



SACRAMENTO PUBLIC LIBRARY

Sacramento Public Library Authority

Request for Proposal SPLBID 1064

Actuarial Study

Due Date: Friday, September 13, 2013 at 4:00 p.m.

To: Sacramento Public Authority
Actuarial Study SPLBID 1064
Attn: Johnny Ea
Finance Manager
828 I Street
Sacramento, CA 95814

PURPOSE

The Sacramento Public Library Authority (SPL) seeks proposals from qualified actuaries to provide Actuarial Consulting Services that comply with the requirements of Governmental Accounting Standards Board (GASB), Statement No. 45, *Accounting and Financial Reporting by Employers for Post-Employment Benefits Other Than Pensions*. The consulting firm, will prepare three (3) biennial actuarial study updates during the period October 21, 2013 to June 30, 2018. The contract will be for three actuarial updates with an option to renew for two (2) additional updates.

The deadline for completion of the first biennial actuarial study is March 31, 2014.

LIBRARY BACKGROUND INFORMATION

Sacramento Public Library is the fourth largest library system in California serving more than 1.3M residents in Sacramento County, including the cities of Citrus Heights, Elk Grove, Galt, Isleton, Rancho Cordova and Sacramento. The system is a Joint Powers Authority (“Library Authority”), governed by a 15-member board comprised of elected officials from each of the member jurisdictions, with representation based on each jurisdiction’s population. The Library Authority operates 27 libraries, a Central Library in downtown Sacramento, and a traveling bookmobile. With 620,000 cardholders, Sacramento Public Library welcomes more than 4M visitors and circulates more than 7.6M items each year. The system has a permanent collection of more than 2M items, and an annual budget of \$30.7M. The Library Director serves as the Executive Director of the Authority. More information about the Library Authority is available on its website at www.saclibrary.org.

SCOPE OF SERVICES

The scope of work is in direct response to the Library's requirements to comply with Government Accounting Standards Board (GASB) Statements numbers 43 and 45. GASB Statement 45 requires an actuarial valuation to estimate the Unfunded Actuarial Accrued Liability (UAAL) related to Other Post Employment Benefits (OPEB), including Retiree medical benefits. GASB 45 also requires an actuary to determine the Annual Required contribution to fund normal contributions and the amortized portion of the UAAL. This project requires the Consultant to perform the required actuarial valuations and calculations, and determine the Annual Required Contribution (ARC) in compliance with GASB 45 requirements. In addition, the Consultant will prepare a final report summarizing the results of each of three modeled options. The scope of work includes two meetings with Library staff and/or Board of Directors.

The project has the following steps:

1. Data collection for both current employees and retirees
2. Selection of actuarial methods and assumptions
3. Analysis and year-by-year projections of the numbers retired and the expected premiums paid by the Library for 15 or more years for each scenario.

4. Report. The sections of the report will include:

- Summary
- Introduction
- Accounting Standards
- Valuation Results (including year-by-year projections)
- Demographics Projections
- Appendices
 - Glossary
 - Actuarial Assumptions
 - Participant Censuses
 - Plan Summaries

PROJECT SCHEDULE

Request for Proposals Issued	August 9, 2013
Proposals Due	September 13, 2013
Proposal Review and Evaluation	September 16-27, 2013
Recommendation to Library Director	October 4, 2013
Project Start	October 21, 2013
Draft plans submitted to Finance Manager	February 28, 2014
Completion of Final Plans	March 31, 2014
Presentation to Board/Committee	May 2014
Similar schedule for 2 additional biennial updates	

SELECTION CRITERIA AND EVALUATION OF PROPOSALS

Proposals will be evaluated based upon the responsiveness to this Request for Proposals (RFP), qualifications, experience, abilities, proposed work plan, proposed schedule, availability, references, estimated fee, and other factors that the selection team deems relevant. A panel made up of Sacramento Public Library Authority staff will evaluate the proposals for the purpose of selecting a firm or finalists for interviews at a later date.

ORGANIZATION AND CONTENT OF PROPOSAL

This section describes the information to be included and submitted in the proposal. It shall contain the following sections:

Section	Contents
Cover Letter	Transmittal summarizing the proposal
1	Detailed project approach
2	Related Experience

3	Project Team
4	Project Schedule
5	Conflicts of Interest
6	Proprietary Information
7	Insurance
8	Library Staff Estimate
9	References
10	Professional Services Agreement
11	Cost Information

1. Detailed Project Approach

Provide a description of the proposed approach to the project, detailing how your company will meet or exceed all requirements as set forth in the Scope of Services. This should include a description of the work program, including a description of the deliverables and activities. An outline of the proposed work plan should accompany the narrative. Any recommended revisions to the list of tasks should be described here.

2. Related Experience

Include a brief summary of your company background and organization. Provide a statement of the company’s capabilities, qualifications and experience for performing the subject services. Provide a summary of your company’s experience and past performance with similar projects. Briefly describe the projects and the functions your firm performed on the projects.

3. Project Team

Identify the key individuals, including sub-consultants if applicable, who are proposed to be part of the team, along with their qualifications and experience. The information should include the expected amount of involvement and time commitment for each of these individuals.

4. Project Schedule

A project schedule has been included above. Please respond with the company’s ability to meet this timeline. It is the responsibility of the proposer to assess and define the appropriate number, type, and hours required of its staff in order to complete the project within the schedule.

5. Conflicts of Interest

Companies submitting proposals in response to this RFP must disclose to the Authority any actual, apparent, direct or indirect, or potential conflicts of interest that may exist with respect to the firm, management, or employees of the firm, or other person relative to the services to be provided under the Agreement for services to be awarded pursuant to this RFP. If there exists no conflict of interest, a statement to that effect shall be included in the proposal.

Companies must also disclose in its proposal any campaign contributions made to any member of the Authority’s Governing Board during the past 12 months in an amount

exceeding \$250. Members may be viewed at: <http://www.saclibrary.org/About-Us/Authority-Board/>

6. Proprietary Information

Companies submitting proposals to this RFP must provide a statement that nothing contained in the submitted proposal will be proprietary. The Authority will not release responses until after the Library Director acts to select the successful vendor(s). Thereafter, all responses are considered public records and subject to disclosure under the Public Records Act.

7. Insurance

Provide a summary of the company’s insurance coverage, including public liability, property damage, worker’s compensation, automobile, and professional liability. See Exhibit D of the Professional Services Agreement (Attachment A) for specific information regarding insurance coverage required by the Library Authority.

8. Library Staff Estimate

Provide an estimate of Library staff required for input and review of this project.

9. References

Provide a minimum of three professional references. The name, address, telephone number, and email for a contact person for the company/organization shall be provided, along with a brief description of the work completed.

10. Professional Services Agreement

Note any exceptions or objections to the terms and conditions of the General Provisions of the Professional Services Agreement (Attachment A).

11. Cost Information

The consultant shall present a specific “not to exceed” fixed fee including associated fees (i.e. printing costs, attendance at meetings, travel). Include a cost estimate for each of the tasks identified in the Scope of Services as well as an overall cost summary. The Sacramento Public Library is **not** sales tax exempt.

Cost Information per Actuarial Study Year

Task	% Billing	Study Year 1 2014	Study Year 2 2016	Study Year 3 2018	Total
TOTAL	100%				

Note: Failure to address any of the requested information may be cause for the proposal to be considered nonresponsive and rejected.

INSTRUCTIONS FOR SUBMITTING PROPOSALS

Six (6) copies of the proposal must be received by the Authority **no later than 4:00 p.m. on September 13, 2013:**

Sacramento Public Library
Attention: Johnny Ea
Finance Manager
828 I Street
Sacramento, CA 95814

Faxed or e-mail only proposals will not be accepted. Hand-delivered submissions should be delivered to the Library's Administrative Office on the fourth floor of the Central Library, 828 I Street, Sacramento, CA 95814. Written submittals should include all of the information requested in this RFP and should be submitted in a sealed envelope marked "Sacramento Public Library Authority/Finance Department/Cost Allocation Plan."

The proposal must be signed by an official authorized to bind the company, and must contain a statement that the proposal and cost are valid for a period of one hundred twenty (120) days from the closing date and time.

QUESTIONS

Questions about this RFP and the project should be directed to Johnny Ea, Finance Manager, via email to jea@saclibrary.org. All questions received and responses will be posted at the Sacramento Public Library's Cost Allocation Study RFP Question and Answer Page located at <http://www.saclibrary.org/About-Us/Request-For-Proposals/>. The authority will make every effort to answer questions as soon as possible.

OTHER TERMS AND CONDITIONS

The Proposer agrees to the following:

1. To examine the RFP and conditions thoroughly. At the time of the opening of proposals, each Proposer will be presumed to have read and to be thoroughly familiar with the plans, specifications, and contract documents (See Attachment A for Authority Professional Services Agreement). The failure of omission of any Proposer to examine any form, instrument, or document shall in no way relieve any Proposer from any obligation in respect to their proposal.
2. To provide for appropriate insurance, deposits, and performance bonds as required.
3. To comply with all federal, state, and local laws, ordinances, and rules.

4. Note any exceptions or objections to the terms and conditions of the Professional Services Agreement (Attachment A).

Authority expressly reserves the following rights:

1. To waive or reject any and/or all irregularities in the proposals submitted.
2. To waive or reject any and/or all proposals or portions thereof.
3. To reject all proposals and negotiate with an individual Proposer or any other person or entity.
4. To base awards with due regard to quality services, experience, compliance with specifications, and other such factors as may be necessary due to circumstance.
5. To make the award to any Proposer whose proposal is in the best interest of the Authority.
6. To negotiate different terms and conditions with any Proposer the Authority may choose.
7. To utilize concepts submitted to the Authority, via proposal, without compensation.

Authority Not Bound by Oral Statements. The Authority will not be bound by any oral statement or representation contrary to the written specifications.

Ownership and Use of Documents. All documents, reports, proposals, submittals, working papers or other materials submitted to Authority from the Proposer shall become the sole and exclusive property of Authority, in the public domain and not the property of the Proposer and are subject to public disclosure under the California Public Records Act. See the Professional Services Agreement (Attachment A) for additional information. The Proposer shall not copyright, or cause to be copyrighted, any portion of any of said documents submitted as a result of this solicitation. Further, the Authority may utilize concepts submitted via proposal without compensation.

Qualifications of Proposer. The Authority may make such investigations as deemed necessary to determine the ability of the Proposer to perform the work, and the Proposer shall furnish all information and data for this purpose as Authority may request. Authority reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Proposer fails to satisfy Authority that such Proposer is properly qualified to carry out the obligations of the contract and to complete work contemplated therein. Conditional proposals will not be accepted.

Informality. The Authority reserves the right to waive any informality, irregularity, or defect in the proposal process and to select any Proposer, even if the selected proposal does not meet all requirements of this RFP. Any such waiver by the Authority shall not be deemed a waiver with respect to any subsequent informality, irregularity, or defect in the proposal process.

Execution of Contract. No contract shall be binding on the Authority until it has been approved by the Authority Governing Board, approved as to form by the Counsel of the Authority, and executed by the Library Director.

General Provisions. Proposer must review Attachment A – Professional Services Agreement and note any exceptions or objections to the terms and conditions.

Contract Term. The term of the contract shall be for the period of three (3) years, unless terminated, canceled or extended as provided in the professional services agreement Attachment A. The contract shall include an option to provide a cost allocation plan that complies with OMB Circular A-87.

EVALUATION OF PROPOSALS – SELECTION FACTORS

An evaluation panel composed of the Finance Manager, Deputy Library Director and up to two additional staff members will review and evaluate each proposal and selection will be made on the basis of the criteria listed below. Proposals shall be evaluated on the following:

- A. Ability to meet or exceed requirements listed in the Request for Proposal specifications
- B. Contract viability and support, including Project Plan, Timetable, and availability
- C. Credentials and related experience, including project team credentials
- D. Cost of services
- E. Quality of References
- F. Other factors staff determines relevant

The Library reserves the right to ask for clarification from any proposer. The proposal should include contact information for the purpose of asking for clarification. The evaluation panel will collectively recommend a vendor to the Library Director. The Library Authority Board will approve the final vendor selection and contract.

All proposals must be made on the basis of, and either meet or exceed, the requirements contained in the scope of services.

SACRAMENTO PUBLIC LIBRARY AUTHORITY

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made at Sacramento, California, as of _____ by and between the **SACRAMENTO PUBLIC LIBRARY AUTHORITY**, a joint powers authority (“AUTHORITY”), and

CONTRACTOR

Address

Phone/Fax

(“CONTRACTOR”), who agree as follows:

- 1. Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to AUTHORITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies AUTHORITY and AUTHORITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) AUTHORITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefore. AUTHORITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Library Director or the Director’s designee, or by the AUTHORITY Governing Board, as required by the AUTHORITY’S Procurement Policy.
- 2. Payment.** AUTHORITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, AUTHORITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to AUTHORITY in the manner specified in Exhibit B.
- 3. Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. AUTHORITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
- 4. General Provisions.** The General Provisions set forth in Exhibit D, which include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefore, the General Provisions shall control over said terms or conditions.
- 5. AUTHORITY Representative.** The AUTHORITY Representative specified in Exhibit A, or the Representative’s designee, shall administer this Agreement for AUTHORITY.
- 6. Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.

7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

SACRAMENTO PUBLIC LIBRARY AUTHORITY
A Joint Powers Agency

CONTRACTOR
CONTRACTOR NAME

By: _____
Rivkah K. Sass, Library Director

By: _____
Signature

Date: _____

(If over \$50,000)
Board Action # and Date: _____

Print Name

APPROVED AS TO FORM:

Title: _____

By: _____
Sheri Chapman, Authority Counsel

Date: _____

Date: _____

Federal I.D. No.

Initiated by: _____
Johnny Ea, Finance Manager

State I.D. No.

Date: _____

Social Security No. (If Individual/Sole Proprietor)

Approved by: _____
Denise Davis, Deputy Library Director

TYPE OF BUSINESS ENTITY (check one):

- _____ Individual/Sole Proprietor
- _____ Partnership
- _____ Corporation
- _____ Limited Liability Company
- _____ Other (*please specify:* _____)

Date: _____

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. **Representatives.**

The AUTHORITY Representative for this Agreement is:

Johnny Ea, Finance Manager
828 I Street
Sacramento, CA 95814
(916) 264-2744
jea@saclibrary.org

All CONTRACTOR questions pertaining to this Agreement shall be referred to the AUTHORITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

CONTRACTOR Representative
Company Name
Address
Phone/Fax
E-Mail

All AUTHORITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative.

All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the AUTHORITY shall be addressed to the AUTHORITY Representative.

2. **Scope of Services/Special Conditions.** The services provided and, if applicable, all special conditions required in connection therewith, shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.

3. **Time of Performance.** The services described herein shall be provided during the period, or in accordance with the schedule, described below:

All work on the aforementioned "Scope of Services" shall be completed during the period of October 21, 2013 and June 30, 2018.

4. **Professional Liability Insurance**

Professional Liability (Errors and Omissions) Insurance X is is not (check one) required for this Agreement. (See Exhibit D, Section 10 for complete insurance requirements.)

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. CONTRACTOR's Compensation. The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A (hereafter "Services"), including reimbursable expenses, shall not exceed the total sum of \$_____.
2. Payment shall be made to CONTRACTOR as follows:

Cost Information per Year – Actuarial Study

Task	% Billing	Study Year 1 2014	Study Year 2 2016	Study Year 3 2018	Total
TOTAL	100%				

3. CONTRACTOR's Reimbursable Expenses. Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall be payable only if specifically authorized in advance by AUTHORITY.
4. Payments to CONTRACTOR.
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of AUTHORITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 1. Job Name
 2. Description of services billed under this invoice, and overall status of project
 3. Date of Invoice Issuance
 4. Sequential Invoice Number
 5. AUTHORITY's Purchase Order Number
 6. Total Contract Amount
 7. Amount of this Invoice (Itemize all Reimbursable Expenses)
 8. Total Billed to Date
 9. Total Remaining on Contract
 10. If project is behind schedule, an updated project schedule that identifies those steps that shall be taken to bring the project back on schedule.
 - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. AUTHORITY shall not be responsible for delays in payment to CONTRACTOR resulting

from CONTRACTOR's failure to comply with the invoice format described below.

Requests for payment shall be sent to:

*Sacramento Public Library
828 I Street
Sacramento, CA 95814
916-264-2753 – Phone / 916-264-2852 - Fax
Attn: Finance Department*

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by AUTHORITY in accordance with AUTHORITY's Supplemental Agreement procedures. AUTHORITY reserves the right to perform any Additional Services with its own staff or to retain other CONTRACTORS to perform said Additional Services.
6. **Accounting Records of CONTRACTOR.** CONTRACTOR shall maintain for three (3) years after completing of all Services and Additional Services hereunder, all records under this Agreement, including, but not limited to, records of CONTRACTOR's direct salary costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep such records available for inspection and audit by representatives of the Department of Finance of AUTHORITY at a mutually convenient time.
7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide AUTHORITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify AUTHORITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by AUTHORITY arising out of CONTRACTOR's breach of this Section 7.

EXHIBIT D

PROFESSIONAL SERVICES AGREEMENT

GENERAL PROVISIONS

1. **Independent Contractor.**

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of AUTHORITY. AUTHORITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold AUTHORITY harmless from any and all claims that may be made against AUTHORITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of AUTHORITY as to the designation of tasks to be performed and the results to be accomplished by the Services agreed to be rendered and performed under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. TO the extent that CONTRACTOR obtains permission to, and does, use AUTHORITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the AUTHORITY does not require that CONTRACTOR use AUTHORITY facilities, equipment or support services or work in AUTHORITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed as to create an exclusive relationship between AUTHORITY and CONTRACTOR.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required for

CONTRACTOR to provide any Services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

3. **Time.** CONTRACTOR shall devote such time to the performance of Services pursuant to this Agreement as may be necessary for satisfactory performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, nor be entitled to additional compensation, to the extent performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of the party.
4. **CONTRACTOR Not Agent.** Except as AUTHORITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of AUTHORITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind AUTHORITY to any obligations whatsoever.
5. **Confidentiality of AUTHORITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use AUTHORITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "AUTHORITY Information") that are valuable, special and unique assets of the AUTHORITY. CONTRACTOR agrees to protect all AUTHORITY Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any AUTHORITY information to any third party without the prior written consent of AUTHORITY. A violation by CONTRACTOR of this Section shall be a material violation of this Agreement and shall justify legal and/or equitable relief.
6. **CONTRACTOR Information.**
 - A. AUTHORITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by AUTHORITY.
 - B. CONTRACTOR shall fully defend, indemnify and hold harmless AUTHORITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. AUTHORITY shall make reasonable efforts to notify CONTRACTOR not

later than ten (10) days after AUTHORITY is served with any such claim, action, lawsuit or other proceeding, provided that AUTHORITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.

- C. All proprietary and other information received from CONTRACTOR by AUTHORITY, whether received in connection with CONTRACTOR's proposal to AUTHORITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked *trade secret* when it is provided to AUTHORITY, AUTHORITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the AUTHORITY, satisfactory to the AUTHORITY Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by AUTHORITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual *trade secret* designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by AUTHORITY and/or to enter into an agreement with AUTHORITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated *trade secret* by CONTRACTOR, and such information shall be disclosed by AUTHORITY pursuant to applicable procedures required by the Public Records Act.

7. **Standard of Performance.** CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify AUTHORITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that AUTHORITY, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform Services pursuant to this Agreement, because AUTHORITY, in its sole discretion, determines that such person(s) is not performing adequately, CONTRACTOR shall remove such person(s) immediately upon receiving notice from AUTHORITY of the desire of AUTHORITY for the removal of such person(s).

8. **Term; Suspension; Termination.**

- A. This Agreement shall become effective on the date that it is approved by both parties, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. AUTHORITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If AUTHORITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. AUTHORITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If AUTHORITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If AUTHORITY terminates this Agreement:

(1) CONTRACTOR shall promptly deliver to AUTHORITY copies of all information

prepared pursuant to this Agreement.

- (2) AUTHORITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, AUTHORITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to AUTHORITY such financial information as in the judgment of the AUTHORITY is necessary for AUTHORITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that AUTHORITY may have in law or equity.

9. **Indemnity.**

- A. Indemnity: CONTRACTOR shall fully indemnify and save harmless, AUTHORITY, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by AUTHORITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as Liabilities), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of CONTRACTOR, its subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether or not the AUTHORITY, its officers or employees reviewed, accepted or approved any service or work product performed or provided by the CONTRACTOR, and whether or not such Liabilities are litigated, settled or reduced to judgment.
- B. Obligation to Defend: CONTRACTOR shall, upon AUTHORITY's request, defend at CONTRACTOR's sole cost any action, claim, suit, cause of action or portion thereof that asserts or alleges Liabilities to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of CONTRACTOR, its subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether such action, claim, suit, cause of action or portion thereof is well founded or not.
- C. Insurance Policies; Intellectual Property Claims: Except as may be expressly provided in this Section 9, the existence or acceptance by AUTHORITY of any of the insurance policies or coverage described in this Agreement shall not affect or limit any of AUTHORITY's rights under this Section 9, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 9 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 6.B., above. The provisions of this Section 9 shall survive any expiration or termination of this Agreement.

10. **Insurance Requirements.** During the entire term of this Agreement, CONTRACTOR shall maintain the following insurance.

- A. Minimum Scope of Insurance: Coverage should be at least as broad as:
 - (1) Insurance Services Office Form No. CG 0001 (Commercial General Liability);
 - (2) Insurance Services Office Form No.: CA 0001 (Ed. 1/87) (Automobile Liability, Code

“Any Auto”);

- (3) Workers’ Compensation as required by the Labor Code of the State of California, and Employers’ Liability Insurance:

B. Minimum Limits of Insurance: CONTRACTOR shall maintain limits no less than:

- (1) Commercial General Liability; \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- (2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (3) Workers’ Compensation and Employers’ Liability: Workers’ compensation limits as required by the Labor Code of the State of California and Employers’ Liability limits of \$1,000,000 per accident.
- (4) Professional Liability (Errors and Omissions) Insurance (if noted as required in Exhibit A, Section 4) in an amount not less than \$1,000,000.00.

C. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the AUTHORITY.

D. Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:

(1) General Liability and Automobile Liability Coverages:

- (a) AUTHORITY, its officials, employees and volunteers shall be covered as insured as respects: liability arising out of activities performed by or on behalf of CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, leased or used by CONTRACTOR.
- (b) The coverage shall contain no special limitations on the scope of the protection afforded to AUTHORITY, its officials, employees or volunteers.
- (c) CONTRACTOR’s insurance coverage shall be primary insurance as respects AUTHORITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by AUTHORITY, its officials, employees or volunteers shall be in excess of CONTRACTOR’s insurance and shall not contribute with it.
- (d) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to AUTHORITY, its officials, employees or volunteers.
- (e) Coverage shall state that CONTRACTOR’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

(2) All Coverages:

Each insurance policy required by this Agreement shall be endorsed to state that coverages shall not be canceled except after thirty (30) days prior written notice has been given to AUTHORITY. In addition, CONTRACTOR agrees that it shall not reduce its coverage or limits on any such policy except after thirty (30) days prior written notice has been given to

AUTHORITY and AUTHORITY approves the reduction in coverage or limits. CONTRACTOR further agrees that it shall not increase any deductibles or self-insured retentions on any such policy except after thirty (30) days prior written notice has been given to AUTHORITY and AUTHORITY approves such increase.

- E. Acceptability of Insurers: Insurance shall be placed with insurers with a Bests' rating of no less than A:VII. This requirement may, however, be waived in individual cases for Errors and Omissions Coverages only; provided, however, that in no event shall a carrier with a rating below B:IX be acceptable.
- F. Verification of Coverage: CONTRACTOR shall furnish AUTHORITY with certificates of insurance showing compliance with the above requirements and with original endorsements affecting all coverages required by this Agreement. The certificates and/or endorsements shall set forth a valid policy number for AUTHORITY, and shall indicate the Issue Date, Effective Date and Expiration Date. The certificates and endorsements for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be forwarded to the AUTHORITY representative named in Exhibit A.
- G. Payment Withhold: AUTHORITY shall withhold payments to CONTRACTOR if the certificates of insurance and endorsements required in subsection F, above, are canceled or CONTRACTOR otherwise ceases to be insured as required herein.

11. **Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subCONTRACTORS, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities a may be determined by the AUTHORITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish

this information, CONTRACTOR shall so certify to the AUTHORITY, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the AUTHORITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:

(1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;

(2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the AUTHORITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request AUTHORITY to enter such litigation to protect the interests of AUTHORITY.

12. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by AUTHORITY, in accordance with applicable provisions of the Sacramento AUTHORITY Code.

13. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

14. **Waiver.** Neither AUTHORITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

15. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

16. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. AUTHORITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the AUTHORITY. Any attempted or purported assignment without AUTHORITY's written consent shall be void and of no effect.

17. **Attorney Fees.** In the event of litigation between the parties arising from this Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs as determined by the Court.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 16, above.