

**CONSULTANT AGREEMENT
BETWEEN THE HOUSING AUTHORITY
OF THE CITY OF SANTA ANA AND
NAN MCKAY AND ASSOCIATES, INC.**

THIS AGREEMENT, made and entered into this 4th day of May, 2021, by and between Nan McKay and Associates, Inc. (NMA), a California corporation (“Consultant”), and the Housing Authority of the City of Santa Ana, a public body, corporate and politic (hereinafter “Authority” or “City”).

RECITALS

- A. On February 22, 2021, the Authority issued a Request for Proposals (RFP #21-026) for annual reexamination with call center services for the Housing Choice Voucher Program from qualified, licensed, and insured entities to provide remote annual reexamination with call center services to a portion of the agency’s Housing Choice Voucher, Mainstream Voucher, VASH, and/or Foster Youth to Independence households. The terms and requirements of RFP #21-026 shall be incorporated herein by reference.
- B. Consultant represents that Consultant is able and willing to provide such annual reexamination with call center services to the Authority subject to the terms of this Agreement.
- C. Consultant represents that Consultant is not listed as debarred, is able and willing to provide such services to the Authority, and will comply with the Housing Choice Voucher Program Regulations.
- D. In undertaking the performance of this Agreement, Consultant represents that it is knowledgeable in its field and that any services performed by Consultant under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. SCOPE OF SERVICES

Pursuant to this Agreement, Consultant will provide annual reexamination with call center services for the Authority’s Housing Choice Voucher Program, as set forth in **Exhibit A** attached hereto and incorporated herein.

2. COMPENSATION

- a. City agrees to pay, and Consultant agrees to accept as total payment for its services, the rates and charges identified in **Exhibit A**. The total sum to be expended under this Agreement shall not exceed Three Hundred Thousand Dollars (\$300,000) during the term of this Agreement.
- b. Payment by City shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals and Scope of Work, which may reasonably be expected by City.

3. TERM

This Agreement shall commence on the date first written above and continue for a three (3) year term, through April 30, 2024, unless terminated earlier in accordance with Section 11, below. The Term of this Agreement may be extended by a writing executed by the City Manager and the City Attorney.

4. INDEPENDENT CONTRACTOR

Consultant shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the Authority to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; however, the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services. Consultant shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

5. OWNERSHIP OF MATERIALS

This Agreement creates a non-exclusive and perpetual license for City 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 Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were provided to Consultant by the City. City shall not be limited in

any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

6. INSURANCE

Prior to undertaking performance of work under this Agreement, Consultant shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

a. **Commercial General Liability Insurance.** Consultant shall maintain commercial general liability insurance naming the City, its officers, agents, volunteers, and employees as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of Consultant's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$1,000,000 per occurrence. Consultant shall supply City with a fully executed additional insured endorsement upon execution of this Agreement and shall be approved in form by the City Attorney.

b. **Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence.** Such insurance shall include coverage for owned, hired and non-owned automobiles.

c. **Worker's Compensation Insurance.** In accordance with the provisions of Section 3300 of the Labor Code, Consultant, if Consultant has any employees, is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, Consultant agrees to obtain and maintain any employer's liability insurance with limits not less than \$1,000,000 per accident.

d. **If Consultant is or employs a licensed professional such as an architect or engineer: Professional liability (errors and omissions) insurance, with a combined single limit of not less than \$1,000,000 per claim.**

e. **The following requirements apply to the insurance to be provided by Consultant pursuant to this section:**

- (i) Consultant shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
- (ii) Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved in form by the City Attorney.
- (iii) Certificates and policies shall state that the policies shall not be cancelled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

f. If Consultant fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Agreement. Such termination shall not affect Consultant's right to be paid for its time and materials expended prior to notification of termination. Consultant waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

7. INDEMNIFICATION

Consultant agrees to and shall indemnify and hold harmless the City, its officers, agents, employees, consultants, counsel, and representatives from liability: (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the direct or indirect operations of the Consultant or its contractors, subcontractors, agents, employees, or other persons acting on their behalf which relates to the services described in section 1 of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. The Consultant further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding.

8. CONSULTANT'S OBLIGATIONS

A. No Conflict. To the best of Consultant's knowledge, Consultant's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Consultant is a party or by which it is bound.

B. No Bankruptcy. Consultant is not the subject of any current or threatened bankruptcy proceeding.

C. No Pending Legal Proceedings/Debarment. Consultant is not the subject of a current or threatened litigation that would or may materially affect Consultant's performance under this Agreement. Consultant further acknowledges that it is not on the list of debarred contractors.

D. No Pending Investigation. Consultant is not aware that it is the subject of any current or threatened criminal or civil action investigation by any public agency, including without limitation a police agency or prosecuting authority, which would relate to affect performance of the Agreement or provision of services hereunder.

E. Licensing. Consultant agrees to obtain and maintain all required licenses, registrations, accreditation and inspections from all agencies governing its operations. Consultant shall ensure that its staff shall also obtain and maintain all required licenses, registrations, accreditation and inspections from all agencies governing Consultant's operations hereunder.

F. Audit Report Requirements. Consultant agrees that if Consultant expends Seven Hundred and Fifty Thousand Dollars (\$750,000.00) or more in federal funds, Consultant shall have a single audit or program specific audit conducted by a certified public accountant in accordance with the standards as set forth and published by the United States Office of Management and Budget. Consultant shall provide City with a copy of said audit by October 1 of the year following the program year in which this Agreement is executed, if applicable.

G. Record Keeping/Reporting. Consultant shall keep and maintain complete and adequate records and reports to assist City in meeting and maintaining its record keeping responsibilities under Title 24, Part 570 of Code of Federal Regulations 24 CFR 570.000, *et seq.*

H. Access to Records. City and the United State Government and/or their representatives shall have access for purposes of monitoring, auditing, and examining Consultant's activities and performance, to books, documents and papers, and the right to examine records of Consultant's subcontractors, bookkeepers and accountants, employees and participants in regard to said program. City and the United States Government and/or their representatives shall also schedule on-site monitoring at their discretion. Monitoring activities may also include, but are not limited to, questioning employees and participants in said program and entering any premises or any site in which any of the services or activities funded hereunder are conducted or in which any of the records of Consultant are kept. Nothing herein shall be construed to require access to any privileged or confidential information as set forth in federal or state law.

I. Location of Records/Required Length of Record Keeping. All accounting records, reports, and evidence pertaining to all costs, expenses and the funds received by Consultant and all documents related to this Agreement shall be maintained and kept available at Consultant's office or place of business for the duration of the Agreement and thereafter for five (5) years after completion of an audit in conformity with the Housing Choice Voucher Program

regulations. Records which relate to (a) complaints, claims, administrative proceedings or litigation arising out of the performance of this Agreement, or (b) costs and expenses of this Agreement to which City or any other governmental agency takes exception, shall be retained beyond the four (4) years until complete resolution or disposition of such appeals, litigation claims, or exceptions. In the event Consultant does not make the above-referenced documents available within the City of Santa Ana, California, Consultant agrees to pay all necessary and reasonable expenses incurred by City in conducting any audit at the location where said records and books of account are maintained.

J. Confidentiality. Without prejudice to any other provisions of this Agreement, Consultant shall, where applicable, maintain the confidential nature of information provided to it concerning participants in accordance with the requirements of federal and state law. However, Consultant shall submit to City and/or HUD or its representatives, all records requested, including audit, examinations, monitoring and verifications of reports submitted by Consultant, costs incurred and services rendered hereunder.

K. Lobbying. Consultant certifies that it will comply with federal law (31 U.S.C. 1352) and regulations found at 24 CFR Part 87, which provide that no appropriated funds may be expended by the recipient of a federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, or an officer or employee of a Member of Congress in connection with awarding of any federal contract, the making of any federal grant or loan, entering into any cooperative agreement and the extension, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit a "Disclosure Form to Report Lobbying," in accordance with its instructions.

L. Financial Interest. Consultant agrees that except for the use of funds to pay salaries and other related administrative or personnel costs, no persons who exercise or have exercised any function with respect to activities assisted under the terms of this Agreement, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a City-assisted activity of Consultant, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. This prohibition applies to any person who is an agent, employee, consultant, officer, or elected or appointed official of City, or of any designated public agency, or the Consultant.

M. Drug Free Workplace. Consultant certifies that it has established the following drug-free workplace policy:

1. The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace for any employee involved in a federally funded program.

2. As an employee working in conjunction with a federally funded program, the employees of Consultant will be required to:

- a) Abide by the terms above in statement 1.
- b) Notify appropriate officials of Consultant and City officials of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction.

3. The City and the United State Department of Housing and Urban Development will be notified within ten days after receiving notice of any such violation.

4. Within 30 days of receiving such notice, appropriate personnel action will be taken against such employee, up to and including termination.

Each such employee shall be required to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency.

N. Nondiscrimination. Consultant agrees that no person on the ground of race, age, color, national origin, disability, religion, sex or other protected class will be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds received pursuant to this Agreement. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

O. Conflict of Interest. Consultant covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement. Further, any conflict or potential conflict of interest of any employee/officer of Consultant shall be fully disclosed in writing prior to the execution of this Agreement and said writing shall be attached and deemed fully incorporated as a part hereof. Notice shall be sent by Consultant to City regarding any changes or modifications to its board of directors and list of officers.

P. Prohibition of Nepotism. Consultant agrees not to hire or permit the hiring of any person to fill a position funded through this Agreement if a member of that person's immediate family is employed in an administrative capacity by Consultant. For the purposes of this section, the term "immediate family" means spouse, child, mother, father, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, stepparent and stepchild. The term "administrative capacity" means having selection, hiring, supervisor or management responsibilities.

9. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Consultant, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Consultant. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Consultant or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein.

10. ASSIGNABILITY

None of the duties of, or work to be performed by, Consultant under this Agreement shall be subcontracted or assigned to any agency, consultant, or person without the prior written consent of City. Consultant must submit all subcontracts and other agreements that relate to this Agreement to City. No subcontract or assignment shall terminate or alter the legal obligations of Consultant pursuant to this Agreement.

11. TERMINATION

A. This Agreement may be terminated on thirty (30) days' written notice by either party. In the event of such termination, Consultant shall only be entitled to reimbursement for approved expenses incurred to the effective date of termination.

B. This Agreement may be suspended or terminated by City upon five (5) days' written notice for violation by Consultant of Federal Laws governing the use of Housing Choice Voucher Program funds. In the event of such suspension or termination, Consultant shall only be entitled to reimbursement for approved expenses incurred up to the effective date of suspension or termination.

C. Pursuant to 24 CFR 85.43, in the event Consultant defaults by failing to fulfill all or any of its obligations hereunder, City may declare a default and termination of this Agreement by written notice to Consultant, which default and termination shall be effective on a date stated in the notice which is to be not less than ten (10) days after certified mailing or personal service of such notice, unless such default is cured before the effective date of termination stated in such notice. If terminated for cause, City shall be relieved of further liability or responsibility under this Agreement, or as a result of the termination thereof, including the payment of money, except for payment for approved expenses incurred for services satisfactorily and timely performed prior to the mailing or service of the notice of termination, and except for reimbursement of (1) any payments made for services not subsequently performed in a timely and satisfactory manner, and (2) costs incurred by City in obtaining substitute performance.

D. The grant of funds under this Agreement may be terminated for convenience in accordance with 24 CFR 85.44.

12. VENUE/JURISDICTION

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

13. VALIDITY

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

14. NOTICE

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by facsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:

Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, California 92702-1988
Facsimile (714) 647-6956

With courtesy copies to:

Community Development Agency
City of Santa Ana
20 Civic Center Plaza (M-25)
P.O. Box 1988
Santa Ana, California 92702-1988
Facsimile (714) 647-6549

City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988

Santa Ana, California 92702
Facsimile (714) 647-6515

To Consultant:

Emily Frampton, Project Manager
Nan McKay and Associates, Inc.
1810 Gillespie Way, Suite 202
El Cajon, California 92020
Phone: (800) 783-3100

15. MISCELLANEOUS PROVISIONS

a. Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

c. No delay or omission by either party hereto to exercise any right or power accruing upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

HOUSING AUTHORITY OF THE CITY OF SANTA ANA

DAISY GOMEZ
Housing Authority Recording Secretary

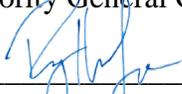
STEVEN A. MENDOZA
Executive Director

APPROVED AS TO FORM:

CONSULTANT

SONIA R. CARVALHO
Authority General Counsel

Nan McKay and Associates, Inc. (NMA)

By: 

Ryan O. Hodge
Assistant Counsel

By: 

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Dorian Jenkins
Vice President, Program Management
Tax ID #41-1381008

EXHIBIT A
SCOPE OF SERVICES

1. SCOPE OF SERVICES

Annual Reexaminations

- Initiate annual reexamination process 95–120 days before effective date;
- Complete transactions via mail, email, or fax;
- Contact clients regarding missing documents (e.g., follow-up calls, emails, and letters/notifications);
- Transfer completed documents to the Housing Authority of the City of Santa Ana (SAHA) in digital format;
- Conduct thorough review of Application for Continued Eligibility (ACE);
- Follow HUD’s verification hierarchy to verify income and assets;
- Complete calculations;
- Determine if repayment agreement (RPA) is needed, and if so, refer to SAHA;
- As applicable, communicate outcomes via NMA’s portal, email, and mail at least thirty (30) days before the transaction effective date; and
- Document all transactions in NMA’s tracking tool and SAHA’s software system.

Call Center

- NMA will respond directly on behalf of SAHA on general complaints and questions; and
- Provide a direct line for HCV clients to call regarding their case.

2. QUALIFICATION FEE SCHEDULE

Pricing includes remote services only and is contingent upon SAHA's ability to grant NMA adequate remote systems and file access. NMA will invoice SAHA for actual postage and mailing expenses incurred related to the performance of the proposed services.

Remote Service	Cost
Annual Reexaminations with Call Center	\$106.00 per transaction plus \$29.09 per hour for call center
Annual Reexaminations only	\$116.00 per transaction