

REQUEST FOR QUALIFICATIONS (RFQ)

TO PROVIDE

**LEGAL SERVICES TO THE OVERSIGHT BOARD TO THE
SUCCESSOR AGENCY TO THE VICTORVILLE
REDEVELOPMENT AGENCY**

June 11, 2015

RFQ Deadline: June 25, 2015 4:00 p.m. PDT

Proposals must be delivered to:

City of Victorville, Economic Development

14343 Civic Drive

Victorville, CA 92392

Attention: Sophie Smith

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Introduction

Pursuant to the provisions of ABx1 26 and AB 1484, which were codified in *California Health and Safety Code (HSC)* Sections 33500 et seq., redevelopment agencies were dissolved as of February 1, 2012. The City of Victorville, a municipal corporation, acting in its capacity as Successor Agency to the Victorville Redevelopment Agency (“SA”) pursuant to *HSC* § 34177 et seq., has taken on the functions of the dissolved redevelopment agency.

Additionally, pursuant to *HSC* § 34179, an Oversight Board (“OB”) has been appointed to oversee and review the actions of the Successor Agency and oversee the dissolution activities of the Successor Agency as further described in *HSC* §§ 34177, 34179-34181. The Oversight Board is deemed a local agency for purposes of the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974. The Successor Agency provides staff for the Oversight Board. The Oversight Board meets on the 2nd and 4th Thursday of each month at Victorville City Hall, Conference Room D.

The Oversight Board is seeking independent legal counsel, free of any conflicts of interest given the various entities represented on the Oversight Board. Thus, the OB is seeking legal representation in carrying out its obligations pursuant to ABx1 26, and AB 1484, the Redevelopment Agency Dissolution trailer bill. Final selection of legal counsel will be made by the Oversight Board.

The purpose of the RFQ is to solicit proposals to allow the Oversight Board to select legal counsel that best meets its needs. The OB strongly urges interested parties to carefully review and consider the requirements as set forth in this RFQ. The OB, in its sole discretion, may interview any number of respondents. The OB also reserves the right to withdraw this RFQ at any time without notice, and reserves the right to accept or deny any or all proposals.

Statement of Work

The Oversight Board is requesting proposals from qualified, licensed, and insured attorneys to provide legal counsel. Legal counsel shall serve as legal advisor to the Oversight Board responsible for advising the Board on issues related to the Brown Act, Public Records Act, Political Reform Act and particularly the California Redevelopment Law and the dissolution provisions set forth in *HSC* §§ 33500 et seq., particularly those functions of the Oversight Board set forth in *HSC* §§ 34179-34181.

Typical Duties of Legal Counsel

Legal Counsel will be expected to perform a range of legal duties which may include, but not be limited to the following:

- Be present as necessary (may be options for telephone attendance) for all Oversight Board Meetings, providing Brown Act and other legal advice, as necessary and given 72-hour notice from OB;
- Provide legal advice regarding Oversight Board member duties, responsibilities and obligations;
- Provide legal advice and consultation on issues and actions before the Oversight Board;
- Provide legal advice and consultation to the Oversight Board regarding its relationship to and role with the Successor Agency;
- Provide legal opinions as requested by the Oversight Board on matters related to the duties of that board; and
- Other duties as necessary within the scope of the Oversight Board.

Proposal Format

The Proposal response must include the following:

1. **Letter of Interest**
 - a. Disclose the Firm/Attorney's approach to providing the services outlined in the RFQ.
 - b. Outline the Firm's/Attorney's legal experience, particularly with respect to representing public entities, representing Brown Act boards and commissions.
 - c. Detail specific experience in particular areas of the law including California Redevelopment Law (CRL), ABx1 26, , AB 1484, pre- and post AB 1290 redevelopment laws and practices, negotiated and statutory pass-through agreements, public contracts, affordable housing, public works contracting, and real property law.
 - d. Discuss other relevant experience and information relating to the Firm's/Attorney's qualifications for this position.
2. **Technical Proposal**
 - a. Include a Firm/Attorney Resume. Include name and resume of the attorney(s) who will be performing the role of Oversight Board Legal Counsel. Identify any designations or delineation of roles which may apply.
 - b. In a sealed envelope, include a fee proposal which shall include the hourly billing rates of proposed staff. The fee proposal may also include any applicable

billing/pricing fees for particular duties, e.g., attendance at Oversight Board meetings.

3. Supporting Documentation

- a. Organization chart, staff assignments and responsibilities
- b. Minimum of three (3) References (Client and/or professional)
- c. Provide State Bar Number for each designated attorney
- d. Availability
- e. Disclosure of known or potential conflicts of interest
- f. Disclosure of past or present legal representation by the Firm and/or Attorney of the following entities:

City of Victorville or any of its related entities
County of San Bernardino or any of its related entities
Victor Valley Community College District
Victor Elementary School District
Victor Union High School District

Proposal Evaluation

The proposal will be evaluated based upon a review of each proposer’s knowledge, experience, expertise, fees, availability, with particular emphasis on experience advising public entities, and familiarity with the CRL and ABx1 26. The Firm/Attorney selected will be required to comply with the Oversight Board’s insurance requirements.

RFQ Schedule

The following schedule is contemplated in the selection of Oversight Board Legal Counsel:

June 11, 2015	Request for Qualifications issued and available
June 25, 2015	Proposals due by 4:00 p.m. PDT
July 2, 2015	Interviews
July 9, 2015	Selection complete/Contract Awarded

Written Questions

Only written questions (including email and faxes) received by the City of Victorville

by June 22, 2015 will be addressed. Any questions or responses that materially impact or clarify the information contained in the RFQ will be posted on the Successor Agency/Oversight Board website. (www.ci.victorville.ca.us)
Questions should be addressed to:

Sophie Smith, Economic Development Administrator
City of Victorville
14343 Civic Drive
Victorville, CA 92392
(760) 955-5033 (office)
(760) 269-0085 (fax)
Email: ssmith@ci.victorville.ca.us

Proposal Submittal

All proposals are due no later than June 25, 2015 at City of Victorville, 14343 Civic Drive, Victorville, CA 92392 at 4:00 p.m. Attention: Sophie Smith, Economic Development Administrator. Proposers shall submit Four (4) copies of the proposal, submitted in hard-copy. Postmarks are not acceptable. Electronic copies of the proposal may be delivered to: (ssmith@ci.victorville.ca.us).

Contract Award

The Oversight Board intends to contract with the successful proposer using a standard service provider agreement that establishes the overall scope of the services to be provided, the obligations of the parties, and the prices and fees to be charged.

The form of standard service provider agreement that shall be used is provided as Attachment 1 to this RFQ.

The Oversight Board reserves the right to modify or update the standard agreement in whole or in part at any time up to the signing of the agreement.

ATTACHMENT 1

GENERAL SERVICES PROVIDER STANDARD AGREEMENT

BY AND BETWEEN

**THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE
VICTORVILLE REDEVELOPMENT AGENCY**

AND

SERVICE PROVIDER

(LEGAL COUNSEL RFQ)

THIS GENERAL SERVICES PROVIDER STANDARD AGREEMENT (hereinafter “Agreement”), is made and entered into by and between the Oversight Board to the Successor Agency to the Victorville Redevelopment Agency, located in the County of San Bernardino, State of California, hereinafter referred to as the “Board”, and SERVICE PROVIDER, a STATE FORM OF BUSINESS, hereinafter referred to as “Service Provider.”

Board and Service Provider are sometimes hereinafter referred to individually as a “Party” and collectively referred to as the “Parties.”

RECITALS:

WHEREAS, the Board requires legal counsel to provide legal advice and representation for the Oversight Board in its official capacity and;

WHEREAS, in light of the facts set forth above, the Board desires to retain the services of a qualified service provider to provide, on an independent contractor basis, to provide legal services.

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth fully herein.

Section 2. SCOPE OF SERVICES

Service Provider shall provide to the Board those services set forth in the Scope of Services, attached hereto as Exhibit "A", and incorporated as part of this Agreement by this reference.

Section 3. COMPENSATION

The Board shall pay a total amount not to exceed _____ DOLLARS (\$0,000,000.00) for the services rendered by Service Provider pursuant to this Agreement, subject to the provisions of Section 4.

Section 4. PAYMENT SCHEDULE

The Board shall pay Service Provider as provided in the Payment Schedule, attached hereto as Exhibit "B," and incorporated as part of this Agreement by this reference (as maybe applicable). The provisions of Exhibit "B" notwithstanding, in order to receive payments, Service Provider shall be required to submit to the Board monthly invoices detailing all services performed. Provided that services have been satisfactorily rendered, invoices shall be paid by the Board approximately thirty (30) working days following receipt of Service Provider's invoice.

Section 5. PERFORMANCE SCHEDULE

Service Provider shall perform the services required under this Agreement as provided in the Performance Schedule, attached hereto as Exhibit "C," (as maybe be applicable) and incorporated as part of this Agreement by this reference.

Section 6. TERM OF AGREEMENT

This Agreement shall be for a initial term of One Year, commencing on July 1, 2015 (the "Commencement Date") and expiring on June 30, 2016 (the "Termination Date") (the "Term"), unless terminated earlier pursuant to Section 21 of this Agreement. From and after the Termination Date, and upon subsequent agreement by the Parties, this Agreement may continue on a month-to-month basis until terminated pursuant to Section 21 below.

This Agreement may be extended for two (2) addition one-year periods (hereinafter "Option Periods"), at the option of the Board, subject to satisfactory performance as determined by the Board. Board shall give Service Provider sixty (60) days advance written notice prior to the

expiration the initial Term and sixty (60) days advance written notice prior to the expiration date of each subsequently exercised Option Period, if any, should the Board decide to exercise its option(s) to extend. In the event the Board does not give Service Provider such written notice of its option to extend, this Agreement shall terminate at the end of the then-current Term or Option Period without further notice from either Party, unless terminated earlier pursuant to the provisions of Section 21 below. Should the Board fail to give Service Provider the sixty (60) days written notice of its intention to exercise any Option Period, the Board may, in its sole discretion, elect to exercise any Option Period at a later date, following written inquiry from Service Provider.

Section 7. INDEPENDENT CONTRACTOR STATUS

Service Provider shall at all times during the Initial Term of this Agreement, and (if applicable during any Option Periods), perform the services described in this Agreement as an independent contractor.

**Section 8. REPRESENTATIONS AND
ACKNOWLEDGMENTS REGARDING
INDEPENDENT CONTRACTOR'S STATUS OF SERVICE
PROVIDER**

- a. Service Provider represents and acknowledges the following:
- (1) The Board is not required to provide any training or legal counsel to Service Provider or its employees in order for Service Provider to perform the services described in this Agreement.
 - (2) Performance of the services described in this Agreement do not have to be integrated into the daily business operations of the Board.
 - (3) The services described in this Agreement can be performed without the use of Board equipment, materials, tools, or facilities, unless otherwise provided under a separate agreement.
 - (4) Nothing in this Agreement shall be interpreted to imply that the Board must maintain any contractual relationship with Service Provider on a continuing basis after termination of this Agreement.
 - (5) The Board will not be requested or demanded to assume any liability for the direct payment of any salary, wage, or other such compensation to any person employed by Service Provider to perform the services described in this Agreement.

(6) Service Provider shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of the Board.

b. The Board represents and acknowledges the following:

(1) Service Provider is solely responsible for determining who, under the supervision or direction of Service Provider, will perform the services set forth in this Agreement.

(2) The Board will not hire, supervise, or pay any employees or assistants working for Service Provider pursuant to this Agreement. Nothing contained in this Agreement shall prevent the Board from hiring Service Provider's employees or assistants after termination of this Agreement.

(3) Nothing in this Agreement shall be interpreted to imply that Service Provider must maintain any contractual relationship with the Board on a continuing basis after termination of this Agreement.

(4) It is the sole responsibility of Service Provider to set the hours in which Service Provider performs or plans to perform the services set forth in this Agreement.

(5) Service Provider is not required to devote full time to the business operations of the Board in order to perform the services set forth in this Agreement.

(6) Unless deemed necessary under certain circumstances, Service Provider is not required to perform the services set forth in this Agreement at City Hall or on Board-owned property.

(7) Nothing in this Agreement shall be interpreted to preclude Service Provider from working for other persons or firms, provided that such work does not create a conflict of interest.

Section 9. NOT AGENT OF THE BOARD

a. Nothing contained in this Agreement shall be deemed, construed, or represented by the Board or Service Provider or by any third person to create the relationship of principal and agent.

b. Service Provider shall have no authority, express or implied, to act on behalf of the Board in any capacity whatsoever as an agent, nor shall Service Provider have any authority, express or implied, to bind the Board to any obligation whatsoever.

Section 10. LICENSES AND PERMITS

Service Provider represents that it has obtained and will maintain at all times during the initial Term, and (If Applicable, during any Option Periods) of this Agreement all business licenses, including but not limited to a City of Victorville business license, certifications, or permits necessary for performing the services described in this Agreement.

Section 11. WARRANTY

Service Provider agrees to perform all services required by this Agreement in a workmanlike competent and satisfactory manner in accordance with the standards prevalent in the industry for such services.

Section 12. FAMILIARITY WITH WORK

Should Service Provider discover any latent or unknown conditions materially differing from those inherent in the services or as represented by the Board, Service Provider shall immediately inform the Board of such fact and shall not provide any services, except at Service Provider's risk, until written instructions are received from the Chairman of the Oversight Board or his designee.

Section 13. CONFLICTS OF INTEREST

Service Provider covenants that it does not have any interest, nor shall it acquire any interest, directly or indirectly, which would conflict in any manner with the performance of Service Provider's services under this Agreement. Service Provider further covenants that in the performance of services under this Agreement, no officer, employee or agent of Service Provider having such an interest shall be employed by it. In the event the Board determines that Service Provider must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Service Provider shall file such Form 700 with the Victorville City Clerk's Office pursuant to the written instructions provided by the City Clerk.

Section 14. COMPLIANCE WITH LAWS

Service Provider shall comply with all local, state, and federal laws and regulations applicable to the services to be rendered hereunder, including any rule, regulation, or bylaw governing the conduct or performance of Service Provider or its employees, officers, or board members.

**Section 15. COMPREHENSIVE GENERAL AND
AUTOMOBILE LIABILITY INSURANCE**

a. Service Provider shall procure and maintain at its own expense, during the initial Term of this Agreement, and (if applicable, during any Option Periods), comprehensive general liability insurance, of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by Service Provider or its officers, employees, servants, volunteers, and agents and independent contractors.

b. Service Provider shall further procure and maintain, at its own expense, during the initial Term of this Agreement, and (if applicable, during any Option Periods) commercial vehicle liability insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) combined single limit, covering any vehicle utilized by Service Provider or its officers, employees, servants, volunteers, agents and independent contractors in performing the services required by this Agreement.

Section 16. WORKERS' COMPENSATION INSURANCE

a. Service Provider shall procure and maintain at its own expense, during the initial Term of this Agreement, and (if applicable, during any Option Periods), workers' compensation insurance, providing coverage as required by the California State Workers' Compensation Law.

b. If any class of employees employed by the Service Provider pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Service Provider shall provide adequate insurance for the protection of such employees to the satisfaction of the Board.

Section 17. PROFESSIONAL LIABILITY INSURANCE

a. Attorneys shall maintain Professional Liability Insurance providing coverage for services included within this contract, with a limit of liability not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate, as acceptable by the Board.

Section 18. ADDITIONAL NAMED INSURED

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, all insurance policies, except for the Workers' Compensation policy and Professional Liability policy, shall be endorsed to name the Board and its officers, employees, as Additional Insureds.

Section 19. WAIVER OF SUBROGATION RIGHTS

Service Provider shall require the carriers of all required insurance policies to waive all rights of subrogation against the Board and its officers, employees, servants, volunteers,

agents, and independent contractors and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

**Section 20. PROOF OF INSURANCE COVERAGE;
REQUIRED ENDORSEMENTS**

a. Service Provider shall secure from a good and responsible company or companies authorized to transact insurance business in the State of California, the policies of insurance required by this Agreement and furnish to the City Clerk certificates of insurance evidencing the required coverage, and policy endorsements at least one (1) business day prior to the commencement of any services to be performed under this Agreement.

b. The policies and certificates of insurance shall be endorsed to provide that in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the Board shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective. In the case of cancellation for non-payment, ten (10) days advance written notice shall be given.

c. Each policy and certificate of insurance shall be endorsed to provide that the policy shall not be terminated or expire without first providing thirty (30) days written notice to the Board of such termination or expiration.

d. Each policy and certificate of insurance shall be endorsed to provide that the policy will be maintained throughout the Initial Term, and (if applicable during any Option Periods) of this Agreement.

e. The comprehensive general liability and vehicle liability policies shall be endorsed to contain the following provision: "For any claims related to this Agreement, Service Provider's coverage shall be primary with respect to the Board. Any insurance maintained by the Board shall be in excess of Service Provider's insurance and shall not contribute with it."

Section 21. TERMINATION OR SUSPENSION

a. This Agreement may be terminated or suspended without cause by either Party at any time, provided that the Party initiating the termination provides the other Party at least thirty (30) days advance written notice of such termination or suspension. In the event of such termination, the Board shall only be liable for payment under the payment provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination.

b. This Agreement may be terminated or suspended with cause by either Party at any time, provided that the Party initiating termination provides the other Party at least ten (10)

days advance written notice of such termination or suspension. In the event of such termination, the Board shall only be liable for payment under the payment provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination.

Section 22. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

Section 23. INDEMNIFICATION

a. Service Provider shall defend, indemnify, and hold harmless the Board, its officers, employees, representatives, and agents, from and against those actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorneys fees, for any personal injuries, deaths, or property damage (including property owned by the Board), which may arise out of Service Provider's negligence or willful misconduct in the performance of the services described in this Agreement, unless such losses or damages are proven to be caused by the Board's own negligence or willful misconduct, or that of its officers or employees.

b. The Board does not and shall not waive any rights that it may have against Service Provider under this Section, because of the acceptance by the Board, or the deposit with the Board, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions of this Section shall apply regardless of whether said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense described herein.

Section 24. REPORTS

Upon request by the Chairman of the Oversight Board or his designee, Service Provider shall prepare and submit reports to the Board concerning Service Provider's performance of the services required by this Agreement.

Section 25. RECORDS

a. Service Provider shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable the Chairman of the Oversight Board or his designee to evaluate the cost and the performance of such services.

b. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles.

c. The Chairman of the Board or his designee shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d. Records and supporting documents pertaining to the use of funds paid to Service Provider hereunder shall be retained by Service Provider and made available to the Chairman of the Board or his designee for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

Section 26. RESERVED

Section 27. CONFIDENTIALITY

a. Any and all documents and information obtained from the Board or prepared by Service Provider for the Board shall be kept strictly confidential unless otherwise provided by applicable law. All Board data, documents and information shall be returned to Board upon termination of the Agreement.

b. Any drawings, specifications, reports, records, documents, or other materials prepared by Service Provider in the performance of services under this Agreement shall not be released publicly without the prior written approval of Chairman of the Board, or as required by applicable law.

c. Service Provider shall not disclose to any other entity or person any information regarding the activities of the Board, except with the prior written approval of the Chairman of the Board, or as required by applicable law.

Section 28. PRINCIPAL REPRESENTATIVES

a. **SERVICES REP.** is designated as the principal representative of Service Provider for purposes of communicating with the Board on any matter associated with the performance of the services set forth in this Agreement.

b. The Chairman of the Board shall be the principal representative(s) of the Board for purposes of communicating with Service Provider on any matter associated with the performance of the services set forth in this Agreement.

c. Either Party may designate another individual as its principal representative by giving written notice of such designation to the other Party.

Section 29. MODIFICATIONS AND AMENDMENTS

This Agreement may be modified or amended only by a written instrument signed by both Parties.

Section 30. ENTIRE AGREEMENT

a. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or written, between the Board and Service Provider with respect to the subject matter of this Agreement.

b. This Agreement contains all of the covenants and agreements between the Parties with respect to the subject matter of this Agreement, and each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any Party, except those covenants and agreements in this Agreement.

c. No agreement, statement, or promise with respect to the subject matter of this Agreement, which is not contained in this Agreement, or in a valid modification or amendment to this Agreement, shall be valid or binding on either Party.

Section 31. AMBIGUITIES

This Agreement is in all respects intended by each Party hereto to be deemed and construed to have been jointly prepared by the Parties and the Parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

Section 32. NOTICES

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the Parties as follows:

To the Board:	Keith Metzler
	Chairman, Oversight Board
	14343 Civic Drive
	Victorville, CA 92392
To Service Provider:	REPRESENTATIVE.....

COMPANY.....

ADDRESS.....

CITY, CA ZIP CODE.....

b. Notices, payments, and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

**Section 33. NON-LIABILITY OF BOARD OFFICERS
AND EMPLOYEES**

No officer or employee of the Board shall be personally liable to Service Provider, or any successor in interest, in the event of any default or breach by the Board or for any amount, which may become due to Service Provider or to its successor(s), or for any breach of any obligation of the terms of this Agreement.

Section 34. REVIEW BY ATTORNEYS

Each Party hereto has had its attorney(s) review this Agreement and all related documents. Each Party hereto has consulted with its attorney(s) and has negotiated the terms of this Agreement based on such consultation.

Section 35. WAIVER

a. No waiver shall be binding unless executed in writing by the Party making the waiver.

b. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c. Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of such provision or any of the remaining provisions of this Agreement.

Section 36. ASSIGNMENT

This Agreement shall not be assigned by either Party without prior written consent of the other Party.

Section 37. CARE OF WORK

The performance of services by Service Provider or the payment of money by the Board shall not relieve Service Provider from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the Board, when such incomplete, inaccurate or defective work is due to the negligence of Service Provider.

Section 38. CAPTIONS AND HEADINGS

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 39. SUCCESSORS, HEIRS, AND ASSIGNS

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties.

Section 40. GENDER

In this Agreement, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

Section 41. SEVERABILITY

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair, or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

Section 42. GOVERNING LAW

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Section 43. DEFAULT

a. Failure or delay by any Party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the Party who is otherwise claimed to be in default by the other Party commences to cure, correct, or remedy the alleged default within fifteen (15) days after receipt of written notice specifying such default and shall diligently complete such cure, correction, or remedy, such Party shall not be deemed to be in default hereunder.

b. The Party claiming that a default has occurred shall give written notice of default to the Party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured Party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default by any Party to this Agreement may remain uncured for more than fifteen (15) days following written notice, as provided above, the injured Party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

Section 44. CUMULATIVE REMEDIES

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default of any other default by the other Party.

Section 45. VENUE

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.

Section 46. ATTORNEYS' FEES

In the event any action, suit, or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement, or as a result of any alleged breach of any provision of this Agreement, the prevailing Party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the losing Party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Section 47. EFFECTIVENESS OF AGREEMENT

This Agreement shall not be binding upon the Board, until signed by the authorized representative(s) of Service Provider, approved by the Board's Risk Manager, and executed by the authorized Board personnel or Mayor.

**Section 48. REPRESENTATIONS OF PARTIES AND
PERSONS EXECUTING AGREEMENT**

(a) Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties hereto.

(b) The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

Section 49. COUNTERPARTS

This Agreement may be executed by the parties in counterparts, and when executed by each of the parties, each counterpart shall be deemed to be a part of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates written below.

OVERSIGHT BOARD

SERVICE PROVIDER

Chairman

**(Insert Name of Owner or Person
(and Title) authorized to sign
Agreements)**

Dated: _____

Dated: _____

EXHIBIT A

SCOPE OF SERVICES

See Attachment

EXHIBIT B

PAYMENT SCHEDULE

See Attachment

EXHIBIT C

PERFORMANCE SCHEDULE

See Attachment