

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

MASTER SERVICES CONTRACT

CONTRACT NO. 2017.105

1. **PARTIES** – The parties to this Contract (“Contract”) are the Bay Area Air Quality Management District (“DISTRICT”) whose address is 375 Beale Street, Suite 600, San Francisco, CA 94105, and **Rightpoint Consulting LLC** (“CONTRACTOR”) whose address is 29 North Wacker Drive, Chicago, IL 60606.

2. **RECITALS**

- A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701. DISTRICT desires to contract with CONTRACTOR for Services as defined herein. DISTRICT is entering into this Contract based on CONTRACTOR’s stated qualifications to perform the Services.
- B. All parties to this Contract have had the opportunity to have this contract reviewed by their attorney.

3. **DEFINITIONS**

- A. “Purchase Order” shall mean the written or electronic document used by DISTRICT to track payments to CONTRACTOR under this Contract.
- B. “Services” shall mean the services to be provided by CONTRACTOR hereunder as generally described in the General Description of Services, attached hereto as Attachment A and made a part hereof by this reference, and as specifically described in Task Orders issued pursuant to this Contract.
- C. “Task Order” shall mean a written request by DISTRICT for specific Services to be performed by CONTRACTOR.

4. **PERFORMANCE REQUIREMENTS**

- A. CONTRACTOR is authorized to do business in the State of California. CONTRACTOR attests that it is in good tax standing with federal and state tax authorities.
- B. CONTRACTOR agrees to obtain any and all required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
- C. CONTRACTOR shall comply with all laws and regulations that apply to its performance under this Contract, including any requirements to disclose potential conflicts of interest under DISTRICT’s Conflict of Interest Code.
- D. CONTRACTOR shall not engage in any performance of work during the term of this contract that is in conflict with duties and responsibilities set forth in the Scope of Work.
- E. CONTRACTOR shall exercise the degree of skill and care customarily required by accepted professional practices and procedures.

F. CONTRACTOR shall ensure that any subcontractors, employees and agents performing under this Contract comply with the performance standards set forth in paragraph D above.

5. TERM – The term of this Contract is from July 1, 2017 to June 30, 2018, unless further extended by amendment of this Contract in writing, or terminated earlier. CONTRACTOR shall not submit any invoice for Services performed under this Contract until the Contract is fully executed.

6. TERMINATION

A. The DISTRICT may terminate this Contract at any time, at will, and without specifying any reason, by notifying CONTRACTOR in writing. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of the notice of termination, and shall be delivered in accordance with the provisions of section 143 below. Immediately upon the effective date of termination, CONTRACTOR shall cease all performance of Services under this Contract. CONTRACTOR shall deliver a final invoice for all remaining Services performed but not billed on or before ten (10) business days following the termination date.

B. Either party may terminate this Contract for material breach by the other party according to the following provisions.

- i) In the event of a material breach by either party, the non-breaching party may terminate the Contract by (i) delivering a written notice of breach to the breaching party and (ii) providing the breaching party with an opportunity to cure the breach. The notice of breach shall specify the date of termination, which shall be no earlier than thirty (30) days from delivery of the notice of breach, and shall specify the nature of the breach sufficient to allow the breaching party to cure the breach. The Contract shall terminate upon the date of termination specified in the notice of breach, unless (i) the breaching party has cured the breach and/or (ii) the non-breaching party has rescinded the notice of breach.
- ii) The notice of breach shall be provided in accordance with the notice requirements set forth in section 143.
- iii) The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages, including (without limitation) any costs or other damages that DISTRICT may suffer or incur to perform, or to have performed by a third party, any duty or obligation that CONTRACTOR fails to perform under this Contract.

7. INSURANCE

A. CONTRACTOR shall maintain the following insurance:

- i) Workers' compensation and employers' liability insurance as required by California law or other applicable statutory requirements.
- ii) Occurrence-based commercial general liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each occurrence. Such insurance shall include DISTRICT and its officers, agents, and employees as additional insureds and shall be primary with respect to any insurance maintained by DISTRICT.
- iii) Business automobile liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles. If CONTRACTOR is a sole proprietor, CONTRACTOR may meet this insurance requirement with personal automobile liability insurance carrying

a business use endorsement or by demonstrating to the satisfaction of DISTRICT that business use is covered under the CONTRACTOR's personal automobile liability insurance. A CONTRACTOR using only rental vehicles in performing work under this Contract may meet this insurance requirement by purchasing automobile liability insurance in the required coverage amount from the rental agency.

- B. Prior to commencement of work under this Contract, CONTRACTOR shall furnish properly executed certificates of insurance for all required insurance. Upon request by DISTRICT, CONTRACTOR shall provide a complete copy of any required insurance policy. CONTRACTOR shall notify DISTRICT in writing thirty (30) days prior to cancellation or modification of any required insurance policy. Any such modifications are subject to pre-approval by DISTRICT.
- C. If CONTRACTOR fails to maintain the required insurance coverage set forth above, DISTRICT reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or to terminate this Contract for breach.

8. INDEMNIFICATION

- A. Each party will indemnify, defend and hold harmless the other party, and their respective employees, directors, officers, principals (partners, shareholders or holders of an ownership interest, as the case may be) and agents, from and against any third party claims, demands, loss, damage or expenses (including reasonable attorneys' fees and court costs) relating to bodily injury or death of any person or damage to real and/or tangible personal property directly caused by the gross negligence or willful misconduct of the indemnifying party, its personnel or agents during the performance or receipt of the Services.
- B. If any alleged infringement of a U.S. patent or copyright is asserted by a third party against DISTRICT based upon CONTRACTOR's performance of the Services and DISTRICT's authorized and proper use of the Deliverables (as defined in Section 18) under this Agreement, as delivered by CONTRACTOR to DISTRICT (an "IP Claim"), CONTRACTOR will indemnify DISTRICT against any expenses paid to unaffiliated third parties (including reasonable attorneys' and experts' fees) resulting from such IP Claim and against any amounts finally awarded by a court or in a settlement resulting from such IP Claim, provided that DISTRICT agrees that CONTRACTOR will have sole control of the investigation, defense and settlement of any IP Claim. DISTRICT agrees to provide CONTRACTOR prompt notice of any IP Claim so as to not materially prejudice the defense of the IP Claim. DISTRICT agrees to provide CONTRACTOR with reasonable cooperation and assistance in defense of the claim at CONTRACTOR's expense. CONTRACTOR's obligations under this Section 8 do not apply to Services and Deliverables (or portions of them) that are: (i) modified by anyone other than CONTRACTOR or its agents, if the alleged infringement arises out of that modification; (ii) created according to the specific plans or specific directions developed or provided by or on behalf of DISTRICT, where the alleged infringement arises out of such specific plans or specific directions (for the avoidance of doubt, CONTRACTOR's indemnification obligations apply to Services and Deliverables to the extent CONTRACTOR determines how to create or complete such Services or Deliverables); (iii) combined with other products, processes or materials, where the alleged infringement arises out of that combination; (iv) used by DISTRICT after DISTRICT was notified of the allegedly infringing activity or after being informed of modifications that would have avoided the alleged infringement; (v) not used in accordance with the terms and conditions of this Agreement and the applicable SOW; or (vi) used by any third-party or by DISTRICT other

than for the benefit of the DISTRICT² and its stakeholders (for example commercialization or distribution of the Deliverables).

9. AGREEMENT TO PROVIDE SERVICES

- A. CONTRACTOR hereby agrees to provide to DISTRICT, as DISTRICT may from time to time designate, such Services as DISTRICT may order by Task Order, all in accordance with and subject to the terms, covenants and conditions of this Contract. DISTRICT agrees to pay for these Services ordered by DISTRICT in accordance with and subject to the terms, covenants and conditions of this Contract.
- B. All Task Orders issued by DISTRICT to CONTRACTOR for Services during the term of this Contract are subject to the provisions of this Contract as though fully set forth in such Task Order. In the event that the provisions of this Contract conflict with any Task Order issued by DISTRICT to CONTRACTOR, the provisions of this Contract shall govern. No other terms and conditions, including, but not limited to, those contained in CONTRACTOR's standard printed terms and conditions, on CONTRACTOR's order acknowledgment, invoices or otherwise, shall have any application to or effect upon or be deemed to constitute an amendment to or to be incorporated into this Contract, any Task Order, or any transactions occurring pursuant hereto or thereto, unless this Contract shall be specifically amended to adopt such other terms and conditions in writing by the parties.
- C. Notwithstanding any other provision of this Contract to the contrary, DISTRICT shall have no obligation to order or purchase any services hereunder and the placement of any Task Order shall be in the sole discretion of DISTRICT. Without limiting the generality of the foregoing, the actual quantity of Services to be purchased hereunder shall be determined by DISTRICT in its sole discretion and shall not exceed \$68,868. Contractor shall not be required to continue to perform Services if the \$68,868 cap has been reached unless otherwise agreed upon in writing. This Contract is not exclusive. CONTRACTOR expressly acknowledges and agrees that DISTRICT may purchase at its sole discretion, Services that are identical or similar to the Services described in this Contract from any third party.

10. TASK ORDERS – Each Task Order will specify the following items, as relevant: specific services requested, schedule for Services, location where Services are to be performed (with contact person), and cost or estimated cost of Services. Each Task Order issued under this Contract shall be made part of, and be incorporated into this Contract, and shall reference this Contract on the face of each Task Order. Should any Task Order not conform to or satisfy the terms of this Contract, CONTRACTOR shall have five (5) business days after receipt to reject the Task Order. By not accepting the Task Order within five (5) business days, CONTRACTOR will have rejected the Task Order; CONTRACTOR shall not commence work on any Task Order so rejected. Acceptance by CONTRACTOR is limited to the provisions of this Contract and the Task Order. No additional or different provisions proposed by CONTRACTOR or DISTRICT shall apply. In addition, the parties agree that this Contract and accepted Task Orders constitute a contract for Services and satisfy all statutory and legal formalities of a contract.

11. PRICING, INVOICES, AND PAYMENT

- A. DISTRICT shall pay CONTRACTOR for all Services ordered and provided in compliance with the terms and conditions of this Contract and with Task Orders issued under this Contract.

- B. CONTRACTOR shall submit original invoices to DISTRICT in form and substance and format reasonably acceptable to DISTRICT. Each invoice, including supporting documentation, must be prepared in duplicate on CONTRACTOR's letterhead; must list DISTRICT's contract number, Purchase Order Number, and the CONTRACTOR's Social Security Number or Federal Employer Identification Number; and must be submitted to: Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, CA 94105, Attn: Blair Adams.
 - C. Except as specifically set forth in Attachment A or in Task Orders under this Contract, DISTRICT shall not be responsible for any additional costs or expenses of any nature incurred by CONTRACTOR in connection with the provision of the Services, including without limitation travel expenses, clerical or administrative personnel, long distance telephone charges, etc.
 - D. CONTRACTOR represents, warrants and covenants that the prices, charges and fees for Services set forth in this Contract (on the whole) are at least as favorable as the prices, charges and fees CONTRACTOR charges (on the whole) to other of its customers or clients for the same or substantially similar services provided under the same or substantially similar circumstances, terms, and conditions. If CONTRACTOR agrees or contracts with other clients or customers similarly situated during the Term of this Contract, and offers or agrees to financial terms more favorable than those set forth herein (on the whole), CONTRACTOR hereby agrees that it will reduce the prices, charges and/or fees charged to DISTRICT in respect of the Services hereunder to the most favorable rates received by those other clients or customers.
12. WARRANTY. CONTRACTOR warrants to DISTRICT that the Services and unmodified Deliverables will substantially conform to the specifications set forth in the applicable Task Order and/or task. DISTRICT must provide a written notice to CONTRACTOR within sixty (60) days of delivery of the Services or Deliverables ("Warranty Period") describing any breach of this warranty in sufficient detail to allow CONTRACTOR to correct and redeliver those Services and Deliverables. CONTRACTOR shall, as its sole obligation and DISTRICT's exclusive remedy for any breach of the foregoing warranty in this Section 12, correct any non-compliance with such warranty reported to CONTRACTOR by DISTRICT in writing during the Warranty Period or, if CONTRACTOR determines that it is unable to correct the non-conformity, CONTRACTOR shall refund to DISTRICT the fees actually paid to CONTRACTOR for the Services or Deliverables containing such non-conformity, in which case, DISTRICT's ownership interest in or other right to use such Deliverables shall immediately terminate. CONTRACTOR shall have no warranty obligations to the extent that: (a) any non-conformity is not material; (b) any non-conformity is not reproducible; or (c) any entity other than CONTRACTOR has modified any Services or Deliverables, unless DISTRICT obtains CONTRACTOR's prior written approval of such modification.
13. DISPUTE RESOLUTION – A party that disputes a notice of breach must first seek mediation to resolve the dispute in accordance with the provisions set forth below.
- A. Upon receipt of a notice of breach of contract, the party may submit a demand for mediation to resolve whether or not a breach occurred. The party must state the basis of the dispute and deliver the demand within ten (10) business days of the date of receipt of the notice of breach.
 - B. The mediation shall take place at DISTRICT's office at 375 Beale Street, Suite 600, San Francisco, or at such other place as may be mutually agreed upon by the parties and the mediator.
 - C. The parties shall make good faith efforts to hold the mediation within thirty (30) days after receipt of the demand for mediation.
 - D. Each party shall bear its own mediation costs.

- E. In the event the parties are unable to resolve the dispute, either party may file an action in a court of competent jurisdiction to enforce the Contract.
- F. Maximum recovery under this section shall be limited to the total value of all Task Orders issued under this Contract, and shall not in any event exceed \$68,868. The mediation costs shall not reduce the maximum amount recoverable under this section.

14. NOTICES – All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. Pacific Time. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

DISTRICT: Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Attn: Blair Adams

CONTRACTOR: Rightpoint Consulting LLC
29 North Wacker Drive
Chicago, IL 60606
Attn: Anastasia Severin

15. ADDITIONAL PROVISIONS – All attachment(s) to this Contract are expressly incorporated herein by this reference and made a part hereof as though fully set forth.

16. EMPLOYEES OF CONTRACTOR

- A. CONTRACTOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay, and pay for legal holidays.
- B. CONTRACTOR, its officers, employees, agents, or representatives shall not be considered employees or agents of DISTRICT, nor shall CONTRACTOR, its officers, employees, agents, or representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.

17. CONFIDENTIALITY – In order to carry out the purposes of this Contract, CONTRACTOR may require access to certain of DISTRICT's confidential information (including trade secrets, inventions, confidential know-how, confidential business information, and other information that DISTRICT considers confidential) (collectively, "Confidential Information"). It is expressly understood and

agreed that DISTRICT may designate in a conspicuous manner Confidential Information that CONTRACTOR obtains from DISTRICT, and CONTRACTOR agrees to:

- A. Observe complete confidentiality with respect to such information, including without limitation, agreeing not to disclose or otherwise permit access to such information by any other person or entity in any manner whatsoever, except that such disclosure or access shall be permitted to employees of CONTRACTOR requiring access in fulfillment of the Services provided under this Contract.
 - B. Ensure that CONTRACTOR's officers, employees, agents, representatives, and independent contractors are informed of the confidential nature of such information and to assure by agreement or otherwise that they are prohibited from copying or revealing, for any purpose whatsoever, the contents of such information or any part thereof, or from taking any action otherwise prohibited under this section.
 - C. Not use such information or any part thereof in the performance of Services to others or for the benefit of others in any form whatsoever whether gratuitously or for valuable consideration, except as permitted under this Contract.
 - D. Notify DISTRICT promptly and in writing of the circumstances surrounding any possession, use, or knowledge of such information or any part thereof by any person or entity other than those authorized by this section. Take at CONTRACTOR's expense, but at DISTRICT's option and in any event under DISTRICT's control, any legal action necessary to prevent unauthorized use of such information by any third party or entity which has gained access to such information at least in part due to the fault of CONTRACTOR.
 - E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection of such information during the term of this Contract and following expiration or termination of the Contract.
 - F. Prevent access to such materials by a person or entity not authorized under this Contract.
 - G. Establish specific procedures in order to fulfill the obligations of this section.
18. INTELLECTUAL PROPERTY RIGHTS – Title and full ownership rights to all intellectual property developed by CONTRACTOR for DISTRICT under this Contract (the "Deliverable") shall at all times remain with DISTRICT, upon payment for the Services giving rise to such Deliverable, unless otherwise agreed to in writing. CONTRACTOR will retain all rights in materials existing prior to commencement of CONTRACTOR's performance of the relevant Services, or developed outside the scope of such Services, that are proprietary to CONTRACTOR (hereinafter, "pre-existing materials"). If CONTRACTOR includes any pre-existing materials in or as part of any materials that CONTRACTOR develops for DISTRICT under this Contract, CONTRACTOR will (i) identify such pre-existing materials to DISTRICT at or before delivery to DISTRICT of the materials containing the pre-existing materials; and (ii) grant DISTRICT a non-exclusive, irrevocable, worldwide, royalty-free license to use the pre-existing materials as part of the materials that CONTRACTOR developed for DISTRICT under this Contract. CONTRACTOR shall not retain any rights in pre-existing materials unless it satisfies the requirements of the preceding sentence with respect to the materials. For the avoidance of doubt, unless otherwise agreed upon in writing, no rights in any third party materials are granted to DISTRICT, and the fees for third party materials are not included in the Service Fees. CONTRACTOR is not responsible for the performance of any Third Party Materials.

19. PUBLICATION

- A. DISTRICT shall approve in writing any report or other document prepared by CONTRACTOR in connection with performance under this Contract prior to dissemination or publication of such report or document to a third party. DISTRICT may waive in writing its requirement for prior approval.
- B. Until approved by DISTRICT, any report or other document prepared by CONTRACTOR shall include on each page a conspicuous header, footer, or watermark stating "DRAFT – Not Reviewed or Approved by BAAQMD," unless DISTRICT has waived its requirement for prior approval pursuant to paragraph A of this section.
- C. Information, data, documents, or reports developed by CONTRACTOR for DISTRICT, pursuant to this Contract, shall be part of DISTRICT's public record, unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information, provided DISTRICT approves use of such information in advance. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.

"This report was prepared as a result of work sponsored, paid for, in whole or in part, by the Bay Area Air Quality Management District (District). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of the District. The District, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report."

- D. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and shall require compliance with the above.

20. NON-DISCRIMINATION – In the performance of this Contract, CONTRACTOR shall not discriminate in its recruitment, hiring, promotion, demotion, and termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts. CONTRACTOR shall also require each subcontractor performing Services in connection with this Contract to comply with this section and shall include in each contract with such subcontractor provisions to accomplish the requirements of this section.

21. PROPERTY AND SECURITY – Without limiting CONTRACTOR'S obligations with regard to security, CONTRACTOR shall comply with all the rules and regulations established by DISTRICT for access to and activity in and around DISTRICT's premises.

22. ASSIGNMENT – No party shall assign, sell, license, or otherwise transfer any rights or obligations under this Contract to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.

23. LIMITATION OF LIABILITY – EXCEPT FOR (1) EACH PARTY’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8A, (2) CONTRACTOR’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8B, (3) CLAIMS BY ONE PARTY AGAINST THE OTHER PARTY FOR LOSS, DAMAGE OR EXPENSES (INCLUDING REASONABLE ATTORNEYS’ FEES AND COURT COSTS) RELATING TO DAMAGE TO THE CLAIMING PARTY’S REAL AND/OR TANGIBLE PERSONAL PROPERTY; (4) CLAIMS BY ONE PARTY AGAINST THE OTHER PARTY FOR LOSS, DAMAGE OR EXPENSES (INCLUDING REASONABLE ATTORNEYS’ FEES AND COURT COSTS) DIRECTLY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE OTHER PARTY, ITS PERSONNEL OR AGENTS DURING THE PERFORMANCE OR RECEIPT OF THE SERVICES; OR (5) A BREACH OF A PARTY’S CONFIDENTIALITY OBLIGATIONS, EACH PARTY’S AGGREGATE LIABILITY UNDER (OR FOR BREACH OF) THIS AGREEMENT WILL NOT EXCEED THE SERVICE FEES PAID OR PAYABLE TO RIGHTPOINT UNDER THIS AGREEMENT. NEITHER PARTY WILL BE LIABLE OR OBLIGATED IN ANY MANNER TO THE OTHER PARTY FOR ANY EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS AND LOST DATA) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF THE PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES BY THE OTHER PARTY.

24. WAIVER – No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this Contract, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.

25. ATTORNEYS’ FEES – In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys’ fees and costs.

26. FORCE MAJEURE – Neither DISTRICT nor CONTRACTOR shall be liable for or deemed to be in default for any delay or failure in performance under this Contract or interruption of Services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the Services, or other causes, except financial, that are beyond the reasonable control of DISTRICT or CONTRACTOR, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party’s own action or inaction, then such cause shall not excuse that party from performance under this Contract.

27. SEVERABILITY – If a court of competent jurisdiction holds any provision of this Contract to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.

28. HEADINGS – Headings on the sections and paragraphs of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.

29. COUNTERPARTS/FACSIMILES/SCANS – This Contract may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same contract. The parties may rely upon a facsimile copy or scanned copy of any party's signature as an original for all purposes.

30. GOVERNING LAW – Any dispute that arises under or relates to this Contract shall be governed by California law, excluding any laws that direct the application of another jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this Contract, including mediation, shall be San Francisco, California.


31. ENTIRE CONTRACT AND MODIFICATION – This Contract represents the final, complete, and exclusive statement of the agreement between the parties related to CONTRACTOR providing Services to DISTRICT and supersedes all prior and contemporaneous understandings and agreements of the parties. No party has been induced to enter into this Contract by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein. This Contract may only be amended by mutual agreement of the parties in writing and signed by both parties.

32. SURVIVAL OF TERMS – The provisions of sections 8 (Indemnification), 17 (Confidentiality), 18 (Intellectual Property Rights), and 19 (Publication) shall survive the expiration or termination of this Contract.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

RIGHTPOINT CONSULTING LLC

By: 

Jack P. Broadbent
Executive Officer/APCO


By: 

5B38FEC5886041A
Brad Schneider
Chief Executive Officer

Date: 8/17/17

Date: 8/11/2017

Approved as to form:
District Counsel

By: 

Brian C. Bunger
District Counsel

Attachment A

General Description of Services

Project Summary:

CONTRACTOR shall provide the following software development and implementation resources for DISTRICT web software projects, as ordered by DISTRICT through Task Orders issued pursuant to Sections 9 and 10 of this Contract:

- Web architecture and design
- User experience design
- Development services in HTML, CSS, JavaScript, C# and TSQL
- Defect tracking and resolution
- Quality assurance, including unit testing
- Build and release code management

The maximum amount of Services authorized under this Contract is **\$68,868**.

Task Orders, Billing, and Related Procedures:

- All work will be requested through Task Orders issued by DISTRICT pursuant to Sections 9 and 10 of this Contract. DISTRICT will transmit each Task Order to CONTRACTOR by email, and each task included in the Task Order will be added to JIRA.
- CONTRACTOR will use TFS4JIRA from Atlassian Marketplace to connect to the DISTRICT's Visual Studio Team Services. CONTRACTOR will review and confirm field mapping with DISTRICT prior to implementation.
- All JIRA tickets will be evaluated and given a timeframe for completion, which will be dependent on resource availability.
- Each task included in a Task Order will be estimated by CONTRACTOR and approved by DISTRICT before the start of work on the task. CONTRACTOR Producer will gain approval from BAAQMD through Basecamp or email before starting any work on the task.
- Any hours used to produce the estimate for a task will be included in the estimate.
- CONTRACTOR Producer will gain written approval from DISTRICT before CONTRACTOR exceeds the number of hours or total cost for a task specified in the estimate for that task.
- CONTRACTOR will submit monthly invoices for payment as provided for in Section 11 of this Contract. Invoices will be delivered to DISTRICT monthly and will include amount of hours spent on the work covered by the invoice.
- DISTRICT will resolve any blocking issues within no more than three (3) days.
- DISTRICT will be responsible for all CONTRACTOR travel costs associated with work performed under this Agreement. CONTRACTOR will submit travel expenses to DISTRICT in advance for approval prior to booking any travel. CONTRACTOR travel must follow the DISTRICT travel policy.