

**ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY  
SERVICE CONTRACT**

THIS AGREEMENT is made in Oakland, California by and between the Alameda County Waste Management Authority (“Agency”), and \_\_\_\_\_ (“Contractor”), who agree that:

1. **Purpose of Contract.** This is a contract for \_\_\_\_\_ as more specifically described in Exhibit A of this agreement (“Scope of Work”) and all work authorized by this agreement shall be completed in accordance with the established project schedule as set forth in the Scope of Work.
  
2. **Term.** The term of this agreement commences on (check one):  the date last signed below  [insert specific start date] (“Effective Date”) and extends through [insert specific end date] or the completion of the project, whichever occurs first. This agreement may be renewed for successive \_\_ year terms by agreement between the parties provided, however, that the total term of such renewals may not extend more than six years beyond the Effective Date.
  
3. **Payment.** Agency shall pay Contractor for work product produced pursuant to this agreement an amount not to exceed the total sum of contract maximum dollar amount in words dollars (\$contract maximum dollar amount in numerals) for work to be performed and any authorized reimbursable costs. Contractor is *not authorized* to undertake any efforts or incur any costs whatsoever under the terms of this agreement until receipt of a copy of this agreement signed on behalf of the Agency or fully executed purchase order from Agency. The initial invoice may be submitted only after (1) this contract is fully executed, (2) insurance certificates and endorsements required by this agreement have been submitted, (3) signed Federal Taxpayer ID Number Form (substitute IRS Form W-9) has been submitted, and (4) any other pre-invoice requirements specified in the Scope of Work have been completed.
  
4. **Contract Administration.** The primary representatives of Agency and Contractor for contract administration are listed below.

	<b>Agency</b>	<b>[Contractor]</b>
Primary Representative:		
Address:		
Telephone:		
Fax:		
Cell Phone:		
E-mail:		

5. **Insurance.** Contractor and all subcontractors shall procure and maintain insurance as required by the provisions set forth in Exhibit B.
  
6. **General Provisions.** Agency and Contractor agree to and shall abide by the general provisions set forth in Exhibit C.

7. **Supplemental Requirements.** This agreement includes supplemental requirements described in connection with each box checked below:
- If this box is checked this agreement is funded in whole or in part by an entity other than Agency. Contractor shall comply with all rules and regulations required by such funding entity. Applicable funding entity requirements are set forth in Exhibit E. Nothing in this paragraph or in the funding entity requirements shall be construed to relieve Contractor of its duty to ensure that it is in compliance with all applicable laws and regulations.
  - If this box is checked Exhibit E sets forth requirements regarding \_\_\_\_\_.
8. **Exhibits.** All exhibits referred to in this agreement are attached hereto and are by this reference incorporated herein and made a part of this agreement.
9. **Power to Execute Agreement.** Each individual executing this agreement, on behalf of one of the parties, represents that he or she is duly authorized to sign and deliver the agreement on behalf of such party and that this agreement is binding on such party in accordance with its terms. This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

Contractor	Agency
_____ (Insert Name, Title)  Date: _____	_____ Justin Lehrer, Administrative Services Director for: Timothy Burroughs, Executive Director  Date: _____
	APPROVED AS TO FORM:  _____ Richard Taylor, General Counsel  Date: _____

Attachments

Exhibit A – Scope of Work

Exhibit B – Insurance Requirements

Exhibit C – General Requirements

Exhibit E - Funding Entity Requirements (If applicable-delete if not attaching)

Exhibit F – Supplemental Requirements (if applicable-delete if not attaching)

## **Exhibit A**

### **Scope of Work**

Contractor shall complete the following scope of work:

[insert scope of work or reference to one or more attachments – Attachment(s) should be labeled “Exhibit A-1, Exhibit A-2 etc.

For time and materials contracts be sure to include Contractor’s hourly rates and any relevant milestones/limits on hours/costs for different phases of the project.

For lump sum contracts be sure to include clear descriptions of work product linked to each payment

For all contracts list project schedule or, at a minimum, final due dates for each deliverable

For all contracts, list any authorized subcontractors

Do not make commitments on behalf of Agency except for payment or Agency work product that is essential for contractor to complete the work].

In the event of a conflict between the terms of this agreement and this Exhibit A or any of the exhibits referenced in this Exhibit A the terms of the agreement shall govern.

**-End of Exhibit A-**

## Exhibit B

### Insurance

1. During the life of this agreement, Contractor and all subcontractors shall maintain the following minimum insurance:
  - A. Comprehensive general liability insurance: Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis including products and completed operations, personal & advertising injury liability, blanket contractual liability, and broad-form property damage liability coverage. The combined single limit for bodily injury and property damage shall be at least \$2,000,000. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
  - B. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), bodily injury and property damage liability insurance covering owned, non-owned (Code 9), rented, and hired (Code 8) cars. The combined single limit for bodily injury and property damage shall at least \$1,000,000.
  - C. Statutory workers' compensation and employer's liability insurance as required by state law with a limit of at least \$1,000,000 per accident for bodily injury or disease. Neither Contractor nor its carrier shall be entitled to recover any costs, settlements, or expenses of workers' compensation claims arising out of this agreement. The Employer's Liability policy shall be endorsed to waive any right of subrogation against the Agency, its employees or agents.
  - D. Professional Errors and Omissions Liability Insurance. The limit of liability shall be at least \$1,000,000. If the policy is written on a "claims made" basis, Contractor must maintain required coverage for a period of three years after the expiration of this agreement. Contractor may satisfy this requirement by renewal of existing coverage or purchase of either prior acts or tail coverage applicable to said three-year period.

Contractor shall submit to Agency certificates of insurance and endorsements for the policies listed above. All endorsements shall be signed by a person authorized by that insurer to bind coverage on its behalf. Agency has the right to require Contractor's insurer to provide complete, certified copies of all required insurance policies. Contractor shall not cancel, assign, or change any policy of insurance required by this agreement or engage in any act or omission that will cause its insurer to cancel any insurance policy required by this agreement except after providing 30 days prior written notice to Agency. If an insurance policy required by this agreement is unilaterally cancelled or changed by the insurer, the Contractor shall immediately provide written notice to the Agency and obtain substitute insurance meeting the requirements of this agreement. Nothing in this subsection relieves Contractor of its obligation to maintain all insurance required by this Contract at all times during the term of the agreement.

2. As to all of the policies of insurance listed above, the following shall apply:
  - A. *Deductibles and Self Insured Retentions.* Any deductibles or self insured retentions must be declared to and approved by the Agency. At the option of the Agency, either (1) the insurer shall reduce or eliminate such deductibles or self insured retentions as respects the Agency, its officers, officials and employees; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- B. *Agency as Additional Insured.* The Agency, its officers, officials, employees, agents and volunteers are to be covered as insureds with the same coverage and limits available to the named insured regarding: liability arising out of activities performed by or on behalf of the Contractor; premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of the protection afforded to the Agency, its officers, officials, employees, agents or volunteers. Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured; the additional insured coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the Agency, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Agency, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. Coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 38 04), or as a separate owner's policy, or on the Agency's own form. Additional insured coverage does not apply to errors and omissions insurance.
- C. *Other Insurance Provisions.* The policies are to contain, or be endorsed to contain, the following provisions:
- Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, its officers, officials, employees or volunteers.
  - The 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.
- D. *Insurer Rating.* Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
- E. *Umbrella/Excess Insurance.* The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non contributory basis for the benefit of Agency (if agreed to in a written contract or agreement) before the Agency's own Insurance or self insurance shall be called upon to protect it as a named insured.
- F. *Subcontractors.* Contractor agrees to include in all subcontracts the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Contractor shall agree to be bound to Contractor and Agency in the same manner and to the same extent as Contractor is bound to Agency under this agreement and Contractor shall furnish a copy of this agreement's insurance and indemnity provisions to all subcontractors. All subcontractors shall provide Contractor with valid certificates of insurance and the required endorsements included in the agreement prior to commencement of any work and Contractor will provide proof of compliance to the Agency.
3. Contractor hereby grants to Agency a waiver of any right to subrogation which any insurer of Contractor may acquire against Agency by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of

subrogation, but this provision applies regardless of whether Agency has received a waiver of subrogation endorsement from the insurer.

4. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this agreement, Contractor shall immediately notify Agency by telephone. Contractor shall promptly submit to Agency a written report, in such form as may be required by Agency of all accidents which occur in connection with this agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) names and address of Contractor's subcontractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of accident and whether any of Agency's equipment, tools, materials or staff were involved. Failure to comply with this section shall constitute a material breach of this agreement.

***All Insurance modifications must be approved by the Agency's Contract Administrator***

***Insurance Modification Approved*** (Yes)\_\_\_ (No) \_\_ (No) Date Approved \_\_\_\_\_ (CAS Initials) \_\_

***Type of Insurance Waived or Reduced:***

Automotive Liability (Auto) \_\_\_\_\_, Worker's Comp (W/C)\_\_\_\_\_, Professional Liability (P/L) \_\_\_\_\_  
\_\_\_\_General Liability (G/L)

**-End of Exhibit B-**

## Exhibit C

### General Provisions

#### 1. Independent Contractor.

Agency requires the services of a qualified contractor to provide the work product described in Exhibit A because it lacks the qualified personnel to provide the specified work product. Contractor is qualified to provide the required work product and is agreeable to providing such work product on the terms and conditions in this agreement. All work authorized by this agreement shall be completed in accordance with the established project schedule as set forth in Exhibit A.

- 1.1 Contractor shall perform Contractor's duties to the best of Contractor's ability and in accordance with the generally accepted professional and ethical standards of Contractor's profession and community. Contractor agrees to perform Contractor's duties at all times in strict accordance with currently approved methods and practices in Contractor's field and in accordance with the standards required by the Agency. All duties shall be performed and rendered in a competent, efficient, timely and satisfactory manner.
- 1.2 Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including without limitation all provisions of the Occupational Safety and Health Act of 1979, Title VII of the Civil Rights Act of 1964, the Immigration Reform and Control Act of 1986 and all other applicable federal, state, and local laws. Contractor represents and warrants to Agency that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Contractor to practice its profession and shall, at its sole cost and expense, keep in effect at all times during the term of this agreement any licenses, permits, and approvals which are legally required for Contractor to practice its profession. Failure to comply with this subsection shall constitute a material breach of this agreement.
- 1.3 Agency recognizes that Contractor's ability to complete the scope of work within the budget and timelines established in this agreement is necessarily dependent on receiving reasonable, timely and adequate input and review from the Agency. The agreement also assumes that Agency's policies, goals, objectives, actions or alternatives will not change in a manner which alters the Scope of Work once it has been initially defined and accepted by the Agency. Should the Scope of Work defined by this agreement be expanded or contracted or the schedule be changed, Contractor's compensation shall be adjusted to reflect any additional work or costs. Agency and Contractor shall negotiate in good faith to determine the adjustment in compensation.
- 1.4 Contractor shall take all responsibility for the work, shall bear all losses and damages directly or indirectly resulting to Contractor, to any subcontractor, to the Agency, to Agency officers and employees, or to parties designated by the Agency, on account of the performance or character of the work, unforeseen difficulties, accidents, occurrences or other causes to the extent predicated on active or passive negligence of the Contractor or of any subcontractor.

- 1.5 No relationship of employer and employee is created by this agreement, it being understood that Contractor shall act hereunder as an independent contractor performing the work set forth in Exhibit A at all times in strict accordance with currently approved methods and practices in Contractor's field and that the sole interest of Agency is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards of the Agency and those set forth in this agreement between the Agency and any subcontractor or employee of Contractor.
- 1.6 Contractor shall not have any claim under this agreement or otherwise against Agency for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, federal and state income taxes, and in connection therewith Contractor shall indemnify and hold Agency harmless from any and all liability that Agency may incur because of Contractor's failure to pay such taxes.
- 1.7 Nothing contained in this agreement shall be construed as limiting the right of Contractor to engage in Contractor's profession separate and apart from this agreement so long as such activities do not interfere or conflict with the performance by Contractor of the obligations set forth herein and in Exhibit A. Interference or conflict will be determined at the sole discretion of the Agency.
- 1.8 Should Agency, in its discretion, or a relevant taxing authority, including, but not limited to the Internal Revenue Service or the State Employment Development Division, determine that the Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by the Contractor which can be applied against this liability). Agency shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by the Contractor for Agency, upon notification of such fact by the Agency, the Contractor shall promptly remit such amount due or arrange with the Agency to have the amount due withheld from future payments to the Contractor under this agreement (again, offsetting any amounts already paid by the Contractor which can be applied as a credit against such liability). Any determination of employment status above shall be solely for the purposes of the particular tax in question, and for all other purposes of this agreement, The Contractor shall not be considered an employee of Agency. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that the Contractor is an employee for any other purpose, then the Contractor agrees to a reduction in the Agency's financial liability so that the Agency's total expenses under this agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that the Contractor was not an employee.

2. Payment.

- 2.1 Contractor shall submit all billings to Agency and Agency shall pay such billings in the manner specified in this paragraph. Payment shall be made payable to Contractor and delivered to the address specified in section 4 on page 1 of this agreement. The payments specified in this paragraph shall be the only payments to be made to Contractor in connection with Contractor's completion of the Scope of Work pursuant to this agreement. Reimbursable expenses shall be billed only at their actual cost. Contractor shall not be allowed or paid travel expenses except to the extent authorized in Exhibit A. The making of any payment by Agency, or the receipt thereof by the Contractor, shall in no way lessen the liability of the Contractor to correct or revise unsatisfactory work, even though the unsatisfactory character of such work may not have been apparent or detected at the time such payment was made. Agency may withhold payment to Contractor in any instance in which the Contractor has failed or refused to satisfy any material obligation provided for in this agreement. In no event shall Agency be liable for interest or late charges for any late payments.
- 2.2 Contractor shall submit invoices, not more often than once a month during the term of this agreement, based on the cost for work performed in accordance with the rate schedule and other terms in the Scope of Work and authorized reimbursable expenses incurred prior to the invoice date. Invoices shall contain the following information:
- (a) Serial identifications of bills, i.e., Bill No. 1;
  - (b) The beginning and ending dates of the billing period;
  - (c) A summary containing the total contract amount, the amount of prior billings, the total due this period, percentage of work completed, the remaining balance available for all remaining billing periods, and a brief description of work completed during the billing period.
- 2.3 Within 30 days of receiving an invoice Agency shall make payment for satisfactory progress in completion of the Scope of Work, and for authorized reimbursable expenses incurred.

3. Agency Representative.

The Agency's Primary Representative designated in section 4 on page 1 of this agreement is authorized to transmit instructions, receive information, and interpret and define Agency's policies consistent with this agreement. Contractor shall be entitled to rely on representations made by Agency's representative(s) unless otherwise directed in writing by Agency. All correspondence and other communications shall be directed to or through the Administrator or the Administrator's designee.

- 3.1 In General. All notices or communication concerning a party's compliance with the terms of this agreement shall be in writing and may be given either personally, by certified mail, return receipt requested, or by overnight express carrier. The notice shall be deemed to have been given and received on the date delivered in person or the date upon which the postal authority or overnight express carrier indicates that the mailing was delivered to the address of the receiving party. The parties shall make good faith efforts to provide advance courtesy notice of any notices or communications hereunder

via e-mail. However, under no circumstances shall such courtesy notice satisfy the notice requirements set forth above; nor shall lack of such courtesy notice affect the validity of service pursuant to the notice requirement set forth above.

- 3.2 Addresses for Notice. Notices or communications shall be given to the parties at the addresses set forth in section 4 (“Contract Administration”) unless otherwise designated in a written notice to the other party. In addition, notices to Agency shall be copied to:

Justin Lehrer Administrative Services Director 1537 Webster Ave. Oakland, CA 94612
---

This copy shall not constitute notice.

- 3.3 Change of Address. Any party hereto, by giving ten (10) days written notice to the other, may designate any other address as substitution of the address to which the notice or communication shall be given.

4. Contractor Not an Agent.

Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this agreement to bind Agency to any obligation whatsoever.

5. Assignment and Subcontracts.

The services to be performed by the Contractor are personal in character and no party to this agreement may assign any right or obligation under this agreement. Any attempted or purported assignment of any right or obligation under this agreement shall be void and of no effect. However, with the consent of the Agency given in writing, Contractor is entitled to subcontract such portions of the work to be performed under this agreement as may be specified by the Agency and all subcontractors shall be subject to all the provisions of this agreement. Failure to comply with this section shall constitute a material breach of this agreement.

6. Retention of Records.

Until the expiration of five years after the furnishing of any services pursuant to this agreement, Contractor shall make available to the Agency or any party designated by the Agency, upon written request by Agency, this agreement, and such books, documents and records of Contractor (and any books, documents, and records of any subcontractor(s)) that are necessary to certify the nature and extent of the reasonable cost of services to Agency.

7. Conflict of Interest.

- 7.1 Contractor understands that its professional responsibility is solely to Agency. Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to a conflict of interest, or that the Contractor has already disclosed all such relevant information. Contractor shall not employ or subcontract with a person having such an interest in the performance of this agreement.
  - 7.2 Contractor agrees that if an actual or potential conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Agency. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Agency to avoid, mitigate, or neutralize the actual or potential conflict. Within 45 days, the Contractor shall have taken all necessary steps to avoid, mitigate, or neutralize the conflict of interest to the satisfaction of the Agency.
  - 7.3 No officer, member or employee of Agency and no member of the Agency governing body shall have any pecuniary interest, direct or indirect, in this agreement or the proceeds thereof. Neither Contractor nor any member of any Contractor's family shall serve on any Agency board or committee or hold any such position which either by rule, practice or action nominates, recommends, or supervises Contractor's operations or authorizes funding to Contractor.
  - 7.4 Failure to comply with this section shall constitute a material breach of this agreement.
8. Rights to Material Produced.
- 8.1 All reports, data, maps, models, charts, studies, surveys, photographs, memoranda or other written documents or materials prepared by Contractor pursuant to this agreement shall become the property of Agency upon completion of the work to be performed hereunder or upon termination of this agreement.
  - 8.2 Without limiting the generality of the foregoing, if, in connection with services performed under this agreement, the Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of Agency. If it is ever determined that any works created by the Contractor or its subcontractors under this agreement are not works for hire under U.S. law, the Contractor hereby assigns all copyrights to such works to Agency, grants Agency a royalty-free, exclusive, and irrevocable license to reproduce, publish, use, and to authorize others to do so, all such works and agrees to provide any material and execute any documents necessary to effectuate such assignment and license.
  - 8.3 Agency acknowledges that Contractor may use its pre-existing intellectual property (including, without limitation, know-how and proprietary methodologies) ("Pre-Existing IP") as it creates the materials hereunder, and this Agreement does not transfer ownership in Contractor's Pre-Existing IP to the Agency except to the extent necessary to allow Agency to use the work product provided or as otherwise specified in Exhibit A.

- 8.4 Contractor shall not use Agency materials including logos, flyers, etc without written permission from Agency.
- 8.5 Contractor may disclose or use documents and materials, or any portion thereof, which: (a) has been previously made available to the public or which is made available by Agency hereafter, or (b) which was already in the Contractor's possession prior to services performed under this agreement. The Agency recognizes Contractor's need to make reference to this project as a part of the experience qualifications for future work of a similar nature. The Agency, therefore, agrees to allow Contractor to describe this project in its statements of qualifications and related materials. Contractor shall not publish any such material without prior written consent of Agency.

9. Intellectual Property.

Contractor represents and warrants that it has the legal right to utilize all intellectual property it will utilize in the performance of this agreement. Contractor further represents that it shall ensure Agency has the legal right to utilize all intellectual property involved in and/or resulting from Contractor's performance of this agreement. Contractor shall indemnify and hold Agency harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Agency, or any of its officers or agents, of articles or services to be supplied in the performance of this agreement.

10. Confidential Information.

Contractor will hold any confidential information received from Agency in the course of performing this agreement in trust and confidence and will not reveal such confidential information to any person or entity, either during the term of the agreement or at any time thereafter. Upon expiration of this agreement, or termination as provided herein, Contractor will return materials which contain any confidential information to Agency. Contractor may keep one copy for its confidential file. For purposes of this paragraph, confidential information is defined as all information disclosed to Contractor which relates to the Agency's past, present, and future activities, as well as activities under this agreement, which information is not otherwise of public record under California law. Failure to comply with this section shall constitute a material breach of this agreement.

11. Indemnification.

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless Agency, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs (including, without limitation, costs and fees of litigation) of any kind whatsoever without restriction or limitation, incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part, to the performance of this agreement. All obligations under this provision are to be paid by Contractor as they are incurred by the Agency.

12. Drug-Free Workplace.

Contractor shall maintain a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code Section 812, including marijuana, heroin, cocaine, and amphetamines, at any facility, premises or work-site used in any manner in connection with performing services pursuant to this agreement. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at such a facility, premises, or work-site, the Contractor, within five days thereafter, shall notify the Agency. Failure to comply with this section shall constitute a material breach of this agreement.

13. Environmentally Preferable Purchasing.

Contractor shall comply with the Agency's Environmentally Preferable Purchasing Policy of instituting practices that reduce waste and purchasing products that include recycled content, are durable and long-lasting, conserve energy and water, and otherwise minimize environmental impacts, toxics, pollution and hazards to worker and community safety to the greatest extent practicable. At a minimum, this shall include all of the following for services and products purchased and used on behalf of the Agency:

- a. All products for which the U.S. Environmental Protection Agency (EPA) has established minimum recycled content standard guidelines (such as paper and non-paper office products) shall contain the highest postconsumer content practicable, but no less than the minimum recycled content standards established by the U.S. EPA Guidelines.
- b. Paper products that are unbleached or that are processed without chlorine or chlorine derivatives, shall be purchased whenever possible. To the greatest extent practicable, recycled content shall be included in products that also meet this specification.
- c. All photocopying and printing shall be double-sided.
- d. All pre-printed recycled content materials intended for distribution that are purchased or produced shall include a statement that the material is recycled content.
- e. Elimination of packaging or use of the minimum amount necessary for product protection is requested, to the greatest extent practicable. Packaging that is reusable, recyclable or compostable is preferred, when suitable uses and programs exist. Take back and reuse of packaging materials by the Contractor is encouraged.

Upon request, Contractor shall submit to the Agency written certification documenting that the requirements above have been satisfied. A copy of the Agency's Environmentally Preferable Purchasing Policy may be obtained from the Agency representative.

14. Notice of Non-Renewal.

Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this agreement will be retained by Agency from Contractor under a new agreement following expiration or termination of this agreement. Contractor waives all rights or claims to notice or hearing respecting any failure by Agency to continue to retain all or any such services from Contractor following the expiration or termination of this agreement.

15. Termination.

Either party may terminate this agreement with or without cause by providing 30 days' notice in writing to the other party. The Agency may terminate this agreement at any time without prior notice in the event that Contractor commits a material breach of the terms of this agreement. Upon termination, this agreement shall become of no further force or effect whatsoever and each of the parties hereto shall be relieved and discharged herefrom, subject to payment for acceptable services rendered prior to the expiration of the notice of termination and delivery to Agency of any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this agreement, and any completed or partially completed work which, if this agreement had been completed, would have been required to be furnished to Agency. Notwithstanding the foregoing and section 2 on page 1, this section and the provisions of this agreement concerning insurance (Exhibit B), Funding Agency Requirements (as set forth in Exhibit E if applicable), Independent Contractor, Retention of Records, Rights to Material Produced, Intellectual Property, Confidential Information, Indemnification, Default and Remedies, and Jurisdiction and Severability shall survive termination of this agreement.

16. Default and Remedies.

16.1 Each of the following shall constitute an event of default hereunder:

- (a) Failure to perform any obligation under this agreement and failure to cure such breach immediately upon receiving notice of such breach, if the breach is such that the Agency determines the health, welfare, or safety of the public is immediately endangered;
- (b) Failure to perform any obligation under this agreement and failure to cure such breach within fifteen (15) days of receiving notice of such breach, provided that if the nature of the breach is such that the party claiming breach determines it will reasonably require more than fifteen (15) days to cure, breaching party shall not be in default if it promptly commences the cure and diligently proceeds to completion of the cure; or
- (c) Without limiting the generality of the foregoing, any Material Breach of any term of this agreement ("Material Breach" as used in this agreement shall include, but not be limited to, any failure to comply with the provisions of any section of this agreement stating that failure to comply with that section shall constitute a material breach of this agreement).

16.2 Upon any default, the non-defaulting party shall have the right to immediately suspend or terminate the agreement, seek specific performance, and/or seek damages including incidental, consequential and/or special damages to the full extent allowed by law.

16.3 The parties shall make a good faith effort to settle any dispute or claim arising under this agreement. If the parties fail to resolve such disputes or claims, they shall submit them to non-binding mediation in California at shared expense of the parties for at least 8 hours of mediation. If mediation does not arrive at a satisfactory result, arbitration, if

agreed to by all parties, or litigation may be pursued. In the event any of these dispute resolution processes are involved, each party shall bear its own costs and attorneys' fees.

16.4 If any litigation is commenced between parties to this agreement concerning any alleged default or any provision hereof or the rights and duties of any person in relation thereto, each party shall bear its own attorneys' fees and costs.

17. Jurisdiction and Severability.

This agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this agreement shall be in that state and venue shall be in Alameda County, California. If any part of this agreement is found to conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with said laws, but the remainder of this agreement shall be in full force and effect.

18. Waiver.

Neither the acceptance of work or payment for work pursuant to this agreement shall constitute a waiver of any rights or obligations arising under this agreement. The failure by the Agency to enforce any of Contractor's obligations or to exercise Agency's rights shall in no event be deemed a waiver of the right to do so thereafter.

19. Parties in Interest.

This agreement is entered only for the benefit of the parties executing this agreement and not for the benefit of any other individual, entity or person.

20. Entire Agreement.

This agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Contractor for Agency and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party which are not embodied herein, and that no other agreement, statement or promise not contained in this agreement shall be valid or binding. No alteration or variation of the terms of this agreement shall be valid unless made in writing and signed by the parties hereto.

**-End of Exhibit C-**

**Exhibit E**  
**Funding Agency Requirements**

**[Delete this Exhibit if Not Applicable]**

This agreement is funded in part pursuant to the contract between Agency and *Insert Name of Funding Agency* ("Funding Agency") attached hereto as Exhibit E-1 ("Funding Agreement"). In recognition of the Funding Agreement Agency and Contractor agree that:

1. All contractual provisions required by the Funding Agreement are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all Funding Agreement-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Agency requests which would cause the Agency to be in violation of the Funding Agreement terms and conditions.
2. If Contractor claims or receives payment from Agency for a service, reimbursement for which is later disallowed by the Funding Agency, the Contractor shall promptly refund the disallowed amount to Agency upon Agency's request. At its option, Agency may offset the amount disallowed from any payment due or to become due to Contractor under this agreement or any other agreement.
3. Agency may terminate or suspend performance of this agreement if Funding Agency suspends or terminates funding pursuant to the terms of the Funding Agreement. In the event of suspension or termination Agency shall be obligated to fund only that portion of Contractor's work performed prior to the suspension or termination that is not funded by the Funding Agreement.
4. By executing this agreement, the Contractor certifies that the Contractor is not suspended, debarred or otherwise excluded from participation in the program(s) supported by the Funding Agreement. Contractor acknowledges that this certification of eligibility to receive Funding Agency funds is a material term of the agreement.

**End of Exhibit E**