

COUNTY OF SAN DIEGO
DEPARTMENT OF GENERAL SERVICES

**REQUEST FOR STATEMENT OF QUALIFICATIONS (RFSQ 4700)
FOR “AS NEEDED” PROJECT MANAGEMENT SERVICES**

Provided to the

Project Management Division
Department of General Services
San Diego, California

This is a description of the services and submittal requirements.

COUNTY OF SAN DIEGO
Department of General Services
Project Management Division
5555 Overland Avenue, Building 2, Suite 2600
San Diego, CA 92123-1294

August 5, 2010

**REQUEST FOR STATEMENT OF QUALIFICATIONS (RFSQ 4700)
FOR “As Needed” PROJECT MANAGEMENT SERVICES**

RFSQ CONTENT

This RFSQ includes the following:

- Scope of Services
- Submittal Requirements
- Evaluation Criteria
- Selection Process
- Representations and Certification Form
- Exhibit B - Insurance Requirements
- Sample contract

SCOPE OF SERVICES

The purpose of this solicitation will be to establish a list of pre-qualified and selected firms to assist the County in performing the following minor tasks:

PROJECT MANAGEMENT Services in support of various small and mid size projects, including but not limited to, new construction, remodels, and demolition. Deliverables are project specific and will be determined in the specific Task Order. These include but are not limited to the following:

- Site review
- Project scoping
- Cost estimating
- Project planning & coordination
- Budget and schedule control
- Bid/J.O.C. Proposal review
- Change Order review
- Contractor Coordination
- Progress reporting
- Project closeout

These are “Basic Services”, and should be considered the firm’s minimum required capabilities. Projects may require pre-construction, design phase, construction phase and closeout/commissioning phase services.

Project Examples:

Examples of the types of projects/facilities prospective firms could be called upon to assist with are listed below:

- Court and Detention facilities

- Sheriff Substations
- Medical Facilities/Clinics
- General Office Buildings
- Libraries
- Educational Facilities
- Office Interior Improvements
- Animal Facilities
- Parking Lots/Exteriors
- Community Centers/Youth Camps
- Historic Buildings
- Properties to be appraised/acquired by the Real Estate Division of the Department
- HVAC Renovation/Upgrades

Consultant services required will be in support of projects initiated by County Departments through the Capital Improvement Plan/Major Maintenance Program, through unanticipated/emergency needs and events, or through Job Order Contracting (JOC). The selected firms must be pre-qualified and demonstrate the ability to complete projects within budget and within the proposed timeframe. Generally fees associated with each project range between \$7,500 and \$25,000 total billable values. Fees may be based on a not to exceed maximum or hourly as determined by Task Order.

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SUBMITTAL REQUIREMENTS

The following information should be included in the response in order to be considered for the pre-qualification and selection list. All items, excluding the cover letter must be tabbed and respondents are required to respond in accordance and in order with the direction provided below. Page limit is thirty (30) pages. Arrange these required elements in the following order:

1. Organization chart of staff members with current specific assignments
2. Profiles and Company History including:
 - Number of Years in business
 - Annual Revenues
 - Number of Employees (company-wide)
 - Number of Employees located in San Diego County
 - Current Work Backlog
 - Listing of California Counties where the firm worked directly with County as a Consultant
3. Detailed resumes of possible personnel to be assigned to this contract; each resume not to exceed two (2) pages. These resumes must represent projects over the last 5 years, and include personnel responsible for these projects currently employed by the firm.
4. Identify the location of the office where possible personnel to be assigned to this contract will primarily work.
5. Demonstrate the capability of the firm and availability to commit designated team member(s) within 48 hours of the request for services.
6. A completed Standard Form 330 (attached separately from the RFSQ 30 pages).
7. Project Experience and Verifiable References - Please provide a brief and concise description of related California County/State or Public Agency projects completed or in progress within the last 5 years which most closely match described services. This description should demonstrate the firm's experience and ability to perform the work listed in the Scope of Services. Provide description of three (3) projects with photos or documents that demonstrate similar, recent completion of new construction, remodels, or renovations. Provide three (3) verifiable client references and include name, title, organization/entity, address, current phone number, and email address.
8. Project Controls – Demonstrate your firm's experience with, and ability to utilize, the following software: CAD, Progen, Tririga, MS Project/Primavera Project Planner.

Statements must have the above-required items to be deemed responsive.

EVALUATION CRITERIA (IN PRIORITY ORDER)

1. Resumes of the firm members to be assigned; licensure with California State Board of Registration for all specialties where appropriate; history of primary staff with the firm or in the discipline.

2. The firm's proposed personnel's previous experience with working with California County Departments (Examples: Health & Human Services, Sheriff, Courts, Libraries, etc.).
3. The firm's proposed personnel's previous experience in working with Job Order Contracting.
4. The firm's proposed personnel's demonstrated ability to utilize and experience with Progen, Tririga, MS Project/Primavera Project Planner, and CAD.
5. Project experience that matches the requirements outlined in this RFSQ.
6. Completeness and accuracy of Statement of Qualifications Submittal Package.
7. Location of the office will be evaluated in determining the capability of the firm to commit designated team members as required in this RFSQ.
8. Verifiable client references and their responses.
9. Capability of the firm and availability to commit designated team member(s) within 48 hours of the request for services.
10. Demonstrated knowledge of and experience with all San Diego County jurisdictions' requirements, codes, and practices.

SELECTION PROCESS

It is anticipated that between three and five firms will be selected for the above As Needed list with a maximum ceiling of two (2) \$250,000 contracts per firm and duration of approximately three years. The firms selected by the Qualification Committee will be ranked according to their relative satisfaction of the Evaluation Criteria. The highest ranked firms will be placed in a short list for consideration by a Selection Committee. The selection process will be performed by a Selection Committee with an appropriate number of firms in the short list created by the Qualification Committee. The Selection Committee shall evaluate and rank firms, in order of preference, according to their satisfaction of the Evaluation Criteria. Firms will be awarded contracts in order of preference as established by the Selection Committee, and as projects/needs arise within the Department of General Services.

The qualification and selection process shall be in accordance with Board of Supervisors Policy F-40 (Procuring Architectural, Engineering and Related Professional Services, and is available in the County website: <http://www.sdcounty.ca.gov/cob/docs/policy/F-40.pdf>). All contact with the County must be in writing, preferably by email through the County's Project Manager Leonard Pinson; Leonard.pinson@sdcounty.ca.gov. The anticipated selection schedule for this process is summarized below:

1. SOLICITATION DATE – August 5, 2010
2. DEADLINE FOR SUBMISSION OF RFSQ – August 27, 2010
3. REVIEW OF RFSQ – September of 2010 – RFSQ material will be reviewed by a Qualification Committee, and subsequently, by a Selection Committee, which will designate the firms it deems "most qualified". The County reserves the right to begin contract negotiations based on this evaluation process alone.

4. INTERVIEW – Week of September 6, 2010 – If the Selection Committee deems necessary, it may invite the “highest ranked” firms for an oral interview and presentation on the short list created by the Qualification Committee. The Selection Committee will rank the firms based upon this interview and the RFSQ information.
5. CONTRACT NEGOTIATIONS – To begin immediately following Interview stage with the highest-ranked firm selected by the Selection Committee.

PROPOSED SUBMITTAL

Six (6) copies of the completed submittal shall be delivered to:
Leonard Pinson, JOC Coordinator
County of San Diego, Department of General Services
5555 Overland Avenue, Building 2, Suite 2207
(or hand deliver to Room 220)
San Diego, CA 92123-1294

Submittals are due at 4 PM, August 27, 2010

If you have any questions regarding the project description or the selection process for this RFSQ, please submit questions in writing and forwarded via email to Leonard.Pinson@sdcounty.ca.gov and hugo.mora@sdcounty.ca.gov and to be given consideration must be received no later than August 16, 2010 by 4:00 p.m. Answers to questions will be in the form of written addenda and, if issued, will be posted on the County BuyNet website at <http://buynet.sdcounty.ca.gov> by August 19, 2010. It is the responsibility of all prospective offerors to check the County BuyNet website for any addenda issued.

PROTEST PROCEDURE

County policy A-97 requires that contracts resulting from a negotiated procurement shall be awarded only after a notice of the proposed award has been posted in a public place. All protests shall be made in writing, and shall be filed with the Contracting Office identified in the solicitation package. A protest shall be filed on the earliest of the following dates: (i) within five business days after a Notice of Intent to award the contract has been posted in a public place in the County’s Contracting Office or County Internet website, (ii) within five business days after the County provides notification that the SOQ is no longer under consideration, or (iii) by noon on the day before the Board of Supervisors is scheduled to consider the matter. Copies of the Board Policy are available from the Clerk of the Board, 1600 Pacific Highway, San Diego, CA 92101, or on the County’s Web site at <http://www.sdcounty.ca.gov/> under the Clerk of the Board’s page.

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County of San Diego
Department of Purchasing and Contracting
REPRESENTATIONS AND CERTIFICATIONS

The following representations and certifications are to be completed, signed and returned with the offer.

1. NOT-FOR-PROFIT ORGANIZATIONS

Attach proof of status and omit Paragraph 3.

2. INTERLOCKING DIRECTORATE

In accordance with Board of Supervisors Policy A-79, if Offeror is a non-profit as indicated in paragraph 1 above, Offeror is required to identify any related for-profit subcontractors in which an interlocking directorate, management or ownership relationship exists. By submission of this offer, Offeror certifies it will not enter into a subcontract relationship with a related for-profit entity if Offeror is a non-profit entity. If Offeror is a non-profit and will be subcontracting with a related for-profit entity, Offeror must list the entity(ies) below and the contract must be approved by the Board of Supervisors.

List of for-profit

Entity(ies): _____
If more than one, attach a separate sheet listing them all.

3. BUSINESS REPRESENTATION

3.1. DEFINITION OF A DISABLED VETERANS BUSINESS ENTERPRISE

"Disabled Veterans Business Enterprise" means a business which is at least fifty-one (51%) owned and operated by one or more veterans with a service related disability as certified by Equal Opportunity Management Office (EOMO), California Department of General Services, Office of Small Business and members of Joint Agencies Contracting Opportunities (JACO), (California Military and Veterans code, Article 6, Section 999).

3.2. REPRESENTATION AS DISABLED VETERANS OWNED BUSINESS:

This Offeror represents as a part of this offer that the ownership, operation and control of the business, in accordance with the specific definition in 3.1, I am currently certified by (Government, Agency)

Certification #: _____

4. CERTIFICATE REGARDING DEBARMENT, SUSPENSION AND RELATED MATTERS

Offeror hereby certifies to the best of its knowledge that neither it nor any of its officers:

- 4.1. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency; and
- 4.2. Have within a three (3) year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

- 4.3. Are presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with the commission of any of the offenses enumerated in paragraph 4.2 of this certification; and
- 4.4. Have within a three (3) year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
- 4.5. Are presently the target or subject of any investigation, accusation or charges by any federal, State or local law enforcement, licensing or certification body and if they are, the appropriate information is included in the proposal, as requested in the Submittal Requirements.
- 4.6. Contractor will report in writing to the County Department of Purchasing and Contracting within five business days of knowing or have any reason to know any change in status as certified in the preceding paragraphs 4.1 through 4.5, and that occur prior to award (in the case of bids) and contract execution (in the case of negotiated procurements).

5. CERTIFICATE OF CURRENT COST OR PRICING

This is to certify that, to the best of my knowledge and belief, cost and/or pricing data submitted with this offer, or specifically identified by reference if actual submission of the data is impracticable, is/are accurate, complete, and current as of the date signed below.

6. CERTIFICATE OF INDEPENDENT PRICING

By submission of this bid or proposal, each offeror certifies, and in the case of a joint offers, each party thereto certifies as to its own organization, that in relation to this procurement:

- 6.1. The prices in this bid or proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with other Offeror; with any competitor; or with any County employee(s) or consultant(s) involved in this or related procurements; and
 - 6.2. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other Offeror or to any competitor; and
 - 6.3. No attempt has been made or will be made by the Offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.
7. The Offeror understands that prior to receiving a contract award from the County, the Offeror must submit a completed IRS W-9 form to provide a Federal Tax ID number, or if not available, to provide a Social Security Number (SSN).

CERTIFICATION

The information furnished in Paragraphs 1 through 7 is certified to be factual and correct as of the date submitted and this certification is made under penalty of perjury under the laws of the State of California.

NAME: _____ SIGNATURE: _____

TITLE: _____ DATE: _____

SUBMIT THIS FORM WITH THE OFFER

**REQUEST FOR STATEMENT OF QUALIFICATIONS (RFSQ 4700)
FOR AS NEEDED PROJECT MANAGEMENT SERVICES
DEPARTMENT OF GENERAL SERVICES
EXHIBIT B – INSURANCE REQUIREMENTS**

ARTICLE 1

INSURANCE REQUIREMENTS FOR CONTRACTORS

Without limiting Contractor's indemnification obligations to County, Contractor shall provide at its sole expense and maintain for the duration of this contract, or as may be further required herein, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of the work by the Contractor, his agents, representatives, employees or subcontractors.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office form CG0001.
- B. Automobile Liability covering all owned, non owned, hired auto Insurance Services Office form CA0001.
- C. Workers' Compensation, as required by State of California and Employer's Liability Insurance.
- D. Professional Liability required if Contractor provides or engages any type of professional services, including but not limited to medical professionals, counseling services, or legal services.

2. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, and Independent Contractors Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$2,000,000.
- B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage.
- C. Employer's Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of County of San Diego.
- D. Professional Liability: \$1,000,000 per claim with an aggregate limit of not less than \$2,000,000. Any self-retained limit shall not be greater than \$25,000 per occurrence/event without County's Risk Manager's approval. Coverage shall include contractual liability coverage. If policy contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any such aggregate limit has been paid or reserved, County will require additional coverage to be purchased by Contractor to restore the required limits. This coverage shall be maintained for a minimum of two years following termination of completion of Contractor's work pursuant to the Contract.

3. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the County's Risk Manager. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

4. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

- A. Additional Insured Endorsement

Any general liability policy provided by Contractor shall contain an additional insured endorsement applying coverage to the County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively.

B. Primary Insurance Endorsement

For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

C. Notice of Cancellation

Each required insurance policy shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County at the address shown in section of Contract entitled "Notices".

D. Severability of Interest clause

Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.

GENERAL PROVISIONS

5. **Qualifying Insurers**

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A-, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County's Risk Manager.

6. **Evidence of Insurance**

Prior to commencement of this Contract, but in no event later than the effective date of the Contract, Contractor shall furnish the County with certificates of insurance and amendatory endorsements effecting coverage required by this clause. Contractor shall furnish certified copies of the actual required insurance policies within thirty days after commencement of Contract. Thereafter, copies of renewal policies, certificate and amendatory endorsements shall be furnished to County within thirty days of the expiration of the term of any required policy. Contractor shall permit County at all reasonable times to inspect any policies of insurance, which Contractor has not delivered to County.

7. **Failure to Obtain or Maintain Insurance; County's Remedies**

Contractor's failure to provide insurance specified or failure to furnish certificates of insurance, amendatory endorsements and certified copies of policies, or failure to make premium payments required by such insurance, shall constitute a material breach of the Contract, and County may, at its option, terminate the Contract for any such default by Contractor.

8. **No Limitation of Obligations**

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to the Contract, including, but not limited to, the provisions concerning indemnification.

9. **Review of Coverage**

County retains the right at any time to review the coverage, form and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. Self-Insurance

Contractor may, with the prior written consent of County's Risk Manager, fulfill some or all of the insurance requirements contained in this Contract under a plan of self-insurance. Contractor shall only be permitted to utilize such self-insurance if in the opinion of County's Risk Manager, Contractor's (i) net worth, and (ii) reserves for payment of claims of liability against Contractor, are sufficient to adequately compensate for the lack of other insurance coverage required by this Contract. Contractor's utilization of self-insurance shall not in any way limit liabilities assumed by Contractor under the Contract.

11. Claims Made Coverage

If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

- A. The policy retroactive date coincides with or precedes Contractor's commencement or work under the Contract (including subsequent policies purchased as renewals or replacements).
- B. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Contract, including the requirement of adding all additional insureds.
- C. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Contract.
- D. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

12. Subcontractors' Insurance

Contractor shall require that any and all Subcontractors hired by Contractor are insured in accordance with this Contract. If any Subcontractors coverage does not comply with the foregoing provisions, Contractor shall defend and indemnify the County from any damage, loss, cost or expense, including attorney fees, incurred by County as a result of Subcontractors failure to maintain required coverage.

13. Waiver of Subrogation

Contractor and County release each other, and their respective authorized representatives, from any Claims (as defined in the Article entitled "Indemnity" of the Pro Forma Contract), but only to the extent that the proceeds received from any policy of insurance carried by County or Contractor, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of insurance provided by Contractor hereunder shall be a standard waiver of rights of Subrogation against County by the insurance company issuing said policy or policies.

ARTICLE 2

RESERVED

SAMPLE CONTRACT

This Contract ("Contract") is made and entered into on _____ by and between the County of San Diego, a political subdivision of the State of California, ("County") and ("Consultant"), with reference to the following facts:

RECITALS

- A. Pursuant to Administrative Code section 401, the County's Director of Purchasing and Contracting is authorized to award this Contract for **Project Management Services**.
- B. Consultant is specially trained and possesses certain skills, experience, education and competency to perform the work described herein.
- C. The Agreement shall consist of this pro forma Agreement, Exhibit A Statement of Work, A-1 Contractor's Task Order, Exhibit B Insurance Requirements and Exhibit C, Payment schedule. In the event that any provision of the Pro Forma Agreement or its Exhibits, A, A-1, B or C, conflicts with any other term or condition, precedence shall be: First (1st) the Pro Forma: Second (2nd) Exhibit B; Third (3rd) Exhibit A; Fourth (4th) Exhibit C; Fifth (5th) Exhibit A-1.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 **PERFORMANCE OF WORK**

- 1.1 Standard of Performance. Consultant shall, in a good and workmanlike manner and in accordance with the highest professional standards, perform and complete the work and provide the services required of Consultant by this Contract.
- 1.2 Consultant's Key Personnel. Consultant's duties under this Contract shall be performed on behalf of Consultant by Consultant's Key Personnel. Consultant represents and warrants that (1) Consultant's Key Personnel has fulfilled all applicable requirements of the laws of the State of California to perform the work under this Contract and has full authority to act for Consultant hereunder. Consultant's Key Personnel shall perform the work or oversee the performance of the work described in Exhibit A, Statement of Work. Consultant's Key Personnel shall not be changed during the Term of the Contract without County's prior written consent. County reserves the right to terminate this Contract pursuant to section 7.1, "Termination for Default," if Consultant's Key Personnel should leave Consultant's employ, or, if in County's judgment, the work hereunder is not being performed by Consultant's Key Personnel.
- 1.3 Independent Contractor. For all purposes under this Contract, Consultant is an independent contractor, and neither Consultant nor Consultant's employees or subcontractors shall be deemed to be employees of County for any reasons. Consultant shall perform its obligations under this Contract according to Consultant's own means and methods of work which shall be in the exclusive charge and under the control of Consultant, and which shall not be subject to control or supervision by County except as to the results of the work. Neither Consultant nor Consultant's employees or subcontractors shall be entitled to any benefits to which County employees are entitled including, without limitation, overtime, retirement, workers' compensation and injury leave.
- 1.4 Consultant's Agents, Employees and Subcontractors. Consultant shall obtain, at Consultant's expense, all agents, employees and subcontractors required for Consultant to perform the services under this Contract. All such services shall be performed by Consultant's Key Personnel, or under Consultant's Key Personnel's supervision by persons authorized by law to perform such services. Retention by Consultant of any agent, employee or subcontractor shall be at Consultant's sole cost and expense, and County shall have no obligation to pay Consultant's agents, employees or subcontractors; to support any such person's or entity's claim against Consultant; or to defend Consultant against any such claim.

- 1.4.1 Consultant Responsibility. If Consultant uses a subcontractor for any portion of the services required under this Contract, Consultant remains primarily responsible for carrying out all the terms of this Contract, including the subcontractor's performance and insuring that the subcontractor retains and makes its records available in accordance with this Contract. Consultant shall not allow any subcontractor to enter into a sub-subcontract for services under this Contract without County's prior written consent.
- 1.4.2 Subcontracts. Consultant shall ensure that all subcontracts incorporate by reference the following terms of this Contract: 1.1, 1.3, 1.5, 3.2, 4.3, 4.4, 4.5, 7.1, 7.2, 7.3, 8.1, 8.3, 8.5, 8.8, 8.9, 8.10, 9.1, 9.2, 10.2, 13.1, 13.2, 15.2, 15.5, 15.6, 15.10, 15.12 and 15.16. If Consultant enters into one or more subcontracts, the subcontract(s) shall not prohibit the subcontractor from negotiating directly with and entering into a contract with County.
- 1.4.3 Change of Subcontractors. Before Consultant enters into any subcontract with a subcontractor not listed in Exhibit A, Statement of Work, Consultant shall obtain the written consent of the Contracting Officer's Technical Representative ("COTR"). "Subcontractor" means any entity, other than County, that furnishes services or supplies to Consultant that are relevant to this Contract other than standard commercial supplies, office space, and printing services.
- 1.5 Consultant's Equipment. Consultant has secured or shall secure at Consultant's own expense all persons, employees, labor, supplies, materials, equipment, transportation, printing and facilities, except those expressly specified herein to be furnished by County, to perform the services required under this Contract. All such services shall be performed by Consultant, or under Consultant's supervision, by persons authorized by law to perform such services.

County shall not be responsible nor be held liable for any damage to person or property resulting from the use, misuse or failure of any equipment used by Consultant or any of Consultant's employees, even though such equipment be furnished, rented or loaned to Consultant by County. The acceptance or use of any such equipment by Consultant or any of Consultant's employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify and save harmless County from and against any and all claims for any damage whatsoever resulting from the use, misuse or failure of such equipment, whether such damage be to the employee or property of Consultant, other Consultants, County, or other persons. Equipment includes, but is not limited to material, tools and machinery.

ARTICLE 2

SCOPE OF WORK

- 2.1 Statement of Work. Consultant shall perform the work described in the "Statement of Work" attached as Exhibit A to this Contract, and by this reference incorporated herein, except for any work therein designated to be performed by County.
- 2.2 Right To Acquire Equipment and Services. Nothing in this Contract shall prohibit the County from acquiring the same type or equivalent type of equipment or services from other sources.

ARTICLE 3

CONTRACT TERM

- 3.1 Contract Term. This Contract shall be effective on _____, and shall terminate on _____ ("Term").
- 3.2 Options to Extend. At the Contracting Officer's sole discretion, County may extend the Term of this Contract in one or more increments, for a total of ____ years beyond the expiration of the Initial Term, but in no event shall extend beyond _____, 20____, pursuant to Exhibit C, Payment Terms or the adjustment factor identified. Unless County notifies Contractor in writing, not less than 30 days prior to the expiration date, that County does not intend to renew the Agreement, this Agreement will be automatically renewed for another year.

ARTICLE 4
COMPENSATION

- 4.1 Compensation. County will pay Consultant a fee not to exceed \$_____ (“Maximum Compensation”), pursuant to Exhibit C, Payment Terms, for the satisfactory completion of the services specified in Exhibit A, Statement of Work.
- 4.1.1 Accounting System And Fiscal Monitoring. Consultant shall maintain and use an accounting and financial support system to monitor, control and verify costs.
- 4.2 Invoices and Payment.
- 4.2.1 Invoices. Payment for the work performed under this Contract shall be in accordance with Exhibit C, unless Consultant and Contracting Officer agree in writing to another payment method. Consultant shall submit invoices to the COTR as specified in Exhibit C. Consultant’s monthly invoices shall include a statement certifying whether it is in compliance with section 8.9 of this Contract.
- 4.2.2 Payments. County will pay Consultant in arrears only after receipt and approval by COTR of a properly submitted, detailed and itemized original invoice referencing the Contract number and the information specified in Exhibits A and C. Each invoice, or portion thereof, so approved and paid shall constitute full and complete compensation to Consultant for the work completed during the billing period pursuant to Exhibit A and Exhibit C. Payment shall be NET 30 days from receipt and approval of invoice unless otherwise stated.
- 4.2.3 Conditions Prerequisite To Payments. County may elect not to make a particular payment if any of the following exists:
- 4.2.3.1. Misrepresentation. Consultant, with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to County.
- 4.2.3.2 Unauthorized Actions by Consultant. Consultant took an action without receiving County’s prior approval as required under this Contract.
- 4.2.3.3 Default. Consultant is in default of a term or condition of this Contract.
- 4.3 Availability of Funding. The County’s obligation to make any payment under this Contract beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on the part of the County shall arise for payment beyond June 30 of the calendar year unless funds are designated by the County and are made available for payment of this Contract.
- 4.4 Reduction in Funding. County may terminate this Contract or reduce compensation and service levels proportionately upon 30 days’ written notice to Consultant if Federal, State or County funding for this Contract ceases or is reduced before the expiration of the Term of this Contract. If funding for this Contract is reduced, County and Consultant shall meet within 10 days of written notice to Consultant of a reduction in funding to renegotiate this Contract based upon the modified level of funding. If County and Consultant fail to reach an agreement within 10 days of the first meeting, either party may terminate this Contract with 10 days written notice of termination.
- If this Contract is terminated in accordance with the terms of this subsection, Consultant shall be entitled to retain all sums paid as of the effective date of such termination, subject to any payment offset to which County may be entitled, for damages or otherwise, under the terms of this Contract. In no event shall Consultant be entitled to any loss of profits or other compensation on the terminated portion of this Contract.
- 4.5 Disallowance. If Consultant receives payment for work under this Contract which is later disallowed by County, Consultant shall promptly refund the disallowed amount to County on request, or, at its option, County may offset the amount disallowed from any payment due or to become due to Consultant under any Contract with County.

ARTICLE 5
CONTRACT ADMINISTRATION

- 5.1 County's Contracting Officer. The Director of Purchasing and Contracting is designated as the contracting officer ("Contracting Officer") and is the only County official authorized to make any changes to this Contract.
- 5.2 Consultant's Representative. Consultant designates the following individual as the Consultant's Representative: **[add name, address, phone number and email address]**
- 5.3 COTR. The County designates the following person as the Contracting Officer's Technical Representative ("COTR"): **[add name, address, phone number and email address]** The COTR will administer this Contract by chairing progress meetings with Consultant, receiving and approving Consultant invoices for payment, auditing and inspecting Consultant's records, inspecting Consultant's work, and providing other technical guidance as required. The COTR is not authorized to change any terms and conditions of this Contract. Only the Contracting Officer, by issuing a properly executed amendment to this Contract, may change the terms or conditions of this Contract.
- 5.4 Administrative Adjustments. Notwithstanding any provision of this Contract to the contrary, the COTR may make Administrative Adjustments ("AA") to this Contract, which do not change the purpose or intent of the Statement of Work, the Terms and Conditions, the Contract Term or the Maximum Compensation. Each AA shall be in writing and shall be signed by the COTR and Consultant. All inquiries about an AA will be referred directly to the COTR.
- 5.5 Contract Progress Meeting. The COTR and other County personnel, as appropriate, will meet periodically with Consultant to review the Contract performance. At these meetings, the COTR will apprise Consultant of how County views Consultant's performance, and Consultant will apprise COTR of any problems Consultant is having. Consultant shall also notify the Contracting Officer in writing of any work being performed that Consultant considers beyond the scope of this Contract. Appropriate action shall be taken to resolve outstanding issues. The minutes of these meetings will be reduced to writing and signed by the COTR and Consultant. If Consultant does not concur with the minutes, Consultant shall submit a written description of any area of disagreement within 10 days of the meeting. Appropriate action will be taken to resolve any areas of disagreement.

ARTICLE 6
CHANGES

- 6.1 Contracting Officer. The Contracting Officer may at any time, by a written order, make changes ("Changes"), within the general scope of this Contract, in the work to be performed, the time (i.e. hours of the day, days of the week, etc. when Consultant shall perform) and place of performance thereof. If any such Change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall be modified in writing accordingly.
- 6.2 Claims. Consultant must assert any claim for adjustment under this Article within 30 days from the date of receipt by the Consultant of the notification of Change. However, if the Contracting Officer determines that the facts justify such action, the Contracting Officer may receive and act upon any such claim asserted at any time before final payment under this Contract. Where the cost of property made obsolete or excess as a result of a Change is included in Consultant's claim for adjustment, the Contracting Officer may prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact under Article 14, "Disputes," of this Contract. However, nothing in this subsection shall excuse the Consultant from proceeding with this Contract as changed.

ARTICLE 7
TERMINATION

- 7.1 Termination For Default. Upon Consultant's breach of this Contract, County may terminate this Contract in whole or part. Prior to termination for default, County will send Consultant written notice specifying the default. The notice will give Consultant at least 15 days from the date the notice is issued to cure the default or make progress satisfactory to County in curing the default. If County determines that the default

contributes to the curtailment of an essential service or poses an immediate threat to life, health or property, County may terminate this Contract immediately upon issuing oral or written notice to Consultant without any prior notice or opportunity to cure. In the event of termination under this Article, all finished or unfinished documents, and other materials, prepared by Consultant under this Contract shall become the sole and exclusive property of County. In the event of such termination, County may purchase or obtain the work elsewhere, and Consultant shall be liable for the difference between the prices for the work set forth in this Contract and the actual cost thereof to County.

- 7.1.1 If, after notice of default of this Contract it is determined for any reason that the Consultant was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued as a Termination for Convenience.
- 7.2 Full Cost Recovery Of Investigation And Audit Costs. Contractor shall reimburse County of San Diego for all direct and indirect expenditures incurred in conducting an audit/investigation when Contractor is found in violation (material breach) of the terms of the Agreement. Reimbursement for such costs shall be withheld from any amounts due to Contractor pursuant to the payment terms of the Agreement, or from any other amounts due to Contractor from County.
- 7.3 Termination For Convenience. The County may, by written notice stating the extent and effective date, terminate this Contract for convenience in whole or in part, at any time. The County shall pay the Contractor as full compensation for work performed in accordance with the terms of this Contract until such termination:
 - 7.3.1 The unit or pro rata price for any delivered and accepted portion of the work.
 - 7.3.2 A reasonable amount, as costs of termination, not otherwise recoverable from other sources by the Contractor as approved by the County, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price.
 - 7.3.3 In no event shall the County be liable for any loss of profits on the resulting order or portion thereof so terminated.
 - 7.3.4 County's termination of this Agreement for convenience shall not preclude County from taking any action in law or equity against Contractor for:
 - 7.3.4.1 Improperly submitted claims, or
 - 7.3.4.2 Any failure to perform the work in accordance with the Statement of Work, or
 - 7.3.4.3 Any breach of any term or condition of the Agreement, or
 - 7.3.4.4 Any actions under any warranty, express or implied, or
 - 7.3.4.5 Any claim of professional negligence, or
 - 7.3.4.6 Any other matter arising from or related to this Contract, whether known, knowable or unknown before, during or after the date of termination.
 - 7.3.5 County's termination of this Contract for convenience shall not preclude County from taking any action in law or equity against Consultant for any matter arising from or related to this Contract.
- 7.4 Suspension Of Work. The Contracting Officer may order Consultant, in writing, to suspend, delay, or interrupt all or any part of the work of this Contract for the period of time that the Contracting Officer determines is in County's best interest.
- 7.5 Remedies Not Exclusive. The rights and remedies of County provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or equity.

ARTICLE 8

COMPLIANCE WITH LAWS AND REGULATIONS

- 8.1 Compliance with Laws and Regulations. Consultant shall at all times perform its obligations hereunder in compliance with all applicable federal, State, and County laws and regulations.

- 8.2 Consultant's Permits and License. Consultant certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to the County, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all applicable statutes, ordinances, and regulations, or other laws, that may apply to performance of work hereunder. County may reasonably request and review all such applications, permits, and licenses.
- 8.3 Equal Opportunity. Consultant shall comply with the provisions of Title VII of the Civil Rights Act of 1964 in that Consultant shall not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment nor shall Consultant discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.
- 8.4 Affirmative Action. If Consultant employs 15 or more full-time permanent employees, Consultant shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated herein by reference. A copy of this Affirmative Action Program will be furnished by the COTR upon request or may be obtained from the County of San Diego Internet web-site (www.sdcounty.ca.gov).
- 8.5 Drug and Alcohol-Free Workplace. In Board of Supervisors' Policy C-25, County of San Diego Drug and Alcohol Use Policy, the Board of Supervisors recognized that those who perform services or work for County under contract should perform the services or work as safely, effectively and efficiently as possible.
- 8.5.1 Consultant and Consultant's employees, while performing work for the County, or while using County equipment:
- 8.5.1.1 Shall not be in any way impaired because of being under the influence of alcohol or a drug.
- 8.5.1.2 Shall not possess, consume or be under the influence of alcohol or an illegal drug.
- 8.5.1.3 Shall not sell, offer, or provide alcohol or a drug to another person.
- 8.5.2 Section 8.5 is a material condition of this Contract. If the Contracting Officer determines that Consultant and/or Consultant's employee(s) has not complied with section 8.5, County may terminate this Contract for default and may also terminate any other Contract Consultant has with County.
- 8.6 Board of Supervisors' Policies. Consultant represents that it is familiar, and shall use its best efforts to comply, with the following policies of the Board of Supervisors: Board Policy B-67, which encourages the County's contractors to use products made with recycled materials, reusable products, and products designed to be recycled; and Board Policies B-53 and B-39a, which encourage the participation of small and disabled veterans' business enterprises in County procurements. Board of Supervisors Policies are available on the County of San Diego web site.
- 8.7 Cartwright Act. Following receipt of final payment under the Contract, Consultant assigns to County all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 1 of Part 2 of Division 7 of the Business and Professions Code, commencing with section 16700), arising from purchases of goods, materials, or work by the Consultant for sale to County under this Contract.
- 8.8 Hazardous Materials. Consultant shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Consultant shall not store any Hazardous Materials on any County property for more than 90 days or in violation of the applicable site storage limitations imposed by Environmental Law. At its sole expense, Consultant shall take all actions necessary to protect third parties, including, without limitation, employees and agents of County, from any exposure to Hazardous Materials generated or utilized in Consultant's performance under this Contract. Consultant shall report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the County of it. Consultant shall not be liable to County for County's failure to comply with, or for County's violation of, any Environmental Law. As

used in this section, the term “Environmental Laws” means any and all federal, State and local laws, ordinances, rules, decrees, orders, regulations or court decisions (including the “common law”), relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. One such law is the Resource Conservation and Recovery Act. As used in this section, the term “Hazardous Materials” means any chemical, compound, material, substance or other matter that: (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws; or (d) is any other material or substance for which there may be any liability, responsibility or duty on County or Consultant with respect to any third person under any Environmental Laws.

- 8.9 Debarment And Suspension. Consultant certifies that it, its principals, its employees and its subcontractors:
- 8.9.1 Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any State or Federal Department or agency.
 - 8.9.2 Have not within a 3-year period preceding this Contract been convicted of, or had a civil judgment rendered against them for, the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 8.9.3 Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and
 - 8.9.4 Have not within a 3-year period preceding this Contract had one or more public transactions (federal, State, or local) terminated for cause or default.

ARTICLE 9

CONFLICTS OF INTEREST; CONSULTANT'S CONDUCT

- 9.1 Conflicts of Interest. Consultant presently has no interest including, but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of work required under this Contract. Consultant shall not employ any person having any such interest in the performance of this Contract.
- 9.2 Conduct of Consultant; Privileged Information.
- 9.2.1 Throughout the term of this Contract, Consultant shall inform County of all of Consultant's interests, if any, which are, or which the Consultant believes to be, incompatible with any interests of the County.
 - 9.2.2 Consultant shall not accept any gratuity or special favor from individuals or organizations with whom Consultant is doing business or proposing to do business, in accomplishing the work under this Contract.
 - 9.2.3 Consultant shall not use for personal gain or make other improper use of privileged information which is acquired in connection with this Contract. The term “privileged information” includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of the individuals; anticipated materials requirements or pricing actions; and knowledge of selection of a contractor in advance of official announcement.
 - 9.2.4 Consultant shall not directly or indirectly offer or give any gift, gratuity, or favor to any County employee.

9.3 Prohibited Contracts. Consultant certifies that this Contract does not violate County Administrative Code section 67, and that Consultant is not, and will not subcontract with, any of the following:

- 9.3.1. Persons employed by County or public agencies for which the Board of Supervisors is the governing body.
- 9.3.2. Profit-making firms or businesses in which employees described in sub-section 9.3.1 serve as officers, principals, partners, or major shareholders;
- 9.3.3. Persons who, within the immediately preceding 12 months came within the provisions of sub-section 9.3.1 and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the Contract, or (2) participated in any way in developing the Contract or its service specifications; and
- 9.3.4. Profit-making firms or businesses in which the former employees described in subsection 9.3.3 serve as officers, principals, partners, or major shareholders.

California Political Reform Act and Government Code Section 1090 Et Seq. Consultant acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq., provides that consultants hired by a public agency, such as County, may be deemed to be a "public official" subject to the Act if the consultant advises the agency on decisions or actions to be taken by the agency. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. To the extent the Act applies to Consultant, Consultant shall abide by the Act. In addition, Consultant acknowledges and shall abide by the conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.

ARTICLE 10

INDEMNITY AND INSURANCE

10.1 Indemnity. County shall not be liable for, and Consultant shall defend and indemnify County and its officers, agents, employees and volunteers (collectively, "County Parties"), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of Consultant or its officers, employees, agents, contractors, licensees or servants.

10.2 Insurance. Before executing this Contract, Consultant shall obtain at its own cost and expense, and keep in force and effect during the Term of this Contract, including all extensions, the insurance specified in Exhibit B, "Insurance Requirements."

ARTICLE 11

AUDIT AND INSPECTION OF RECORDS

11.1 Audit And Inspection. Contractor agrees to maintain and/or make available within San Diego County accurate books and accounting records relative to all its activities under this Agreement. Authorized Federal, State or County representatives shall have the right to monitor, assess, or evaluate Contractor's performance pursuant to this Agreement, said monitoring, assessments, or evaluations to include but not limited to audits, inspection of premises, reports, and interviews of project staff and participants.

At any time during normal business hours and as often as County may deem necessary, Contractor shall make available to County, State or Federal officials for examination all of its records with respect to all matters covered by this Agreement and will permit County, State or Federal officials to audit, examine and make excerpts or transcripts from such records, and to make audits of all invoices, materials, payrolls, records of personnel, information regarding clients receiving services, and other data relating to all matters covered by this Agreement. . If an audit is conducted, it will be done in accordance with generally accepted government auditing standards as described in "Government Auditing Standards," published for the United States General Accounting Office.

If any services performed hereunder are not in conformity with the specifications and requirements of this Agreement, County shall have the right to require the Contractor to perform the services in conformity with said specifications and requirements at no additional increase in total Agreement amount. When the services to be performed are of such nature that the difference cannot be corrected, County shall have the right to (1) require Contractor immediately to take all necessary steps to ensure future performance of the services in conformity with requirements of the Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services performed. In the event Contractor fails to perform the services promptly or to take necessary steps to ensure future performance of the service in conformity with the specifications and requirements of the Agreement, County shall have the right to either (1) by Agreement or to otherwise have the services performed in conformity with the Agreement specifications and charge to Contractor any cost occasioned to County that is directly related to the performance of such services, or (2) terminate this Agreement for default as provided in the Termination clause.

- 11.2 Cost or Pricing Data. If the Contractor submitted cost or pricing data in connection with the pricing of this Agreement or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities of the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the County or its agent shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation pricing or performance of such Agreement, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted.
- 11.3 Availability. The materials described above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit or reproduction, until the expiration of three (3) years from the date of final payment under this Agreement, or by section 11.3.1 and 11.3.2, below:
- 11.3.1 If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.
- 11.3.2 Record which relate to appeals under the "Disputes" clause of this Agreement, or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of, or three years after Agreement completion, whichever is longer. County shall keep the materials described above confidential unless otherwise required by law.
- 11.4 Subcontract. The Contractor shall insert a clause containing all the provisions of this Article 11 in all subcontract hereunder except altered as necessary for proper identification of the Contracting parties and the Contracting officer under the County's prime Agreement.

ARTICLE 12

INSPECTION OF SERVICE

- 12.1 Subject to Inspection. Consultant's performance (including work, materials, supplies, equipment furnished or used and workmanship related to the performance of this Contract) shall be subject to inspection and testing by County at all times during the Term of this Contract. Consultant shall cooperate with any inspector assigned by the County to determine whether Consultant's performance conforms to the requirements of this Contract. County shall perform such inspection in a manner that will not unduly interfere with Consultant's performance.
- 12.2 Specification and Requirements. If any work performed by Consultant does not conform to the specifications and requirements of this Contract, County may require Consultant to re-perform the work until it conforms to said specifications and requirements, at no additional cost. County may withhold payment until Consultant correctly performs the work. When the work to be performed is of such a nature that Consultant cannot correct its performance, County may require Consultant to immediately take all necessary steps to ensure that future performance of the work conforms to the requirements of this Contract; and to reduce the Maximum Compensation to reflect the reduced value of the work received by County. If Consultant fails to promptly re-perform the work or to take necessary steps to ensure that future performance of the work conforms to the specifications and

ARTICLE 13
USE OF DOCUMENTS AND REPORTS

- 13.1 **Confidentiality.** County and Contractor agree to maintain confidentiality and take industry appropriate and legally required measures to protect the confidentiality of any information regarding applicants, project participants or their immediate families which may be obtained through application forms, interviews, tests, reports, from public agencies or counselors or any other source. Without the written permission of the applicant or participant, such information shall be divulged only as necessary for purposes related to the audit and evaluation of the Agreement and then only to persons having responsibilities under the Agreement, including those furnishing services to Project under subcontract. County and Contractor agree that all information and records obtained in the course of providing services to project clients shall be subject to confidentiality and disclosure provisions of applicable Federal and State statutes and regulations adopted pursuant thereto. However, at County's request, Contractor shall permit County access to all records and information regarding the project and confidentiality shall not be a bar to County's access to all records and information. Contractor shall take industry appropriate and legally required measures to safeguard information regarding applicants, project participants or their immediate families including, but not limited to, the transfer of this information electronically or in hard copy format, verbal transfer of information, and staff training and monitoring regarding safeguards. Contractor shall evaluate their internal processes and practices for areas of potential vulnerability and take actions to put controls in place. Examples for management of confidential information can be found at www.cosdcompliance.org.
- 13.2 **Publication, Reproduction or Use of Materials.** All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials produced under this Contract, whether in printed or "electronic" format, shall be the sole and exclusive property of County. No materials produced in whole or in part under this Contract shall be subject to private use, copyright or patent right without the express prior written consent of County. Consultant shall submit reports to County in the form specified by County's Contract Representative or as may be specified elsewhere in this Contract. County may publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or any other materials prepared by Consultant under this Contract.

ARTICLE 14
DISPUTES

Notwithstanding any provision of this Contract to the contrary, the Contracting Officer shall decide any dispute concerning a question of fact arising out of this Contract that is not otherwise disposed of by the parties within a reasonable period of time. The decision of the Contracting Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Consultant shall proceed diligently with its performance hereunder pending resolution by the Contracting Officer of any such dispute. Nothing herein shall be construed as granting the Contracting Officer or any other administrative official, representative or board authority to decide questions of law.

ARTICLE 15
GENERAL PROVISIONS

- 15.1 **Assignment.** Consultant shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the County, which consent shall not be unreasonably withheld.
- 15.2 **Contingency.** This Contract shall bind County only when approved by the Board of Supervisors or when signed by the Director of Purchasing and Contracting.

- 15.3 Entire Contract. This Contract, together with all exhibits attached hereto and other Contracts expressly referred to herein, constitute the entire Contract between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, including any proposals from Consultant and requests for proposals from County, are superseded by this Contract.
- 15.4 Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference.
- 15.5 Further Assurances. The parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required to carry out the provisions of this Contract and the intentions of the parties.
- 15.6 Governing Law. This Contract shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California and any action brought relating to this Contract shall be held exclusively in a state court in the County of San Diego, State of California.
- 15.7 Headings. The Article captions and Section headings used in this Contract are inserted for convenience only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.
- 15.8 Modification and Waiver. Except as otherwise provided in Article 6, "Changes," no modification, waiver, amendment or discharge of this Contract shall be valid unless the same is in writing and signed by both parties.
- 15.9 Neither Party Considered Drafter. Despite the possibility that one party may have prepared the initial draft of this Contract or played the greater role in preparing subsequent drafts, neither party shall be deemed to be the drafter of this Contract. In construing this Contract, no provision shall be construed in favor of one party on the ground that the provision was drafted by the other party.
- 15.10 No Other Inducement. The making, execution and delivery of this Contract by the parties hereto has not been induced by any representations, statements, warranties or agreements other than those expressed herein.
- 15.11 Notices. Notices required or allowed to be given under this Contract shall be in writing and either personally delivered or sent by certified mail, postage prepaid, return receipt requested, addressed to the party to be notified at the address specified herein. Any such notice shall be deemed received on the date of personal delivery to the party (or such party's authorized representative) or three business days after deposit in the U.S. Mail. All notices to County shall be sent to the COTR at the address specified in subsection 5.1. All notices to Consultant shall be sent to Consultant's Representative at the address specified in subsection 5.2. Either party may change the name and address of the person to receive notices for that party by providing written notice of the change to the other party.
- 15.12 Severability. If any term, provision, covenant or condition of this Contract is held to be wholly or partially invalid, void or otherwise unenforceable by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby, and every other term, provision, covenant or condition of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- 15.13 Successors. Subject to the limitations on assignment set forth in subsection 15.1 above, all terms of this Contract shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
- 15.14 Time. Time is of the essence of each provision of this Contract.
- 15.15 Time Period Computation. All periods of time referred to in this Contract shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days. If the date or last date to perform any act or give any notice or approval falls on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.
- 15.16 Waiver. The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Contract, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition. Delay by any party in pursuing any remedy or in insisting

- 15.17 Corporation in Good Standing. If Consultant is a California corporation, Consultant warrants that it is a corporation in good standing and is currently authorized to do business in California.
- 15.18 Sections that Survive Termination. The following sections or articles shall survive the termination of this Contract: sections 8.7, 8.8, 10.1, 11.2 and Articles 7 and 13.

(remainder of this page left blank)

SIGNATURE PAGE

IN WITNESS WHEREOF, County and Consultant have executed this Contract effective as of the date first set forth above

COUNTY OF SAN DIEGO

[CONSULTANT'S NAME]

By: _____
WINSTON F. McCOLL, Director
Department of Purchasing and Contracting

By: _____

Print Name

Print Title

Date: _____

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

By: _____
Senior Deputy

By: _____

Print Name

Print Title

Date: _____

[Note: if Consultant is a Calif. corp., need proof (resolution from corp.'s board, etc.) that person who signs contract is authorized to sign, or need one signature from each of the following two groups:

1. Executive Group: President, Vice-president or Chairman of Board; and
2. Management Group: Secretary, Assistant Secretary, Assistant Treasurer or Chief Financial Officer. (Corp. Code § 313.)]