



**REPORT TO HOUSING AUTHORITY**  
**City of Sacramento**  
 915 I Street, Sacramento, CA 95814-2671  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

Consent  
**December 10, 2013**

**Chair and Members of the Housing Authority Board**

**Title: Audit Services Contract for Sacramento Housing and Redevelopment Agency**

**Location/Council District:** Citywide

**Issue:** SHRA is required to solicit bids and award an annual audit contract. Staff is recommending awarding the contract to Macias, Gini & O'Connell LLP.

**Recommendation:** Pass: 1) a **Housing Authority Resolution (Authority)** adopting the attached resolution which authorizes the Executive Director or her designee to: a) execute annual contracts with Macias Gini & O'Connell LLP to provide audit services for the Sacramento Housing and Redevelopment Agency (Agency), and Housing Authority of the City of Sacramento for the calendar years ending December 31, 2013, 2014, 2015, 2016 and 2017. It is the intent of SHRA to award an initial contract for a period of one (1) year, with the option to add four (4) additional one (1) year periods. The additional periods are at the sole discretion of SHRA based on the firm's performance and SHRA needs. b) amend the contract, as needed, for additional audit services such as management consulting and tax related matters or for audit services as required by Governmental Accounting Standards Board Statements or pronouncements, new HUD regulations, new SHRA funding sources or programs, and unanticipated problems that require additional work for the audit firm. c) execute any and all documents necessary to carry out provisions of the annual examination of the financial statements and 4) make environmental findings.

**Contact:** Don Cavier, Director of Finance, 440-1325, Karen Lukes, Management Analyst, 449-6207

**Presenters:** N/A

**Department:** Sacramento Housing and Redevelopment Agency

**Description/Analysis**

**Issue:** The United States Department of Housing and Urban Development requires that the Sacramento Housing and Redevelopment Agency (SHRA) publish a complete set of financial statements presented in accordance with generally

## Audit Services Contract for Sacramento Housing and Redevelopment Agency

accepted accounting principles (GAAP) in the United States of America applied to governmental entities. The financial statements are to be audited by certified public accountants in accordance with GAAP standards and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require the auditors to plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the basic financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall basic financial statement presentation.

SHRA issued a Request for Proposals for audit services on May 31, 2013. SHRA received three eligible proposals. The proposals were evaluated by a committee consisting of one Sacramento Housing & Redevelopment Commissioner, one representative from the City of Sacramento, one representative from the County of Sacramento, the SHRA's Director of Finance and Director of Administrative Services. Each firm was evaluated and rated on the experience of the firm with comparable work, the qualifications of the firm and its team members, their understanding of audit requirements, the fee proposal, and their technical approach to the audit. After evaluation of the proposals, the evaluation committee is recommending awarding the audit services contract to Macias Gini & O'Connell LLP.

Approval of this item will allow SHRA to execute a contract with Macias Gini & O'Connell LLP to provide audit services for SHRA, and the Housing Authority of the City of Sacramento for the calendar years ending December 31, 2013, 2014, 2015, 2016 and 2017. It is the intent of SHRA to award an initial contract for a period of one (1) year, with the option to add four (4) additional one (1) year periods. The additional periods are at the sole discretion of SHRA based on the firm's performance and SHRA needs.

**Policy Considerations:** Upon entering into the joint exercise of power agreement creating SHRA, the constituent members delegated authority to the Sacramento Housing and Redevelopment Commission to approve routine service contracts, however the Housing Authority of the City and Redevelopment Agency of the City retained the authority to select and award contracts for auditors. As of February 1, 2012, the administration of the former redevelopment agency of the City was assumed within the management structure of the City, which elected to administer the affairs of the successor agency (RASA). The budget for the former redevelopment agency and non-housing funds of the former redevelopment agency are no longer administered by SHRA. The actions recommended are consistent with this policy direction.

**Environmental Considerations:**

**California Environmental Quality Act (CEQA):** The California Environmental Quality Act (CEQA) does not apply to the proposed action pursuant to CEQA Guidelines section 15378(b)(5), which excludes administrative activities of governments that will not result in direct or indirect changes in the environment. The proposed action is exempt under the national Environmental Policy Act (24 CFR 58.34(a)(3).

**Sustainability Considerations:** N/A

**Other:** None

**Commission Action:** On November 6, 2013, the Sacramento Housing and Redevelopment Commission considered the staff recommendation for this item. The votes were as follows:

**AYES:** Alcalay, Gore, Griffin, Johnson, LeDuc, Morton, Morgon, Stivers

**NOES:** none

**ABSENT:** Chan, Rosa, Shah

**Rationale for Recommendation:** Annual audits are a requirement for all housing authorities and it is financially and administratively beneficial to enter into a multi-year service contract.

**Financial Considerations:** The proposed cost for this service for the years ending December 31, 2013, 2014, 2015, 2016 and 2017 are \$125,000, \$125,000, \$128,000, \$126,500, and \$126,500, respectively. The increase in 2015 is attributable to the implementation of the GASB 68 pension accounting standard which will require additional audit services. The cost of each year's contract is included in the Agency's annual budget. There is no budget action needed at this time.

November 6, 2013

Audit Services Contract for Sacramento Housing and Redevelopment Agency

**M/WBE and Section 3 Considerations:** Minority and Women Business Enterprise Requirements will be applied to all activities to the extent required by federal funding to maintain that federal funding. Section 3 requirements will be applied to the extent as may be applicable.

Respectfully Submitted by:

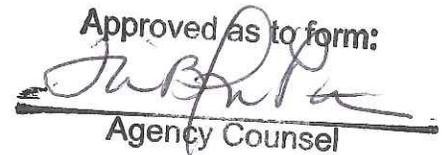


LA SHELLE DOZIER  
Executive Director

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Approved as to form:



Agency Counsel

## **RESOLUTION NO. 2013 -**

**Adopted by the Housing Authority of the City of Sacramento**

on date of

### **AUDIT SERVICES CONTRACT**

#### **BACKGROUND**

- A. Audits are required by federal, state, and local governmental funding sources;
- B. SHRA issued a Request for Proposals for audit services on May 31, 2013, and received three eligible proposals.
- C. After a formal competitive evaluation process, the evaluation committee recommends the Contract to Provide the Audit Services for the Agency be awarded to Macias Gini & O'Connell LLP.
- D. The California Environmental Quality Act (CEQA) does not apply to the proposed action pursuant to CEQA Guidelines section 15378(b)(5), which excludes administrative activities of governments that will not result in direct or indirect changes in the environment. The proposed action is exempt under the National Environmental Policy Act (24 CFR 58.34(a)(3)).

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:**

- Section 1. The above statements, including but not limited to the environmental statements are determined to be true and correct.
- Section 2. The Executive Director or her designee is hereby authorized execute annual contracts with Macias Gini & O'Connell LLP to provide audit services for the Sacramento Housing and Redevelopment Agency (SHRA) and Housing Authority of the City of Sacramento for the calendar year ending December 31, 2013, with an option to extend for four additional calendar years, in an amount not to exceed \$631,000 for the five-year period. The additional periods are at the sole discretion of SHRA based on the firm's performance and SHRA needs.

- Section 3. The Executive Director, or her designee, is hereby authorized to amend the contract for additional audit services such as management consulting and tax related matters or for audit services as required by Governmental Accounting Standards Board Statements or pronouncements, new HUD regulations, new SHRA funding sources or programs, and unanticipated issues requiring additional work from the audit firm.
- Section 4. The Executive Director, or her designee, is hereby authorized to execute any and all documents necessary to carry out provisions of the annual examination of the financial statements.



**CONTRACT  
For  
Audit Services**

Effective Date:

AS OF THE ABOVE-WRITTEN "EFFECTIVE DATE", AND IN CONSIDERATION OF THEIR MUTUAL OBLIGATIONS, THE AGENCY AND CONTRACTOR (DEFINED BELOW) ENTER INTO THIS "CONTRACT" AND AGREE AS FOLLOWS:

1. "Agency" is/are the following selected agency/agencies, which are public bodies, corporate and politic, and which has/have the address of 801 12<sup>th</sup> Street, Sacramento, California 95814:

SELECT		AGENCY	
<input checked="" type="checkbox"/>	Housing Authority of the City of Sacramento	<input checked="" type="checkbox"/>	Housing Authority of the County of Sacramento
<input checked="" type="checkbox"/>	Sacramento Housing and Redevelopment Agency		

2. "Contractor" and Contractor's name and address for its principal place of business are the following:

Name	Macias Gini & O'Connell LLP
Address	3000 S Street, Suite 300, Sacramento, CA 95816

Contractor is the following legal entity (select one):

<input type="checkbox"/> Sole Proprietor/Individual(s)	<input type="checkbox"/> Corporation	<input type="checkbox"/> Nonprofit Corporation	<input type="checkbox"/> General Partnership
<input type="checkbox"/> Limited Liability Company	<input checked="" type="checkbox"/> Limited Liability Partnership	<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Other:

Contractor is organized in (select one):

<input checked="" type="checkbox"/> California	
<input type="checkbox"/> in the following state and is licensed to do its business in California	State

3. "Funding Source" is the source of funding that the Agency is using to pay the Contract payments. Contractor must comply with each and every requirement of the Funding Source. Agency will cooperate with Contractor in determining the applicable requirements of the Funding Source. The Funding Source is :

Funding Source	CFDA#	Award #	Award Year	Jurisdiction	Amount
CDBG	14.218	B-14-UC-06-0005	2014	<input checked="" type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local	\$9,459
HOME	14.239	M-14-DC-06-0211	2014	<input checked="" type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local	\$3,163
HCV	14.871	CA007AF		<input checked="" type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local	\$59,659
Shelter Plus Care	14.238	CA0153C9T031003 CA0127C9T030800 CA0151C9T030802		<input checked="" type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local	\$2,691
Sec 8 Mod Rehab	14.856	CA005MR0002 & 3		<input checked="" type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local	\$90
Low Rent Pub Hsg	14.850	CA005000101-9 CA0007000201-7		<input checked="" type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local	\$14,189
Misc Local Funds				<input type="checkbox"/> Federal <input type="checkbox"/> State <input checked="" type="checkbox"/> Local	\$35,749

4. "Attachments" for this Contract are the following, which are incorporated in this Contract as if included in full in the body of this document:

ATTACHMENT NO. CHECK APPLICABLE BOX	DESCRIPTION OF ATTACHMENT (Attachments marked N/A or stricken are not included)
1	Contract Provisions (This Contract is <i>invalid</i> without the Contract Provisions attachment)
<input checked="" type="checkbox"/> yes #__ <input type="checkbox"/> no	Federal Requirements
<input type="checkbox"/> yes #__ <input type="checkbox"/> no	CDBG and Other Federal Requirements
<input type="checkbox"/> yes #__ <input checked="" type="checkbox"/> no	Payments
<input type="checkbox"/> yes #__ <input checked="" type="checkbox"/> no	General Conditions for Limited Construction Work (If this Contract is for construction work, it is <i>invalid</i> without the General Conditions for Limited Construction Work attached.)
<input type="checkbox"/> yes #__ <input checked="" type="checkbox"/> no	Attachment for Architectural Services (If this Contract is for architectural services, it is <i>invalid</i> without the Attachment for Architectural Services attached.)
<input type="checkbox"/> yes #__ <input checked="" type="checkbox"/> no	Other

Unless expressly stated otherwise, the Attachments shall supersede any provisions of this Contract with which they conflict.

5. "Scope of Work" for this Contract is the following [This contract is *invalid* unless this section is completed. In addition to the Scope of Work here, there may be a detailed Scope of Work attached if that attachment is written by the Agency and the attachment must be in the same form as the following table, including all categories and tasks.]:

"PERFORMING PARTY"	"TASK/OBLIGATION":	"DEADLINE"
Contractor	<i>Scope of work or summary of scope of work</i>	
	Audit services for year one of five year contract (for year ended 12/31/2013)- including the Basic Financial Statements, Single Audit, CalHFA Audit, tax returns and all other items required for completion of CAFR.	06/30/2014
	HUD FDS attestation services	09/30/2014
	Other technical assistance as required.	12/31/2014
Contractor	"COMPLETION DATE": The date for completion of all of Contractor's Tasks/Obligations under this Contract	12/31/2014
Contractor	"BILLING DATE": Contractor must submit the final bill for all work under this Contract. Agency will not pay bills submitted after the Billing Date	01/31/2015
Agency	"FINAL DATE": Agency must make final payment for all bills submitted in accordance with the terms of this Contract.	02/28/2015

6. "Contract Price" is the maximum amount that the Agency is required to pay Contractor under this Contract. The Contract Price for this Contract is the following:

CONTRACT PRICE	\$125,000
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7. "Payment Schedule" for this Contract, by which schedule Agency must make payments under this Contract, is following:

SELECT ONE	DATE, TIME PERIOD OR PERFORMANCE TO BE COMPLETED AS CONDITION OF PAYMENT (Only one payment schedule is selected, the others not selected included):		MAXIMUM AMOUNT OF PERIODIC PAYMENT:
	Monthly payments, Payable	Date	Amount
	In the amounts and on the dates stated in Attachment ___ Payment		Stated in attachment
X	According to the following Schedule of Tasks, periodic payment upon Contractor's completion of each respective task:		Amount
	Basic Financial Statements		\$91,385
	Single audit		\$15,040
	CalHFA		\$6,695
	Tax Returns		\$5,800
	HUD Attestation		\$6,080
	As billed by Contractor, for work actually performed and services actually provided		According to the fees and rates stated in Attachment ___ Payment
	Allowed Reimbursable Expenses		Maximum Amount
			\$

Contractor shall not be reimbursed for expenses that are not specifically included in the Payment Schedule. Notwithstanding any other provision, reimbursable travel expenses shall not exceed the rates allowed by the Internal Revenue Service Standard Mileage Reimbursement and shall not include expenses for travel within a forty-five (45) mile radius from the Agency's place of business. Notwithstanding any other provision, reimbursable expenses shall not include any pro-rated overhead costs and expenses, facsimile or telecopier charges, copying costs (unless extraordinary and approved in advance by the Agency), courier charges, local and long distance telephone charges, and ordinary office and business supplies.

8. "Special Provisions" are the following provisions or additional recitals, which are a part of the contract only if approved by Agency counsel as indicated by the accompanying initials.

SPECIAL PROVISION	AGENCY COUNSEL

THIS CONTRACT IS EXECUTED in Sacramento, California as of the date first above written.

AGENCY:  
By:

CONTRACTOR:  
By:

Name:		Name:	
Title:		Title:	
		Tax ID Number:	

Contractor must file a Conflict of Interest Statement with the Agency Clerk, unless this box is checked by the Agency signatory indicating that the Contractor is excluded from filing under the Agency Conflict of Interest Code.

**CERTIFICATION OF AUTHORITY**

I certify under penalty of perjury under the laws of the State of California that I am fully authorized to execute the attached document for Contractor in the capacity I have stated, and that such execution is sufficient to bind the Contractor. Executed in \_\_\_\_\_, California, on \_\_\_\_\_.

\_\_\_\_\_  
Contractor's Signatory

## ATTACHMENT 1 CONTRACT PROVISIONS

1. **CONTRACT CONTENTS, PRECEDENCE AND DEFINITIONS.** This Contract consists of this Contract document and all of the Attachments named in this Contract. Except for matters required by law or expressly stated otherwise, the provisions of the attachments supersede any provisions of the body of this Contract with which they conflict. Unless otherwise defined in this Attachment 1, capitalized terms shall have the definitions stated in this Contract.

2. **SCOPE OF WORK.** Notwithstanding the wording of the Scope of Work, unless a Task/Obligation is expressly described in the Scope of Work as one that is not mandatory, each Task/Obligation described in the Scope of Work is the mandatory obligation of the Performing Party, and it must be completed on or before its respective Deadline. As the context indicates the Task/Obligation must be performed at or delivered to the Location stated in the Scope of Work.

3. **CONTRACT TERM AND TIME OF PERFORMANCE.** The "Contract Term" shall begin on the date of this Contract and shall end at 5:00 p.m. on the Final Date or upon completion of all services, whichever shall first occur. The Final Date is the date for completion of all obligations of the parties under this Contract.

a) Certain of the Contract requirements, as expressly stated in this Contract, shall survive the completion or termination of this Contract.

b) The Contractor acknowledges that Contractor is not entitled to compensation for any work done or costs incurred prior to the date of this Contract or subsequent to the Completion Date. This contract cannot be revived, amended or extended by agreement made after the Final Date.

4. **COMPENSATION, REIMBURSEMENT AND METHOD OF PAYMENT.** Notwithstanding any other provision of this Contract, the parties agree that the total compensation and reimbursement for all services and expenses required during the term of this Contract shall not exceed the Contract Price. Agency shall pay the Contractor in the amounts and at the times specified in the Payment Schedule. Agency is not obligated to make any payment under this Contract for work Contractor has not yet performed or goods not delivered. Agency is not obligated to make any payment under this Contract for so long as Contractor is in material default of this Contract. Except as specified in writing in this Contract, Agency is not obligated or liable under this Contract to any party other than the Contractor.

5. **INSURANCE COVERAGE REQUIREMENTS.** During the Contract Term, Contractor must maintain the following insurance coverage from insurance providers licensed to do business in California and having an industry rating that is reasonably acceptable to Agency. Failure to maintain the required insurance is a material breach of this Contract. Before beginning any work under this Contract, Contractor must provide Agency with certificates of insurance or copies of the insurance policies demonstrating the required coverage, and the required endorsements naming Agency as an additional insured. Contractor must assure that such certificates and endorsements are in a form reasonably acceptable to the Agency and reflect fulfillment of all of the requirements of this Contract. Contractor must assure that the coverage afforded under the policies can only be canceled after thirty (30) days prior written notice to the Agency of the pending cancellation. Contractor must mark such notice to the attention of the Agency's Procurement Services Office at the following address:

SACRAMENTO HOUSING & REDEVELOPMENT AGENCY  
801 12<sup>th</sup> Street – Procurement Services (PS)  
Sacramento, California 95814

a) The required insurance coverage is the following: (i) Two Million Dollars (\$2,000,000) or more of comprehensive general liability coverage including, without limitation, coverage for contractual liability, public liability and property damage and having a deductible of Twenty-five Thousand Dollars (\$25,000) or less; (ii) if motor vehicles are used in connection with this Contract, Three Hundred Thousand Dollars (\$300,000) or more of automobile liability coverage having a deductible of Five Thousand Dollars (\$5,000) or less; and statutory limits or more of workers compensation coverage for all employees of Contractor and all others doing Contract work. The general liability and automobile policies shall be endorsed to name the Agency as an additional insured.

b) Cancellation: Contractor will provide the Agency with the cancellation clause and/or any amendatory endorsements that modify or change the policy cancellation clause of the insurance policies in force. It is the Contractor's

responsibility to notify the Agency of any notice of cancellation, non-renewal or non-payment of premium in accordance with your policy provisions. In the event insurance is cancelled or not renewed, the Contractor shall notify the Agency within forty eight (48) hours of such cancellation or non-renewal.

\_\_\_\_ **Contractor's Initials**

c) Contractor is in material breach of this Contract for so long as Contractor fails to maintain all of the required insurance. Agency has the right, but not the obligation, to pay any delinquent insurance premiums and any other charges to reinstate or maintain the required insurance policies and coverage. Upon Agency's demand, Contractor must immediately reimburse Agency for any and all costs incurred by Agency in so obtaining or maintaining insurance. If Agency does incur such costs, Agency shall have the right to withhold such amount from any payment due to Contractor under this Contract and to reduce the compensation payable to Contractor under this Contract by such amount.

**6. BILLING PROCEDURES AND CONDITIONS.** Agency must make the payments due under this Contract, as provided in Part I, subject to the following provisions.

a) Agency must pay the Contract Price to Contractor for performance of Contractor's obligations under this Agreement, or so much of the Contract Price as may be due for services actually performed and materials actually supplied by Contractor under this Contract. Agency must make such payments within thirty (30) days following delivery by Contractor to Agency of invoices stating the amount then due and specifying the services performed for which payment is due. Agency is not required to make such payment more frequently than specified as the Time for Payment. Contractor will not be paid for expenses or overhead as separate items of cost unless such items are specifically listed in the Payment Schedule, and then not to exceed the amounts so provided. In any event, Agency is not required to pay Contractor a total amount for goods, services and expenses which exceed the Contract Price.

b) Contractor may make requests for payment, after the Completion Date and through the Billing Date, for services performed or materials provided to the Contract work on or before the Completion Date. The Agency shall make payments due under this Contract on or before the Final Date.

c) As a condition for payment, Contractor must submit billing statements, in duplicate, not less than ten (10) business days before the date of a requested payment. Such billing statements shall specify the dates on which the work was performed; the nature of the work performed; the percentage of the total work performed; the name of the individual performing each element of the work; the respective hourly billing rates; a list of all expenses for which reimbursement is sought; and the requested payment date.

d) Within ten (10) days following a written request received from Agency, Contractor must provide a bill to Agency for all work done as of the request date. Agency is entitled to make similar requests at intervals of not less than thirty (30) days following the initial request.

**7. INDEMNIFICATION.** Contractor shall indemnify, save harmless and defend, to the fullest extent permitted by law, the Housing Authority of the City of Sacramento, the Housing Authority of the County of Sacramento, the Sacramento Housing and Redevelopment Agency, the City of Sacramento and the County of Sacramento, their respective officers, directors, commissioners, advisory committee members, agents, and employees from liability, claims, demands, attorney's fees or litigation and related costs, including without limitation, court costs and investigator, witness, arbitrator and mediator fees, for any injury or damages to persons or property resulting from Contractor's prosecution of work under the Contract, or otherwise related to this Contract, whether caused, in whole or part, by an intentional act, negligent act or omission by Contractor, its officers, employees, or agents.

**8. NO WAIVER OF RIGHTS AND REMEDIES.** Agency's failure, at any time, to object to any breach of covenant or obligation, to any failure of performance, or to any other default on the part of the Contractor shall not constitute a continuing waiver of subsequent breaches or defaults. Agency's making of any payment to the Contractor shall not, under any circumstances, be considered as a waiver by Agency. Agency's making of any payment while any breach or default by Contractor exists shall in no way impair any right or remedy available to Agency related to such breach or default, including without limitation, the right to withhold future payments.

**9. HIRING OF OTHERS.** Unless consultants, specialists, experts or other third parties are listed in the Scope of Work, Contractor must not employ any of them or incur any obligation to pay any of them for services performed under this

Contract without the prior written approval of Agency. Agency's written approval shall not create any obligation of the Agency with regard to any such third party. Contractor has no authority to, and must not purport to, employ, hire or contract with any such third party as agent of the Agency or otherwise on behalf of Agency.

**10. TERMINATION OF CONTRACT FOR CAUSE.** If either party fails to fulfill its obligations under this Contract in a timely and proper manner or violates any of the covenants, agreements, or stipulations of this Contract, and if such failure or violation is material and substantial, the other party shall have the right to terminate this Contract by written notice to the defaulting party.

a) If Contractor defaults and Agency terminates the Contract, all finished or unfinished work, products, documents, electronic media, data, studies, artwork, renderings, models, software programs, and reports prepared by Contractor under this Contract shall, at the option of Agency, become property of the Agency, upon payment to Contractor of just and equitable compensation for such work which is completed and which is reasonably satisfactory to Agency. Agency's exercise of its option to own such properties does not relieve Contractor of liability to Agency for damages on account of Contractor's default, and Agency may withhold any payments to Contractor for the purpose of setoff until such time as the exact amount of damages due Agency from Contractor is determined.

b) If Agency defaults and Contractor terminates the Contract, upon Contractor's submission of the billings and receipts required by this Contract, Agency must pay to Contractor an amount which bears the same ratio to the total compensation under this Contract as the services actually performed by Contractor bear to the total services of Contractor covered by this Contract, less payments of compensation previously made. (By way of example if the work is eighty percent complete, Agency must pay eighty percent of the compensation less any amounts previously paid for the work.) In addition, Agency must reimburse Contractor for all unreimbursed expenses that are reimbursable under this Contract upon Contractor's submission of the billings and receipts required by this Contract for reimbursement. If less than fifty percent (50%) of the services covered by this Contract have been performed as of the termination date, Agency must also pay Contractor for that portion of the actual out-of-pocket expenses incurred by Contractor during the Contract period which are directly attributable to the uncompleted portion of the services covered by this Contract.

**11. TERMINATION FOR CONVENIENCE OF AGENCY.** Agency may terminate this Contract, at any time and without cause, by a notice in writing from Agency to Contractor. Upon such termination, Agency must pay Contractor the same amounts as Agency would have paid under Section 10.b) as a termination for Agency default.

**12. CHANGES.** Agency may, from time to time, request changes in the Scope of Work to be performed by Contractor. Such changes, including any increase or decrease in Contractor's compensation, must be by written amendment to this Contract executed in advance by Agency and Contractor.

**13. PERSONNEL, FACILITIES AND EQUIPMENT.** Contractor represents that he has, or will, secure at his own expense all personnel, facilities and equipment required in performing the services under this Contract. Such personnel must not be Agency employees or have any contractual relationship with Agency, except with Agency's prior written approval.

a) All the services required under this Contract will be performed by Contractor or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

b) No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

**14. SUBCONTRACTING.** Contractor must not enter into any subcontract for performance of the services covered by this Contract without the prior written consent of Agency. In any event, Contractor shall be as fully responsible to Agency for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him. In any event, Contractor must insert in each subcontract appropriate provisions requiring compliance with the labor standards provisions, insurance and other relevant provisions of this contract.

**15. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS.** During the performance of this Contract, Contractor agrees as follows:

a) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Agency setting forth the provisions of this nondiscrimination clause.

b) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

**16. INTERESTS OF OFFICIALS.** No member of the governing body of Agency, and no other officer, employee or agent of Agency who exercises any functions or responsibilities in connection with the carrying out of the project to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract. No member of the governing body of the locality in which the project is situated, and no other public official of such locality, who exercises any functions or responsibilities in the review or approval of the carrying out of the project to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract. If federal funds are expended by the Agency for this Contract, no member of or delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit arising from this Contract. Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, in any portion of the project to which this Contract pertains, or any other interest which would conflict in any manner or degree with the performance of his services under this Contract. Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed by Contractor.

**17. CONFLICTS OF INTEREST STATEMENT.** Contractor shall, upon Agency request, complete and submit a conflict of interest statement to the Agency in form approved by the Agency.

**18. MONITORING AND REPORTING.** Agency may monitor the adequacy of Contractor's performance in any manner which Agency deems most effective. Contractor must cooperate with Agency in such monitoring. If requested by the Agency staff, in writing, Contractor must provide Agency with detailed reports outlining the most current status involving all Agency activities and projects being handled by Contractor. Such reports may be required no more often than monthly. Agency shall have the right to audit such reports, including the right to review all records of Contractor related to such reports.

**19. OWNERSHIP OF PROFESSIONAL AND TECHNICAL INFORMATION.** All professional and technical information, in the form of original designs, drawings, data, computations, specifications, report texts, estimates, writings, artwork, renderings, models, software programs, and any other material, data and information collected or developed in connection with the work under this Contract, and all original documents shall be forwarded to and become the sole property of Agency. Neither Contractor nor any of its associates or consultants shall have any rights or interest in such information, documents and material. Contractor and its associates and consultants may retain such copies or reproductions, at their expense, of the original documents as necessary for their files, records and reference.

**20. NO INTELLECTUAL PROPERTY RIGHTS OR ARTIST'S RIGHTS IN CONTRACT WORK.** In any event, without the prior written approval of the Agency, Contractor and any person or entity acting on behalf of Contractor shall not obtain nor have, and expressly waives, any rights, in law or in equity, in any intellectual property developed in furtherance of this Agreement, including without limitation, copyright, trademark, service mark, patent or rights of an artist in a work of art. Artists preparing any artwork under this Agreement waive any rights to notice or to take any action regarding the use, removal, relocation or destruction of any artwork so prepared. Contractor represents and acknowledges that Contractor has or shall obtain such waivers in writing for all persons or entities doing work under this Agreement

**21. COMPLIANCE WITH LAWS.** Contractor must comply with all applicable laws, ordinances and codes of the federal, state and local governments, and must commit no trespass on any public or private property in performing any of the work embraced by this Contract.

**22. CHILD SUPPORT COMPLIANCE ACT.** If this Agreement is in amount that exceeds \$100,000, then following is acknowledged and agreed to by the Contractor: (1) Contractor recognizes the importance of child and family support and

shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including but not limited to, disclosure of information and compliance with earnings assignment orders as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and (2) contractor, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry, maintained by the California Employment Development Department.

23. **ASSIGNABILITY.** Contractor is prohibited from assigning and waives all rights to assign or transfer any interest in this Contract without the prior written approval of Agency. Any purported assignment of any of Contractor's rights and obligations under this Contract without the prior written consent of the Agency is a breach of this Contract.

24. **AGENCY COOPERATION.** Agency will reasonably cooperate with Contractor regarding this Contract. As and when requested by Contractor, Agency will furnish to Contractor any and all pertinent information which Agency may possess during the time of performance of Contractor's duties under this Contract.

25. **CONFIDENTIALITY.** All information prepared or assembled by the Contractor under this Contract is confidential. Contractor must not make this information available to any individual or organization without the prior written approval of Agency. Contractor must immediately forward to Agency all requests for information related to this Contract made by a third party to Contractor. Contractor must not disclose or permit the disclosure of any confidential information of the Agency, except to its agents, employees and other consultants, approved by Agency, who need such confidential information for the proper performance of their duties related to this Contract or on behalf of the Agency.

26. **CONTRACTOR'S STATUS.** Contractor for all purposes under this Agreement is an independent Contractor and must maintain any and all licenses required by law for the performance of Contractor's obligations under this Contract. Except as expressly stated in this Contract, Agency is prohibited from directing the methods of Contractor's work under this Contract, requiring Contractor's use of an Agency office for Contractor's performance or setting regular working hours for Contractor or Contractor's employees.

27. **CONTRACT CONSTRUCTION AND ENFORCEABILITY.** The existence, validity, construction and operation of this Contract, and all its representations, terms and conditions shall conform to the laws of the State of California, exclusive of its conflicts of law rules. Throughout this contract, the use of singular and plural forms, or the various gender forms, shall each include the other as the context may indicate. If any provision of this Contract is held in whole or in part to be unenforceable for any reason, the remainder of that provision and the entire Contract will be severable and remain in effect.

28. **NOTICES.** Any notices, bills, invoices, or reports required by this Contract shall be sufficient if sent by the parties in the United States mail, postage paid, to the address of the other party as indicated in this Contract.

29. **ENTIRE CONTRACT.** This Contract contains the entire agreement of the parties. No other agreement, statement or promise made on or before the date of this Contract will be binding on the parties. No changes to this Contract are valid unless they are made by written amendment duly executed by the parties.

30. **VENUE.** Unless otherwise agreed in writing by the parties, the venue for all actions related to this Contract is Sacramento County, California.

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## ATTACHMENT 2 FEDERAL REQUIREMENTS

The following provisions shall be applicable to this Agreement and binding on Contractor and Agency only if all or part of the funds to be paid for work performed under this Agreement are provided by the United States Department of Housing and Urban Development (other than Community Development Block Grant funds) or some other funding program of the federal government. In the event of a dispute as to the applicability of any of the following provisions to Contractor's work under this Contract, Agency's decisions shall be final.

1. **ANTI-KICKBACK RULES.** Monthly, or more often, Contractor must, without condition, pay the salaries of architects, draftsmen, technical engineers and technicians performing work under this Contract. Such payments shall be made without deduction or rebate, excepting only such payroll deductions as are mandatory by law or permitted by applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1937 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C., Section 874; and Title 40 U.S.C., Section 276(C)). Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Contract to insure compliance by subcontractors with such regulations. Contractor shall be responsible for the submission of affidavits required of subcontractors under this Contract, except for such variations or exemptions as the Secretary of Labor may specifically allow.

2. **WORK HOURS.** Contractor must comply with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) and must cooperate with Agency in implementing and enforcing the provisions of such Act. Among other requirements of the act, Contractor must pay not less than one and one-half times the basic rate of pay for the work of Contractor's employee in excess of eight hours in one day or forty hours in one week, in the performance of this Contract. Contractor must insert appropriate provisions in all subcontracts covering work under this Contract to insure compliance with such Act. Contractor must meet and cooperate with Agency's Labor Compliance officer to assure compliance with such Act.

3. **WITHHOLDING OF SALARIES.** If, in the performance of this Contract, there is any underpayment of salaries by Contractor or by any subcontractor, Agency must withhold from Contractor out of payments due to him any amount sufficient to pay employees underpaid the difference between the salaries required under this Contract to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by Agency for and on account of Contractor or subcontractor to the respective employees to whom they are due.

4. **CLAIMS AND DISPUTES PERTAINING TO SALARY RATES.** Claims and disputes pertaining to salary rates or to classification of architects, draftsmen, technical engineers and technicians performing work under this Contract must be promptly reported in writing by Contractor to Agency for the latter's decision which shall be final with respect thereto.

5. **EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS.**

i. Contractor will send to each labor union or representative of workers with whom he has a collective bargaining agreement or other contract or understanding, a notice to be provided by Agency, advising the labor union or workers' representative of Contractor's commitments under Section 202 of Executive order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

ii. Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

iii. Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant

thereto, and will permit access to his books, records and accounts by Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

**6. CONTRACTUAL REQUIREMENTS: "SECTION 3 CLAUSE".** The following is applicable to all contracts related to the project which is the subject of this Contract.

- i. The work to be performed under this Contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.
- ii. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- iii. Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- iv. Contractor will include this Section 3 Clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient for federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of requirements issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- v. Compliance with the provisions of Section 3. The regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract, shall be a condition to the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractor, its successors and assigns, to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135. In order to comply with the Section 3 requirements, the bidder must indicate along with his bid, what affirmative action processes he has used in soliciting bids from business concerns listed on the Registry. Forms for the bidders' use are included in the Project Manual. These completed Section 3 Affirmative Actions forms must be submitted with the proposal.
- vi. Good Faith Effort. Each Contractor or subcontractor undertaking work in connection with a Section 3 covered project must fulfill his obligation to utilize lower income project area residents as employees to the greatest extent feasible by:

- (1) Identifying the number of positions in the various occupational categories including skilled, semi-skilled, and unskilled labor, needed to perform each phase of the Section 3 covered project;

- (2) Identifying the positions described in Paragraph (1) of this Section, the number of positions in the various occupational categories which are currently occupied by regular, permanent employees;
- (3) Identifying the positions described in Paragraph (1) of this Section, the number of positions in the various occupational categories which are not currently occupied by regular permanent employees;
- (4) Establishing the positions described in Paragraph (3) of this Section, a goal which is consistent with the purpose of this subpart within each occupational category of the number of positions to be filled by lower income residents of the Section 3 covered project area; and
- (5) Making a good faith effort to fill all of the positions identified in Paragraph (4) of this Section with lower income project area residents.

7. **DAVIS-BACON ACT.** Unless expressly indicated otherwise in this Contract, if this Contract is for construction, alteration, or repair (including painting and decorating) of public buildings or public works, Contractor must comply with the provisions of the Davis-Bacon Act (40 U.S.C. 276a - 276a-5) and all rules, regulations and orders promulgated under said Act. Among other provisions, said act establishes minimum wages and fringe benefits; prohibits deductions or rebates from payments; provides for the withholding of funds to assure compliance with wage provisions; and provides for the termination of this Contract and debarment of the Contractor for failure so to comply.

8. **CONFLICT OF INTEREST.** No member, officer or any employee of Contractor, or its designees or agents, who exercises any functions or responsibilities with respect to the program during his tenure or for one (1) year thereafter, shall have an interest, direct or indirect, in any contract or its proceeds, for work to be performed in connection with the program assisted under this Contract. Contractor must incorporate, or cause to be incorporated, in all subcontracts a provision prohibiting such interest pursuant to the purposes of this Section.

9. **DISCRIMINATION BECAUSE OF CERTAIN LABOR MATTERS.** No person employed on the work covered by this Contract shall be discharged or in any way discriminated against because he has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable to his employer under this Contract.

10. **RECORDS.** Contractor must keep all necessary books and records, including loan documentation and financial records, in connection with the operation and services performed under this Agreement, in accordance with the provisions of OMB Circular No. A-102 Attachment G (as amended), and must document all transactions as Agency may properly audit all expenditures made pursuant to this Contract. Contractor must maintain and preserve all records related to this Contract in its possession for a period of three (3) years from the effective date of this Contract, unless otherwise directed by Agency. All books, records and accounts kept by Contractor in connection with the performance of this Contract shall be made available for inspection by representatives of the federal government and/or Agency staff as required to monitor or audit the program.

11. **DRUG FREE WORKPLACE.** Contractor must comply with the Drug-Free Workplace Act of 1988 (final rule published on May 25, 1990) and Agency's policies and rules promulgated under the Act. Contractor must obtain such policies and rules from the Agency

12. **OTHER FEDERAL REQUIREMENTS.** Agency must provide Contractor with all relevant program information regarding the federal programs having jurisdiction over this Contract. Agency must assist Contractor in the interpretation of the requirements of such programs. Contractor shall be considered to be familiar with the requirements of such programs and shall comply with such requirements.

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