

PROFESSIONAL SERVICES AGREEMENT
OCEAN BLUE ENVIRONMENTAL SERVICES, INC.

THIS AGREEMENT is made this ____ day of _____ 2016, by the **SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, (“SUCCESSOR AGENCY”), and **OCEAN BLUE ENVIRONMENTAL SERVICES, INC.**, a California Corporation (“CONSULTANT”).

RECITALS

The following recitals are a substantive part of this Agreement:

1. SUCCESSOR AGENCY desires to utilize Consultant to furnish all labor, materials to remove hazardous materials from SUCCESSOR AGENCY owned property.
2. CONSULTANT services are delineated in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference (the “services” or “work”). Consultant warrants that all services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services.
3. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement:** The term of the agreement shall be for period of **one (1) year from full execution** of the agreement or until completion of the work, whichever occurs first. This Agreement may be terminated by SUCCESSOR AGENCY without cause as provided in Section 3.4 below. In such event, SUCCESSOR AGENCY will compensate CONSULTANT for work performed to date in accordance with the Proposal incorporated herein by reference as Exhibit “A”. CONSULTANT is required to present evidence to support performed work completion.
2. **Services to be Provided:** The services to be performed by CONSULTANT shall consist of tasks as set forth in the Proposal incorporated herein by reference as Exhibit “A.” The Proposal and this Agreement do not guarantee any specific amount of work. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
3. **Compensation.** CONSULTANT shall be compensated as follows:
 - 3.1 **Amount.** Compensation under this agreement shall be the Not To Exceed (NTE) amount of **One Hundred Sixty Three Thousand Nine Hundred Ninety Eight Dollars (\$163,998.00)**, payable in arrears.
 - 3.2 **Payment.** For work under this Agreement, payment shall be made per invoice for work completed. For extra work not a part of this Agreement, a written authorization by SUCCESSOR AGENCY will be required, and payment shall be based on a schedule approved in conjunction with such written authorization.

- 3.3 Records of Expenses. CONSULTANT shall keep complete and accurate records of payroll costs, travel and incidental expenses. These records will be made available at reasonable times to SUCCESSOR AGENCY.
- 3.4 Termination. SUCCESSOR AGENCY and CONSULTANT shall each have the right to terminate this Agreement, without cause, by giving thirty-(30) days written notice of termination to the other party. If the Agreement is terminated by SUCCESSOR AGENCY, then the provisions of Section 3.2 would apply to that portion of the work completed.

4. Insurance Requirements

- 4.1 Commencement of Work CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the SUCCESSOR AGENCY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the SUCCESSOR AGENCY of any material change, cancellation, or termination at least thirty (30) days in advance.
- 4.2 Workers Compensation Insurance For the duration of this Agreement, CONSULTANT and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable. The insurer shall waive its rights of subrogation against the SUCCESSOR AGENCY, the City of Garden Grove, and their officers, officials, agents, employees, and volunteers.
- 4.3 Insurance Amounts CONSULTANT shall maintain the following insurance for the duration of this Agreement:
- a) Commercial general liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable); Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-Class VII or better, as approved by the SUCCESSOR AGENCY;
 - b) Automobile liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable) Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the SUCCESSOR AGENCY.
 - c) Professional liability in the amount of \$1,000,000 per occurrence; Insurance companies must be acceptable to SUCCESSOR AGENCY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the SUCCESSOR AGENCY. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate the SUCCESSOR AGENCY, the City of Garden

Grove, their officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONSULTANT. CONSULTANT shall provide to SUCCESSOR AGENCY proof of insurance and endorsement forms that conform to SUCCESSOR AGENCY's requirements, as approved by the SUCCESSOR AGENCY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate the SUCCESSOR AGENCY, the City of Garden Grove, and their officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, lease, hired, or borrowed by CONSULTANT. CONSULTANT shall provide to SUCCESSOR AGENCY proof of insurance and endorsement forms that conform to SUCCESSOR AGENCY's requirements, as approved by the SUCCESSOR AGENCY.

For any claims related to this Agreement, CONSULTANT's insurance coverage shall be primary insurance as respects to the SUCCESSOR AGENCY, the City of Garden Grove, and their officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the SUCCESSOR AGENCY, the City of Garden Grove, and their officers, officials, employees, agents, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.

5. **Non-Liability of Officials and Employees of the SUCCESSOR AGENCY.** No official or employee of SUCCESSOR AGENCY shall be personally liable to CONSULTANT in the event of any default or breach by SUCCESSOR AGENCY, or for any amount, which may become due to CONSULTANT.
6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed that CONSULTANT shall act and be an independent contractor and not an agent or employee of SUCCESSOR AGENCY, and shall obtain no rights to any benefits which accrue to SUCCESSOR AGENCY'S employees.
8. **Compliance With Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government.
 - 8.1. **Prevailing Wages.** The SUCCESSOR AGENCY has been advised that the Prevailing Wages Law applies to demolition work. CONSULTANT and its subcontractors must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. This Agreement shall not be effective until CONSULTANT provides proof of registration to the SUCCESSOR AGENCY. CONSULTANT shall be responsible for CONSULTANT's compliance in all respects with the Prevailing Wage Law, including the payment of the prevailing wage rates to all the laborers involved, and with California Labor Code Section 1770 et seq., including the keeping of all records required by the provisions of Labor Code Section 1776 and the implementing administrative regulations. CONSULTANT shall submit payroll records to the Labor Commissioner pursuant to Labor Code section 1771.4(a)(3) and shall comply with the job site notices posting requirements

established by the Labor Commissioner pursuant to Title 8, California Code of Regulations Section 16461(e) or other regulation promulgated pursuant to Labor Code Section 1771.4(a)(2). Pursuant to Labor Code Section 1771.4, demolition work is subject to compliance monitoring and enforcement by the California Department of Industrial Relations. The SUCCESSOR AGENCY shall be a third party beneficiary of the forgoing covenant with rights to enforce the same as against the CONSULTANT.

9. **Disclosure of Documents.** All documents or other information developed or received by CONSULTANT are confidential and shall not be disclosed without authorization by SUCCESSOR AGENCY, unless disclosure is required by law.
10. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT shall be the property of SUCCESSOR AGENCY. CONSULTANT shall provide SUCCESSOR AGENCY with copies of these items upon demand or upon termination of this Agreement.
11. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
12. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
 - (a) Address of CONSULTANT is as follows:

Ocean Blue Environmental Services Inc.,
925 West Esther Street
Long Beach, CA 90813
 - (b) Address of SUCCESSOR AGENCY is as follows (with a copy to):

Finance Department:	Agency Counsel
Attention: Carlos Marquez	City of Garden Grove
City of Garden Grove	P.O. Box 3070
P.O. Box 3070	Garden Grove, CA 92840
Garden Grove, CA 92840	
13. **Licenses, Permits and Fees.** At its sole expense, CONSULTANT shall obtain a **Garden Grove Business License**, all permits and licenses as may be required by this Agreement.
14. **Familiarity With Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there, if applicable; and (3) it understands the facilities, difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any latent or unknown conditions materially differing from those inherent in the work or as represented by SUCCESSOR AGENCY, it shall immediately inform SUCCESSOR AGENCY of this and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from SUCCESSOR AGENCY.

15. **Time of Essence.** Time is of the essence in the performance of this Agreement.
16. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability and reputation of CONSULTANT, its principals and employees were a substantial inducement for SUCCESSOR AGENCY to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform the services required without written approval of the SUCCESSOR AGENCY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of SUCCESSOR AGENCY. If CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT shall be responsible to SUCCESSOR AGENCY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and SUCCESSOR AGENCY. All persons engaged in the work will be considered employees of CONSULTANT. SUCCESSOR AGENCY will deal directly with and will make all payments to CONSULTANT.
17. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
18. **Indemnification.** To the fullest extent permitted by law, CONTRACTOR shall defend, and hold harmless SUCCESSOR AGENCY, City of Garden Grove, and their elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR in the performance of the Agreement. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless SUCCESSOR AGENCY and City of Garden Grove, is due to the sole negligence, recklessness and/or wrongful conduct of SUCCESSOR AGENCY and City of Garden Grove, or any of its elective or appointive boards, officers, agents, or employees.
19. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by SUCCESSOR AGENCY and CONSULTANT.
20. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the SUCCESSOR AGENCY and CONSULTANT.
21. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.
22. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.
23. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.
24. **Counterparts; Facsimile Signatures.** This Agreement may be executed in counterparts, all of which shall constitute the same Agreement, notwithstanding that all parties to this Agreement are

not signatory to the same counterpart. Signature and acknowledgement pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one (1) original document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, these parties hereto have caused this Agreement to be executed as of the date set forth opposite the respective signatures.

**“SUCCESSOR AGENCY”
SUCCESSOR AGENCY TO THE GARDEN
GROVE AGENCY FOR COMMUNITY
DEVELOPMENT, a public body**

Dated: _____, 2016

By: _____
Director

ATTEST

**"CONSULTANT"
OCEAN BLUE ENVIRONMENTAL
SERVICES, INC.,**

Secretary

By: _____

Title: _____

Dated: _____, 2016

Dated: _____, 2016

APPROVED AS TO FORM:

If CONSULTANT/CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to SUCCESSOR AGENCY

Successor Agency Council

Dated: _____, 2016

Exhibit "A"