



**Request for Qualifications for:**

Water Efficient Landscape Ordinance  
Enforcement Training and Technical Assistance  
For Public Agencies

Release Date: June 25, 2018

**Qualifications Due: July 23, 2018**

## About the Agency

StopWaste (the Agency) helps Alameda County's businesses, residents and schools waste less, recycle more and use water, energy and other resources efficiently. We're a public agency governed by the Alameda County Waste Management Authority, the Alameda County Source Reduction and Recycling Board, and the Energy Council. Our work helps people make better decisions everyday about the products they buy, the resources they use, and the stuff they throw away.

## Project Overview & Description

The model Water Efficient Landscape Ordinance (WELo), updated in 2015 by the California Department of Water Resources, is enforced by cities and counties who issue building permits. StopWaste has been an active stakeholder in the WELo updates advocating for resource conservation and use of compost and recycled mulches.

In an effort to aid jurisdictions in Alameda County (member agencies, MA) who implement and enforce WELo, StopWaste has created a WELo Tool Kit. The Tool Kit consists of checklists that cover WELo requirements, a water budget calculator, a brochure for use at the planning counter and links to other resources. Visit the website at [www.StopWaste.org/welo](http://www.StopWaste.org/welo). StopWaste is seeking professional services to train MA staff to use the model WELo Tool Kit and provide sample WELo compliant submittals and landscape plans.

The qualified candidate or firm will work closely with StopWaste and MA staff to improve the implementation of WELo in Alameda County.

The project budget is "time and materials" billing but may also include payment by task as agreed upon in advance by both parties. The total budget available for this project is not to exceed \$25,000. The Agency reserves the right to extend the term of the contract and augment the amount of the contract with the agreement of the selected firm or individual.

For more information regarding our organization and programs, visit our website: [www.stopwaste.org](http://www.stopwaste.org).

To be considered, the Agency must receive qualifications by **July 23, 2018 at 5:00 p.m. Please hold open Friday, August 3, 2018 for interviews**. Selected firm will be notified at least 3 business days before the interview.

## Scope of Work

The qualified contractor would provide the following services (as examples, not an exhaustive list):

### Task 1. Provide trainings on WELo enforcement using the StopWaste WELo Tool Kit

- a. Train on WELo enforcement for:
  - Prescriptive Path (Appendix D) for landscape projects from 500 up to 2,500 sq ft
  - The complete WELo Landscape Documentation Package and Certificate of Completion and other relevant submittals for landscape projects 2,500 sq ft or greater
- b. Create power points for the trainings
- c. Design a group exercise to review one or more submittals
- d. Train counter staff to recognize which projects trigger WELo compliance and at what level of compliance

- e. Train trainers within cities who can become the in-house WELO expert
- f. Hold 1 to 2 group trainings at StopWaste Offices and up to 12 trainings within Alameda County at member agency locations to reach all relevant staff
- g. Desirable elements include real world examples, group participation, strong pedagogy and interactive learning activities.

### **Task 2. Creating sample WELO submittals**

*For both Prescriptive Path (Appendix D) submittals and for the Complete Landscape Document Package*

- a. Create sample submittals with landscape plans that can be used as a model for trainings and for examples to project developers
- b. Create a sample submittal with landscape plans and elements that include common mistakes and a key with corrections as a training tool

### **Task 3. WELO Technical Assistance to MA staff**

- a. Provide on-call assistance to MA staff to answer technical questions about WELO enforcement on a limited basis.

## **Timelines**

Anticipated contract and commencement of work is mid to late August 2018. Development of training materials and sample WELO submittals begin in August and are completed in September. Initial trainings could begin in late September 2018 and be completed by June of 2019.

## **Qualifications and Experience**

The firms or individual submitting qualifications must have extensive experience in hands-on professional trainings, deep knowledge of WELO content, and familiarity with the permitting review process. In addition, the qualified applicant has experience in making landscape plans, and has successfully completed and/or reviewed WELO submittals.

Firms and/or individuals should provide relevant information, including the resume of person(s) to provide trainings and materials, and his/her hourly rate. Include a brief overview of your firm, including number of years in business, and number of employees.

The ideal applicant will also:

- Have five years or more experience as landscape architect, landscape contractor or irrigation designer or auditor
- Be located in the Bay Area

## **Submittal Instructions**

Include in your qualifications:

1. Experience. A statement of experience not to exceed 2 pages. Include (as applicable):
  - Training of professionals in landscape or irrigation related topics
  - Code enforcement or compliance

- Landscape inspections
  - WELO content and requirements
  - Ability to create landscape plans and create sample WELO submittal packages
  - Other relevant experience
2. Schedule. A schedule to develop training content, power points and WELO sample submittal materials by September 2018 and a statement of availability and notification needed for scheduling WELO trainings through June 2019.
  3. Fees and Staff Qualifications. A document that contains a fee schedule, as well as a list of the names, title, and a brief resume of the person or persons who will be working on this project including their level of education, professional licenses and certifications.  
Unless specified in the submittals, the Agency will assume that fee schedules will include any costs associated with complying with the agency’s insurance requirements as specified in Attachment A of the RFQ.
  4. References. Provide a list of references, including contact information, from at least 3 organizations.
  5. A signed copy of Attachment A. Required Contract Elements: Professional Services Agreement including Insurance Requirements and Statement of Economic Interest (attached).
  6. Exceptions to Contract Terms. Please detail any exceptions your firm has to the terms in the Agency’s standard contract language contained in “Attachment A and/or B”

<b>Release of RFP:</b>	June 25, 2018
<b>Submittals Due:</b>	July 23, 2018, 5pm PST
<b>Short list Interviews:</b>	August 3, 2018
<b>Notification of Selected Contractor:</b>	August 17, 2018 (Tentative)

Email questions regarding this RFQ to Teresa Eade at [teade@stopwaste.org](mailto:teade@stopwaste.org) with the subject line “**Question WELO RFQ**”

Email submittal materials to Teresa Eade at [teade@stopwaste.org](mailto:teade@stopwaste.org) with the subject line clearly marked “**WELO Training and Technical Assistance RFQ**”.

## Attachments

Attachment A: Required Contract Elements

Attachment B: StopWaste Professional Services Agreement standard language

## Attachment A - Required Contract Elements

### Professional Services Agreement including Insurance Requirements and Statement of Economic Interest

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It is a requirement of StopWaste that any individual or firm selected to provide professional consulting services must be able to comply with the terms of our professional services agreement (Attachment B) which includes the following insurance requirements:

- 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.

In addition, the individual or firm's project manager may be required to submit a Statement of Economic Interest Form (Form 700) as required by the State Fair Political Practices Commission. For a copy of a Form 700, please see the California Fair Political Practices Commission website at <http://www.fppc.ca.gov>

Please sign the statement below to indicate that you and your firm understands and will comply with the terms of the Authority's professional services agreement including the required insurance policies and will submit a Statement of Economic Interest Form if requested by Authority staff.

*I have reviewed and will comply with the terms of the Authority's professional services agreement and certify that my firm has the ability to obtain the required insurance policies and submit the Statement of Economic Interest Form.*

*I understand that failure to comply with any of these requirements will result in the Agency's refusal to enter into a contract for services with my firm.*

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Attachment B - Professional Services Agreement Standard Language

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### 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:

Serial identifications of bills, i.e., Bill No. 1;

The beginning and ending dates of the billing period;

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:

Pat Cabrera Administrative Services Director 1537 Webster Ave. Oakland, CA 94612
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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 D 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.