

**AGENDA  
MEETING OF THE  
CITY/COUNTY ANIMAL SERVICES JPA  
WEDNESDAY, FEBRUARY 10, 2010, 10:00 A.M.  
YUCCA VALLEY COMMUNITY CENTER MESQUITE ROOM**

**ROLL CALL:** Directors Cronin, Herbel, Huntington, Chair Derry

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF MINUTES**

1-3 Approve the minutes of January 13, 2010 as presented

**DIRECTORS REPORTS/UPDATES**

**DISCUSSION ITEMS**

4-8 1. Directors and Officers Liability.

9-46 2. Review draft Requests for Qualifications (RFQ)

47-48 3. Draft Operating Budget

**PUBLIC COMMENTS**

**ADJOURNMENT**

**CITY/COUNTY ANIMAL SERVICES JPA  
MINUTES  
WEDNESDAY, JANUARY 13, 2010, 10:30 A.M.**

The meeting was called to order at 10:30 a.m. with Directors Herbel, Huntington, Cronin present. Alan Rasmussen represented Chair Derry and chaired the meeting.

**PLEDGE OF ALLEGIANCE**

Led by Rasmussen

**APPROVAL OF MINUTES**

Upon motion and second, the minutes of the meeting of November 10, 2009 were approved unanimously (Huntington/Herbel)

**DIRECTORS REPORTS/UPDATES**

None

**ACTION ITEMS**

**1. Resolution adopting Conflict of Interest Code**

RESOLUTION OF THE BOARD OF DIRECTORS OF THE ANIMAL CARE JOINT POWERS AUTHORITY ADOPTING A CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974

Director Cronin advised the County Council has developed an abbreviated code and recommended adoption.

Motion by Director Cronin, second by Director Huntington to adopt the code and Resolution carried unanimously.

**2. Acceptance of Insurance Quote provided at the November 10, 2009 JPA meeting.**

Director Cronin advised that at the last meeting it was requested that competitive bids be obtained for best cost. The County quote is the most cost effective.

Motion by Director Cronin, second by Director Herbel to accept the quote in the amount of \$3,730 per year for insurance, carried unanimously.

**DISCUSSION ITEMS**

**3. Draft Operating Budget**

Director Cronin advised the CAO has requested he work with the Town to develop a 5 year budget project for operating costs once the shelter is constructed. He requested a

meeting with Deputy Town Manager Stueckle to develop a draft for full JPA discussion.

Upon suggestion that Director Cronin work with Administrative Services Director Yakimow, Deputy Town Manager Stueckle and Animal Care and Control Manager Crider, it was agreed to put the item on the next agenda for action.

**4. Estimate of County Counsel Costs**

Director Cronin advised that the costs incurred to date for support of the JPA have been incurred on behalf of the County and not assessed to the JPA. Additional costs will be reported to the board at a future date.

**5. Consideration of acceptance of the Town's property as part of the Town's payment**

Director Cronin advised the County would like to consider the transfer of the land after the project is fully funded, and does not want the JPA to own properties now. Administrative Services Director Yakimow stated that staff does not have a problem with that.

**6. Review draft Requests for Qualifications (RFQ)**

Director Cronin commented he has received a template for an RFQ from the County Architectural & Engineering (A&E) Department which was very long and involved, and he recommended that A&E be requested to submit a minimal cost bid to develop the RFQ/RFP, or ask that the County agree to help develop the template for the JPA at no cost. He will bring a report back at the next meeting on what services A&E can provide and if there are any initial costs.

**7. Update on Town's request for financing of its portion of the JPA contribution.**

Director Cronin advised it is the County's objective to put forth a budget proposal n FY 10/11 to fully fund the remaining 3 Town payments of the Town's commitment to the project. The specifics of repayment and financing are not determined yet. He introduced Trudy Raymundo who stated the County wants to see the financing as a partnership where they will provide additional start up costs and the Town will take on a larger percentage for future operating costs of each adopted budget. At some point the total contributions would be the same.

Upon further discussion regarding funding it was agreed that everything will be done during the budget process.

**PUBLIC COMMENTS**

None

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:56 p.m.

Respectfully submitted,

Jamie Anderson, MMC  
Town-Clerk

**DIRECTORS AND OFFICERS LIABILITY-NOT FOR PROFIT ORGANIZATION APPLICATION**



**I. GENERAL INFORMATION SECTION**

1. (a) Name of Organization:

Animal Care Joint Powers Authority (JPA)

(b) Organization Address:

ATTN: Brian Cronin

351 N. Mountain View Avenue, 3<sup>rd</sup> Floor, San Bernardino, CA 92415-0003

2. Date Organized: November 18, 2008

3. Purpose of Organization: To provide shared animal care and control services, including the operation of a shared animal shelter facility, for the County of San Bernardino and the Town of Yucca Valley.

4. Has the Organization been involved in any merger or acquisition within the past three (3) years or is the Organization currently contemplating any merger or acquisition? Yes  No

(If "Yes", please give details) n/a

5. List all Subsidiaries and indicate if any operate for profit: none

Is coverage to be extended to all Subsidiaries?

Yes  No

(If "Yes", please include a list of Directors and Officers for each Subsidiary)

6. (a) Does the Organization currently have a Tax Exempt Status under the U.S. Internal Revenue Code? Yes  No

(If "No", please give details) This is a shared government agency.

(b) Have there been or is there now any pending dispute regarding the Organization's Tax Exempt Status? Yes  No

(If "Yes", please give details) the organization is not tax exempt.

7. Within the past five (5) years, has the Organization received any Inquiry, Complaint or Notice of Hearing from any State or Federal Regulatory Authority, or Congressional or Legislative Committee? Yes  No

(If "Yes", please give details) n/e

8. Current Directors' and Officers' Liability Insurance (answer each item)

(a) Insurer(s): n/a - this is the agencies first insurance policy as a new organization

(b) Total Limit(s): n/a

(c) Retention(s)/Deductible: n/a

(d) Total Premium: n/a

(e) Expiration date: n/a

(f) Loss experience (Attach full details of all claims during the past five (5) years that would fall within the scope of proposed insurance) If no losses, check "None": None

(g) Has any similar insurance been declined, cancelled or non-renewed? Yes  No

(If "Yes", please give details) n/a

II. EMPLOYMENT PRACTICES LIABILITY SECTION

1. (a) Number of Employees:	<u>Union</u>	<u>Non-Union</u>
Full time:	<u>0</u>	Full time: <u>0</u>
Part time:	<u>0</u>	Part time: <u>0</u>
Total:	<u>0</u>	Total: <u>0</u>

(b) Total number of Volunteers: 4

2. List total number of Employees in the following states:

CA 0 NJ 0 NY 0 MA 0 TX 0

3. How many Employees or Officers have been terminated within the past two (2) years?

Number of Employees: 0 Number of Officers: 0

4. Turnover percentage of Employees within the past three (3) years?

Year 1: 0 Year 2: 0 Year 3: 0

5. Does the Organization anticipate making any reductions in the work force within the next twelve (12) months? Yes  No

(If "Yes", please give details) \_\_\_\_\_

6. Does the Organization have a separate Human Resources Department? Yes  No

7. Does the Organization have an Employee manual or handbook governing the terms and conditions of employment? Yes  No

8. Does the Organization have a written policy regarding sexual or workplace harassment, Affirmative Action and Equal Opportunity Employment? Yes  No

9. Does the Employee handbook contain an employment-at-will statement, disclaimer of employment contract and disclaimer of benefits statement? Yes  No

**III. PRIOR KNOWLEDGE SECTION**

1. Has there been, or is there now any claim(s) pending against the Organization or its Subsidiaries, or any person proposed for insurance that is based upon or arises from acts, errors or omissions in a capacity as Director, Officer or Employee of the Organization or its Subsidiaries (including but not limited to demands by past, present or potential Employees and administrative proceedings)? Yes  No

(If "Yes", please give details) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Does any person proposed for this insurance have knowledge of any fact, circumstance or situation involving the Organization, its Subsidiaries or the Directors, Officers or Employees of the Organization or its Subsidiaries which he/she has reason to believe might result in any future claim(s) which might fall within the scope of proposed insurance? Yes  No

(If "Yes", please give details) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

It is agreed that any claim or action arising from any negligent act, error or omission, or breach of duty which is known to any Director or Officer prior to the issuance of the policy shall be excluded from coverage.

The undersigned authorized Officer of the Organization, on behalf of the Organization and its Subsidiaries, and on behalf of the Directors and Officers of the Organization and its Subsidiaries declares that to the best of his/her knowledge and belief, the information, particulars, documents, representations and statements contained in, attached or referred to in this application for insurance and/or as a result of the underwriting process are true and accurate and recognizes that the Insurer, in issuing this policy, will rely on such information, particulars, documents, representations and statements.

Although the signing of this application does not bind the undersigned to effect insurance, the undersigned agrees, on behalf of the Organization and its Subsidiaries, and on behalf of the Directors and Officers of the Organization and its Subsidiaries, that the information, particulars, documents, representations and statements contained in, attached or referred to in this application for insurance and/or as a result of the underwriting process shall be the basis of the contract should a policy be issued and that this application will be attached to and will become part of such policy. The Insurer is hereby authorized to make any investigation and inquiry it deems necessary in connection with this application.

**NOTE:** This application must be signed by the Chairman of the Board, President or Executive Director and dated within thirty (30) days of the effective date of coverage.

The undersigned authorized Officer agrees that if the information supplied on this application changes between the date of this application and the effective date of the insurance, he/she (undersigned) will immediately notify the Insurer of such changes, and the Insurer may withdraw or modify any outstanding quotations and/or authorization or agreement to bind the insurance.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Chairman  
(Chairman of the Board, President or Executive Director)

Date \_\_\_\_\_ 01-20-10 \_\_\_\_\_ Organization \_\_\_\_\_ Animal Care JPA

**One copy of each of the following documents is attached and made part of the policy:**

- (a) COMPLETE COPY OF LATEST ANNUAL REPORT. IF AUDITED FINANCIALS, PLEASE INCLUDE AUDITORS NOTES.
- (b) COMPLETE COPY OF BY LAWS
- (c) CURRENT LIST OF DIRECTORS AND OFFICERS
- (d) EEO-1 REPORT (IF REQUIRED BY FEDERAL LAW)
- (e) COPY OF EMPLOYMENT APPLICATION
- (f) COPY OF EMPLOYEE HANDBOOK

Submitted By \_\_\_\_\_ Date \_\_\_\_\_  
(Producer)

**SIGNATURE REQUIRED  
NEW YORK FRAUD STATEMENT**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

\_\_\_\_\_  
Applicant's Signature \_\_\_\_\_ Date \_\_\_\_\_

**No Signature Required**

**ARKANSAS AND LOUISIANA FRAUD STATEMENT**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

## **COLORADO FRAUD STATEMENT**

It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policy holder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

## **DISTRICT OF COLUMBIA FRAUD STATEMENT**

**WARNING:** It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment, fines and denial of insurance benefits.

## **FLORIDA FRAUD STATEMENT**

Any person who knowingly and with intent to injure, defraud or deceive any insurer, files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

## **KENTUCKY FRAUD STATEMENT**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

## **MAINE FRAUD STATEMENT**

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or denial of insurance benefits.

## **MINNESOTA FRAUD STATEMENT**

A person who submits an application or files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

## **NEW JERSEY FRAUD STATEMENT**

Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

## **NEW MEXICO FRAUD STATEMENT**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

## **PENNSYLVANIA FRAUD STATEMENT**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance ~~or statement of claim containing any materially false information or conceals~~ for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

## **TENNESSEE AND VIRGINIA FRAUD STATEMENT**

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

February 11, 2010

«Architect»

«Address»

«City\_» «State» «Zip\_Code»

Attention: «name»

SUBJECT: REQUEST FOR PROPOSALS  
ANIMAL CARE JPA - YUCCA VALLEY ANIMAL SHELTER

The Animal Care Joint Powers Authority (JPA) is soliciting written proposals from consulting firms to perform the required design and construction administration for the proposed new Yucca Valley Animal Shelter (Project). A Project description is attached. The JPA reserves the right to change the Scope of Work for the Project.

The proposals shall demonstrate each firm's qualifications, background and past experience with animal shelter projects. From the proposals submitted, three to five firms will be selected to make a brief presentation of their proposals after which a final selection will be made. The successful consultant will be selected on the basis of demonstrated competence, and on the professional qualifications necessary for the satisfactory performance of the services required.

A not-to-exceed fee proposal, including estimated labor, travel costs, printing costs, etc., shall be submitted. This fee proposal shall be in a separate sealed envelope. If negotiations on the fee proposal from the most qualified firm are not successful, the JPA will seek to execute a Contract with the second most qualified firm.

If your firm is interested in this Project, please submit a complete statement of qualifications, including company background, past experience with similar projects, description of Project scope as understood by your firm, and other documentation as specified herein.

A site visit will be conducted on February 25, 2010 at 10:00 am. The participants for the site visit shall meet at the existing animal shelter, located at 56460 Paseo Los Ninos in the Town of Yucca Valley.

Proposals (original plus five copies) must be received by March 19, 2010, 5:00 p.m., at the Department of Public Health, Animal Care and Control Division, 351 N. Mountain View Ave., 3<sup>rd</sup> Floor, San Bernardino, CA 92415-0003, ATTN: Brian Cronin. Facsimile or electronically transmitted proposals will not be accepted. Postmarks will not be accepted

in lieu of actual receipt. Proposals received after the deadline will be marked "LATE" and will receive no further consideration.

The envelope shall clearly state:

Request for Proposal: Animal Care JPA – Yucca Valley Animal Shelter

Questions regarding this Request for Proposals shall be directed to:

Shane Stueckle, Deputy Town Manager  
Town of Yucca Valley  
57090 Twentynine Palms Highway  
Yucca Valley, CA. 92284  
(760) 369-6575  
Email: [sstueckle@yucca-valley.org](mailto:ssstueckle@yucca-valley.org)

Brian Cronin, Secretary  
Animal Care JPA

BMC/dj

Enclosures (2)

1. Sample Standard Contract
2. Proposed Fee

cc: Brian Cronin, County of San Bernardino  
Shane Stueckle, Town of Yucca Valley

## I. BACKGROUND INFORMATION:

The Animal Care Joint Powers Authority (JPA) was formed by the County of San Bernardino (County) and the Town of Yucca Valley (Town) to provide for the financing, planning, design, construction, operation and maintenance of an animal care and control facility in the Town of Yucca Valley to provide animal services and shelter to both the residents in the incorporated area of the Town and the unincorporated areas of the County. The JPA is soliciting proposals from consulting firms to provide required design and construction administration services for the proposed new Animal Shelter to be located in the Town of Yucca Valley (Project).

The JPA has the right to issue addenda or amendments to this Request for Proposal (RFP) and reserves the right to terminate this procurement process at any time.

The terms Proposer, Firm and Consultant are used interchangeably in this RFP and all refer to the company responding to this RFP who will provide the services requested in this RFP.

Questions regarding this RFP shall be directed to:

Shane Stueckle, Deputy Town Manager  
Town of Yucca Valley  
57090 Twentynine Palms Highway  
Yucca Valley, CA. 92284  
(760) 369-6575  
Email: sstueckle@yucca-valley.org

During the proposal and evaluation process, the individual identified above is the sole contact point for any inquiries or information relating to this RFP. Only if authorized by the JPA contact, may other individuals provide information regarding this Project or RFP. Any violation of this procedure may be grounds for disqualification of the Proposer. It is the responsibility of the Proposer to ensure that the RFP responses arrive in a timely manner.

Proposals (original plus five copies) must be received by March 19, 2010, at 5:00 p.m., at the Department of Public Health, Animal Care and Control Division, 351 N. Mountain View Ave., 3<sup>rd</sup> Floor, San Bernardino, CA 92415-0003 Attention: Brian Cronin. Facsimile or electronically transmitted proposals will not be accepted. Postmarks will not be accepted in lieu of actual receipt. Proposals received after the deadline will be marked "LATE" and will receive no further consideration.

## II. SCOPE OF WORK:

The following is a description of the subject Project:

The Animal Care JPA is seeking a qualified consulting firm to develop, design and administer the construction of a new animal shelter facility, to be located in the Town of Yucca Valley, that is anticipated to house and care for approximately 5,000 animals per year. The proposed site is approximately 5 acres and will include a 12,040 sf. building; a

16,744 sf. covered animal shelter; public, staff and vehicle parking as required; and 60,900 sf. of uncovered animal shelter. All quantities are approximate, and will be formalized as the selected consultant develops a conceptual budget and it is contrasted with the established construction budget.

The following items should be noted in terms of your response to this RFP:

- The existing water supply may need to be replaced to meet fire flow requirements from County Fire
- The Colorado River Region of the Water Quality Control Board may require a package treatment plant for discharge exceeding 2,500 gallons per day
- This is a "green field" site and will require grading, a geotechnical investigation, possible tortoise survey, and native plant relocation

### III. PERSONNEL:

The Consultant's staff shall include an Architect or Engineer, licensed in the State of California who shall be in direct control of this Project. When engineering judgments or calculations are required during the design process, they shall be performed by a Professional Engineer licensed in the State of California.

The Consultant shall designate in their proposal, a Project Consultant who will serve as the sole contact person for the JPA for the duration of the Project. The Project Consultant shall be an Architect or Engineer licensed in the State of California.

List any sub-consultants to be used during the term of this Project and include qualifications, education and relevant experience.

### IV. CONSULTANT QUALIFICATIONS:

The Consultant shall furnish detailed information on references, as well as background and experience with projects of a similar type and scope to include as a minimum:

- A. Brief history of the firm.
- B. A listing of clients for the past two years. Indicate for each, the scope of services performed, the type of project and a name, address and phone number.
- C. Past experience with animal shelter projects.

### V. COMPENSATION:

The hourly wage rate submitted by Consultant shall remain in effect until the final completion of the Project.

A detailed schedule of payments is included in the attached sample Standard Contract.

Payment shall be made not more often than every 30 days.

VI. CONSULTANT RESPONSIBILITIES:

The Consultant shall describe their understanding of the Project scope, their proposed approach to performing the work, submit a proposed schedule including document review dates, and acknowledge in their proposal acceptance of requirements contained in this RFP.

The services to be rendered by the Consultant shall consist of all such services as are customarily rendered for such projects, and as detailed in this RFP and the attached sample Standard Contract (Exhibit A).

Consultant must complete the attached Fee Proposal Sheet (Exhibit B), and enclose it in a separate sealed envelope to be submitted as part of the proposal.

VII. CONSTRUCTION BUDGET:

The construction budget established by the JPA is \$2,800,000.

VIII. SCHEDULE:

The Consultant shall submit a schedule of services.

IX. FUNDING:

This Project is funded by the JPA.

X. CONTRACT REQUIREMENTS:

Contracts resulting from this procurement may include the terms contained below. If the Proposer has any objections to these terms, these objections must be stated in the proposal or the objections will be deemed to have been waived.

A. General

1. Representation of the JPA – In the performance of the Contract, Consultant, its agents and employees, shall act in an independent capacity and not as officers, employees or agents of the JPA.
2. Contract Assignment – Without the prior written consent of the JPA, the Contract is not assignable by the Consultant either in whole or in part.
3. Subcontracting – Consultant agrees not to enter into any subcontracts for work contemplated under the Contract without first obtaining written approval from the JPA. Any subcontractor shall be subject to the same provisions as Consultant. Consultant shall be fully responsible for the performance of any subcontractor.

4. Contract Amendments – Consultant agrees any alterations, variations, modifications, or waivers of the provisions of the Contract shall be valid only when they have been reduced to writing, duly signed and attached to the original Contract and approved by the required persons and organizations.
5. Licenses and Permits – Consultant will ensure that it has all necessary licenses and permits required by the laws of the United States, State of California, County, Town, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Contract. Consultant will notify JPA immediately of loss or suspension of any such licenses and permits.
6. Records – Consultant shall maintain all records and management books pertaining to the services provided under this Contract and demonstrate accountability for contract performance and maintain all fiscal, statistical, and management books and records pertaining to the services provided. Records should include, but are not limited to, payroll records and other primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles.
7. Consultant Primary Contact – The Consultant will designate an individual to serve as the primary point of contact for the Contract. Consultant shall notify JPA when the primary contact will be unavailable/out of the office for five (5) or more workdays. Consultant or designee must respond to JPA inquiries within two (2) business days.
8. Attorneys Fees – Consultant agrees to bear its own attorneys' fees and costs regardless of who prevails in the event of a contractual dispute and not charge such fees as an expense under the Contract.
9. Change of Address – Consultant shall notify the JPA in writing of any change in mailing address within ten (10) calendar days of the address change.
10. Recycled Paper Products – Consultants are required to use recycled paper for proposals and for any printed or photocopied material created as a result of a Contract with the JPA. Consultants shall use both sides of the paper sheets for reports submitted to the JPA whenever practicable.
11. Electronic Fund Transfer – Consultant shall accept all payments from the JPA via electronic funds transfer (EFT) directly deposited

into the Consultant's designated checking or other bank account. Consultant shall promptly comply with directions and accurately complete forms provided by JPA required to process EFT payments.

12. Nondiscrimination – In connection with the performance of Consultant pursuant to this Contract, Consultant will not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, national origin, marital status, sexual orientation, age, political affiliation, or disability. Consultant will take action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, ancestry, gender, national origin, marital status, sexual orientation, age, political affiliation, or disability.

#### B. Indemnification Requirements

Consultant shall defend and indemnify the JPA for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional.

#### C. Insurance Requirements

The Consultant agrees to provide insurance set forth in accordance with the requirements herein. If the Consultant uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Consultant agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Consultant shall secure and maintain throughout the Contract term the following types of insurance with limits as shown:

Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Consultant and all risks to such persons under this Contract.

If Consultant has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the JPA.

With respect to Consultants that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

Commercial/General Liability Insurance – The Consultant shall carry General Liability Insurance covering all operations performed by or on behalf of the Consultant providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse and underground hazards.
- (e) Personal injury
- (f) Contractual liability.
- (g) \$2,000,000 general aggregate limit.

Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Consultant is transporting one or more non-employee passengers in performance of Contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the JPA.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the Contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after Contract completion.

Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

Additional Insured – All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the JPA and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the JPA to vicarious liability but shall allow coverage for the JPA to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

Waiver of Subrogation Rights – The Consultant shall require the carriers of required coverages to waive all rights of subrogation against the JPA, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Consultant and Consultant's employees or agents from waiving the right of subrogation prior to a loss or claim. The Consultant hereby waives all rights of subrogation against the JPA.

Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the JPA.

Severability of Interests – The Consultant agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Consultant and the JPA or between the JPA and any other insured or additional insured under the policy.

Proof of Coverage – The Consultant shall furnish Certificates of Insurance to the JPA representative administering the Contract evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the JPA, and Consultant shall maintain such insurance from the time Consultant commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Contract, the Consultant shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

Acceptability of Insurance Carrier – Unless otherwise approved by the JPA, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by the JPA.

Failure to Procure Coverage – In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, the JPA has the right but not the obligation or duty to cancel the Contract or obtain insurance if it deems necessary and any premiums paid by the JPA will be

promptly reimbursed by the Consultant or JPA payments to the Consultant will be reduced to pay for JPA purchased insurance.

Insurance Review – Insurance requirements are subject to periodic review by the JPA. The JPA is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever it determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the JPA. In addition, if the JPA determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the JPA is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the JPA, inflation, or any other item reasonably related to the JPA's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Consultant agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the JPA to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the JPA.

#### XI. JPA RESPONSIBILITIES:

The JPA shall make available to the Consultant all pertinent data that is in the JPA's possession in the condition it exists.

The JPA shall pay for publishing costs for advertisements of notices for public hearings or other similar items. The Consultant will pay for all draft and final report printing, including drawings and specifications.

Proposal preparation and associated direct costs are the sole responsibility of the Consultant and will not be reimbursed by the JPA.

#### XII. CONSULTANT SELECTION:

##### A. Evaluation Process

All Proposals will be subject to a standard review process developed by the JPA. The JPA will establish an Evaluation Committee with responsibility for reviewing and evaluating all proposals.

No proposal shall be rejected if it contains a minor irregularity, defect, or variation if the irregularity, defect or variation is considered by the JPA (at the JPA's sole discretion) to be immaterial or inconsequential. In such cases the Proposer will be notified of the deficiency in the proposal and given an opportunity to correct the irregularity, defect or variation or the JPA may elect to waive the deficiency and accept the Proposal.

## B. Evaluation Criteria

The successful Consultant will be selected on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required as follows:

- A. Responsiveness to RFP.
- B. Professional reputation of firm.
- C. Experience with Animal Shelter or similar projects.
- D. Experience with publicly bid projects.
- E. Adequacy of firm's support staff or sub-consultants.
- F. Satisfaction of current/past clients.
- G. Depth and breadth of experience relative to this Project.
- H. Proven experience in meeting schedules.
- I. Accuracy of firms cost estimates.
- J. Experience with agencies having jurisdictional authority over these types of projects.

All Consultants will be rated on this basis. At the JPA's sole discretion the top rated firms may be invited in for oral presentations. The JPA will rank the firms based upon their proposals and oral presentation (if any) and the most qualified Consultant will be selected. Following the ranking of firms all Fee Proposal Sheets will be examined. Negotiations will be held with the most qualified Consultant. If negotiations are not successful, the JPA will so notify the Consultant, and commence negotiations with the next rated Consultant, and so on.

## XIII. SUBMITTAL REQUIREMENTS:

The Proposal must be signed by the individual or official of the Consultant who has the power to bind the Consultant contractually.

~~All Proposals must contain a statement that the offer made in the proposal is firm and binding for 120 days from the date the proposal is opened and recorded.~~

Do not submit more than 20 pages. Submittals containing more than 20 pages will not be considered.

To be considered, all proposals must be submitted in the manner set forth in this RFP. It is the Proposer's responsibility to ensure that its proposal contains all required information and arrives on or before its specified time.

## XIV. RIGHT TO REJECT PROPOSALS

This RFP does not commit the JPA to award a Contract. The JPA reserves the right to accept or reject any or all proposals if the JPA determines it is in the best interest of the JPA to do so.

The final authority to award a contract as a result of this RFP rests solely with the JPA Board of Directors.

XV. PROPOSER'S COST:

Proposer agrees that all costs incurred in developing this Proposal are the Proposer's responsibility.

XVI. CHANGES TO CONTRACT:

It is the JPA's intent that the contractual relationship between the Consultant and the JPA shall be substantially as set forth in the attached sample contract. In developing the Proposal, the Consultant should carefully review the sample contract to take into consideration the rights, obligations, and costs associated therewith. **If the Proposer has any objections to the terms in the sample contract, the objections must be addressed in the Proposal or the objections will be deemed to have been waived.**

XVII. CONFLICT OF INTEREST:

Consultant shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the JPA. Consultant shall make a reasonable effort to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties.

Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and State law. In the event the JPA determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation may be disallowed by the JPA and such conflict may constitute grounds for termination of the Contract.

This provision shall not be construed to prohibit employment of persons with whom ~~Consultant's officers, employees, or agents have family, business, or other ties so long as~~ the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

XVIII. RESERVED

XIX. INACCURACIES OR MISREPRESENTATIONS:

If in the course of the RFP process or in the administration of a resulting Contract, the JPA determines that Consultant has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the JPA, the Consultant may be terminated from the RFP process or in the event a Contract has been awarded, the Contract may be immediately terminated.

In the event of a termination under this provision, the JPA is entitled to pursue any available legal remedies.

**XX. IMPROPER CONSIDERATION:**

Consultant shall not offer (either directly or through an intermediary) any improper considerations such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the JPA, County of San Bernardino, or the Town of Yucca Valley in an attempt to secure favorable treatment regarding this RFP.

The JPA, by written notice, may immediately reject any proposal or terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the JPA, County of San Bernardino, or the Town of Yucca Valley with respect to the proposal and award process or any solicitation for consideration was not reported. This prohibition shall apply to any amendment, extension or evaluation process once a Contract has been awarded.

Proposer shall immediately report any attempt by an officer, employee or agent of the JPA, County of San Bernardino, or the Town of Yucca Valley to solicit (either directly or through an intermediary) improper consideration from Proposer. The report shall be made to the JPA. In the event of a termination under this provision, the JPA is entitled to pursue any available legal remedies.

**XXI. DISCLOSURE OF CRIMINAL AND CIVIL PROCEEDINGS:**

The JPA reserves the right to request the information described herein from the Consultant selected for Contract award. Failure to provide the information may result in a disqualification from the selection process and no award of Contract to the Consultant. The JPA also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The selected Consultant also may be requested to provide information to clarify initial responses. Negative information provided or discovered may result in disqualification from the selection process and no award of Contract.

The selected Consultant may be asked to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Consultant will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the selected Consultant may be asked to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten

years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Consultant will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the county. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

## XXII. CALIFORNIA PUBLIC RECORDS ACT:

All information submitted in the proposal or in response to a request for additional information is subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. and the following. Proposals may contain financial or other data that constitutes a trade secret. To protect such data from disclosure, Proposer should specifically identify the pages that contain confidential information by properly marking the applicable pages and inserting the following notice on the front of the response:

### NOTICE

The data on pages \_\_\_\_\_ of this Proposal response, identified by an asterisk (\*) or marked along the margin with a vertical line, contains information which are trade secrets. We request that such data be used only for the evaluation of our response, but understand that disclosure will be limited to the extent that the JPA determines is proper under federal, state, and local law.

The proprietary or confidential data shall be readily separable from the Proposal in order to facilitate eventual public inspection of the non-confidential portion of the Proposal.

The JPA assumes no responsibility for disclosure or use of unmarked data for any purpose. In the event disclosure of properly marked data is requested, the Proposer will be advised of the request and may expeditiously submit to the JPA a detailed statement indicating the reasons it has for believing that the information is exempt from disclosure under federal, state, and local law. This statement will be used by the JPA in making its determination as to whether or not disclosure is proper under federal, state and local law. The JPA will exercise care in applying this confidentiality standard but will not be held liable for any damage or injury which may result from any disclosure that may occur.

## XXIII. PROTESTS:

Proposers may protest the recommended award, provided the protest is in writing, contains the RFP number and Project number, is delivered to the Department of Public

Health, Animal Care and Control Division, 351 N. Mountain View Ave., 3<sup>rd</sup> Floor, San Bernardino, CA 92415-0003 Attention: Brian Cronin, and submitted within ten (10) calendar days of the date of notification of intent to award.

Grounds for a protest are that the JPA failed to follow the selection procedures and adhere to requirements specified in the RFP or any addenda or amendments; there has been a violation of conflict of interest as provided by California Government Code Section 87100 et seq.; or violation of State or Federal law. Protests will not be accepted on any other grounds. In the event of a protest, all protests will be handled by a panel ("Appeals Panel") designated by the JPA Secretary. The Appeals Panel will consider only those specific issues addressed in the written protest. The protestor will be given the opportunity to present information to the Appeals Panel in a hearing. Within five days of the hearing, the Appeals Panel will render its decision and provide a written response to the Proposer advising of the decision regarding the protest and the basis for the decision.

FEE PROPOSAL

Animal Care JPA – Yucca Valley Animal Shelter

Consultant's All-Inclusive Fee \$ \_\_\_\_\_  
(Including reimbursable expenses, such as travel costs, printing costs, etc.)

Proposed Man Hours for Design \_\_\_\_\_ Man Hours  
(including estimated man hours for agency(ies) reviews)

Proposed Schedule for Design \_\_\_\_\_ Weeks  
(including estimated agency(ies) reviews)

Estimate of Construction Schedule \_\_\_\_\_ Weeks

\_\_\_\_\_  
Signature & Title

\_\_\_\_\_  
(Firm)

Consultant must complete this form.

**FEE PROPOSAL - DO NOT OPEN**

Animal Care JPA – Yucca Valley Animal Shelter

Department of Public Health  
Animal Care and Control Division  
351 N. Mountain View Ave., 3<sup>rd</sup> Floor  
San Bernardino, CA 92415-0003

Attention: Brian Cronin

THIS CONTRACT is entered into in the State of California by and between the Animal Care Joint Powers Authority, hereinafter called the JPA, and

Name \_\_\_\_\_ hereinafter called Consultant  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_ Federal ID No. or Social Security No. \_\_\_\_\_  
On File \_\_\_\_\_

**IT IS HEREBY AGREED AS FOLLOWS:**

**ARTICLE 1. THE PROJECT**

**1.1 Consultant's Scope of Work**

JPA does hereby engage Consultant to perform for the JPA under the terms and conditions in this Contract all services relative to the development, design and construction administration of the proposed new Animal Shelter to be located in the Town of Yucca Valley per the JPA's Request for Proposal and Construction Scope of Work dated February 11, 2010 (the Project). The Construction Scope of Work shall be incorporated into this Contract in its entirety. (See Attachment A, Construction Scope of Work.) Consultant shall not perform any services not specifically provided for in Attachment A, Construction Scope of Work, without prior approval of JPA as set forth in Article 6, Extra Services of Consultant.

**1.2 Budget**

The Construction Budget as determined by JPA is Two Million Eight Hundred Thousand Dollars (\$2,800,000). ~~The JPA, in its sole discretion, reserves the right to change the Construction Budget.~~

**1.3 Schedule of Services**

- a. It is understood and agreed that time is of the essence for this Contract. Within fourteen (14) calendar days after the execution of this Contract, Consultant shall prepare and submit for approval to JPA a detailed schedule showing the order in which Consultant proposes to carry on its work. The schedule shall apply to the completion of all services listed hereunder within the time established by the Contract. The schedule shall be in the form of a progress chart so as to indicate the percentage of work completed at any time. Consultant shall, as requested, update the progress schedule and deliver three copies to JPA.
- b. Consultant shall complete all work and services under Article 3.2, Pre-Design Services, within \_\_\_\_\_ ( ) calendar days after receipt of written authorization by JPA to proceed with Pre-Design Services.

- c. Consultant shall complete all work and services required under Article 3.3, Schematic Design Services, within \_\_\_\_\_ (\_\_\_\_) calendar days after receipt of written authorization by JPA to proceed with Schematic Design Services.
- d. Consultant shall complete all work and services required under Article 3.4, Design Development Services, within \_\_\_\_\_ (\_\_\_\_) calendar days after receipt of written authorization by JPA to proceed with Design Development Services.
- e. Consultant shall complete all work and services required under Article 3.5, Construction Document Services, within \_\_\_\_\_ (\_\_\_\_) calendar days after receipt of written authorization by JPA to proceed with Construction Document Services.
- f. The time frames above include the normal and reasonable times for JPA reviews.
- g. The time during which Consultant is delayed in the work by acts of the JPA or its employees, or those under contract to JPA, or by act of God, or other cause which Consultant could not have foreseen and provided for, and which is not due to any fault or negligence on the part of Consultant, shall be added to the time of completion of the work and Consultant shall not be liable for any damages as a result of such delay.

#### 1.4 Consultant's Fee

- a. JPA agrees to pay Consultant a total fixed fee of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for all services described in this Contract, including but not limited to the services set forth in Article 3, Basic Services of Consultant. JPA also agrees to pay Consultant a total not-to-exceed amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the properly authorized reimbursable expenses described in Article 5, Reimbursable Expenses. JPA also agrees to pay Consultant a total not-to-exceed amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for properly authorized Extra Services described in Article 6, Extra Services. The compensation payment schedule is specified in Article 4, Compensation.
- b. If the scope of the Project is revised, the fee for Basic Services and the schedule shall be revised by negotiation between the JPA and Consultant and approved by the Board.
- c. If JPA fails to authorize Consultant to proceed with any portion of this Contract for a period of six months beyond the normal time to proceed with any portion, except as described in Article 11, Termination or Suspension of Contract, JPA and Consultant shall renegotiate Consultant's fees under this Contract. If no Agreement can be reached, this Contract shall be terminated under the provisions of Article 11, Termination or Suspension of Contract.

## ARTICLE 2. DEFINITIONS

For all purposes of this Contract, the following definitions shall apply:

- 2.1 Appropriate Authorities - Any private, local, municipal, county, state, regional, or federal authority, public utility or other agency.
- 2.2 Approved Final Construction Cost Estimate - The estimate of construction cost approved by the JPA at the time the completed drawings, details and specifications are approved by the JPA.

- 2.3 Consultant - Consultant hired by JPA, based on competence and related experience, to perform the work described herein.
- 2.4 Board – Animal Care Joint Powers Authority Board of Directors.
- 2.5 Construction Budget - Funding in place, for the complete construction of the Project, as established by the JPA.
- 2.6 Construction Site Representative (Inspector) - The individual or firm responsible to the Project Manager for the inspection of the construction work, on a part time basis.
- 2.7 Contract Documents - Standard Construction Contract and all Project documents designated in the construction contract as part of the construction contract, including working drawings, addenda, specifications, general conditions, and special conditions of the construction contract.
- 2.8 Construction Documents - All services relative to drawings, specifications, estimates, and other data more fully described in Article 3.5, Construction Document Services, hereof.
- 2.9 Design Development Documents - All services relative to drawings, specifications, estimates, and other data more fully described in Article 3.4, Design Development Services, hereof.
- 2.10 Itemized Categories of Work - Those applicable and specific categories of work necessary for completion of construction of the Project including, but not limited to: demolition, site preparation, earthwork and grading, general construction items, sewer, gas, water, plumbing, storm drains, electrical, on-site improvements, off-site improvements, landscaping and irrigation.
- 2.11 JPA - The Animal Care Joint Powers Authority, and its representatives, as herein stated.
- 2.14 Project Consultant - Person, designated by Consultant and approved by JPA, responsible for Consultant's work.
- 2.15 Project Construction Cost Estimate - The Consultant's dated, itemized estimate, including the Itemized Categories of Work, of the entire Project's current cost, escalated to the proposed mid point of construction.
- 2.16 Project Manager - The individual or firm, designated by the JPA, responsible for the administration of the contract.
- 2.17 Schematic Documents - All services relative to drawings, specifications, estimates, and other data more fully described in Article 3.3, Schematic Design Services, hereof.

### ARTICLE 3. BASIC SERVICES OF CONSULTANT

#### 3.1 General Services

The services to be rendered by the Consultant shall consist of all such services as customarily performed by a Consultant for the design of the Project, specifically including, but not limited to, the following:

- a. Clearly indicate on the plans and in the specifications, the specific contractor license classification required to perform the work in compliance with the State Contractor's License Board.
- b. Process all matters relating to this Project through a single point of contact, the Project Manager.
- c. Consult with authorized employees, agents, and representatives of the JPA and other agencies having jurisdiction relative to the design and construction of the Project.
- d. Cooperate with other consultants.
- e. Provide recommendations to the Project Manager regarding proposed locations of soil borings and/or excavation pits/trenches for the purposes of the Project site's geotechnical investigation and soils testing.
- f. Make field trips as required to review existing site conditions, and to properly prepare design and construction documents.
- g. Attend design meetings as scheduled by the Project Manager, prepare minutes of meetings, and distribute within three (3) working days.
- h. Contract for sub-consultants, at Consultants expense, to the extent necessary for design of the Project, including but not limited to, mechanical, electrical, structural and civil engineers, and landscape architects, all licensed or registered as such by the State of California. All plans and specifications shall be prepared by an architect currently licensed by the State of California, and shall be signed and sealed by the architect.
- i. Submit consultant's names for approval by JPA, for each professional element of service of the Project. Nothing in the foregoing procedure shall create any relation between JPA and any consultant employed by the Consultant under terms of this Contract.
- j. Designate a principal or member of his staff satisfactory to JPA as the Project Consultant who shall, ~~as long as his performance continues to be acceptable to JPA, remain in charge of the~~ Consultant's services to the Project from beginning of preliminary design through completion of construction.
- k. Obtain and set forth requirements of Appropriate Authorities, utility companies and other governmental agencies whose jurisdiction affects the design, cost, or construction of the Project.
- l. Prepare plans and specifications in such form as to comply with the latest applicable laws, building codes and ordinances, including but not limited to the: Americans with Disabilities Act (ADA); Standard Specifications for Public Works Construction, (latest edition); Public Contract Code; Division 4 of Title I of the Government Code; CAL-OSHA and the Uniform Building Code (latest edition). All applicable energy requirements shall be met and energy calculations performed.

- m. Advise JPA of deficiencies in construction of the Project which have developed following the acceptance of the work and prior to expiration of the guarantee period of the Project, and suggest satisfactory methods for corrections for such deficiencies.

### 3.2 Pre-Design Services

Upon written authorization by Project Manager to proceed with Pre-Design Services, Consultant shall:

- a. Finalize Project requirements as described fully in Article 1.1, Consultant's Scope of Work. Pre-design services shall include, but not be limited to, the following for JPA acceptance:
  - 1. Prepare a program addressing all civil, landscape, architectural, structural, mechanical, and electrical Project requirements.
  - 2. Furnish the Project Manager necessary documents and information for the JPA to use in the processing of the Project's environmental review in compliance with the California Environmental Quality Act ("CEQA").
  - 3. Future needs assessment.
  - 4. Written conceptual cost estimate.
- b. Prepare and submit for JPA acceptance, five copies of Project program addressing all Project requirements including future needs assessment.

### 3.3 Schematic Design Services

Upon written authorization by Project Manager to proceed with Schematic Design Services, Consultant shall:

- a. In consultation with Project Manager, prepare Schematic Documents, consisting of, but not limited to, the following for JPA acceptance: (1) site, architectural, structural, mechanical and electrical floor plans, elevations, cross sections and other required drawings; and (2) outline specifications describing the size, character, and quality of the entire Project in its essentials as ~~to kinds and locations of materials, type of structural, mechanical, and electrical systems.~~
- b. Schematic Documents shall be revised by Consultant until an acceptable design concept has been accepted by the Project Manager. Submit five sets of final Schematic Documents to Project Manager for final review and acceptance.
- c. Prepare and submit for acceptance, a written itemized Project Construction Cost Estimate.

### 3.4 Design Development Services

Upon authorization by the Project Manager to proceed with the Design Development Services, the Consultant shall:

- a. Based on the accepted Schematic Documents, prepare plot plans, landscape, irrigation, civil, architectural, structural, mechanical and electrical floor, elevations, cross-sections and other required drawings; and outline specifications describing the size, character, and quality of the

entire Project in its essentials as to kinds and locations of materials, and type of structural, mechanical, and electrical system.

- b. Prepare and submit for acceptance a written, Itemized Project Construction Cost Estimate listing material and labor total costs based on the Design Development Documents.
- c. The information in the Design Development Documents shall be sufficiently complete to cover all matters which will materially affect the cost of the Project.
- d. Revise Design Development Documents to the satisfaction of the Project Manager. Submit five sets of final Design Development Documents to Project Manager for final review and acceptance.

### 3.5 Construction Document Services

After acceptance of Design Development Documents and Project Construction Cost Estimate and upon receipt of written authorization from the Project Manager to proceed with the preparation of Construction Documents, Consultant shall:

- a. Prepare from accepted Design Development Documents, Construction Documents consisting of working drawings and specifications and such standard documents and special requirements as may be furnished by JPA that set forth in detail the requirements for construction of the entire Project.
- b. Submit for JPA review and acceptance, five sets of Construction Documents, consisting of working drawings and specifications at the Fifty (50) percent point of completion.
- c. Submit for JPA review and acceptance, five sets of Construction Documents, consisting of working drawings and specifications at the Ninety-five (95) percent point of completion.
- d. Submit for final JPA review and acceptance, after obtaining all regulatory agencies' approval, i.e. Building & Safety, Environmental Health, Planning or other required approvals, five sets of Construction Documents consisting of working drawings and specifications at the One Hundred (100) percent point of completion.
- e. Prepare Construction Documents in full compliance with all applicable building codes, ordinances and other regulatory requirements in force at the time of Contract award.
- f. Prepare Construction Documents in such detail as may be required to obtain competitive bidding for the entire Project or any division of work. Furnish the JPA at no additional expense one (1) complete set of the bid drawings and specifications. The bid drawings shall be on reproducible transparent vellum with the architect's/engineer's professional stamp and signature and a recorded copy on a compact disc – recordable (CD-R). File format shall be compatible with MS-DOS and AutoCAD 14 software or newer (dwg. file format). The specifications shall be submitted as a reproducible hard copy and a recorded copy on CD-R compatible with MS-DOS and Microsoft Word.
- g. Prepare and submit for JPA approval a list of movable furniture, panel systems, accessories and other articles not included in the construction contract.

- h. Prepare and submit for JPA approval a written final Project Construction Cost Estimate upon 100 percent completion of Construction Documents. The Project Construction Cost Estimate shall be itemized including estimates for alternate bid items, in conformance with the form of proposal intended for bidding purposes. In the event that bids are not solicited within 100 calendar days after the date Consultant submits 100 percent complete Construction Documents and final Project Construction Cost Estimate to the Project Manager, the Consultant shall upon written direction by the Project Manager revise his final Project Construction Cost Estimate so as to reflect any changes in price due to increase or decrease in construction costs.
- i. Upon written approval by Project Manager of a final approved set of drawings, and final draft of specifications including all corrections required by Building and Safety, Public Health Department and other regulatory agencies, provide to the Project Manager completed tracings and a complete set of typed specifications on reproducible masters. Reproduction of these documents will be by JPA.

### 3.6 Bidding Services

Upon solicitation of bids by JPA, Consultant shall:

- a. Attend the Pre-Bid Meeting as scheduled by the JPA.
- b. Prepare addenda and clarification documents, interpret Construction Documents and assist JPA as required. The addenda drawings shall be on reproducible transparent vellum with the architect's/engineer's professional stamp and signature and a recorded copy on a CD-R. File format shall be compatible with MS-DOS and AutoCAD 14 software or newer (dwg. file format). The clarification documents shall be submitted as a reproducible hard copy and a recorded copy on CD-R compatible with MS-DOS and Microsoft Word.
- c. If requested, assist JPA with review, evaluation, and recommendations for awarding construction contracts.
- d. If the approved final Project Construction Cost Estimate for the Construction Document phase ~~exceeds the Construction Budget by more than ten (10) percent, the JPA may, at its discretion~~ (1) give written approval of an increase in the Construction Budget, or (2) authorize the soliciting of bids, reserving their rights under paragraph 3.6e below, or (3) require Consultant to revise Construction Documents to reduce construction cost to within the Construction Budget.
- e. If the lowest responsible bid received exceeds the Construction Budget by more than 10 percent, the JPA may, at its discretion, (1) give written approval of an increase in the Construction Budget, or (2) authorize rebidding of the Project within a reasonable time, and require the Consultant, at Consultant's cost, to revise the scope of the Project or its quality, or both, so as to reduce the Project Construction Cost Estimate and to modify the Project Construction Cost Estimate to within the Construction Budget, or (3) abandon the Project.

### 3.7 Construction Administration Services

Upon award of construction contract by JPA, Consultant shall provide all the construction administration services set forth below:

- a. Interpret the Contract Documents and furnish four (4) copies, one of which is in reproducible form, of all clarification drawings and other documentation required. Prepare, for approval by Project Manager, architectural instruction bulletins that are necessary as a result of such interpretations and/or clarifications. Architectural instruction bulletins may be used by the JPA for the solicitation of price quotations from the construction contractor. Analyze price quotations received from the construction contractor for proposed change orders and advise Project Manager as to the acceptability of same.
- b. Make all revisions and changes to the Contract Documents as directed by Project Manager to correct errors, conflicts or omissions.
- c. Make periodic visits (normally bi-weekly) to the Project to review and advise the Project Manager on the progress of the work, the character, scope and detail of construction, the quantity and quality of materials and equipment, and the standard of workmanship conform to the intent of the Consultant as expressed in the Contract Documents; attend Project meetings, prepare minutes of such Project meetings and forward to the Project Manager for distribution by the Project Manager. A written report detailing field observations shall be submitted to the Project Manager following each weekly site visit.
- d. Provide technical direction to interpret the Contract Documents and advise the Project Manager of all recommendations as required.
- e. Make prompt recommendations on claims, disputes, and other matters in question between the construction contractor and JPA relating to the execution or progress of the work or the interpretation of the Contract Documents.
- f. Analyze and advise the Project Manager as to acceptability of test reports, methods, materials, equipment and systems.
- g. Review and advise the Project Manager as to the acceptability of substitutions proposed by construction contractor.
- h. Assist the Project Manager in reviewing and approving all contractor pay requests.
- i. Review and advise the Project Manager as to the acceptability of schedules, shop drawings, laboratory reports, samples, fabrication, erection, and setting drawings, wiring and control diagrams, schedules, list of materials, and equipment and other descriptive data pertaining to materials, equipment or methods of construction.
- j. Assemble and deliver to Project Manager written guarantees, operating and maintenance instructions books, diagrams and charts required of the construction contractor.
- k. Assemble and deliver to Project Manager three (3) copies of a summary report containing information on all approved submittals arranged by technical specification division. The report shall contain, at a minimum, information of types of equipment and/or material, model numbers, sizes, equipment ratings, and product line and color of interior finishes, etc.
- l. Participate in the final inspection of the Project, write punch list, and advise the Project Manager as to the acceptability of work performed by construction contractor.

- m. Promptly after recording the Notice of Completion by the JPA, furnish the JPA, at no additional expense to the JPA, one (1) complete set of permanent mylar transparent reproductions of the as-built tracings and a recorded copy on a compact disc – recordable (CD-R). File format shall be compatible with MS-DOS and AutoCAD 14 software or newer (dwg. file format). The reproducible transparencies and CD-R will be of the final as-built drawings and specifications including such revisions that may have been made in the course of construction as represented in documentation provided to the Consultant or as known by the Consultant. Revisions or changes shall be properly annotated on the reproducible transparencies and cross-referenced. Each transparency sheet shall be prominently noted "Record Drawing". Information on reproducible drawings shall not be delegated by the Consultant to the construction contractor or any other person.

#### ARTICLE 4. COMPENSATION

The JPA shall compensate the Consultant as follows:

- 4.1 For the Consultant's services as described in Article 3, Basic Services of Consultant, of this Contract, the basis of compensation shall be as follows:
  - a. Upon completion of Pre-Design Services phase and approval thereof by Project Manager, payment in the amount of five percent (5%) of the Consultant's fixed fee.
  - b. Upon completion of Schematic Design Services phase and approval thereof by Project Manager, payment in the amount sufficient to increase the total amounts paid to the Consultant to fifteen percent (15%) of the Consultant's fixed fee.
  - c. Upon completion of Design Development Services phase and approval thereof by the Project Manager, payment in the amount sufficient to increase the total amount paid to the Consultant to thirty percent (30%) of the Consultant's fixed fee.
  - d. Upon fifty percent (50%) completion of the Construction Document Services phase of their work as determined by the Project Manager, payment in the amount sufficient to increase the total amount paid to the Consultant to fifty percent (50%) of the Consultant's fixed fee.
  - e. Upon completion of the Construction Document Services phase of the work, upon documents being filed as required with all jurisdictional agencies for necessary approvals and permits, payment in the amount sufficient to increase the total amount paid to the Consultant to seventy percent (70%) of the Consultant's fixed fee.
  - f. Upon completion of corrections to the Construction Documents as required by the appropriate jurisdictional agencies and upon approval by the Project Manager, payment in the amount sufficient to increase the total amount paid to the Consultant to eighty percent (80%) of the Consultant's fixed fee.
  - g. As construction progresses, payment in the amount sufficient to increase the total amount paid to the Consultant to ninety-eight percent (98%) of the Consultant's fixed fee, shall be paid in monthly installments in the proportion of the completed Project to the entire Project.

- h. Upon acceptance by the Board of the completed project construction and approval by the Project Manager of the "Record Drawings", the unpaid balance of the Consultant's fixed fee shall be paid.
- i. All demands for payment under this Contract shall be submitted in quadruplicate to the Project Manager. The demand for payment shall indicate the amount due and the amounts previously paid.
- j. Payment for Extra Services as described in Article 6, Extra Services of Consultant, shall be made only after the Consultant provides the JPA with an agreed upon "not-to-exceed" amount, as determined by negotiation with the Project Manager and approved by the Board, including all relative costs, prior to the start of any work.

#### ARTICLE 5. REIMBURSABLE EXPENSES

- 5.1 Rent, utilities, word processing, in-house courier, local telephone charges, office supplies, support staff, local area travel, meal expenses, time spent to provide necessary information for JPA audits or billing inquiries, and any other expense item not listed as a reimbursable expense on Attachment B, Reimbursable Expenses, are all non-reimbursable expenses.
- 5.2 JPA shall reimburse Consultant for only those reimbursable expenses items and at the reimbursement rates set forth on Attachment B, Reimbursable Expenses.
- 5.3 Consultant, along with its itemized request for payment of any reimbursable expense, shall provide the Project Manager sufficient evidence to justify the amount of the request.
- 5.4 Reimbursable expenses are subject to the not-to-exceed total of Article 1.4a, Consultant's Fee.

#### ARTICLE 6. EXTRA SERVICES OF CONSULTANT

- 6.1 All services of Consultant's personnel or sub-consultants not specifically provided for in this Contract, including but not limited to Article 3, Basic Services of Consultant, shall be considered Extra Services and shall not be paid without the prior approval of JPA. Extra Services performed that have not been properly authorized by JPA shall all be non-reimbursable. Such Extra Services shall be a gratuitous effort by Consultant.
- 6.2 The following Extra Services, when authorized by a written JPA change authorization, shall be paid for by JPA as provided in Article 4.1j, Compensation.
  - a. Revision to previously approved documents to accommodate changes (excluding corrections of errors, conflicts and/or omissions by Consultant, or changes initiated by Consultant) when so directed by JPA, provided, however, that no compensation for extra services shall be paid for revisions which may be requested by JPA pursuant to Article 3.6d or 3.6e, Bidding Services.
  - b. Preparation of revisions and changes requested by JPA (excluding corrections of errors and omissions by Consultant) or as stated in Article 3.7a, after a construction contract has been awarded.

- c. Additional services necessary to supervise correction of defects in or damage to the Project (excluding corrections of defects or damage arising from the errors or omissions of Consultant).
- d. Additional services caused by the delinquency or insolvency of construction contractor during or after the guarantee period.
- e. The service of JPA approved consultants other than those employed or retained by Consultant pursuant to Article 3.1, General Services. Upon written approval by the JPA, Consultant may retain special consultants to investigate the Project and furnish to the Consultant a report containing all relevant information. Six (6) copies of said report shall be filed with the Project Manager.
- f. Preparation of models other than study models made at Consultant's option.
- g. ~~Whenever any documents are changed pursuant to this Article 6, Extra Services of Consultant,~~ the Consultant shall provide additional copies of the revised documents for review purposes as requested by the Project Manager at JPA expense. The Project Manager reserves the right to select the type of reproduction and the establishment where said reproduction will be done.
- h. Additional copies of any documents requested by JPA, but not including additional copies of any documents required under Article 6.2a thru g.

#### ARTICLE 7 - PAYMENT BY ELECTRONIC FUND TRANSFER

Consultant shall accept all payments from JPA via electronic funds transfer (EFT) directly deposited into the Consultant's designated checking or other bank account. Consultant shall promptly comply with directions and accurately complete forms provided by JPA required to process EFT payments.

#### ARTICLE 8. RECORDS

~~All records relating to the Consultant's personnel, consultants, extra services and reimbursable expenses,~~ pertaining to the Project shall be kept in a generally acceptable accounting format and shall be available to the JPA upon request, and shall be maintained by Consultant for not less than three (3) years after the Notice of Completion is filed.

#### ARTICLE 9. JPA RESPONSIBILITIES

The JPA is responsible to provide the following:

- 9.1 Project Budget and information relating to facility requirements, and project scheduling.
- 9.2 Soils investigation, topographic survey and recommendations, as deemed necessary by JPA.
- 9.3 Reproduction of final drawings and specifications for bidding.
- 9.4 Environmental review as required.

- 9.5 Site approval.
- 9.6 Building permits, as required.
- 9.7 Any available construction drawings of similar construction, to assist the Consultant in economically accomplishing the design of the facility to the satisfaction of the JPA.
- 9.8 Necessary bid package document forms.
- 9.9 Construction Site Representative (Inspector) as the JPA deems necessary.
- 9.10 Notify the Consultant in writing of JPA procedures required and name the JPA representative authorized to act in its behalf. JPA shall review documents submitted by the Consultant and shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the Project.
- 9.11 ~~Nothing in this Agreement nor any act or failure to act on the part of the JPA shall be construed as a waiver of claim by JPA for any defects or deficiencies in the plans.~~

ARTICLE 10. DOCUMENTS

All plans and specifications and other documents prepared by Consultant shall become and remain the property of JPA. Consultant and JPA shall retain reproducible copies of all documents for not less than three (3) years after the Notice of Completion is filed.

ARTICLE 11. TERMINATION OR SUSPENSION OF CONTRACT

- 11.1 JPA reserves and has the right and privilege of canceling, terminating, suspending or abandoning the contract or the execution of any work in connection with this Contract at any time upon written notice to the Consultant. The Consultant may terminate this Contract upon 30 days written notice to JPA, should the JPA substantially fail to perform in accordance with its responsibilities.
- 11.2 ~~In the event of any termination, all finished and unfinished design and research documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant shall, at the option of the JPA, become the property of the JPA.~~
- 11.3 In the event of any termination, JPA shall pay to Consultant as full payment for all services performed and all expenses incurred under this Contract the sum due and payable, plus a pro-rata portion of the next uncompleted phase, if any, as the services actually rendered by the Consultant bear to the total services necessary for the full performance of those subsequent tasks. In ascertaining the services actually rendered hereunder up to the date of termination of this Contract, consideration shall be given to completed work, work in progress to complete any incomplete drawings, and other documents, whether delivered to JPA or in possession of Consultant.
- 11.4 It is recognized that JPA may, at its discretion defer the solicitation of bids. Consultant agrees to remain responsible for completion of all professional services under this Contract for a period of one (1) year commencing on the date of submission of the final approved Construction Documents and completion of all services under Article 3, Sections 3.1 through 3.5, Basic Services of Consultant. If, at the end of the one (1) year period the JPA has not proceeded with the solicitation of bids,

Consultant may, by written notice to the JPA, terminate this Contract. It is specifically agreed that the written notice is essential and the one (1) year period shall automatically be extended until receipt of notice.

- 11.5 If, after payment of the amount required to be paid under this Article 11, Termination or Suspension of Contract, following the termination of the Contract, JPA should decide to complete the original Project, (or substantially the same Project), JPA shall have the right of utilization of any original tracings, drawings, calculations, specifications, estimates and other documents and research studies prepared under this Contract by Consultant who shall make them available to JPA upon completion and acceptance of the plans and specifications. JPA agrees to credit Consultant with such authorship as may be due him, but is not required to renew the Contract. Should the JPA choose to complete the Project and not renew the agreement, or make future modifications to the Construction Documents, the JPA shall indemnify the Consultant to the fullest extent of the law.

## ARTICLE 12. INDEMNIFICATION

**Consultant shall defend and indemnify JPA for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional.**

## ARTICLE 13. INSURANCE

- 13.1 Insurance: The Consultant agrees to provide insurance set forth in accordance with the requirements herein. If the Consultant uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Consultant agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Consultant shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- a. **Workers' Compensation/Employers Liability** - A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Consultant and all risks to such persons under this contract.

If Consultant has no employees, it may certify or warrant to the JPA that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the JPA.

With respect to consultants that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

b. **Commercial/General Liability Insurance** – The Consultant shall carry General Liability Insurance covering all operations performed by or on behalf of the Consultant providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse and underground hazards.
- (e) Personal injury
- (f) Contractual liability.
- (g) \$2,000,000 general aggregate limit.

c. **Automobile Liability Insurance** - Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Consultant is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

d. **Professional Liability** – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits

or

**Errors and Omissions Liability Insurance** with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

**Directors and Officers Insurance** coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the JPA.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

e. **Umbrella Liability Insurance** - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

- 13.2 Additional Insured - All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the JPA and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the JPA to vicarious liability but shall allow coverage for the JPA to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
- 13.3 Waiver of Subrogation Rights - The Consultant shall require the carriers of required coverages to waive all rights of subrogation against the JPA, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Consultant and Consultant's employees or agents from waiving the right of subrogation prior to a loss or claim. The Consultant hereby waives all rights of subrogation against the JPA.
- 13.4 Policies Primary and Non-Contributory - All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the JPA.
- 13.5 Severability of Interests - The Consultant agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Consultant and the JPA or between the JPA and any other insured or additional insured under the policy.
- 13.6 Proof of Coverage - The Consultant shall furnish Certificates of Insurance to the JPA administering the contract evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the JPA, and Consultant shall maintain such insurance from the time Consultant commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Consultant shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
- 13.7 Acceptability of Insurance Carrier - Unless otherwise approved by JPA, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
- 13.8 Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by JPA.
- 13.9 Failure to Procure Coverage - In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the JPA has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the JPA will be promptly reimbursed by the Consultant or JPA payments to the Consultant will be reduced to pay for JPA purchased insurance.
- 13.10 Insurance Review - Insurance requirements are subject to periodic review by the JPA. The JPA is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever JPA

determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the JPA. In addition, if the JPA determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the JPA or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the JPA, inflation, or any other item reasonably related to the JPA's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Consultant agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the JPA to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the JPA.

#### ARTICLE 14. SUCCESSORS AND ASSIGNS

- 14.1 This Contract shall be binding upon JPA and Consultant and their respective successors and assigns.
- 14.2 Neither the performance of this Contract, nor any part thereof, nor any monies due or to become due thereunder may be assigned by Consultant without the prior written consent and approval of JPA.
- 14.3 Death or Incapacity: If the Consultant transacts business as an individual, his death or incapacity shall automatically terminate this Contract as of the date of such event, and neither he nor his estate shall have any further right to perform hereunder, and JPA shall pay him or his estate the compensation payable under Article 4, Compensation, for any services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by JPA by reason of such termination. If there be more than one Consultant and any one of them die or become incapacitated and the others continue to render the services covered herein, the JPA will make payment to those continuing as though there had been no such death or incapacity and the JPA will not be obliged to take any account of the person who died or became incapacitated or to make any payments to such person or his estate. The provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Consultant herein, and if death or incapacity befalls the last one of such group before this Contract is fully performed, then the rights shall be as if there had been only one Consultant.

#### ARTICLE 15. NOTICES

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally, or by facsimile, or sent by prepaid, first-class mail. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated two (2) working days from the time of mailing if mailed as provided in this paragraph.

Consultant's address: As shown on page one of this Contract.

JPA's address: Department of Public Health  
351 N. Mountain View Ave., 3<sup>rd</sup>. Floor  
San Bernardino, CA. 92415-0003  
Attn: Brian Cronin, Secretary  
Animal Care JPA

#### ARTICLE 16. FEDERAL GRANTS, STATE GRANTS, PARTICIPATION

In the event a federal or state grant or other federal or state financing participates in the funding of this Project, the Consultant shall permit federal and state authorities access to and grant the right to examine its books covering its work under this Contract. Consultant shall comply with federal and/or state requirements as to work hours, overtime compensation, nondiscrimination, and contingent fees.

#### ARTICLE 17. NONDISCRIMINATION

In connection with the performance of Consultant pursuant to this Contract, Consultant will not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, marital status, sexual orientation, age, political affiliation, disability, or national origin. Consultant will take action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, ancestry, gender, marital status, sexual orientation, age, political affiliation, disability, or national origin. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer; recruitment or recruitment advertisement; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

#### ARTICLE 18. WAIVER

Consultant shall not be relieved of liability to the JPA for damages sustained by the JPA by virtue of any breach of the Contract by Consultant, and JPA may withhold any payments to Consultant for the purpose of set-off until such time as the exact amount of damages due JPA from Consultant is determined. The waiver by either party or any breach to this Contract shall not constitute a waiver as to any succeeding breach.

#### ARTICLE 19. REPRESENTATIVES OF JPA

The Project Manager shall represent the JPA in all matters pertaining to the services to be rendered under this Contract including termination of this contract and shall be the final authority in all matters pertaining to the Project.

#### ARTICLE 20. ERRORS, OMISSIONS AND/OR CONFLICTS

Consultant shall be responsible for the integrity of all design and research studies prepared or approved by Consultant and should JPA suffer damages due to errors, omissions and/or conflicts within the Contract Documents, the Consultant shall be responsible to JPA for costs of all such damages.

ARTICLE 21. RESERVED

ARTICLE 22. INACCURACIES OR MISREPRESENTATIONS

If during the course of the administration of this Contract, the JPA determines that the Consultant has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the JPA, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the JPA is entitled to pursue any available legal remedies.

ARTICLE 23. CONFLICT OF INTEREST

Consultant shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the JPA. Consultant shall make a reasonable effort to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the JPA determines a conflict of interest situation exists, the JPA may disallow any increase in costs associated with the conflict of interest situation, and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Consultant's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

ARTICLE 24. IMPROPER CONSIDERATION

Consultant shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the JPA in an attempt to secure favorable treatment regarding this Contract.

ARTICLE 25. INDEPENDENT CONTRACTOR

The parties hereto, in the performance of this Contract, will be acting in their individual capacities and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Neither party shall have any right, power or authority to create any obligation, express or implied, on behalf of the other except as defined in this Contract or as mutually agreed to under the terms of this Contract.

ARTICLE 26. VENUE

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San

Bernardino District. Each party hereby waives any law or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning this Contract, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

ARTICLE 27. ATTORNEY'S FEES AND COSTS

If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against the JPA, including such costs and attorneys' fees payable under Article 11, INDEMNIFICATION.

ARTICLE 28. LABOR CODE

Consultant hereby agrees to comply with the California Labor Code and acknowledges he will comply with all provisions of the California Labor Code.

//  
//  
//  
//  
//

ARTICLE 29. LAW

This Contract shall be construed and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Board and the Consultant have caused this Contract to be subscribed by their duly authorized officers on their behalf.

ANIMAL CARE JOINT POWERS AUTHORITY

\_\_\_\_\_  
*(Print or type name of corporation, company, contractor, etc.)*

▶ \_\_\_\_\_  
Neil Derry, Chairman, Board of Directors

By ▶ \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

Dated: \_\_\_\_\_

Name \_\_\_\_\_  
*(Print or type name of person signing contract)*

Title \_\_\_\_\_  
*(Print or Type)*

Dated: \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

ATTACHMENT A  
CONSTRUCTION SCOPE OF WORK

ATTACHMENT B  
REIMBURSABLE EXPENSES

Reimbursable Expense Item

Rate of Reimbursement

50-45 Acct	Animal Shelter Description	Budget 2009-2010	Proposed Budget				
			Year 1	Year 2	Year 3	Year 4	Year 5
5110	Salaries - Full Time	\$ 196,873	\$ 281,913	\$ 301,647	\$ 322,762	\$ 345,355	\$ 369,530
5111	Salaries - Part Time	12,551	12,800	13,696	14,655	15,681	16,778
5112	Salaries - Overtime	2,354	4,575	4,895	5,238	5,605	5,997
5113	Standby	3,063	-	-	-	-	-
5121	FICA/Medicare	3,115	4,340	4,643	4,968	5,316	5,688
5123	Health Care	35,424	66,420	71,069	76,044	81,367	87,063
5124	Workers' Comp Insurance	8,400	11,702	12,521	13,398	14,336	15,339
5125	Life & Disability	2,017	2,779	2,973	3,181	3,404	3,642
5126	Unemployment Insurance	2,148	2,993	3,202	3,427	3,666	3,923
5127	Retirement	48,923	70,055	74,959	80,206	85,821	91,828
	<b>Personnel</b>	<b>314,868</b>	<b>457,577</b>	<b>489,607</b>	<b>523,879</b>	<b>560,551</b>	<b>599,790</b>
6110	Office Supplies	1,800	1,800	1,853	1,909	1,966	2,025
6120	Operating Supplies	3,800	8,000	8,239	8,487	8,741	9,004
6140	Animal Food/Bedding	16,000	22,075	22,737	23,419	24,122	24,846
6141	Veterinary Supplies	15,000	24,800	25,544	26,310	27,100	27,913
6190	Clothing	2,200	3,300	3,399	3,501	3,606	3,714
6430	Custodial Supplies	-	4,036	4,157	4,282	4,410	4,543
6610	Reference Materials	500	500	515	530	546	563
6910	Tools & Equipment	1,300	3,460	3,564	3,671	3,781	3,894
7110	Professional Services	79,000	92,625	95,404	98,266	101,214	104,250
7111	Contract Legal Costs	1,500	1,500	1,545	1,591	1,639	1,688
7131	Basic Telephone	1,800	1,854	1,910	1,967	2,026	2,087
7137	Internet/T-1	3,900	3,708	3,819	3,934	4,052	4,173
7210	Gas - Propane	4,500	6,489	6,684	6,884	7,091	7,303
7211	Utilities - Electricity	7,200	10,382	10,694	11,015	11,345	11,685
7212	Utilities - Water	3,240	4,672	4,812	4,957	5,105	5,258
7410	IT Software/Computers	2,500	5,000	5,150	5,305	5,464	5,628
7411	Maintenance - Equipment	-	500	515	530	546	563
7510	Printing	2,500	3,750	3,863	3,978	4,098	4,221
7610	Major Conferences	1,400	1,400	1,442	1,485	1,530	1,576
7615	Minor Conferences	500	500	515	530	546	563
7618	Meetings & Travel Reimbur	500	500	515	530	546	563
7630	Dues & Memberships	500	500	515	530	546	563

<b>Supplies &amp; Services</b>	149,640	201,350	207,391	213,613	220,021	226,622
Start Up Costs	-	136,430	-	-	-	-
Vehicle Depreciation	7,000	7,000	7,000	7,000	7,000	7,000
Service/Support @ 15%	32,516	68,636	73,441	78,582	84,083	89,968
Operational Contingency	62,875	65,893	69,700	73,749	78,057	82,641
<b>Other Costs</b>	<b>102,391</b>	<b>277,959</b>	<b>150,141</b>	<b>159,331</b>	<b>169,140</b>	<b>179,610</b>
<b>50-45 Total Department</b>	<b>\$ 566,899</b>	<b>\$ 936,886</b>	<b>\$ 847,139</b>	<b>\$ 896,823</b>	<b>\$ 949,712</b>	<b>\$ 1,006,021</b>
<b>County Share @ 50%</b>	<b>\$ 283,450</b>	<b>\$ 468,443</b>	<b>\$ 423,569</b>	<b>\$ 448,412</b>	<b>\$ 474,856</b>	<b>\$ 503,010</b>

1.07  
1.03  
0.05