

RESOLUTION NO. OB-21-14

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY, AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF EL CAJON AS SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY AND MARK A. SMITH DBA ANDREW A. SMITH COMPANY, FOR APPRAISAL SERVICES.

WHEREAS, the City of El Cajon, as Successor Agency to the El Cajon Redevelopment Agency, is charged with the winding down of the affairs of the former El Cajon Redevelopment Agency (the "Agency"); and

WHEREAS, Health and Safety Code Section 34177.3(b) provides that successor agencies may create enforceable obligations to conduct the work of the winding down of the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance; and

WHEREAS, Health and Safety Code Section 34177(e) requires that the Successor Agency is to dispose of assets and properties of the Agency in a manner aimed at maximizing value; and

WHEREAS, in order to maximize the value of real property being disposed by the Successor Agency the fair market value of the property should be determined by an independent appraiser approved by the Oversight Board; and

WHEREAS, Mark A. Smith dba Andrew A. Smith Company (the "Smith Company") has provided appraisal services to the former Agency since 2008, has a current as-needed Agreement for Professional Services dated August 8, 2013 with the Successor Agency, and has extensive experience appraising Agency properties; and for these reasons, staff is recommending approval of the Smith Company to perform appraisal services on behalf of the Successor Agency; and

WHEREAS, all work requested by the Smith Company will be estimated and included in the next and each successive Recognized Obligation Payment Schedule, and allocated to applicable Successor Agency projects/activities.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY, AS FOLLOWS:

- A. The Oversight Board finds that:
 - 1. The recitals above are true and correct and have been incorporated herein by reference.

2. Authorization to execute an Agreement is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) (General Rule) of the CEQA Guidelines because the proposed agreements will not cause a significant adverse physical change to the environment either directly or indirectly.
 3. The proposed Agreement would be in the best interest of the affected taxing entities and the public by the establishment of fair market values of Successor Agency properties included in the LRPMP, which may retained for redevelopment purposes.
- B. The Oversight Board hereby APPROVES execution by the City Manager of the City of El Cajon, or such person designated by the City Manager, acting in the capacity of the chief executive officer for the Successor Agency, of an Agreement between the City of El Cajon, in its capacity as successor agency to the El Cajon Redevelopment Agency, and Mark A. Smith dba Andrew A. Smith Company, substantially in the form as presented with such changes as may be approved by the City Manager, for the appraisal of select Successor Agency properties identified in the LRPMP.

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PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly-scheduled meeting held this 17th day of September 2014, by the following vote to wit:

AYES: ABUSHABAN, BUXBAUM, CHADWICK, DAVIES, GRIFFIN,
TURNER-EMERSON

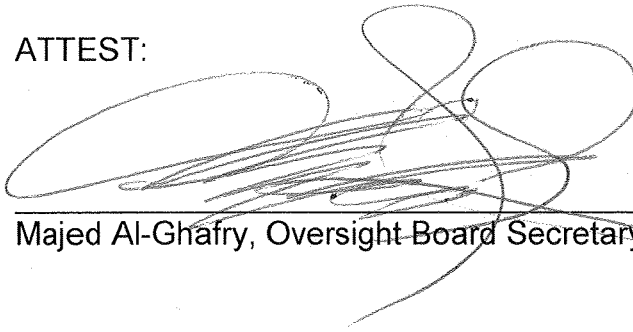
NOES: NONE

ABSENT: SHUTE



Debra Turner-Emerson, Chairperson

ATTEST:



Majed Al-Ghafry, Oversight Board Secretary

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**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
THE CITY OF EL CAJON AS SUCCESSOR AGENCY
TO THE EL CAJON REDEVELOPMENT AGENCY
AND
MARK A. SMITH dba
ANDREW A. SMITH COMPANY**

This Agreement for Professional Services ("AGREEMENT") is made and entered into this 2nd day of July, 2014, by and between the CITY OF EL CAJON, a California charter city and municipal corporation, solely in its capacity as SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY ("SUCCESSOR AGENCY") and MARK A. SMITH dba ANDREW A. SMITH COMPANY, a sole proprietorship, ("CONSULTANT").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

Section 1. Term of Agreement.

Subject to the provisions of Section 19 "Termination of Agreement" of this AGREEMENT, the term of this AGREEMENT shall be for a period of one (1) year from the date of execution of this AGREEMENT, as first shown above. Such term may be extended for one (1) additional one-year period upon written agreement of both parties to this AGREEMENT, and the approval of the oversight board to the SUCCESSOR AGENCY ("OVERSIGHT BOARD").

Section 2. Scope of Services.

CONSULTANT agrees to perform the services set forth in that certain proposal entitled "APPRAISAL SERVICES Professional Service Agreement," dated April 30, 2014, ("Scope of Services") attached hereto as Exhibit "A" and incorporated herein as if fully set forth; provided, however, that should any covenant, requirement, provision or condition of the Scope of Services be in conflict with any covenant, requirement, provision or condition of this AGREEMENT, the terms of this AGREEMENT shall prevail.

Section 3. Additional Services.

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to or outside of those set forth in this AGREEMENT or listed in Exhibit "A" (Scope of Services), unless such additional services are authorized in advance and in writing by the legislative body or City Manager of SUCCESSOR AGENCY, with the approval of the OVERSIGHT BOARD. CONSULTANT shall be compensated for any such additional services in the amounts and in the manner agreed to by the legislative body or City Manager, with the approval of the OVERSIGHT BOARD.

Section 4. Compensation and Method of Payment.

(a) Subject to any limitations set forth in this AGREEMENT, SUCCESSOR AGENCY agrees to pay, and CONSULTANT agrees to accept for said services the total compensation (including reimbursement for actual expenses) in an amount not to exceed FORTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$45,000.00), unless additional compensation is approved in writing by the legislative body or City Manager of SUCCESSOR AGENCY, which is subject to the approval of the OVERSIGHT BOARD.

(b) Each month CONSULTANT shall furnish to SUCCESSOR AGENCY an **original** invoice for all services performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, subcontractor contracts and miscellaneous expenses. SUCCESSOR AGENCY shall independently review each invoice submitted by CONSULTANT to determine whether the services performed and expenses incurred are in compliance with the provisions of this AGREEMENT. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event SUCCESSOR AGENCY disputes any charges or expenses, SUCCESSOR AGENCY shall return the original invoice to CONSULTANT for correction and resubmission.

(c) Except as to any charges for services performed or expenses incurred by CONSULTANT, which are disputed by SUCCESSOR AGENCY, SUCCESSOR AGENCY will use its best efforts to cause CONSULTANT to be paid within thirty (30) days of receipt of CONSULTANT's invoice.

(d) Payment to CONSULTANT for services performed pursuant to this AGREEMENT shall not be deemed to waive any defects in services performed by CONSULTANT.

Section 5. Inspection and Final Acceptance.

SUCCESSOR AGENCY may inspect and accept or reject any of CONSULTANT's services under this AGREEMENT, either during performance or when completed. SUCCESSOR AGENCY shall reject or finally accept CONSULTANT's services within sixty (60) days after submitted to SUCCESSOR AGENCY. SUCCESSOR AGENCY shall reject services by a timely written explanation, otherwise CONSULTANT's services shall be deemed to have been accepted. SUCCESSOR AGENCY's acceptance shall be conclusive as to such services except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of CONSULTANT's services by SUCCESSOR AGENCY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, sections 15 and 16, pertaining to indemnification and insurance, respectively.

Section 6. Ownership of Documents.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONSULTANT in the course of providing any services pursuant to this AGREEMENT shall become the sole property of SUCCESSOR AGENCY and may be used, reused or otherwise

disposed of by SUCCESSOR AGENCY without the permission of CONSULTANT. Upon completion, expiration or termination of this AGREEMENT, CONSULTANT shall turn over to SUCCESSOR AGENCY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

Section 7. Consultant's Books and Records.

(a) CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks or other documents or records evidencing or relating to services, expenditures and disbursements charged to SUCCESSOR AGENCY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for three years from the date of execution of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by SUCCESSOR AGENCY or its designated representative. Copies of such documents or records shall be provided directly to SUCCESSOR AGENCY for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

(c) Where SUCCESSOR AGENCY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONSULTANT's business, SUCCESSOR AGENCY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to SUCCESSOR AGENCY, as well as to its successors-in-interest and authorized representatives.

Section 8. Status of Consultant.

(a) CONSULTANT is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of SUCCESSOR AGENCY. CONSULTANT shall have no authority to bind SUCCESSOR AGENCY in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against SUCCESSOR AGENCY, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by SUCCESSOR AGENCY.

(b) The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither SUCCESSOR AGENCY, nor any elected or appointed boards, officers, officials, employees or agents of SUCCESSOR AGENCY, shall have control over the conduct of

CONSULTANT or any of CONSULTANT's officers, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, employees or agents are in any manner officials, officers, employees or agents of SUCCESSOR AGENCY.

(c) Neither CONSULTANT, nor any of CONSULTANT's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits, which may otherwise accrue, to SUCCESSOR AGENCY's employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights, and shall indemnify and protect SUCCESSOR AGENCY from and against any claims to such rights made by CONSULTANT's officers, employees or agents.

Section 9. Standard of Performance.

CONSULTANT represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONSULTANT shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONSULTANT under this AGREEMENT.

Section 10. Compliance with Applicable Laws; Permits and Licenses.

CONSULTANT shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONSULTANT shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither SUCCESSOR AGENCY, nor any elected or appointed boards, officers, officials, employees or agents of SUCCESSOR AGENCY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

Section 11. Nondiscrimination.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, sexual orientation, age, physical handicap, medical condition or marital status in connection with or related to the performance of this AGREEMENT.

Section 12. Unauthorized Aliens.

[Intentionally omitted.]

Section 13. Conflicts of Interest.

(a) CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of SUCCESSOR AGENCY or which would in any way hinder CONSULTANT's performance of services under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it

as an officer, employee, agent or subcontractor without the express written consent of the City Manager. CONSULTANT agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of SUCCESSOR AGENCY in the performance of this AGREEMENT.

(b) If applicable, CONSULTANT shall at all times comply with the terms of the Political Reform Act and SUCCESSOR AGENCY's Conflict of Interest Code (Chapter 2.75 of the El Cajon Municipal Code). Application of this subdivision (b) shall be determined by SUCCESSOR AGENCY and shall be set forth in Exhibit "B" (Conflict of Interest Determination). The level of disclosure categories shall be set by SUCCESSOR AGENCY and shall reasonably relate to the Scope of Services provided by CONSULTANT under this AGREEMENT.

(c) SUCCESSOR AGENCY understands and acknowledges that CONSULTANT is, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONSULTANT is unaware of any stated position of SUCCESSOR AGENCY relative to such projects. Any future position of SUCCESSOR AGENCY on such projects shall not be considered a conflict of interest for purposes of this section.

Section 14. Confidential Information; Release of Information.

(a) All information gained by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain. All instruments of service provided by CONSULTANT in performance of this AGREEMENT shall be considered a public record under California law. CONSULTANT shall not release or disclose any such information or instruments of service to persons or entities other than SUCCESSOR AGENCY without prior written authorization from the City Manager, except as may be required by law.

(b) CONSULTANT, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of SUCCESSOR AGENCY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the services performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives SUCCESSOR AGENCY notice of such court order or subpoena.

(c) If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or instruments of service in violation of this AGREEMENT, then SUCCESSOR AGENCY shall have the right to reimbursement and indemnity from CONSULTANT for any damages, costs and fees, including attorneys' fees, caused by or incurred as a result of CONSULTANT's conduct.

(d) CONSULTANT shall promptly notify SUCCESSOR AGENCY should CONSULTANT, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this

AGREEMENT and the work performed thereunder. SUCCESSOR AGENCY retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with SUCCESSOR AGENCY and to provide SUCCESSOR AGENCY with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean the right by SUCCESSOR AGENCY to control, direct, or rewrite said response.

Section 15. Indemnification.

(a) SUCCESSOR AGENCY and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall indemnify, protect and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of CONSULTANT's negligent performance of any services under this AGREEMENT, or by the negligent or willful acts or omissions of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT.

(b) The foregoing obligations of CONSULTANT shall not apply to the extent that the CLAIMS arise from the sole negligence or willful misconduct of SUCCESSOR AGENCY or its elected and appointed boards, officials, officers, agents, employees and volunteers.

Section 16. Insurance.

(a) CONSULTANT agrees to obtain and maintain in full force and effect, during the term of this AGREEMENT, commercial general liability insurance of not less than \$2,000,000. Such insurance policy shall comply with El Cajon City Council Policy D-3, which is attached hereto as Exhibit "C" and made a part of this AGREEMENT. If there is any conflict between Exhibit "C" and this section 16, the terms of Exhibit "C" shall apply. All insurance policies shall be subject to approval by SUCCESSOR AGENCY as to form and content.

(b) CONSULTANT shall furnish properly executed endorsements and certificates of insurance to SUCCESSOR AGENCY prior to commencement of services under this AGREEMENT. Such endorsements and certificates shall:

1. Clearly evidence all coverages required above, including specific evidence of a separate endorsement naming SUCCESSOR AGENCY as an additional named insured;
2. Indicate whether coverage provided is on claims-made or occurrence basis; and

3. Provide that such insurance shall not be materially changed, terminated, or allowed to expire except on thirty (30) days prior written notice, via first class mail to SUCCESSOR AGENCY.
4. CONSULTANT agrees to provide SUCCESSOR AGENCY with copies of all required policies upon request.

(c) CONSULTANT shall also obtain and maintain professional liability insurance coverage in an amount not less than \$1,000,000.

(d) CONSULTANT shall maintain Workers' Compensation insurance with statutory limits, and employer's liability insurance with limits of not less than \$1,000,000 per accident.

Section 17. Assignment.

The expertise and experience of CONSULTANT are material considerations for this AGREEMENT. SUCCESSOR AGENCY has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer this AGREEMENT or any portion of this AGREEMENT or the performance of any of CONSULTANT's duties or obligations under this AGREEMENT without the prior written consent of the legislative body of SUCCESSOR AGENCY, with the approval of the OVERSIGHT BOARD. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling SUCCESSOR AGENCY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. SUCCESSOR AGENCY acknowledges, however, that CONSULTANT, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors.

Section 18. Continuity of Personnel.

CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT's staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall notify SUCCESSOR AGENCY of any changes in CONSULTANT's staff assigned to perform the services required under this AGREEMENT, prior to any such performance.

Section 19. Termination of Agreement.

(a) SUCCESSOR AGENCY may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONSULTANT. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(b) SUCCESSOR AGENCY may terminate this AGREEMENT at any time if funds are no longer appropriated for the work to be performed by CONSULTANT.

(c) CONSULTANT may terminate this AGREEMENT at any time upon thirty (30) days written notice of termination to SUCCESSOR AGENCY.

(d) If either CONSULTANT or SUCCESSOR AGENCY fails to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, either CONSULTANT or SUCCESSOR AGENCY may terminate this AGREEMENT immediately upon written notice.

(e) Upon termination of this AGREEMENT by either CONSULTANT or SUCCESSOR AGENCY, all property belonging exclusively to SUCCESSOR AGENCY, which is in CONSULTANT's possession, shall be returned to SUCCESSOR AGENCY. CONSULTANT shall furnish to SUCCESSOR AGENCY a final invoice for services performed and expenses incurred by CONSULTANT, prepared as set forth in Section 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in Section 4 of this AGREEMENT.

Section 20. Default.

In the event that CONSULTANT is in default under the terms of this AGREEMENT, SUCCESSOR AGENCY shall not have any obligation or duty to continue compensating CONSULTANT for any services performed after the date of default and may terminate this AGREEMENT immediately by written notice to CONSULTANT.

Section 21. Excusable Delays.

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of SUCCESSOR AGENCY, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

Section 22. Cooperation by Successor Agency.

All public information, data, reports, records, and maps as are existing and available to SUCCESSOR AGENCY as public records, and which are necessary for carrying out the services as outlined in the Scope of Services, shall be furnished to CONSULTANT in every reasonable way to facilitate, without undue delay, the services to be performed under this AGREEMENT.

Section 23. Notices.

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To SUCCESSOR AGENCY: Adriana Castaneda, Management Analyst
 City of El Cajon Community Development Dept.
 200 Civic Center Way
 El Cajon, CA 92020

To CONSULTANT:

Mark A. Smith
Andrew A. Smith Company
4215 Spring Street, Suite 225
La Mesa, CA 91941-7983

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, five (5) days after deposit of the same in the custody of the United States Postal Service.

Section 24. Authority to Execute.

The person or persons executing this AGREEMENT on behalf of CONSULTANT represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind CONSULTANT to the performance of its obligations hereunder.

Section 25. Binding Effect.

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

Section 26. Modification of Agreement.

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by CONSULTANT and by the legislative body or City Manager of SUCCESSOR AGENCY, and the OVERSIGHT BOARD. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

Section 27. Waiver.

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by SUCCESSOR AGENCY of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

Section 28. Law to Govern; Venue.

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Diego, East County Division. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Southern District of California, in San Diego. CONSULTANT hereby expressly waives any right to remove any action from San Diego County as is otherwise permitted by Code of Civil Procedure section 394.

Section 29. Dispute Resolution.

The parties hereby mutually agree that should any dispute arise out of or relate to this AGREEMENT, or its alleged breach thereof, said parties shall first attempt to settle such dispute or alleged breach by good faith negotiation. If, after good faith negotiation the parties are unable to resolve the dispute, the parties may, but are not obligated to submit the dispute to mediation under the Commercial Mediation Rules of the American Arbitration Association before resorting to arbitration, litigation, or other action.

Section 30. Attorneys' Fees, Costs and Expenses.

In the event litigation or other proceeding is required to enforce or interpret any provision of this AGREEMENT, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled.

Section 31. Entire Agreement.

This AGREEMENT, including the attached Exhibits "A," "B" and "C," is the entire, complete, final, and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONSULTANT and SUCCESSOR AGENCY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party, which are not embodied herein shall be valid and binding. To the extent that the terms and conditions of this AGREEMENT conflict with, or are in any way inconsistent with, the terms and conditions of Exhibits "A," "B" and "C," the terms and conditions of this AGREEMENT will prevail. No amendment to this AGREEMENT shall be valid and binding unless in writing, duly executed by the parties or their authorized representatives, and approved by the OVERSIGHT BOARD.

Section 32. Severability.

If a term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.


**CITY OF EL CAJON,
a California charter city
and municipal corporation,
AS SUCCESSOR AGENCY TO THE
EL CAJON REDEVELOPMENT AGENCY**

**MARK A. SMITH dba
ANDREW A. SMITH COMPANY,
a sole proprietorship.**


By 
Douglas Williford, City Manager

By 
Mark A. Smith, Owner

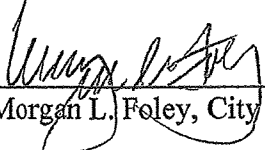
ATTEST:


Belinda A. Hawley, CMC, City Clerk

APPROVED AS TO CONTENT:


Majed Al-Ghafry, Assistant City Manager

APPROVED AS TO FORM:


Morgan L. Foley, City Attorney