

22) **Agreement with KPA Services, LLC for Environmental Health & Safety Monitoring at Lake Elsinore Diamond Stadium**

Approve and authorize the Executive Director to execute an Agreement with KPA Services, LLC, in an amount not to exceed \$50,000.00 for Environmental Health and Safety Monitoring at Lake Elsinore Diamond Stadium in such final form as approved by the Agency Attorney and authorize the Executive Director to execute change orders not to exceed a 10% contingency amount of \$5,000.00 for uncertainties and adjustments.



## REPORT TO CITY COUNCIL

**To:** Honorable Chair and Members of the Successor Agency

**From:** Jason Simpson, City Manager

**Prepared by:** Rick De Santiago, Public Works Manager

**Date:** October 8, 2024

**Subject:** Agreement with KPA Services, LLC for Environmental Health & Safety Monitoring at Lake Elsinore Diamond Stadium

### **Recommendation**

Approve and authorize the Executive Director to execute an Agreement with KPA Services, LLC, in an amount not to exceed \$50,000.00 for Environmental Health and Safety Monitoring at Lake Elsinore Diamond Stadium in such final form as approved by the Agency Attorney and authorize the Executive Director to execute change orders not to exceed a 10% contingency amount of \$5,000.00 for uncertainties and adjustments.

### **Background**

KPA Services specializes in providing comprehensive environmental health and safety solutions, including risk assessments, compliance monitoring, and training programs. Contracting with KPA Services for environmental health and safety monitoring at Lake Elsinore Diamond Stadium marks a significant initiative consistent with the Agency's post-dissolution obligations and agreements. KPA Services has a deep understanding of local, state, and federal regulations related to environmental health and safety. The City has utilized the services of KPA in connection with City-owned facilities, and their expertise has been essential for adhering to regulatory standards and promoting best practices in public health and safety. The Agency-owned Lake Elsinore Diamond Stadium has not previously been included in the KPA schedule. Staff desires to take a proactive approach to ensure the well-being of visitors and staff by ensuring that the stadium complies with all necessary laws.

## **Discussion**

This agreement is important as it aims to ensure a safe and healthy environment for all patrons and staff. Regular monitoring of environmental conditions helps detect issues early, allowing for timely interventions that can prevent accidents or health risks. The work performed under this agreement consists of the following:

- **On-Site Audits and Inspections** – conduct regular audits and inspections of the stadium to identify potential hazards, assess compliance with safety regulations, and recommend corrective actions.
- **Workplace Health and Safety Program Services** – Develop and implement tailored workplace health and safety programs to ensure the well-being of employees and visitors, addressing key areas such as training, safety protocols, and emergency preparedness.
- **Environmental Risk Management Consulting** – provide expert consulting services to identify, assess and mitigate environmental risks, helping the Agency maintain a safe and sustainable environment.
- **F&I Compliance Services** – ensure compliance with applicable federal and state regulations regarding environmental health and safety, including monitoring practices and documentation to avoid potential liabilities.
- **Remote Consulting** – remote support and consulting services, allowing for ongoing guidance and assistance in addressing health and safety concerns as they arise.

## **Fiscal Impact**

Funds are available in the Fiscal Year 24-25 ROPS budget.

## **Attachments**

Attachment 1 - Agreement  
Exhibit A - Proposal  
Public Works

## **AGREEMENT FOR CONTRACTOR SERVICES**

### **KPA Services, LLC**

#### **Environmental Health & Safety Monitoring at Lake Elsinore Diamond Stadium**

This Agreement for Contractor Services (On-Call) (the "Agreement") is made and entered into as of October 8, 2024 by and between the Successor Agency of the Redevelopment Agency of the City of Lake Elsinore, a public body, corporate and politic established pursuant to Section 34173 of the Health and Safety Code (the "Agency") and KPA Services, LLC., a corporation (the "Contractor").

### **RECITALS**

A. The Agency has determined that it requires the following services:

On-call Environmental Health & Safety Monitoring at Lake Elsinore Diamond Stadium.

B. The Agency has prepared a request for a proposals and Contractor has submitted to Agency a proposal, dated March 28, 2024, both of which are attached hereto as Exhibit A (collectively, the "Contractor's Proposal") and incorporated herein, to provide services and related work to the Agency pursuant to the terms of this Agreement.

C. Contractor possesses the skill, experience, ability, background, certification and knowledge to perform the services and related work described in this Agreement on the terms and conditions Agreement.

### **AGREEMENT**

1. Scope of Services. Contractor shall perform the services and related work described in Contractor's Proposal (Exhibit A). Contractor shall provide such services and related work at the time, place, and in the manner specified in Contractor's Proposal (Exhibit A), subject to the direction of the Agency through its staff that it may provide from time to time. Contractor acknowledges that the Scope of Services provides for 24 hour-a-day, 7 day-a-week, on-call and minor construction support on an as needed basis.

2. Time of Performance.

a. Time of Essence. Time is of the essence in the performance of this Agreement. The time for completion of the services and related work to be performed by Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the services and related work contemplated pursuant to this Agreement consistent with Contractor's Proposal (Exhibit A) and shall provide, furnish and pay all labor, materials, necessary tools, expendable equipment, and all taxes, utility and transportation services required to perform such the services and related work.

b. Performance Schedule. Contractor shall commence the services and related work pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services and related work within the time period(s) established in the Contractor's Proposal (Exhibit A). When requested by Contractor, extensions to the time period(s) specified may be approved in writing by the Executive Director.

c. Term and Compliance with Task/Work Order System. Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall continue in full force and effect for a period commencing on October 8, 2024 and ending June 30, 2025. The Agency may, at its sole discretion, extend the term of this Agreement on a 12-month basis not to exceed 2 additional twelve (12) month renewal terms by giving written notice thereof to Contractor not less than thirty (30) days before the end of the contract term, such notice to be exercised by the Executive Director.

Contractor hereby agrees and acknowledges that any and all work or services performed pursuant to this Agreement shall be based upon the issuance of a Task/Work Order by the Agency. Contractor acknowledges that it is not guaranteed any minimum or specific amount of work or services as all work or services shall be authorized through a Task/Work Order issued by the Agency.

3. Compensation. Compensation to be paid to Contractor shall be in accordance with the fees set forth in Contractor's Proposal (Exhibit A), which is attached hereto and incorporated herein by reference. In no event shall Contractor's annual compensation exceed Fifty Thousand (\$50,000.00) without additional written authorization from the Agency. Notwithstanding any provision of Contractor's Proposal to the contrary, out of pocket expenses set forth in Exhibit A shall be reimbursed at cost without an inflator or administrative charge. Payment by Agency under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the Agency at the time of payment.

4. Method of Payment. Contractor shall promptly submit billings to the Agency describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Contractor's bills shall be segregated by project task, if applicable, such that the Agency receives a separate accounting for work done on each individual task for which Contractor provides services. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. Agency shall pay Contractor no later than forty-five (45) days after receipt of the monthly invoice by Agency staff.

5. Background Checks. At any time during the term of this Agreement, the Agency reserves the right to make an independent investigation into the background of Contractor's personnel who perform work required by this Agreement, including but not limited to their references, character, address history, past employment, education, social security number validation, and criminal or police records, for the purpose of confirming that such personnel are lawfully employed, qualified to provide the subject service or pose a risk to the safety of persons or property in and around the vicinity of where the services will be rendered or City Hall. If the Agency makes a reasonable determination that any of Contractor's prospective or then current personnel is deemed objectionable, then the Agency may notify Contractor of the same. Contractor shall not use that personnel to perform work required by this Agreement, and if necessary, shall replace him or her with a suitable worker.

6. Suspension or Termination.

a. The Agency may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least ten (10) days prior written notice. Upon receipt of such notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the Agency suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the Agency shall pay to Contractor the actual value of the work performed up to the time of termination,

provided that the work performed is of value to the Agency. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to the Agency, pursuant to Section entitled "Method of Payment" herein.

7. Plans, Reports, Documents

a. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notepad internal documents, shall become the property of the Agency upon payment to Contractor for such work, and the Agency shall have the sole right to use such materials in its discretion without further compensation to Contractor or to any other party. Contractor shall, at Contractor's expense, provide such reports, plans, studies, documents and other writings to Agency upon written request. Agency shall have sole determination of the public's rights to documents under the Public Records Act, and any third-party requests of Contractor shall be immediately referred to Agency, without any other actions by Contractor.

b. Licensing of Intellectual Property. This Agreement creates a nonexclusive and perpetual license for Agency to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Contractor under this Agreement ("Documents & Data"). Contractor shall require that all subcontractors agree in writing that Agency is granted a nonexclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Contractor represents and warrants that Contractor has the legal right to license any and all Documents & Data. Contractor makes no such representation and warranty in regard to Documents & Data, which were prepared by design professionals other than Contractor or provided, to Contractor by the Agency. Agency shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at Agency's sole risk.

c. Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor. Contractor shall not, without the prior written consent of Agency, use such materials for any purposes other than the performance of the services under this Agreement. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Contractor, which is otherwise known to Contractor or is generally known, or has become known, to the related industry shall be deemed confidential. Contractor shall not use Agency's name or insignia, photographs relating to project for which Contractor's services are rendered, or any publicity pertaining to the Contractor's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Agency.

8. Contractor's Books and Records.

a. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to Agency for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor to this Agreement.

b. Contractor shall maintain all documents and records which demonstrate

performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the Executive Director, Agency Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the Agency for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

d. Where Agency has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, Agency may, by written request by any of the above-named officers, require that custody of the records be given to the Agency and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

9. Independent Contractor.

a. Contractor is and shall at all times remain as to the Agency a wholly independent contractor pursuant to California Labor Code Section 3353. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither Agency nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the Agency. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatsoever against Agency, or bind Agency in any manner.

b. Notwithstanding any other federal, state and local laws, codes, ordinances and regulations to the contrary, Contractor and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in PERS as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contribution and/or employee contributions for PERS benefits.

10. PERS Eligibility Indemnification. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the Agency, Contractor shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency.

11. Interests of Contractor. Contractor (including principals, associates and management employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Contractor's services hereunder. Contractor further covenants and represents that in the performance of its duties hereunder no person having any such

interest shall perform any services under this Agreement.

Contractor is not a designated employee within the meaning of the Political Reform Act because Contractor:

- a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the Agency or of any Agency official, other than normal agreement monitoring; and
- b. possesses no authority with respect to any Agency decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a) (2).)

12. Ability of Contractor. Agency has relied upon the training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Agreement. Contractor shall therefore provide properly skilled personnel to perform all services under this Agreement. All work performed by Contractor under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent contractors in Contractor's field of expertise.

13. Compliance with Laws.

- a. Contractor shall comply with all local, state and federal laws and regulations applicable to the services required hereunder, including any rule, regulation or bylaw governing the conduct or performance of Contractor and/or its employees, officers, or board members.
- b. Contractor represents that it has obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement, including a City business license.

14. Licenses. Contractor represents and warrants to Agency that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required of Contractor to practice its profession. Contractor represents and warrants to Agency that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Contractor to practice its profession. Contractor shall maintain a City of Lake Elsinore business license.



15. Indemnity. Contractor shall indemnify, defend, and hold harmless the Agency and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Contractor or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Contractor shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises from the sole negligence or willful misconduct of the Agency or its officers, employees, agents, or volunteers and (2) the actions of Contractor or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Agency of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

16. Insurance Requirements .

a. Insurance. Contractor, at Contractor's own cost and expense, shall procure and maintain, for the duration of the contract, unless modified by the City's Risk Manager, the following insurance policies.

i. Workers' Compensation Coverage. Contractor shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the Agency at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against Agency, its officers, agents, employees and volunteers for losses arising from work performed by Contractor for Agency. In the event that Contractor is exempt from Worker's Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California, Contractor shall submit to the Agency a Certificate of Exemption from Workers Compensation Insurance in a form approved by the Agency Attorney.

ii. General Liability Coverage. Contractor shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Required commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. No endorsement may be attached limiting the coverage.

iii. Automobile Liability Coverage. Contractor shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence. Automobile liability coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.

b. Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language :

i. Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation, shall bear an endorsement whereby it is provided that, the Agency and its officers, employees, servants, volunteers and agents and independent contractors, including without limitation, the Executive Director and Agency Attorney, are named as additional insureds. Additional insureds shall be entitled to the full benefit of all insurance policies in the same manner and to the same extent as any other insureds and there shall be no limitation to the benefits conferred upon them other than policy limits to coverages.

ii. This policy shall be considered primary insurance as respects the Agency, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the Agency, including any self-insured retention the Agency may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against the Agency, its elected or appointed officers, officials, employees or agents.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, its elected or appointed officers, officials, employees, agents or volunteers.

vi. The insurance provided by this Policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the Agency.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Agency. At the Agency's option, Contractor shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance. Contractor shall provide certificates of insurance with original endorsements to Agency as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the Agency on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the Agency at all times during the term of this Agreement.

17. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to Agency: Successor Agency of the Redevelopment Agency of the City  
of Lake Elsinore  
Attn: Executive Director  
130 South Main Street  
Lake Elsinore, CA 92530

**With a copy to:** City of Lake Elsinore  
Attn: City Clerk  
130 South Main Street  
Lake Elsinore, CA 92530

If to Contractor: KPA Services, LLC  
Attn: Sean Cohen  
1380 Forest Park Circle, Suite 140  
Lafayette, CO 80026

18. Assignment and Subcontracting. The parties recognize that a substantial inducement to Agency for entering into this Agreement is the reputation, experience and competence of Contractor. Contractor shall be fully responsible to Agency for all acts or omissions of any subcontractors. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express consent of the Agency. Contractor shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the Agency. If Agency consents to such subcontract, Contractor shall be fully responsible to Agency for all acts or omissions of those subcontractors. Nothing in this Agreement shall create any contractual relationship between Agency and any subcontractor nor shall it create any obligation on the part of the Agency to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

19. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

20. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

21. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and share the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

22. Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to

solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Agency shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Agency, during the term of his or her service with Agency, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

23. Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Contractor agrees to fully comply with all applicable federal and state labor laws (including, without limitation, if applicable, the Prevailing Wage Laws). It is agreed by the parties that, in connection with the work or services provided pursuant to this Agreement, Contractor shall bear all risks of payment or non-payment of prevailing wages under California law, and Contractor hereby agrees to defend, indemnify, and hold the Agency, and its officials, officers, employees, agents, and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The foregoing indemnity shall survive termination of this Agreement.

25. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

26. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Riverside.

27. Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party. The Executive Director is authorized to enter into an amendment or otherwise take action on behalf of the Agency to make the following modifications to the Agreement: (a) a name change; (b) grant extensions of time; (c) non-monetary changes in the scope of services; and/or (d) suspend or terminate the Agreement.

28. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

29. Entire Agreement; Incorporation; Conflict. This Agreement contains the entire understanding between the parties relating to the obligations described herein. All prior or contemporaneous understandings, agreements, representations and statements, oral or written, are superseded in total by this Agreement and shall be of no further force or effect. Contractor's Proposal is incorporated only for the description of the scope of services and/or the schedule of performance and

no other terms and conditions from such proposal shall apply to this Agreement unless specifically agreed to in writing. In the event of conflict, this Agreement shall take precedence over those contained in the Contractor's Proposal.

30. Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and Agency and approved as to form by the Agency Attorney.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

"AGENCY"

SUCCESSOR AGENCY OF THE  
REDEVELOPMENT AGENCY OF THE CITY OF  
LAKE ELSINORE, a public body, corporate and  
politic

"CONTRACTOR"

KPA Services, LLC

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
By: Sean Cohen

Its: [Click or tap here to enter text.](#)

ATTEST:

\_\_\_\_\_  
Agency Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Agency Attorney

\_\_\_\_\_  
Assistant Executive Director

Attachments: Exhibit A – Contractor's Proposal

EXHIBIT A  
CONTRACTOR'S PROPOSAL  
[ATTACHED]

## Exhibit I

	FEATURES	FUNDAMENTAL	PRO
SOFTWARE	MSDS	✓	✓
	DOT	✓	✓
	LMS – Haz-Com, ER, Haz-Waste & MVAC	✓	✓
	LMS – PPE, Back, Eye, DOT, Drive...		✓
	Haz-Com & ER	✓	✓
	Safety Program (I <sub>2</sub> P <sub>2</sub> ) & PPE		✓
	Action Item Management	✓	✓
	Online Accident Reporting	✓	✓
	Self-Inspection (Safety)		12 / year
	Self-Inspection (Environmental)		
	Self-Inspection (DOT)		
	Loss Run Imports		✓
ACTIVITIES PER YEAR	ONSITE VISITS	1	4
	WEBINAR CONSULTATION		
	EMERGENCY TELEPHONE SUPPORT	✓	✓
	EMERGENCY ONSITE SUPPORT	✓	✓
SERVICES	SCM Management		✓
	CA HPP & Future(I <sub>2</sub> P <sub>2</sub> )		✓
	Onsite Environmental Audits	✓	✓
	Onsite Safety Audits		✓
	Onsite Best Practices Audits	✓	✓
	Audit Review (by webinar)		
	Management Meeting (by webinar)		
	Management Training	✓	✓
	Onsite Training (HC, ER & HW)	✓	✓
	Onsite Training (PPE, EYE...)		✓
+ BP(CA)	Remote Authoring of HMMBP		✓
	Onsite Authoring of HMMBP	✓	✓
	Facility Map w/ Haz Mat Locations	✓	✓
	Document Hosting in myKPAonline	✓	✓

## Exhibit I

### Packaged Services, Software Feature Definition

**MSDS:** Assist Client in completing and periodically updating its hazardous substance chemical inventory. For MSDS/DOT & ELEMENTS packages client is responsible for providing KPA with an initial chemical inventory for system population. Client is responsible for routinely updating inventory with new or previously unidentified chemical products. Obtain Material Safety Data Sheets (MSDS) to the extent available to KPA from manufacturers or suppliers for substances listed on initial Client chemical inventory and make those MSDSs available online through use of the KPA MSDS Online service. When requested by Client for new chemicals or when KPA determines it advisable from time-to-time, KPA will update MSDS listing for new chemicals listed on Client's chemical inventory, subject to availability from manufacturers and suppliers and accessibility to KPA. Client is responsible for routinely obtaining MSDSs for new or previously unidentified chemical products.

**DOT:** Provide 24-hour shipping emergency hotline use. Provide a 24-hour telephone number to be used by Client as an "emergency contact number" on all shipments leaving the facility involving hazardous materials. Provide unlimited access to KPA's Online DOT Hazardous Materials Certification Course. Provide online access to myKPAonline resources, where online training instructions, posters explaining the shipping hotline system, posters with the shipping hotline number, and completed training documentation are available. Provide on-site, ongoing program support using KPA staff engineers during regularly scheduled visits, (if applicable).

**LMS – Haz-Com, ER, Haz-Waste & MVAC:** Access to online training courses for Hazard Communication, Emergency Response, Hazardous Waste and Motor Vehicle Air Conditioning Section 609 Trainings. Access to online content is subject to the Terms of Use and Privacy Policy statements posted on the site at [www.mykpaonline.com](http://www.mykpaonline.com) and accepted by each user upon initial use of the site.

**LMS – PPE, Back, Eye...:** Access to online training courses for Personal Protective Equipment, Back Injury Prevention, Eye Injury Prevention, Forklift Safety Training, Forklift Training Requirements for Supervisors, Accident Investigation Techniques. Access to online content is subject to the Terms of Use and Privacy Policy statements posted on the site at [www.mykpaonline.com](http://www.mykpaonline.com) and accepted by each user upon initial use of the site.

**Haz Com & ER programs:** Write and update Client's Hazard Communication Program to comply with the federal Hazard Communication Standard. This document will include an explanation of how Client can meet requirements for labeling, MSDS and employee information and training, along with a written employee training program. Write the Client's Emergency Response Plan to be followed in the event of a release or threatened release of a hazardous material. This plan will include the following: 1) Procedures for emergency notification of administering agency(s) and local emergency personnel. 2) Steps to mitigate damage to persons, property and the environment. 3) Evacuation procedures, if applicable. 4) Facility diagram as required by regulatory agencies.

**Safety Program (I2P2) & PPE:** Prepare a written Client Health and Safety Policy and Injury Prevention Program that is consistent with management objectives.

**Action Item Management:** Leveraging the myKPAonline system KPA will assist management in establishing procedures for Client to evaluate and correct workplace hazards identified by Client.

**Online Accident Reporting:** Access to the online accident reporting system in myKPAonline.com and accompanying reporting tools.

**Self Inspection (Safety), (Environmental) & (DOT):** Access to periodically published, (frequency listed in services table), self inspection safety, environmental and DOT forms that can be completed by users of the myKPAonline system. Deficient items identified by client during self inspections will be promoted into the issue management system for follow up by Client.

**Incident Management:** Online training will be made available to employees of client involved in accident investigation. This training will educate clients on best management practices for incident management to drive a reduction in future losses.

**Loss Run Imports:** Availability of a loss run import system where Client provides electronic Loss Run Data for direct import into myKPAonline system by KPA. Import subject to data limitations.

### Packaged Services, Services Feature Definition:

**SCM Management:** Assist Client management in selecting members of the Safety Committee for Client. Assist the Safety Committee in maintaining an ongoing employee Safety program.

**CA IIPP & Future(I2P2):** Serve as assistant to the Safety Committee as that committee carries out its responsibility to: 1) Schedule and conduct Safety Committee meetings, 2) Ensure that mandated periodic worksite inspections are conducted by designated Client personnel, 3) Establish procedures to communicate with workers on safety matters.



## Exhibit I

**Onsite Environmental, Safety and Best Practices Audits:** Assist Client in identifying hazardous wastes generated at the Client's facility. Periodically review existing hazardous waste management procedures for identified hazardous wastes generated at the Client's facility. This will include a review of Client's existing registration as a hazardous waste generator (EPA I.D. No.), procedures for managing collection manifests, receipts and other records, hazardous waste handling and storage practices, and hazardous waste container labeling. Provide management information on proper handling and administration of identified hazardous wastes generated at the Client's facility as required by final federal, state and local administrative regulations. Provide guidance for each identified hazardous waste generated at the Client's facility. Identify opportunities where Client can reduce either the volume and/or costs of hazardous waste disposal.

**Management Training:** KPA will conduct management training on use of the myKPAonline system. This training will be provided to ensure that all Client representatives who attend the training session are familiar with system functionality and use.

**Onsite Training (HC, ER & HW):** Provide Hazard Communication training to those employees of Client who attend training sessions announced by Client. Provide emergency response training on safety procedures to be followed in the event of a release or threatened release of a hazardous material. Perform annual refresher training for employees of Client who attend training sessions announced by Client.

**Onsite Training (PPE, EYE...)** Prepare and/or administer employee training to those employees of Client who attend training sessions announced by Client that are consistent with Client's safety program and with direction provided by Client's Committee. KPA onsite training administration will be limited to a maximum of 1 hour per client visit. Training may include any of the following, as agreed to by KPA and the client during each visit:

Asbestos Awareness	Eye Injury Prevention	Hand Injury Prevention	Housekeeping
Back Injury Prevention	First Aid Awareness	Hazardous Waste	Personal Protective Equipment
Driving Safety	Forklift Safety	Hazard Communication	Slips, Trips and Falls
Electrical Safety	General Office Safety	Hearing Conservation	
Emergency Response	General Shop Safety	Heat Illness Prevention	

### **+ SPCC Add-On Service Feature Definition:**

**Spill Prevention Control & Countermeasures Plan (SPCC)** KPA will prepare a Spill Prevention, Control and Countermeasure Plan for client facility. Plan will be based upon federal SPCC regulation and guidelines, which are final, and in effect as of the date of this Agreement or as modified by subsequent Exhibits. Any changes and additions to those regulations and guidelines after the date of this Agreement may require an addition to one of the Exhibits, an amendment to this Agreement, or both, to provide for additional services and related services. Spill Prevention, Control and Countermeasure Plan will be signed / stamped by a Professional Engineer.

### **+ RPP Add-On Service Feature Definition:**

**Written Program:** Provide Client's Respiratory Protection Program based on state and federal regulations. This document will include information on: 1) Physical limitations for respirator wearers, 2) Respirator selection, 3) Instruction and training, 4) Inspection, maintenance, cleaning and storage of respirators, 5) Employee training, 6) Client responsibility to ensure adequate medical surveillance of prospective respirator wearers. The written program will be stored in the myKPAonline system and KPA will provide management orientation on respirator program and recordkeeping requirements.

**Online Respiratory Training:** Provide employee training on respirator use and maintenance. Training to include: reasons for respiratory protection, effects of respiratory hazards, discussion of engineering controls versus respirator use, respirator selection, discussion of operation capabilities and limitations of selected respirator(s), instruction in inspecting, donning, checking the fit and wearing respirators, fit testing, maintenance and storage of respirators.

**Online 6H Training (available January 2011):** Access to an online training courses to address federal 6H regulations. Access to online content is subject to the Terms of Use and Privacy Policy statements posted on the site at [www.mykpaonline.com](http://www.mykpaonline.com) and accepted by each user upon initial use of the site.

**Onsite Fit Testing:** Prepare and/or administer employee training to those employees of Client who attend training sessions announced by Client. Training may include testing for respirator fit, instruction on donning, checking the fit, wearing respirators, maintenance and storage of respirators.

### **+ CR Add-On Service Feature Definition:**

## Exhibit I

**Data Gathering Interview Consult:** KPA will work with management over the phone to identify and quantify applicable Client hazardous waste management expenses. Such expenses to be reviewed and, as required, updated annually. KPA will perform calculations necessary to allocate these expenses to particular maintenance functions.

**Written Program:** Prepare cost recovery documentation, including a matrix summarizing cost recovery calculations. Documentation to be prepared and updated in a manner consistent with guidance provided to KA by the overseeing regulatory agency. Provide a customer notification sign with wording identifying the nature of these customer charges.

**Onsite Documentation Gathering** KPA will work with management onsite to identify and quantify applicable Client hazardous waste management expenses. Such expenses to be reviewed and, as required, updated annually. KPA will perform calculations necessary to allocate these expenses to particular maintenance functions.

**Onsite Management Training:** Provide onsite management training on installing Client cost recovery system.

### **+ BP(CA) Add-On Service Feature Definition:**

**Remote Authoring of HMMBP:** Assist management over the phone to develop and, as required by the California, Certified Program Agency (CUPA), update a Client's business Plan (Hazardous Materials Management Plan) based on CUPA requirements. This plan will include the hazardous material inventory, the Emergency Response Plan and an employee training plan. Update plan as required by CUPA.

**Onsite Authoring of HMMBP:** Assist management onsite to develop and, as required by the California, Certified Program Agency (CUPA), update a Client's business Plan (Hazardous Materials Management Plan) based on CUPA requirements. This plan will include the hazardous material inventory, the Emergency Response Plan and an employee training plan. Update plan as required by CUPA.

**Facility Map w/ Haz Mat Locations** Prepare a Facility map that shows the locations of Hazardous Materials in quantities above CUPA reporting thresholds.

**Document Hosting in myKPAonline:** Host the Business Plan in the myKPAonline system in the documents section.

### **Hourly Consulting Services can include...**

The following programs can be customized and, at upon request, will be quoted on an hourly basis:

Bloodborne Pathogen Control Program	DOT Safety for drivers Program
Lockout Tag-out / Mark-out Program	HazWopper training
Fall Protection Program	Underground Storage Tank Program
Hot Works / Fire Safety / Welding Program	Storm Water Pollution Prevention Plan
Ergonomics Program	Industrial Waste Water Audit / Program
Subcontractor Safety Program	Lead Abatement Assessment / Program
Confined Space Entry Program	Methylene Chloride Safety Program
Hearing Conservation Program	Preliminary Environmental Assessment
Mobile Service Safety Program	FIFRA Compliance