

**FIRST 5 COMMISSION OF SAN DIEGO  
CONSULTANT AGREEMENT NO. \_\_\_\_\_  
AGREEMENT WITH (XXXXXXXXXX) FOR  
CONSULTANT FOR DATABASE MANAGEMENT**

This Contract ("Contract") is made and entered into this 1<sup>st</sup> day of XXXXXXXX ("Effective Date") by and between the First 5 Commission of San Diego ("Commission") and Consultant (**Name**) located at (Address, City, State, ZIP) ("Consultant"), with reference to the following facts:

**RECITALS**

- A. The Commission, by action on XXXXXXXX authorized the Executive Director to award a contract to provide XXXXXXXXX consultation services.
1. Consultant is specially trained and possesses certain skills, experience, education and competency to perform these services.
  2. The Contract shall consist of this pro forma Contract, Exhibit A Statement of Work, Exhibit B and Exhibit B Insurance Requirements.
  3. In the event that any provision of the Pro Forma Agreement or its Exhibits, A or B, conflicts with any other term or condition, precedence shall be:
    - 3.1 First (1st) the Pro Forma;
    - 3.2 Second (2nd) Exhibit A; and
    - 3.3 Third (3rd) Exhibit B.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE 1  
PERFORMANCE OF WORK**

- 1.1 Standard of Performance. Consultant shall, in good and workmanlike manner and in accordance with the highest professional standards, at his/her own cost and expense, furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, facilities, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by Commission, necessary or proper to perform and complete the work and provide the services required of Consultant by this Contract.
- 1.2 Consultant's Representative. Consultant's duties under this Contract shall be performed by Consultant. Consultant represents and warrants that s/he has fulfilled all applicable requirements of the laws of the State of California to perform the services under this Contract. Commission reserves the right to terminate this Contract pursuant to Clause 7.1, below, "Termination for Default," if, in Commission's judgment, the work hereunder is not being performed by Consultant.
- 1.3 Consultant as Independent Consultant. Consultant is, for all purposes of this Contract, an independent Consultant, and neither Consultant nor Consultant's employees or subConsultants shall be deemed to be employees of the Commission. Consultant shall perform his/her obligations under this Contract according to Consultant's own means and methods of work which shall be in the exclusive charge and under the control of Consultant, and which shall not be subject to control or supervision by Commission except as to the results of the work. Neither Consultant nor Consultant's employees or subConsultants shall be entitled to any benefits to which Commission employees are entitled, including without limitation, overtime, retirement benefits, workers' compensation benefits and injury leave.
- 1.4 Consultant's Agents and Employees or SubConsultants. Consultant shall obtain, at Consultant's expense, all agents, employees and subConsultants required for Consultant to perform his/her duties under this Contract, and all such services shall be performed by Consultant, or under Consultant's supervision, by persons authorized by law to perform such services. Retention by Consultant of any agent, employee or subConsultant shall be at Consultant's sole cost and expense, and Commission shall have no obligation to pay Consultant's agents, employees or subConsultants; to support any such person's or entity's claim against the Consultant; or to defend Consultant against any such claim.

**FIRST 5 COMMISSION OF SAN DIEGO  
CONSULTANT AGREEMENT NO. \_\_\_\_\_  
AGREEMENT WITH (XXXXXXXXXX) FOR  
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**ARTICLE 2  
SCOPE OF WORK**

- 2.1 Statement of Work. Consultant shall perform the work described in the "Statement of Work" attached as "Exhibit A" to this Contract, and by this reference incorporated herein, except for any work therein designated to be performed by Commission.
- 2.2 Right To Acquire Equipment and Services. Nothing in this Contract shall prohibit the Commission from acquiring the same type or equivalent equipment and/or service from other sources, when deemed by the Commission to be in its best interest.

**ARTICLE 3  
TERM OF CONTRACT: COMMISSION'S OPTIONS TO EXTEND THE TERM**

- 3.1 Consultant shall satisfactorily complete all tasks required by this Contract during the period commencing upon the Effective Date, which is defined as the date that this Contract is executed on behalf of the Commission, and ending (DATE). This Contract may be extended at the sole option of the Commission beyond the expiration of the Initial Term at contract pricing in effect for the Initial Term.
- 3.2 Such options to extend the term shall be exercised by delivery to Consultant of written notice thereof ten (10) days prior to expiration of the then current term.

**ARTICLE 4  
COMPENSATION**

4.1 Approved Consultant's Fee and Allowable Costs

4.1.1 Consultant's Fee. Subject to the provisions of Sections 4.2, "Task-Based Management," and 4.3, "Maximum Compensation," below, Commission shall pay a "fee per hour of work" to Consultant for its services in accordance with the rate set at \$xxx per hour.

4.2 Task-Based Work Management. As part of the Statement of Work, attached as "Exhibit A", the consultant has submitted estimates of the time necessary and the fees Consultant anticipates it will charge for each component task ("Task") of the Project. Consultant shall not perform work on any component Task of the Project where such work will cause the total amount billed by Consultant to exceed Consultant's Project Budget for such Task unless and until a revised Project Budget is approved by Commission's Contract Representative.

4.3 Maximum Compensation. Consultant shall provide services under this Agreement until such time as fees and disbursements are made, not to exceed xxxxxx dollars (\$xxxx) ("Total Compensation"). Consultant shall not perform any work which will cause the total amount billed to exceed the Total Compensation unless and until a revised Project Budget setting forth a new Total Compensation is approved by Commission's Contract Representative.

4.4 Invoices. Payment for the services performed under this Contract shall be in accordance with Paragraphs 4.1 and 4.2 unless other payment methodologies are negotiated and agreed to by both Consultant and Commission. Consultant shall submit approved invoices monthly to the Contract Administrator for work performed in the monthly period, or at the completion of each phase or task, or at contract completion. Submit invoices to:

XXXXXXXXXXXX  
First 5 Commission of San Diego  
1495 Pacific Highway, Suite 201  
San Diego, CA 92101

4.4 Payments. The Commission agrees to pay Consultant in arrears only after receipt and approval by the Contract Administrator of properly submitted, detailed and itemized original invoices referencing the Contract number, documenting the total amount invoiced by the Consultant, deliverables and the number of hours of service

**FIRST 5 COMMISSION OF SAN DIEGO  
CONSULTANT AGREEMENT NO. \_\_\_\_\_  
AGREEMENT WITH (XXXXXXXXXX) FOR  
CONSULTANT FOR DATABASE MANAGEMENT**

specifying hours worked per deliverable, and project name. Payment shall be Net 30 Days from receipt and approval of invoice unless otherwise stated.

- 4.5 Conditions Prerequisite to Payments. Commission may elect not to make a particular payment if any of the following exists:
- 4.4.1.1 Misrepresentation. Consultant, with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to County.
  - 4.4.1.2 Unauthorized Actions by Consultant. Consultant took an action without receiving County's prior approval as required under this Contract.
  - 4.4.1.3 Default. Consultant is in default of a term or condition of this Contract.
- 4.6 Availability of Funding. The Commission's obligation to make any payment under this Contract beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on part of the Commission shall arise for payment beyond June 30 of the calendar year unless funds are designated by the Commission and are made available for payment of this Contract.
- 4.7 Disallowance. In the event the Consultant receives payment for services under this Contract which is later disallowed by the Commission, Consultant shall promptly refund the disallowed amount to Commission on request, or at its option, Commission may offset the amount disallowed from any payment due or to become due to Consultant under any contract with the Commission.

**ARTICLE 5  
CONTRACT ADMINISTRATION**

- 5.1 Commission's Contract Administrator. The Commission's Executive Director is designated as the contracting officer ("Contracting Officer") and is the only Commission official authorized to make any Changes to this Contract.

XXXXXXXXXX  
First 5 Commission of San Diego  
1495 Pacific Highway, Suite 201  
San Diego, CA 92101  
Phone: (619) 230-XXXX FAX: (619) 230-6466

The Contracting Officer and/or her designee will chair Consultant progress meetings and will coordinate Commission's contract administrative functions. The Contracting Officer is designated to receive and approve Consultant invoices for payment, audit and inspect records, inspect Consultant services, and provide other technical guidance as required.

- 5.2 Consultant's Representative. Consultant designates the following individual as the Consultant's Representative:

NAME  
COMPANY NAME  
STREET ADDRESS  
CITY, STATE, ZIP CODE

- 5.3 Contract Progress Meeting. The Contracting Officer and other Commission personnel, as appropriate, will meet periodically with the Consultant to review the contract performance. At these meetings the Contracting Officer will apprise the Consultant of how the Commission views the Consultant's performance, and the Consultant will apprise the Commission of problems, if any, being experienced. The Consultant shall also notify the Contracting Officer (in writing) of any work being performed, if any, that the Consultant considers being over and above the requirements of the contract. Appropriate action shall be taken to resolve outstanding issues. The minutes of these meetings will be reduced to writing and signed by the Contracting Officer and the Consultant. Should the Consultant not concur with the minutes, the Consultant shall set out in writing any area of disagreement. Appropriate action will be taken to resolve any areas of disagreement.

**FIRST 5 COMMISSION OF SAN DIEGO  
CONSULTANT AGREEMENT NO. \_\_\_\_\_  
AGREEMENT WITH (XXXXXXXXXXXX) FOR  
CONSULTANT FOR DATABASE MANAGEMENT**

**ARTICLE 6  
CHANGES**

- 6.1 Contracting Officer. The Contracting Officer may at any time, by a written order, make changes ("Changes"), within the general scope of this Contract, in the definition of services to be performed, and the time (*i.e.* hours of the day, days of the week, etc.) and place of performance thereof. If any such Change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, whether changed or not changed by an such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly.
- 6.2 Claims. Consultant must assert any claim for adjustment under this clause within 30 days from the date of receipt by the Consultant of the notification of Change; provided, however, that the Contracting Officer, if s/he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Contract. Where the cost of property made obsolete or excess as a result of a change is included in the Consultant's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes" (Article 14). However, nothing in this clause shall excuse the Consultant from proceeding with this Contract as changed.

**ARTICLE 7  
TERMINATION**

- 7.1 Termination For Default. Upon Consultant's breach of this Contract, Commission shall have the right to terminate this Contract, in whole or part. Prior to termination for default, Commission will send Consultant written notice specifying the cause. The notice will give Consultant 10 days from the date the notice is issued to cure the default or make progress satisfactory to Commission in curing the default, unless a different time is given in the notice. If Commission determines that the default contributes to the curtailment of an essential service or poses an immediate threat to life, health or property, Commission may terminate this Contract immediately upon issuing oral or written notice to the Consultant without any prior notice or opportunity to cure. In the event of termination under this Article, all finished or unfinished documents, and other materials, prepared by Consultant under this Contract shall become the sole and exclusive property of Commission. In the event of such termination, the Commission may purchase or obtain the supplies or services elsewhere, and Consultant shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to the Commission. The prevailing market price shall be considered the fair repurchase price.
- 7.1.1 If, after notice of termination of this Contract under the provisions of this clause, it is determined for any reason that the Consultant was not in default under this provisions of this clause, the rights and obligations of the parties shall, if this Contract contains a clause providing for termination for convenience of the Commission, be the same as if the notice of termination had been issued pursuant to such clause.
- 7.2 Termination For Convenience. The Commission may, by written notice stating the extent and effective date, terminate this Contract for convenience in whole or in part, at any time. The Commission shall pay the Consultant as full compensation for performance until such termination:
- 7.2.1 The unit or pro rata price for any delivered and accepted portion of the work.
- 7.2.2 A reasonable amount, as costs of termination, not otherwise recoverable from other sources by the Consultant as approved by the Commission, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price. In no event shall the Commission be liable for any loss of profits on the resulting order or portion thereof so terminated.
- 7.3 Remedies Not Exclusive. The rights and remedies of Commission provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

**FIRST 5 COMMISSION OF SAN DIEGO  
CONSULTANT AGREEMENT NO. \_\_\_\_\_  
AGREEMENT WITH (XXXXXXXXXX) FOR  
CONSULTANT FOR DATABASE MANAGEMENT**

**ARTICLE 8  
COMPLIANCE WITH LAWS AND REGULATIONS**

- 8.1 Compliance with Laws and Regulations. Consultant shall at all times perform his/her obligations hereunder in compliance with all applicable federal, State, County and Commission laws and regulations.
- 8.2 Consultant Permits and License. Consultant shall obtain and maintain, at no cost to the Commission, all approvals, permissions, permits, licenses, and other forms of documentation required in order to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of services hereunder. The Commission reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of any services hereunder.
- 8.3 Board of Supervisors' Policies. Consultant represents that is familiar, and shall use its best efforts to comply, with Board of Supervisors Policies B-53, B-67, and C-25. (Policies are available on the County of San Diego web site at [www.sdcounty.ca.gov](http://www.sdcounty.ca.gov).)
- 8.4 Debarment and Suspension. Consultant certifies that it, its principals, its employees and its subcontractors:
- 8.4.1 Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
  - 8.4.2 Have not within a 3-year period preceding this Contract been convicted of or had a civil judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - 8.4.3 Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and
  - 8.4.4 Have not within a 3-year period preceding this Contract had one or more public transaction (Federal, State, or local) terminated for cause or default.

**ARTICLE 9  
CONFLICTS OF INTEREST; CONSULTANT'S CONDUCT**

- 9.1 Conflicts of Interest. Consultant presently has no interest, including but not limited to other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The Consultant shall not employ any person having any such interest in the performance of this Contract.
- 9.2 Conduct of Consultant; Privileged Information.
- 9.2.1 Consultant shall inform the Commission of all the Consultant's interests, if any, which are or which the Consultant believes to be incompatible with any interests of the Commission.
  - 9.2.2 The Consultant shall not, under circumstances that might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, accept any gratuity or special favor from individuals or organizations with whom the Consultant is doing business or proposing to do business, in accomplishing the work under this Contract.
  - 9.2.3 Consultant shall not use for personal gain or make other improper use of privileged information, which is acquired in connection with his/her employment. In this connection, the term "privileged information" includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of the individuals; anticipated materials requirements or pricing actions; and knowledge of selections of Consultants or subConsultants in advance of official announcement.

**FIRST 5 COMMISSION OF SAN DIEGO  
CONSULTANT AGREEMENT NO. \_\_\_\_\_  
AGREEMENT WITH (XXXXXXXXXX) FOR  
CONSULTANT FOR DATABASE MANAGEMENT**

- 9.2.4 The Consultant shall not offer directly or indirectly gifts, gratuity, favors, entertainment or employees thereof.
- 9.3 Prohibited Contracts. As required by Section 67 of the San Diego County Administrative Code, Consultant certifies that it is not in violation of the provisions of Section 67, and that Consultant is not, and will not subcontract with, any of the following:
- 9.3.1 Persons employed by Commission or of public agencies for which the Board of Supervisors is the governing body.
- 9.3.2 Profit-making firms or businesses in which employees described in sub-section 9.3.1, above, serve as officers, principals, partners, or major shareholders.
- 9.3.3 Persons who, within the immediately preceding twelve (12) months, came within the provisions of the above sub-sections and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the contract, or (2) participated in any way in developing the contract or its service specifications.
- 9.3.4 Profit-making firms or businesses in which the former employees described in sub-section C, above, serve as officers, principals, partners, or major shareholders.
- 9.4 California Political Reform Act and Government Code Section 1090 et seq. Consultant acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq. provides that consultants hired by a public agency such as the Commission may be deemed to be a "public official," subject to the Act, if the consultant advises the agency on decisions or actions to be taken by the agency. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. Within thirty (30) days of undertaking any work hereunder, therefore, Consultant, and any "subConsultants," as defined in Section 1.2.2, above, retained by Consultant hereunder, shall either (i) read and sign the "Conflict of Interest Declaration" attached hereto as Exhibit "B," or (ii) disqualify themselves from undertaking any work hereunder. In addition, Consultant is aware of, and shall abide by, the conflict of interest restrictions imposed upon public officials by Government Code section 1090 et seq.

**ARTICLE 10  
INDEMNITY AND INSURANCE**

- 10.1 Indemnity. Commission shall not be liable for, and Consultant shall defend and indemnify Commission and the employees and agents of Commission (collectively "Commission Parties") against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to the work covered by this Contract arising either directly or indirectly from any act, error, omission or negligence of Consultant or its Consultants, licensees, agents, servants or employees, as well as Claims caused by the concurrent negligent act, error or omission of Commission Parties. However, Consultant shall have no obligation to defend or indemnify Commission Parties against Claims caused by the active negligence, sole negligence or willful misconduct of Commission Parties.
- 10.2 Insurance. Prior to execution of this Contract, Consultant must obtain at his/her own cost and expense, and keep in force and effect during the term of this Contract, including all extensions, the insurance specified in Exhibit "D" "Insurance Requirements," attached hereto.

**FIRST 5 COMMISSION OF SAN DIEGO  
CONSULTANT AGREEMENT NO. \_\_\_\_\_  
AGREEMENT WITH (XXXXXXXXXX) FOR  
CONSULTANT FOR DATABASE MANAGEMENT**

**ARTICLE 11  
AUDIT AND INSPECTION OF RECORDS**

Consultant shall maintain accurate and complete records specifically relating to the services provided hereunder and in accordance with generally accepted accounting principles and practice, consistently applied. To the extent that such records may be relevant in determining whether Consultant is complying with its obligations hereunder, the Commission may audit such records. Consultant shall retain such records for a period of three (3) years from the date of the last payment under this Contract.

**ARTICLE 12  
INSPECTION OF SERVICE**

- 12.1 Subject to Inspection. All performance (including services, materials, supplies and equipment furnished or utilized in the performance of this Contract, and workmanship in the performance of services) shall be subject to inspection and test by the Commission at all times during the term of this Contract. Consultant shall cooperate with any inspector assigned by the Commission to permit the inspector to determine whether Consultant's performance conforms to the requirements of this Contract. Commission shall perform such inspection in a manner as not to unduly interfere with Consultant's performance.
- 12.2 Specification and Requirements. If any services performed by Consultant do not conform to the specifications and requirements of this Contract, Commission may require Consultant to re-perform the services until they conform to said specifications and requirements, at no additional cost, and Commission may withhold payment for such services until Consultant correctly performs them. When the services to be performed are of such a nature that Consultant cannot correct its performance, the Commission shall have the right to (1) require the Consultant to immediately take all necessary steps to ensure future performance of services conforms to the requirements of this Contract, and (2) reduce the contract price to reflect the reduced value of the services received by Commission. In the event Consultant fails to promptly re-perform the services or to take necessary steps to ensure that future performance of the service conforms to the specifications and requirements of this Contract, the Commission shall have the right to either (1) without terminating this Contract, have the services performed, by contract or otherwise, in conformance with the specifications of this Contract, and charge Consultant, and/or withhold from payments due to Consultant, any costs incurred by Commission that are directly related to the performance of such services, or (2) terminate this Contract for default.

**ARTICLE 13  
USE OF DOCUMENTS AND REPORTS**

- 13.1 Findings Confidential. Any confidential reports, information, data, statistics, forms, procedure systems, studies or other communications or any form of knowledge given to or prepared or assembled by Consultant under this agreement shall be kept strictly confidential, shall be subject to all applicable privileges which may be held by Commission and/or its clients, and shall not be revealed or made available to any individual or organization without the prior written approval of the Office of County Counsel.
- 13.2 Publication, Reproduction or Use of Materials. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties produced under this Contract, whether in printed or "electronic" format, shall be the sole and exclusive property of the Commission. No such materials or properties produced in whole or in part under this agreement shall be subject to private use, copyright or patent right without the express written consent of the Commission. Consultant shall submit reports to Commission in the form specified by Commission's Contract Officer, or as may be specified elsewhere in this Contract. Commission shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared by Consultant under this Contract.

**FIRST 5 COMMISSION OF SAN DIEGO  
CONSULTANT AGREEMENT NO. \_\_\_\_\_  
AGREEMENT WITH (XXXXXXXXXX) FOR  
CONSULTANT FOR DATABASE MANAGEMENT**

**ARTICLE 14  
DISPUTES**

Notwithstanding any provision of this Contract to the contrary, the Contracting Officer shall decide any dispute concerning a question of fact arising out of this Contract that is not otherwise disposed of by the parties within a reasonable period of time. The decision of the Contracting Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Consultant shall proceed diligently with its performance hereunder pending resolution by the Contracting Officer of any such dispute. Nothing herein shall be construed as granting the Contracting Officer or any other administrative official, representative or board authority to decide questions of law.

**ARTICLE 15  
GENERAL PROVISIONS**

- 15.1 Assignment and Subcontracting. Consultant shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Commission. Commission's consent shall not be unreasonably withheld. The Consultant shall make no contract with any party for furnishing any of the work or services herein contained without the prior written approval of the Contracting Officer.
- 15.2 Entire Agreement. This Contract, together with all Sections attached hereto and other agreements expressly referred to herein, constitutes the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, including any proposals from Consultant and requests for proposals from Commission, are superseded.
- 15.3 Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference.
- 15.4 Further Assurances. Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Contract and the intentions of the parties.
- 15.5 Governing Law. This Contract shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.
- 15.6 Headings. The Article captions, Clause and Section headings used in this Contract are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.
- 15.7 Modification; Waiver. Except as otherwise provided in Article 6, "Changes," above, no modification, waiver, amendment or discharge of this Contract shall be valid unless the same is in writing and signed by both parties.
- 15.8 Neither Party Considered Drafter. Despite the possibility that one party may have prepared the initial draft of this Contract or played the greater role in the physical preparation of subsequent drafts, neither party shall be deemed the drafter of this Contract and that, in construing this Contract in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one party on the ground that such provision was drafted by the other.
- 15.9 No Other Inducement. The making, execution and delivery of this Contract by the parties hereto have not been induced by representations, statements, warranties or agreements other than those expressed herein.
- 15.10 Notices. Notice to either party shall be in writing and either personally delivered or sent by certified mail, postage prepaid, return receipt requested, addressed to the party to be notified at the address specified herein. Any such notice shall be deemed received on the date of personal delivery to the party (or such party's authorized representative) or three (3) business days after deposit in the U.S. Mail, as the case may be.

**FIRST 5 COMMISSION OF SAN DIEGO  
CONSULTANT AGREEMENT NO. \_\_\_\_\_  
AGREEMENT WITH (XXXXXXXXXX) FOR  
CONSULTANT FOR DATABASE MANAGEMENT**

Commission: Contracting Officer

Consultant: Name  
Contact information

15.11 Severability. If any term, provision, covenant or condition of this Contract is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Contract shall not be affected thereby, and each term, provision, covenant or condition of this Contract shall be valid and enforceable to the fullest extent permitted by law.

15.12 Successors. Subject to the limitations on assignment set forth in Clause 15.1 above, all terms of this Contract shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.

15.13 Time. Time is of the essence of each provision of this Contract.

15.14 Time Period Computation. All periods of time referred to in this Contract shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday or State or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or State or national holiday.

15.15 Waiver. The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Contract, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition. Delay by any party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.

15.16 Notification of Key Personnel Changes. Contractor shall notify the COTR (or designee) within 72 hours in writing when there is a change of key personnel funded under this Contract. Key personnel are defined to include personnel who provide direct services management oversight or any combination of these services. Contractor shall also notify COTR (or designee) within 72 hours in writing when a subcontractor is changed. COTR shall have the right to reject any change in key personnel or a new subcontractor upon reasonable cause (direct services or management staff), funded under this Contract.

**FIRST 5 COMMISSION OF SAN DIEGO  
CONSULTANT AGREEMENT NO. \_\_\_\_\_  
AGREEMENT WITH (XXXXXXXXXX) FOR  
CONSULTANT FOR DATABASE MANAGEMENT**

**SIGNATURE PAGE**

IN WITNESS WHEREOF, Commission and Consultant have executed this Contract effective as of the date first set forth below.

**CONTRACT TERM.** This Contract shall be effective this XXXXXXXXX (“Effective Date”) and end on XXXXX (“Initial Term”), a period of XXXXX.

**COMPENSATION.** Pursuant to Exhibit B, Commission agrees to pay Consultant a sum not to exceed xxxxx dollars (\$xxxx.00) for the term of this Contract.

**CONTRACT ADMINISTRATOR.** The Commission has designated the following individual as the Contract Administrator:

XXXXXXXXX  
First 5 Commission of San Diego  
1495 Pacific Highway, Suite 202  
San Diego, CA 92101  
Telephone: (619) 230-64XX Fax: (619) 230-6466  
E-mail:

**CONSULTANT’S REPRESENTATIVE.** The Consultant has designated the following individual as the Consultant’s Representative.

**Agency Name  
Contact Information**

IN WITNESS WHEREOF, Commission and Consultant have executed this Contract effective as of the date first set forth above.

**FIRST 5 COMMISSION OF SAN DIEGO**

**Agency Name**

By: \_\_\_\_\_  
Name, Title

By: \_\_\_\_\_  
**Name, Title**

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

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

**FIRST 5 COMMISSION OF SAN DIEGO  
CONSULTANT AGREEMENT NO. \_\_\_\_\_  
AGREEMENT WITH (XXXXXXXXXX) FOR  
CONSULTANT FOR DATABASE MANAGEMENT**

**EXHIBIT A –STATEMENT OF WORK**

**[to be inserted]**

**FIRST 5 COMMISSION OF SAN DIEGO  
CONSULTANT AGREEMENT NO. \_\_\_\_\_  
AGREEMENT WITH (XXXXXXXXXX) FOR  
CONSULTANT FOR DATABASE MANAGEMENT**

**EXHIBIT B –INSURANCE REQUIREMENTS**

A. Required General Liability Insurance Coverage. Consultant shall procure Comprehensive General Liability Insurance in the amounts and form set forth below:

(1) Commercial General Liability Insurance. A policy of Commercial General Liability Insurance which provides limits of not less than:

(a) Per Occurrence:	\$1,000,000
(b) General Aggregate:	\$1,000,000
(c) Products/Completed Operations:	\$1,000,000
(d) Personal & Advertising Injury limit:	\$1,000,000

Deductibles shall be declared to and approved by the County's Risk Manager.

(2) Required General Liability Policy Coverage. Any general liability policy provided by Consultant hereunder shall include the following coverage:

- (a) Premises and Operations
- (b) Products/Completed Operations with limits of at least one million dollars (\$1,000,000) per occurrence to be maintained for three (3) years following Acceptance of the work by the County
- (c) Contractual Liability expressly including liability assumed under the Contract.
- (d) Independent Consultants' Liability

(3) Additional Insured Endorsement. Any general liability policy provided by Consultant hereunder shall contain an endorsement which applies its coverage to the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively, as additional insureds.

(4) Primary Insurance Endorsement. The coverage afforded by the additional insured endorsement described above shall apply as primary insurance, and any other insurance maintained by the County, the members of the Board of Supervisors of the County, or its officers, agents, employees and volunteers, or any County self-funded program, shall be excess only and not contributing with such coverage.

(5) Form of General Liability Insurance Policies. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Consultant of that part of the indemnity agreement contained in the Contract relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, County may require additional coverage to be purchased by Consultant to restore the required limits. Consultant may combine primary, umbrella and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the Additional Insured Endorsement described above.

(6) Waiver of Subrogation. Consultant and County release each other, and their respective authorized representatives, from any Claims (as defined in the Article entitled "Indemnity" of the Contract), but only to the extent that the proceeds received from any policy of liability insurance carried by County or Consultant, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of liability insurance provided by Consultant hereunder shall be a

**FIRST 5 COMMISSION OF SAN DIEGO  
CONSULTANT AGREEMENT NO. \_\_\_\_\_  
AGREEMENT WITH (XXXXXXXXXXXX) FOR  
CONSULTANT FOR DATABASE MANAGEMENT**

standard waiver of rights of subrogation against County by the insurance company issuing said policy or policies.

- B. Comprehensive Automobile Liability Insurance. Consultant shall procure Comprehensive Automobile Liability Insurance written for bodily injury, including death, and property damage, however occasioned, occurring during the policy term, in the amount of not less than Five Hundred Thousand Dollars (\$500,000), combined single limit per occurrence, applicable to all owned, non-owned and hired vehicles. This coverage shall include contractual liability.
- C. Statutory Workers' Compensation and Employer's Liability Insurance. Unless the Consultant is a sole proprietorship, Consultant shall maintain a policy of California Workers' Compensation coverage in statutory amount and Employer's Liability coverage for no less than one million dollars (\$1,000,000) per occurrence for all employees of Consultant engaged in services or operations under the Contract. Coverage shall include a Waiver of Subrogation endorsement, copy of which shall be provided to the County.
- D. SubConsultants' Insurance. Consultant shall make certain that any and all subConsultants hired by Consultant are insured to current industry standards for form and limits. If any subConsultant's coverage does not comply with the foregoing provisions, Consultant shall indemnify and hold Owner harmless of and from any damage, loss, cost, or expense, including attorneys' fees, incurred by Owner as a result thereof. Consultant shall include subConsultants under its policies or shall furnish separate certificates of insurance and endorsements for each subConsultant.

In addition to the foregoing, Consultant shall make certain that any and all subConsultants performing any excavation of the Project have Explosion, Collapse and Underground Damage Liability Insurance and coverage in the amount of at least One Million Dollars (\$1,000,000) per occurrence.

D. General Provisions.

- (1) Evidence of Insurance. Consultant shall, as soon as practicable following the placement of insurance required hereunder, but in no event later than the effective date of the Contract, deliver to County certified copies of the policies of insurance required hereunder, together with appropriate separate endorsements thereto, evidencing that Consultant has obtained such coverage for the period of the Contract. Consultant shall deliver certified copies of the actual insurance policies specified herein, within thirty days after commencement of work. Thereafter, copies of renewal policies, or certificates and appropriate separate endorsements thereof, shall be delivered to County within thirty (30) days prior to the expiration of the term of any policy required herein. Consultant shall permit County at all reasonable times to inspect any policies of insurance of Consultant that Consultant has not delivered to County.
- (2) Claims Made Coverage. If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
- (a) The policy retroactive date coincides with or precedes Consultant's commencement of work under the Contract (including subsequent policies purchased as renewals or replacements).
  - (b) Consultant will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Contract, including the requirement of adding all additional insureds.
  - (c) If insurance is terminated for any reason, Consultant shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Contract.

**FIRST 5 COMMISSION OF SAN DIEGO  
CONSULTANT AGREEMENT NO. \_\_\_\_\_  
AGREEMENT WITH (XXXXXXXXXXXX) FOR  
CONSULTANT FOR DATABASE MANAGEMENT**

- (d) The policy allows for reporting of circumstances or incidents that might give rise to future claims.
- (3) Failure to Obtain or Maintain Insurance; County's Remedies. Consultant's failure to procure the insurance specified herein, or failure to deliver certified copies or appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of the Contract, and County may, at its option, terminate the Contract for any such default by Consultant.
- (4) No Limitation of Obligations. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Consultant, and any approval of said insurance by the County or its insurance Consultant(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to the Contract, including, but not limited to, the provisions concerning indemnification.
- (5) Notice of Cancellation or Change of Coverage. All certificates of insurance provided by Consultant must evidence that the insurer providing the policy will give County thirty (30) days' written notice, at the address shown in the section of the Contract entitled "Notices," in advance of any cancellation, lapse, reduction or other adverse change respecting such insurance.
- (6) Qualifying Insurers. All policies of insurance required hereby shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A, VII according to the current Best's Key Rating Guide, or a company of equal financial stability that is approved in writing by County's Risk Manager.
- (7) Review of Coverage. County shall retain the right at any time to review the coverage, form and amount of insurance required herein and may require Consultant to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.
- (8) Self-Insurance. Consultant may, with the prior written consent of County's Risk Manager, fulfill some or all of the insurance requirements contained in the Contract under a plan of self-insurance. Consultant shall only be permitted to utilize such self-insurance, however, if, in the opinion of County's Risk Manager, Consultant's (i) net worth, and (ii) reserves for payment of claims of liability against Consultant, are sufficient to adequately compensate for the lack of other insurance coverage required by the Contract. Consultant's utilization of self-insurance shall not in any way limit liabilities assumed by Consultant.