **Exhibit B**).
- f. Insurance: See the Agreement, attached hereto as **Exhibit B**, for a description of the insurance requirements.

- g. Other Information: This section shall contain all other pertinent information regarding the following:
 - i. Demonstration of record of staffing tasks efficiently and completing projects on time and within the allocated budget.
 - ii. Description of community involvement.
 - iii. Description of any previous involvement with OCPA.

2. EVALUATION CRITERIA

Proposals submitted in response to this solicitation will be evaluated based on the criteria outlined below. Proposers must provide sufficient information and detail to enable OCPA to conduct a comprehensive evaluation of the submission. Failure to provide required information may result in a proposal being deemed non-responsive and excluded from further consideration.

The evaluators will select the proposal that offers the greatest value to OCPA based on an analysis of the following criteria:

- a. Demonstrated independence and objectivity.
- b. Appropriate licensure and authorization to perform external auditing services in the State of California.
- c. Absence of conflicts of interest related to other work performed for or in connection with OCPA.
- d. Completeness, clarity, and organization of the proposal.
- e. Adherence to the submission requirements and structure outlined in this solicitation.
- f. Demonstrated understanding of OCPA's mission, needs, and scope of services.
- g. Prior experience providing external auditing services to public agencies, with preference for experience related to CCAs.
- h. Proven performance in delivering timely, high-quality work.
- i. Qualifications, certifications, and relevant experience of key personnel.
- j. Availability and commitment of proposed team members to the project.
- k. Competitiveness and reasonableness of the proposed not-to-exceed fee.
- l. Strength and relevance of references from public sector clients with similar scope and complexity.
- m. Feedback on past performance, professionalism, responsiveness, and outcomes.

It is OCPA's intent to select a firm evidencing demonstrated competence and professional qualification sufficient to perform the Services. As outlined in the Evaluation Criteria, OCPA will consider multiple factors when deciding whether and to which firm to award the Agreement, prioritizing OCPA's needs. It is important to note that OCPA will not necessarily award the contract to the lowest bidder.

OCPA reserves the right to reject all proposals, select by proposal review only, or interview as needed. Certain firms may be selected to make a brief presentation and oral interview after which a final selection will be made. The successful proposer will be selected on the basis of

information provided in the solicitation, in-person presentations, and the results of OCPA's research and investigation.

Upon selection of a firm, OCPA will endeavor to negotiate a mutually agreeable professional services agreement with the selected firm. In the event that OCPA is unable to reach agreement, OCPA will proceed, at its sole discretion, to negotiate with the next firm selected by OCPA. OCPA reserves the right to contract for services in the manner that most benefits OCPA including awarding more than one contract if desired.

3. SOLICITATION SCHEDULE

The tentative schedule is as follows:

Release of Solicitation	May 15, 2025
Deadline for Question Submittal	May 27, 2025
Posting of Responses to Questions	June 2, 2025
Proposals Due	June 13, 2025
Evaluations Due	June 20, 2025
Contract Begins	July 1, 2025

The above scheduled dates are tentative and OCPA retains the sole discretion to adjust the above schedule. Nothing set forth herein shall be deemed to bind OCPA to award a contract for the above-described professional Services, and OCPA retains the sole discretion to cancel or modify any part of or all of this solicitation at any time.

D. TERMS AND CONDITIONS

1. GENERAL PROVISIONS

a. Incurring Cost

This solicitation does not commit OCPA to award or pay any cost incurred in the submission of the proposal, or in making necessary studies or designs for the preparation thereof, nor procure or contract for services or supplies. Further, OCPA will not reimburse the Proposer for any costs incurred in responding to this solicitation.

b. Claims Against OCPA

Neither your organization nor any of your representatives shall have any claims whatsoever against OCPA or any of its respective officials, agents, or employees arising out of or relating to this solicitation or these solicitation procedures, except as set forth in the terms of a definitive agreement between OCPA and your organization.

c. Guarantee of Proposal

Responses to this solicitation, including proposal prices, will be considered firm and irrevocable for ninety (90) days after the due date for receipt of proposals.

d. Basis for Proposal

Only information supplied by OCPA in writing by OCPA in connection with this solicitation should be used as the basis for the preparation of your proposal.

e. Form of Proposals

Proposals must be submitted electronically via www.bidnetdirect.com and must be received by OCPA prior to the deadline.

f. Amended Proposals

Proposers may submit amended proposals before the Proposals Due date identified in the Solicitation Schedule. Such amended proposals must be complete replacements for previously submitted proposals and must be clearly identified in a written format.

g. Withdrawal of Proposal

Proposers may withdraw their proposals at any time prior to the Proposals Due date identified in the Solicitation Schedule. The firm seeking to withdraw its proposal must submit a written withdrawal request signed by the firm's duly authorized representative addressed to and submitted to the Contact.

h. No Late Responses

To be considered, proposals must be received electronically via bidnetdirect.com by the date and time reflected on the cover page.

i. California Public Records Act (CPRA)

Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, proposals submitted in response to this solicitation 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(s) have completed negotiations and entered into an Agreement or OCPA has rejected all proposals. All correspondence with OCPA including responses to this solicitation 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 solicitation, 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.

j. Confidentiality

All data and information obtained from or on behalf of OCPA by the Proposer and its agents in this solicitation process, including reports, recommendations, specifications, and data, shall be treated by the Proposer and its agents as confidential. The Proposer and its agents

shall not disclose or communicate this information to a third party or use it in advertising, publicity, propaganda, or in another job or jobs, unless written consent is obtained from OCPA. Generally, each proposal and all documentation, including financial information, submitted by a consultant to OCPA is confidential until a contract is awarded, when such documents become public record under State and local law, unless exempted under CPRA.

k. Electronic Mail Address

Most of the communication regarding this procurement will be conducted by electronic mail (e-mail). Potential Proposers agree to provide the Contact with a valid e-mail address to receive this communication.

l. OCPA Rights

OCPA reserves the right to do any of the following at any time:

- Reject any or all proposal(s), without indicating any reason for such rejection;
- Waive or correct any minor or inadvertent defect, irregularity, or technical error in a proposal or the solicitation process, or as part of any subsequent contract negotiation;
- Request that Proposers supplement or modify all or certain aspects of their proposals or other documents or materials submitted;
- Cancel the solicitation, and at its option, issue a new solicitation;
- Procure any services specified in this solicitation by other means;
- Modify the selection process, the specifications or requirements for materials or services, or the contents or format of the proposals;
- Extend a deadline specified in this solicitation, including deadlines for accepting proposals;
- Negotiate with any or none of the Proposers;
- Modify any terms and/or conditions described in this solicitation in the final agreement;
- Terminate failed negotiations with any Proposer without liability, and negotiate with other Proposer(s);
- Disqualify any Proposer on the basis of a real or apparent conflict of interest, or evidence of collusion that is disclosed by the proposal or other data available to OCPA;
- Eliminate, reject, or disqualify a proposal of any Proposer who is not a responsible Proposer or fails to submit a responsive offer as determined solely by OCPA or its representative; and/or
- Accept all or a portion of a Proposer's proposal.

m. Protests

A Proposer may protest a contract award if the Proposer believes that the award was inconsistent with OCPA policy or this solicitation is not in compliance with law. A protest must be filed in writing with OCPA (e-mail 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.

n. Independent Contractor

Services provided by the successful Consultant shall be performed as an independent contractor. All persons employed by Consultant in connection with the 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.

o. Non-Discrimination for Employment with Consultant

During the performance of the Agreement, the 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.

p. Conflict of Interest

The Consultant shall employ no OCPA official or employee in the work performed pursuant to the Agreement. No officer or employee of OCPA shall have any financial interest in the 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.

q. 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.

r. Exceptions; Certification to this Solicitation

In submitting a proposal in response to this solicitation, Proposer is certifying that it takes no exceptions to this solicitation 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.

s. 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 or at a future point during the engagement if such requirements become applicable to the selected proposer.

t. Reporting of Supplier Diversity Information

Public Utilities Code Section 366.2(m) requires certain CCAs, 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.

u. Prevailing Wage

Proposers shall take cognizance of the requirements of California Labor Code Sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public work" and "maintenance" projects. The Proposer must agree to fully comply with and to require its subcontractors/subconsultants to fully comply with such Prevailing Wage Laws to the extent applicable.

2. OCPA CONTACT

All questions regarding these specifications, terms and conditions are to be submitted via www.bidnetdirect.com or to Sviramontes@ocpower.org, no later than 5:00 p.m. on May 27, 2025. Bidnetdirect.com will be the official notification posting place of all Requests for Interest, Proposals, Quotes and Addenda.

Go to <https://www.bidnetdirect.com/california/orangecountypowerauthority> to view current contracting opportunities.

3. ATTACHMENTS

Exhibit "A": Scope of Services

Exhibit "B": Standard Professional Services Agreement

EXHIBIT "A"

SCOPE OF SERVICES

The Consultant will perform an audit of the basic financial statements of Orange County Power Authority ("OCPA") as set forth below for the fiscal year period ending June 30, 2025, and subsequent years, if renewed. Consultant shall perform the audit in accordance with auditing standards generally accepted in the United States.

Consultant shall prepare the following reports:

- Report on the fair presentation of OCPA's financial statements;
- Management letter of comments;
- Report on significant deficiencies or material weaknesses in internal control, if any are identified;
- Other communications to those charged with governance as required by professional standards.

The Consultant shall meet with the Board of Directors and designated committees of the Board as requested.

All working papers and reports shall be held by the Consultant for a minimum of seven years at their expense. All working papers should be made available to OCPA and governmental agencies with oversight over OCPA upon OCPA's request .

During the audit, the Consultant shall observe the adequacy of the system of internal control relevant to the preparation of OCPA's financial statements. At the conclusion of the audit, Consultant shall present to the Board the audit report, findings, and make other communications as required by professional standards. During the audit, Consultant shall provide routine progress to the Chief Financial Officer on the status of the engagement.

The Management Letter of Comments should address the following:

- Areas where OCPA's internal controls can be enhanced;
- Areas where operational processes can be streamlined and made more efficient;
- OCPA's compliance with other laws and regulations applicable to OCPA.

EXHIBIT "B"

PROFESSIONAL SERVICES AGREEMENT

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. Fees and Payments.

2.1 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 NOT TO EXCEED AMOUNT] without written approval of Authority's Board of Directors or Chief Executive Officer,

as appropriate. 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.

2.2 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.

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

2.4 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.

3. Responsibilities of Consultant.

3.1 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.

3.2 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.

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

3.4 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]

3.5 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.

3.6 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.

3.7 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.

3.8 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.

3.9 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.

3.10 Insurance.

3.10.1 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.

3.10.2 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.

3.10.3 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.

3.10.4 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.

3.10.5 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.

3.10.6 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.

3.10.7 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.

3.10.8 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.

3.10.9 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.

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 four (4) 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 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.

5.4 Ownership of Materials and Confidentiality.

5.4.1 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.

5.4.2 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.

5.4.3 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.

5.4.4 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.

5.5 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.

5.6 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.

5.7 Indemnification.

5.7.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of Authority's choosing), indemnify and hold 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's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, Authority, its officials, officers, employees, agents, or volunteers. This section shall survive any expiration or termination of this Agreement.

5.7.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

5.8 California Labor Code Requirements.

5.8.1 Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold Authority, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code

Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

5.8.2 If the services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

5.8.3 This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant’s performance of services, including any delay, shall be Consultant’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by Authority. Consultant shall defend, indemnify and hold Authority, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

5.9 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.

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

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

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

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

5.14 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.

5.15 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.

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

5.17 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.

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

5.19 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.

5.20 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.

5.21 Nondiscrimination and 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.

5.22 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.

5.23 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.

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

5.25 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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