



**REQUEST FOR PROPOSALS**

**FOR**

**PROFESSIONAL AUDITING SERVICES**

Proposal due by 5:00 pm on March 2, 2017

Dolores Reyna  
Administrative Manager  
3403 10<sup>th</sup> Street, Suite 320  
Riverside, CA 92501

**WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY  
REQUEST FOR PROPOSALS  
PROFESSIONAL AUDITING SERVICES**

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	1
II.	BACKGROUND .....	1
III.	PROPOSAL SUBMISSION .....	2
	A. RFP Time Schedule .....	2
	B. Questions .....	2
IV.	SERVICES REQUESTED .....	2
	A. Financial Audit and Single Audit.....	2
	B. Agreed Upon Procedures.....	4
	C. Working Papers Retention .....	5
	D. Irregularities and Illegal Acts .....	5
V.	PROPOSAL FORMAT .....	6
	A. Signature/Cover Page .....	6
	B. Table of Contents .....	6
	C. Contents of Technical Proposal .....	6
	D. Evidence of Insurability/Business Licenses .....	8
	E. Clarification, Exceptions or Variations.....	8
VI.	CONTENTS OF COST PROPOSAL .....	9
	A. Total All-Inclusive Maximum Price .....	9
	B. Rates for Additional Professional Services .....	9
	C. Manner of Payment.....	9
VII.	EVALUATION CRITERIA .....	9
VIII.	ADDITIONAL TERMS.....	10
	Exhibit A. Schedule of Professional Fees and Expenses .....	11
	Exhibit B. List of Member Agencies Subject to Agreed Upon Procedures.....	12
	Exhibit C. Model Professional Services Agreement.....	13

## **I. INTRODUCTION**

The Western Riverside County Regional Conservation Authority (“RCA”) is requesting proposals from certified public accounting firms to audit RCA’s annual financial statements for the current fiscal year ending June 30, 2017 and to perform additional services as listed below for each Member Agency as listed on Exhibit “B” for this same period. The Parties may extend the term of this Agreement for additional one year terms not to exceed four years upon mutual agreement of the Parties and satisfactory completion of professional services.

## **II. BACKGROUND**

RCA is a joint powers agency comprised of the County of Riverside and 18 cities in the western portion of Riverside County. RCA is responsible for overseeing and implementing the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP” or “Plan”). The Plan is one of the largest and the most comprehensive habitat conservation plan in the United States. The Plan is a framework for the assembly and management of a 500,000-acre reserve, to protect 32 federally-listed animal and plant species, and 114 species that are anticipated to be listed in the future.

Three hundred forty-seven (347,000) acres of the reserve are currently in conservation and managed by various federal, state and local agencies. Pursuant to the Plan, the Member Agencies of the RCA, the Riverside County Transportation Commission, Caltrans, County Flood Control and Water Conservation District, County Park and Open-Space District, County Department of Waste Resources, and State Parks – referred to as Permittees - are granted authorization to “take” or disturb the habitats of the covered species to accommodate development and public infrastructure.

Additional information on the RCA and the MSHCP, including all Plan documents, studies, fees, procedures, acquisitions, annual reports, and other public documents and records can be found on the RCA Website (<http://www.wrc-rca.org>).

The RCA Financial Statements consist of a general fund, one capital project fund and one permanent fund. In fiscal year 2016, the RCA’s governmental funds revenues totaled \$26.1 million. Approximately 46% of the revenues were derived from Member Agency contributions. Total governmental funds expenditures totaled approximately \$23.0 million; of this amount 76% represents land acquisition cost. The RCA uses the County of Riverside’s PeopleSoft Financials 9.1 software for all of its financial transactions.

The RCA’s Financial Statements for the year ended June 30, 2016 are available on the RCA website at [www.wrc-rca.org/2016\\_BD/161205/Agenda\\_Item\\_9\\_Staff\\_Report.pdf](http://www.wrc-rca.org/2016_BD/161205/Agenda_Item_9_Staff_Report.pdf)

### III. PROPOSAL SUBMISSION

Timeline	
Release of RFP	February 3, 2017
Deadline for submittal of Questions:	February 16, 2017
Response to Questions:	February 21, 2017
Proposal Submission Date:	March 2, 2017 (by 5:00 PM PST)
Interview of Finalists:	March 2017 (TBD)
Award contract:	April 3, 2017

Inquiries concerning the RFP must be made to:

WRC Regional Conservation Authority  
Attn: Dolores Reyna, Administrative Manager  
3403 10<sup>th</sup> Street, Suite 320  
Riverside, CA 92501

Email: [dreyrna@wrcrca.org](mailto:dreyrna@wrcrca.org)  
Phone: (951) 955-9700  
Fax: (951) 955-8873

Contact with personnel of the RCA other than the above regarding this RFP may be grounds for elimination from the selection process.

Submission of Proposal: Three (3) hard copy original Proposals are required, along with an electronic copy of the Proposal in Adobe Portable Document Form (electronic copy may be emailed to [dreyrna@wrcrca.org](mailto:dreyrna@wrcrca.org) by the deadline). All Proposals must be received in the RCA offices by **March 2, 2017 at 5:00 PM. Late Proposals will not be accepted.** Proof of receipt before the deadline is an RCA date/time stamp.

### IV. SERVICES REQUESTED

#### A. **Financial Audit and Single Audit**

1. The audit firm will perform an audit of all funds of the RCA. The audit will be conducted in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards*, issued by the Comptroller of the United States. The Financial Statements will be in full compliance with GASB Statements. The audit firm will render its auditors' report on the basic financial statements which will include both Government-Wide Financial Statements and Fund Financial Statements. The audit firm will also apply limited audit procedures to Management's Discussion and Analysis (MD&A) and required supplementary information.
2. When required, the audit firm will perform a Single Audit on the expenditures of federal grants in accordance with U.S. Office of Management and Budget (OMB) Uniform Grant Guidance/Super Circular and render the appropriate audit reports on Internal Control over Financial

Reporting based upon the audit of the RCA's financial statements in accordance with *Government Auditing Standards* and the appropriate reports on compliance with Requirements Applicable to each Major Program, Internal Control over Compliance and on the Schedule of Expenditures of Federal Awards in Accordance with OMB Uniform Grant Guidance/Super Circular . The Single Audit report will include appropriate schedule of expenditures of federal awards, footnotes, findings and questioned costs, including reportable conditions and material weaknesses, and follow up on prior audit findings where required. A Single Audit will be required for the year ended June 30, 2017. However, a Single Audit may not be necessary in subsequent years depending on future funding sources. The Cost Proposal should separate the fees for the Single Audit. Payment for those services would be contingent upon the Single Audit requirement for each audit year.

3. The audit firm shall issue a separate "management letter" that includes recommendations for improvements in internal control, accounting procedures and other significant observations that are considered to be non-reportable conditions.
4. The audit firm may be consulted occasionally throughout the year as an information resource. The auditors may be asked to provide guidance on implementation of new GASB and Statements on Auditing Standards requirements and specifics of Federal and State regulations as they may affect local government accounting. In addition, from time of award, if there are any new auditing standards that come out, these are to be implemented without additional fees.
5. Time Requirements:
  - a. Audit planning, documentation of systems of internal controls and compliance and transaction testing could be completed during the interim stage. It is expected the RCA will close its books by the end of August, and be ready for final audit by the first week of September.
  - b. The completed Financial Statements shall be delivered to the Director of Administrative Services by November 8th. The Audit firm may be required to present the Financial Statements and discuss results of the audit with the Board of Directors the first Monday of December.
6. Report preparation:
  - a. The RCA's staff and responsible management personnel will be available during the audit to assist the auditor by providing information, documentation and explanations.
  - b. Preparation of confirmations will be the responsibility of the RCA.
  - c. The RCA's staff will prepare the lead schedules, the financial statements including: MD&A, government-wide statements, fund financial statements for all funds, accompanying notes to the financial statements, and required supplementary information.
  - d. RCA's staff will be responsible for preparing the Schedule of Federal Financial Assistance, if applicable.

- e. The Auditor will be responsible for the final printing and binding of the financial statements. The RCA requires 10 final bound financial statements and one electronic copy of the financial statements.

## **B. Agreed Upon Procedures**

The selected audit firm will provide additional professional services regarding the collection and remittance of mitigation fees and contributions for public, civic and infrastructure projects from Member Agencies for the year ended June 30, 2017. The Parties may extend the term of this Agreement for additional one year terms not to exceed four years upon mutual agreement of the Parties and satisfactory completion of professional services. The purpose of these procedures will be to assist in determining if fees are collected and remitted in accordance with each Member Agency's *Multiple Species Habitat Conservation Plan Mitigation Fee Ordinance* (with amendments). The engagement must be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. For each of the Member Agencies listed on Exhibit "B", the audit firm will perform the following services:

1. Obtain any updates to each Member Agency ordinance for collection of the MSHCP fees.
2. Upon obtaining the updates, determine if the ordinance is in accordance with the MSHCP Implementing Agreement and Joint Powers Agreement.
3. Determine if fees on the building permits are collected in accordance with the Member Agency ordinance.
4. Obtain the schedule of fees collected on the building permits for the year ended June 30, 2017.
5. Obtain a listing of building permits issued during the year ended June 30, 2017. Identify the new construction and commercial/industrial permits. Select for testing 10% of new construction or commercial/industrial building permits issued, selecting no less than 25 permits or 100% of permits if total permits issued for new construction or commercial/industrial is less than 25.
6. Recalculate the fees collected by the Member Agency on building permits to determine if they are correct and if the correct amounts have been remitted to the RCA. If fees are incorrect, determine the fees that should have been collected and remitted.
7. Determine if fees collected on building permits were remitted on a timely basis to the RCA.
8. Determine additional amounts, if any, which should be returned to the Member Agency for building permits.

9. If amounts are due to the RCA on building permits, calculate interest owed, based on the RCA's Resolution No. 07-04 adopted on September 10, 2007, using the interest rate paid by Riverside County Treasury on amounts held by the County.
10. Obtain a list of all construction (civic and infrastructure) contracts awarded by the Member Agency during the fiscal year.
11. Select a sample of 10% of the construction contracts for testing, selecting no less than three contracts, or 100% of construction contracts if the total number of contracts is less than three.
12. Compute the amount of MSHCP contributions on the construction contracts that should have been remitted.
13. Determine if the MSHCP contributions on the construction contracts were remitted to the RCA within 90 days of contract award.
14. Determine additional amounts on construction contracts, if any, which should be remitted to the RCA or returned to the Member Agency.
15. If additional amounts are due to the RCA on construction contracts, calculate interest owed, using the interest rate paid by Riverside County Treasury on amounts held by the County.

Report Preparation:

The auditor will submit a report for each Member Agency listing the procedures performed and findings, if any. The auditor will be responsible for preparation, editing and printing of all agreed-upon procedure reports. The auditor will work closely with the RCA's staff on issues identified during the course of the engagement. Drafts of the reports will be issued to the RCA and the applicable Member Agency. Five copies and one pdf of final agreed-upon reports are to be issued to the RCA by February 28, 2018 for fiscal year ended June 30, 2017 for each Member Agency. If circumstances outside the control of the auditor or the RCA arise and the deadline cannot be met, both parties agree to communicate the circumstances and develop an action plan. At the discretion of the RCA, agreed upon procedure services may be scheduled less frequent than annually.

**C. Working Papers Retention**

Retain audit working papers for seven (7) years, unless the firm is notified in writing by the RCA of the need to extend the retention period. In addition, the firm shall respond to reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

**D. Irregularities and Illegal Acts**

Auditors shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties: Executive Director and RCA Board of Directors.

## V. PROPOSAL FORMAT

The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the firm seeking to undertake an independent audit of the RCA in conformity with the requirements of this request for proposals. As such, the substance of proposals will carry more weight than the form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the request for proposals requirements.

The Technical Proposal should address all points outlined in the RFP (**excluding any cost information which should only be included in the Sealed Dollar Cost Bid**). The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of this request for proposals. While additional data may be presented, the following subjects must be included. They represent the criteria against which the proposal will be evaluated.

A. **Signature/Cover Page** - This page will include the title information and the signature of the Bidder. The signature shall constitute a warranty, the falsity of which shall entitle the RCA to pursue any remedy authorized by law, which shall include the right, at the option of the RCA, of declaring any contract made as a result thereof, to be void.

B. **Table of Contents**

C. **Contents of Technical Proposal**

1. Independence

The firm should provide an affirmative statement that it is independent of the RCA as defined by generally accepted auditing standards. The firm should also list and describe its professional relationships, if any, involving the RCA or any of the Member Agencies listed in Exhibit "B" for the past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed audit(s).

2. License to Practice in California

An affirmative statement should be included indicating that the firm and all assigned key professional staff are properly licensed to practice in California.

3. Firm Qualifications and Experience

To qualify the firm must have extensive experience in audits of local governments. The auditor should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the

work on this engagement is to be performed and the number of the professional staff to be employed in this engagement on a full-time basis and the number and nature of the staff to be so employed on a part-time basis. Staff consistency is an important consideration.

The firm is also required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific government engagements.

The firm shall also provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. In addition, the firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations.

4. Partner, Supervisory and Staff Qualifications and Experience

The firm should identify the principal supervisory and engagement staff, including engagement partners, managers, other supervisors and specialists, who would be assigned to the engagement and indicate whether each such person is licensed to practice as a certified public accountant in California. The firm also should provide information on the government auditing experience of each person, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit. The firm also should indicate how the quality of staff over the term of the agreement would be assured.

Engagement partners, manager, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the RCA. However, in either case, the RCA retains the right to approve or reject replacements.

5. Similar Engagements with Other Governmental Entities

For the firm's office that will be assigned responsibility for the audit, list the most significant engagements (maximum of 5) performed in the last five years that are similar to the engagement described in the request for proposals. These engagements should be ranked on the basis of total staff hours. Indicate the scope of work, date, engagement partners, and the name, address and telephone number of the principal client contact. Information should be provided regarding clients that the firm serves that have received the California Society of Municipal Officers award and/or Government Finance Officers Association awards. The RCA reserves the right to contact any or all of the listed references regarding the audit services performed by the firm.

6. Specific Audit Approach

The proposal should set forth a work plan, including an explanation of the audit methodology to be followed, to perform the services required in Section III of this request for proposal. Audit firms will be required to provide the following information on their audit approach:

- a. Proposed segmentation of the engagement;
- b. Level of staff and number of hours to be assigned to each proposed segment of the engagement;
- c. Sample size and the extent to which statistical sampling is to be used in the engagement;
- d. Type and extent of analytical procedures to be used in the engagement;
- e. Approach to be taken to gain and document an understanding of the RCA's internal control structure;
- f. Approach to be taken in determining laws and regulations that will be subject to audit test work; and
- g. Approach to be taken in drawing audit samples for purposes of tests of compliance.

7. Identification of Anticipated Potential Audit Problems

The proposal should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problems and any special assistance that will be requested from the RCA.

D. **Evidence of Insurability/Business Licenses** - All Bidders shall submit evidence of all required insurance. An Accord cover page will suffice, and if awarded the contract, the Bidder has ten (10) calendar days to produce the required insurances including a certified endorsement naming the RCA as additionally insured. Bidders shall certify to the possession of any and all current required licenses or certifications. Do not purchase additional insurance until this bid has been awarded. Provide a copy of current business license or other applicable licenses.

E. **Clarification, Exceptions, or Variations** - All Bidders shall describe any exception or variation from the requirements of the RFP, including, but not limited to the *Model Professional Services Agreement* attached hereto as Exhibit "C." 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, Bidder is directed to carefully review the proposed Professional Services Agreement and, in particular, the insurance and indemnification provisions therein.

## **VI. CONTENTS OF COST PROPOSAL**

*Place the cost proposal in a sealed envelope separate from the Technical Proposal.*

### **A. Total All-Inclusive Maximum Price**

Cost Proposal should contain all pricing information relative to performing the audit engagements as described in the request for proposals. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs including out-of-pocket expenses. This should include the Rates by Partner, Specialist, Supervisory and Staff Levels Times Hours Anticipated for Each engagement.

The cost proposal should be submitted in the format provided in Exhibit "A" *Schedule of Professional Fees and Expenses.*

### **B. Rates for Additional Professional Services**

If it should become necessary for the RCA to request the auditor to render any additional services to either supplement the services requested in this request for proposal or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between the RCA and the firm. Additional professional services shall be performed at the same Quoted Hourly Rates set forth in the Schedule of Professional Fees and Expenses.

### **C. Manner of Payment**

Progress payments will be made on the basis of hours of work completed during the course of the engagement incurred in accordance with the firm's dollar cost proposal. The monthly invoice should indicate the work completed and hours of services rendered for each audit (Financial Audit, Single Audit, and Agreed Upon Procedures) by staff levels.

## **VII. EVALUATION CRITERIA**

A. Each proposal will be reviewed by an evaluation group to determine if it meets the proposal requirements. Failure to meet the requirements of the Request for Proposals will be cause for rejection of the Proposal.

B. The evaluation group may ask for formal oral presentations by the selected consultants. The number 1 ranked Consultant will then proceed to contract negotiation.

C. The Prospective Consultant is advised that should this RFP result in award of a contract, the contract will not be in force until it is approved and fully executed by the RCA.

- D. The Consultant will be selected for final negotiation of a contract based upon the following factors:
1. The audit firm is independent and licensed to practice in California;
  2. The firm submits a copy of its last external quality control review report and the firm has a record of quality audit work;
  3. The firm's past experience and performance on comparable government engagements;
  4. The quality of the firm's professional personnel to be assigned to the engagement and the quality of the firm's management support personnel to be available for technical consultation;
  5. Adequacy of proposed staffing plan for each audit service;
  6. Thoroughness of approach to conducting the audit of the RCA and demonstration of the understanding of the objectives and scope of the engagements;
  7. Commitment to timeliness in the conduct of the engagements;
  8. References from similar engagements: and
  9. Maximum fees to conduct the audit.

**VIII. ADDITIONAL TERMS**

- A. Cancellation of RFP - The RCA reserves the right to cancel this RFP at any time prior to contract award without obligation in any manner for proposal preparation, interview, fee negotiation or other marketing costs associated with this RFP.
- B. No Commitment to Award - Issuance of this RFP and receipt of Proposals does not commit the RCA to award a contract. The RCA expressly reserves the right to postpone the proposal for its own convenience, to accept or reject any or all Proposals received in response to this RFP, to negotiate with more than one Proposer concurrently, or to cancel all or part of this RFP. The RCA reserves the right to waive any discrepancy or technicality and to split or award the contract in any manner determined to be the most advantageous to the agency.
- C. There is no expressed or implied obligation for the RCA to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.
- D. The RCA reserves the right, where it may serve the RCA's best interest, to request additional information or clarifications from audit firms, or to allow corrections of errors or omissions.

**EXHIBIT "A"**  
**SCHEDULE OF PROFESSIONAL FEES AND EXPENSES**

**FOR THE AUDIT OF THE 2017 FINANCIAL STATEMENTS, SINGLE AUDIT AND  
 AGREED-UPON PROCEDURES**

	<u>Hours</u>	<u>Standard Hourly Rates</u>	<u>Quoted Hourly Rates</u>	<u>Total</u>
<b><u>FINANCIAL STATEMENTS</u></b>				
<b><u>AUDIT</u></b>				
Partners	_____	_____	_____	_____
Managers	_____	_____	_____	_____
Supervisory Staff	_____	_____	_____	_____
Staff	_____	_____	_____	_____
Other:	_____	_____	_____	_____
Subtotal Financial Audit	_____	_____	_____	_____
<b><u>SINGLE AUDIT</u></b>				
Partners	_____	_____	_____	_____
Managers	_____	_____	_____	_____
Supervisory Staff	_____	_____	_____	_____
Staff	_____	_____	_____	_____
Other:	_____	_____	_____	_____
Subtotal Single Audit	_____	_____	_____	_____
<b><u>AGREED-UPON PROCEDURES</u></b>				
Partners	_____	_____	_____	_____
Managers	_____	_____	_____	_____
Supervisory Staff	_____	_____	_____	_____
Staff	_____	_____	_____	_____
Other:	_____	_____	_____	_____
Subtotal Agreed-Upon	_____	_____	_____	_____
<b>TOTAL ALL-INCLUSIVE MAXIMUM PRICE FOR 2017</b>				
	_____			_____

Note: The rate quoted should not be presented as a general percentage of the standard hourly rate or as a gross deduction from the total all-inclusive maximum price. (USE THE SAME FORMAT FOR EACH SUBSEQUENT YEAR OF THE FIVE-YEAR AGREEMENT).

Please present a summary page of the all-inclusive price showing each year of the proposal.

**EXHIBIT "B"**  
**LIST OF MEMBER AGENCIES SUBJECT TO AGREED UPON PROCEDURES**

City of Banning

City of Beaumont

City of Calimesa

City of Canyon Lake

City of Corona

City of Eastvale

City of Hemet

City of Jurupa Valley

City of Lake Elsinore

City of Menifee

City of Moreno Valley

City of Murrieta

City of Norco

City of Perris

City of Riverside

City of San Jacinto

City of Temecula

City of Wildomar

County of Riverside:

Economic Development Agency

Flood Control & Water Conservation District

Regional Park and Open-Space District

Transportation, Land & Management Agency

**EXHIBIT "C"**

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY  
AND \_\_\_\_\_**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by and between the Western Riverside County Regional Conservation Authority, a Joint Powers Authority organized under the laws of the State of California with its principal place of business at 3403 Tenth Street, Suite 320 Riverside, California 92501 ("RCA") and [NAME OF FIRM], a/an [LEGAL STATUS OF CONSULTANT] with its/his/her principal place of business at [ADDRESS OF CONSULTANT] ("Consultant"). RCA and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

**2. RECITALS.**

2.1 Consultant. Consultant desires to perform and assume responsibility for the provision of certain professional services required by RCA on the terms and conditions set forth in this Agreement. Consultant represents that it is a professional consultant, experienced in providing [INSERT TYPE OF SERVICES] services to public clients, is licensed in the State of California, and is familiar with the plans of RCA.

2.2 Project. RCA desires to engage Consultant to render such services for the [INSERT PROJECT DESCRIPTION] ("Project") as set forth herein.

**3. TERMS.**

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to RCA all labor, materials, tools, equipment, services and incidental and customary work necessary to fully and adequately supply the [INSERT TYPE OF SERVICES] services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. Services shall include, but not be limited to, any duties and responsibilities assigned by the RCA Executive Director. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from the date first specified above 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.

### 3.2 Responsibilities of Consultant.

#### 3.2.1 Control and Payment of Subordinates; Independent Contractor.

The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. RCA retains Consultant on an independent contractor basis and Consultant is not an employee of RCA. 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 not be employees of RCA 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, and workers' compensation insurance.

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

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

3.2.4 RCA's Representatives. RCA hereby designates its Executive Director, or his or her designee, to act as its representative for the performance of this Agreement. All invoices for Consultant shall be submitted to the Executive Director. The Executive Director shall be responsible for directing Consultant's activities pursuant to this Agreement. The Executive Director shall have the power to act on behalf of RCA for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than the Executive Director or his or her designee.

3.2.5 Substitution of Key Personnel. Consultant has represented to RCA 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 and experience upon written approval of RCA. In the event that RCA and Consultant cannot agree as to the substitution of key personnel, RCA shall be entitled to terminate this Agreement for cause, pursuant to provisions of Section 3.5.1 of this Agreement. The key personnel for performance of this Agreement are as follows: **[INSERT NAME OR TITLE OF KEY PERSONNEL]**

3.2.6 Consultant's Representative. Consultant hereby designates **[INSERT NAME OR TITLE]**, 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. Consultant shall work closely and cooperate fully with RCA's Representative and any other agencies which may have jurisdiction over, or an interest in, the Services. Consultant's Representative shall be available to the RCA staff at all reasonable times.

3.2.7 Coordination of Services. Consultant agrees to work closely with RCA staff in the performance of Services and shall be available to RCA's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform the 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 subcontractors 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 RCA, 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 and shall be fully responsible to RCA for all damages and other liabilities arising from the Consultant's errors and omissions. Any employee of the Consultant or its sub-consultants who is determined by RCA 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 RCA, 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.

3.2.9 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 RCA, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold RCA, its officials, directors, officers, employees, consultants, volunteers 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.

### 3.2.10 Insurance.

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

3.2.10.2 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) *If Consultant has employees, 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: \$2,000,000 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) If Consultant has employees, 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.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim, and shall be endorsed to include contractual liability. 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.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements 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 RCA, 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 RCA’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.

(i) The automobile liability policy shall be endorsed to state that: (1) RCA, 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 RCA, 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 RCA, 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 he/she 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 he/she will comply with such provisions before commencing work under this Agreement.

(ii) The insurer shall agree to waive all rights of subrogation against RCA, 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.

(i) Defense costs shall be payable in addition to the limits set forth hereunder.

(ii) 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 RCA, 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.

(iii) 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 RCA (if agreed to in a written contract or agreement) before RCA'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).

(iv) Consultant shall provide RCA 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 RCA at least ten (10) days prior to the effective date of cancellation or expiration.

(v) 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.

(vi) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by RCA, 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.

(vii) 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, RCA has the right but not the duty to obtain the insurance it deems necessary and any premium paid by RCA will be promptly reimbursed by Consultant or RCA will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, RCA may cancel this Agreement. RCA may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither RCA 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.

3.2.10.5 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 RCA, its directors, officials, officers, employees, agents and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by RCA. If RCA does not approve the deductibles or self-insured retentions as presented, Consultant shall guarantee that, at the option of RCA, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects RCA, 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.

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

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

3.2.10.9 Reporting of Claims. Consultant shall report to RCA, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with Services under this Agreement.

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

3.2.11 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.

### 3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The Total Compensation shall not exceed \$[INSERT WRITTEN DOLLAR AMOUNT] (\$[INSET NUMERICAL DOLLAR AMOUNT]), without written approval of RCA's Executive Director. Reimbursable expenses shall include \_\_\_\_\_. Extra Work may be authorized, as described below, and, if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to RCA 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. Said compensation shall be paid in accordance with an invoice submitted to RCA by Consultant within fifteen (15) days from the last day of each calendar month, and RCA shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

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

3.3.4 Extra Work. At any time during the term of this Agreement, RCA may request that Consultant perform Extra Work. As used herein, "Extra Work" means

any work which is determined by RCA 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 RCA's Representative.

3.3.5 Prevailing Wages. By execution of this Agreement, Consultant certified that it is aware 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 works" and "maintenance" projects. 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. RCA shall provide Consultant with a copy of the prevailing rate of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold RCA, its directors, officials, officers, consultants, employees, volunteers 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.

3.3.6 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race, creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

The parties expressly understand that the responsibility for compliance with provisions of this Section and with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code in regard to all apprenticeable occupations lies with Consultant.

3.3.7 No Waiver. Failure of RCA to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be

deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

3.3.8 Eight-Hour Law. Pursuant to the provisions of the California Labor Code, eight hours of labor shall constitute a legal day's work, and the time of service of any worker employed on the work shall be limited and restricted to eight hours during any one calendar day, and forty hours in any one calendar week, except when payment for overtime is made at not less than one and one-half the basic rate for all hours worked in excess of eight hours per day ("Eight-Hour Law"), unless Consultant or the Services are not subject to the Eight-Hour Law. Consultant shall forfeit to RCA as a penalty, \$50.00 for each worker employed in the execution of this Agreement by him or her, or by any sub-consultant under him or her, for each calendar day during which such workman is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week without such compensation for overtime violation of the provisions of the California Labor Code, unless Consultant or the Services are not subject to the Eight-Hour Law.

3.3.9 Contractor Registration. Effective March 1, 2015, 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. This Project 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.

#### 3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of RCA 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.

#### 3.5 General Provisions.

##### 3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. RCA 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 fully and adequately rendered to RCA through the effective date of the termination, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, RCA may require Consultant to provide all finished or unfinished Documents and Data, as defined below, 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.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, RCA may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 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:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RCA:** Western Riverside County Regional  
Conservation Authority  
Attention: Executive Director  
3403 Tenth Street, Suite 320  
Riverside, CA 92501

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.

3.5.3 Ownership of Materials/Confidentiality.

3.5.3.1 Documents & Data. This Agreement creates an exclusive and perpetual license for RCA to copy, use, modify, reuse, or sub-license any and all copyrights and designs embodied in plans, specifications, studies, drawings, estimates, materials, data 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 RCA is granted an 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 grant the exclusive and perpetual license for all such 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 RCA.

RCA 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 RCA's sole risk.

3.5.3.2 Intellectual Property. In addition, RCA 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.

RCA shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether paid for wholly or in part by RCA, 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 RCA.

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 RCA.

All materials and documents which were developed or prepared by 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 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.

RCA 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.

3.5.3.3 Infringement Indemnification. Consultant shall defend, indemnify and hold RCA, 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 RCA of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.4 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & 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 RCA, 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 RCA'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 RCA.

3.5.5 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.

3.5.6 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 costs of such actions.

3.5.7 Indemnification. Consultant shall defend, indemnify and hold RCA, its directors, officials, officers, agents, consultants, employees, and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to alleged negligent acts, omissions or willful misconduct of the Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' 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 RCA, its directors, officials, officers, agents, consultants, employees, and volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against RCA or its directors, officials, officers, agents, consultants, employees, and volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse RCA and its directors, officials, officers, employees, agents, consultants, and volunteers, for any and all legal expenses and costs, including reasonable attorney's 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 RCA, its directors, officials, officers, agents, consultants, employees, and volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to,

or relate to the negligence, recklessness, or willful misconduct of the Consultant. This Section 3.5.7 shall survive any expiration or termination of this Agreement.

3.5.8 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.

3.5.9 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

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

3.5.11 RCA's Right to Employ Other Consultants. RCA reserves the right to employ other consultants in connection with this Project.

3.5.12 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 RCA. 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.

3.5.13 Successor and Assigns. This Agreement shall be binding on the successors and assigns of the Parties, and shall not be assigned by Consultant without the prior written consent of RCA.

3.5.14 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 directors, officials, officers, agents, consultants, employees, and volunteers of Consultant, except as otherwise specified in this Agreement. All references to RCA include its directors, officials, officers, agents, consultants, employees, 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.

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

3.5.16 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.

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

3.5.18 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.

3.5.19 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, RCA shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of RCA, during the term of his or her service with RCA, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.20 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. 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. Consultant shall also comply with all relevant provisions of any RCA programs or guidelines concerning equal opportunity employment currently in effect or hereinafter enacted.

3.5.21 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require 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.

3.5.22 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.

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

3.5.24 Subpoenas or Court Orders. Should Consultant receive a subpoena or court order related to this Agreement, the Services or the Project, Consultant shall immediately provide written notice of the subpoena or court order to RCA. Consultant shall not respond to any such subpoena or court order until notice to RCA is provided as required herein, and shall cooperate with RCA in responding to the subpoena or court order.

3.5.25 Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Agreement as though fully set forth herein.

3.5.26 Survival. All rights and obligations hereunder that by their nature are to be performed after any expiration or termination of this Agreement shall survive any such expiration or termination.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work or Services required by this Agreement, except as expressly stated herein, without prior written approval of RCA. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

**RCA**

**CONSULTANT**

By: \_\_\_\_\_  
Marion Ashley, Chairman  
RCA Board of Directors  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Approved as to form:*

\_\_\_\_\_  
RCA General Counsel  
Best Best & Krieger LLP