

# CITY OF INDUSTRY PUBLIC FACILITIES AUTHORITY



Chair Cory C. Moss  
Vice Chair Cathy Marcucci  
Board Member Abraham Cruz  
Board Member Mark D. Radecki  
Board Member Newell Ruggles

## **SPECIAL MEETING AGENDA APRIL 23, 2020 AT 8:30 A.M.**

*Location: City Council Chamber, 15651 East Stafford Street, City of Industry, California 91744*

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*Addressing the Authority:*

### **NOTICE OF TELEPHONIC MEETING:**

- ***Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, the special meeting of the Public Facilities Authority shall be held telephonically. Members of the public shall be able to attend the meeting telephonically, and offer public comment by calling the following conference call number: 657-204-3264, and entering the following Conference ID: 208455859#. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public, Council Chambers will not be open for the meeting, and all public participation must occur by telephone at the number set forth above. Pursuant to the Executive Order, and in compliance with the Americans with Disabilities Act, if you need special assistance to participate in the IPFA meeting (including assisted listening devices), please contact the City Clerk's Office at (626) 333-2211 by 5:00 p.m. on Tuesday, April 21, 2020, to ensure that reasonable arrangements can be made to provide accessibility to the meeting.***

*Addressing the City Council/Agency/Commission/Authority:*

**Agenda Items:** Members of the public may address the City Authority on any matter listed on the Agenda.

**Public Comments (Agenda Items Only):** During public comments, if you wish to address the Authority during this Special Meeting, under Government Code Section 54954.3(a), you may only address the Authority concerning any item that has been described in the notice for the Special Meeting.

**Agendas and other writings:**

*In compliance with SB 343, staff reports and other public records permissible for disclosure related to open session agenda items are available at City Hall, 15625 East Stafford Street, Suite 100, City of Industry, California, at the office of the City Clerk during regular business hours, Monday through Thursday 8:00 a.m. to 5:00 p.m., Friday 8:00 a.m. to 4:00 p.m. Any person with a question concerning any agenda item may call the City Clerk's Office at (626) 333- 2211.*

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1. Call to Order
2. Flag Salute
3. Roll Call
4. Public Comment
5. **BOARD MATTERS**
  - 5.1 Consideration of the minutes of the January 23, 2020 special meeting  
*RECOMMENDED ACTION: Approve as submitted.*
  - 5.2 Presentation and discussion regarding selection of a proposed auditing firm, and consideration of a Professional Services Agreement between the Authority and White Nelson Diehl Evans, LLP  
*RECOMMENDED ACTION: Approve the Agreement.*
6. Adjournment

*PUBLIC FACILITIES AUTHORITY*

ITEM NO. 5.1

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INDUSTRY PUBLIC FACILITIES AUTHORITY  
SPECIAL MEETING MINUTES  
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The Special Meeting of the Industry Public Facilities Authority of the City of Industry, California, was called to order by Chair Cory C. Moss at 9:00 a.m. in the City of Industry Council Chamber, 15651 East Stafford Street, California.

**FLAG SALUTE**

The flag salute was led by Chair Moss.

**ROLL CALL**

PRESENT: Cory C. Moss, Chair  
Cathy Marcucci, Vice Chair  
Abraham Cruz, Board Member  
Mark D. Radecki, Board Member  
Newell Ruggles, Board Member

STAFF PRESENT: Troy Helling, City Manager, Bing Hyun, Assistant City Manager; James M. Casso, City Attorney; Josh Nelson, Director of Public Works/City Engineer; and Julie Robles, Secretary.

**PUBLIC COMMENTS**

There were no public comments.

**CONSENT CALENDAR**

**5.1 CONSIDERATION OF THE MINUTES OF THE JUNE 13, 2019 SPECIAL MEETING AND THE AUGUST 22, 2019 SPECIAL MEETING**

*RECOMMENDED ACTION:* *Approve as submitted.*

**5.2 CONSIDERATION OF ANNUAL AUDITED FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2019**

*RECOMMENDED ACTION:* *Approve Annual Audited Financial Statements for FY 18-19.*

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**5.3 CONSIDERATION OF INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS FOR THE FISCAL YEAR ENDED JUNE 30, 2019**

*RECOMMENDED ACTION:* *Approve Independent Auditor's Report for FY 18-19.*

**5.4 CONSIDERATION OF AUDITOR'S COMMUNICATIONS WITH THE BOARD OF DIRECTORS FOR THE FISCAL YEAR ENDED JUNE 30, 2019**

*RECOMMENDED ACTION:* *Approve Auditor's Communication Report for FY 18-19.*

MOTION BY BOARD MEMBER RUGGLES, AND SECOND BY VICE CHAIR MARCUCCI TO APPROVE THE CONSENT CALENDAR. MOTION CARRIED 5-0, BY THE FOLLOWING VOTE:

AYES:	BOARD MEMBERS:	CRUZ,	RADECKI,	RUGGLES,
		VC/MARCUCCI,	C/MOSS	
NOES:	BOARD MEMBERS:	NONE		
ABSENT:	BOARD MEMBERS:	NONE		
ABSTAIN:	BOARD MEMBERS:	NONE		

**ADJOURNMENT**

There being no further business, the Industry Public Facilities Authority adjourned at 9:03 a.m.

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Cory C. Moss, Chair

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Julie Robles  
Secretary

*PUBLIC FACILITIES AUTHORITY*

ITEM NO. 5.2



# INDUSTRY PUBLIC FACILITIES AUTHORITY

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## STAFF REPORT

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**TO:** Chairman and Members of the Board of Directors Industry Public Facilities Authority

**FROM:** Audit Committee

**STAFF:** Yamini Pathak, Finance Director *YP*  
Consultant – Dean Yamagata - Frazer, LLP

**DATE:** April 23, 2020

**SUBJECT:** Presentation and discussion regarding selection of a proposed auditing firm, and consideration of a Professional Services Agreement between the Board and White Nelson Diehl Evans, LLP

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### **Background:**

The Industry Public Facilities Authority's ("IPFA") current outside auditing firm, The Pun Group, has been the auditors for the IPFA and related entities from fiscal year ending June 30, 2014 through June 30, 2019. As best practices dictate, the IPFA should put its auditing services out to bid every five years. Given that The Pun Group served the IPFA for five years, Staff issued a Request for Proposal ("RFP") for audit services for the IPFA and related entities for the year ending June 30, 2020. The RFP is for a one-year contract with an option to renew the contract for three one-year terms.

The IPFA received proposals from the following four CPA firms:

- A) Rogers, Anderson, Malody & Scott, LLP
- B) Harshwal Company LLP
- C) White Nelson Diehl Evans, LLP ("WNDE")
- D) The Pun Group

### **Discussion:**

The Finance Department and Frazer, LLP went through a grading matrix and each firm was interviewed by a panel consisting of City management personnel and financial and accounting consultants. The interview panel consisted of the following:

- 1) Troy Helling – City Manager
- 2) Bing Hyun – Assistant City Manager

- 3) Yamini Pathak – Finance Director
- 4) Elise Calvo – City Treasurer
- 5) Dean Yamagata – Frazer, LLP
- 6) Ryan Zhang – Frazer, LLP

Each firm was graded on the following:

- 1) Qualifications in municipal audit experience
- 2) Audit engagement team knowledge and experience in auditing municipalities
- 3) Their understanding of the scope of services to be provided and their willingness to adapt their approach to meet the needs of the Board
- 4) Pricing
- 5) Responses from references
- 6) In person interviews

Through this process WNDE scored the highest in the evaluation process. WNDE is also the largest CPA firm of the four firms in terms of personnel available to service the City during the time period that the audit work would be conducted. Staff felt that this was an additional advantage that the other CPA firms did not possess. Therefore, staff recommended WNDE to be selected as auditors for the Board.

The Audit Committee reviewed staff's recommendation to retain the accounting firm of White Nelson Diehl Evans to provide auditing services to the Board.

**Recommended Action:**

Approve the professional service agreement retaining White Nelson Diehl Evans as the auditors for the IPFA for the year ending June 30, 2020 with an option to renew the contract for three one-year terms.

**Exhibit:**

A. Professional Services Agreement with White Nelson Diehl Evans, dated April 23, 2020

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YP/DY:yp



**EXHIBIT A**

Professional Services Agreement with White Nelson Diehl Evans,  
dated April 23, 2020

## INDUSTRY PUBLIC FACILITIES AUTHORITY

### PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”), is made and effective as of April 23, 2020, (“Effective Date”), between the Industry Public Facilities Authority, a public body, corporate and politic (“IPFA”) and White Nelson Diehl Evans, LLP, a California Limited Liability Partnership (“Consultant”). IPFA and Consultant are hereinafter collectively referred to as the “Parties”.

#### RECITALS

**WHEREAS**, IPFA desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, IPFA and Consultant agree as follows:

#### 1. TERM

This Agreement shall commence on the Effective Date and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2021, unless sooner terminated pursuant to the provisions of this Agreement. Notwithstanding the foregoing, the IPFA may extend the Term of the Agreement for three (3) one (1) year extensions.

#### 2. SERVICES

(a) Consultant shall perform the tasks (“Services”) described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. (“Scope of Services”). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the IPFA. The Services shall be performed by Consultant, unless prior written approval is first obtained from the IPFA. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) IPFA shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the IPFA and in a first-class manner in conformance with the standards of quality normally observed by an entity providing financial auditing services, serving a municipal IPFA.

(d) Consultant shall comply with all applicable federal, state, and local laws,

regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*). During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) IPFA has not consented in writing to Consultant's performance of such work. No officer or employee of IPFA shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the IPFA. If Consultant was an employee, agent, appointee, or official of the IPFA in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the IPFA for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Services. All Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Services shall be qualified and licensed to perform such services.

### **3. MANAGEMENT**

IPFA's Executive Director shall represent the IPFA in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

### **4. PAYMENT**

(a) The IPFA agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Five Thousand Eight Hundred and Thirty Dollars (\$5,830.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the IPFA. Consultant shall be compensated for any additional services in the amounts and in the manner as

agreed to by IPFA and Consultant at the time IPFA's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the IPFA disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

## **5. SUSPENSION OR TERMINATION OF AGREEMENT**

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

(b) In the event this Agreement is terminated pursuant to this Section, the IPFA shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the IPFA. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the IPFA pursuant to Section 5 of this Agreement.

## **6. OWNERSHIP OF DOCUMENTS**

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by IPFA that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of IPFA or its designees at reasonable times to review such books and records; shall give IPFA the right to examine and audit said books and records; shall permit IPFA to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the IPFA and may be used, reused, or otherwise disposed of by the IPFA without the permission of the Consultant. With respect to computer files, Consultant shall make available to the IPFA, at

the Consultant's office, and upon reasonable written request by the IPFA, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to IPFA all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the IPFA.

## 7. INDEMNIFICATION

### (a) Indemnity for professional liability

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the IPFA and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any IPFA or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

### (b) Indemnity for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless IPFA, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or IPFA for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) DUTY TO DEFEND. In the event the IPFA, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by IPFA, Consultant shall have an immediate duty to defend the IPFA at Consultant's cost or at IPFA's option, to reimburse the IPFA for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by IPFA is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and IPFA, as to whether liability arises from the sole negligence of the IPFA or its officers, employees, or agents, Consultant will be obligated to pay for IPFA's defense until such time as a final judgment has been entered adjudicating the IPFA as solely negligent. Consultant will not be entitled in the absence of

such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

## **8. INSURANCE**

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

## **9. INDEPENDENT CONSULTANT**

(a) Consultant is and shall at all times remain as to the IPFA a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither IPFA nor any of its officers, employees, or agents 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 it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the IPFA. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the IPFA, or bind the IPFA in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, IPFA shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for IPFA. IPFA shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

## **10. LEGAL RESPONSIBILITIES**

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The IPFA, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

## **11. UNDUE INFLUENCE**

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the IPFA in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the IPFA has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the IPFA to any and all remedies at law or in equity.

**12. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES**

No member, officer, or employee of IPFA, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

**13. RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without IPFA's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the IPFA, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the IPFA, unless otherwise required by law or court order.

(b) Consultant shall promptly notify IPFA should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the IPFA, unless Consultant is prohibited by law from informing the IPFA of such Discovery, court order or subpoena. IPFA retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless IPFA is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the IPFA and to provide the opportunity to review any response to discovery requests provided by Consultant. However, IPFA's right to review any such response does not imply or mean the right by IPFA to control, direct, or rewrite said response.

**14. NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To IPFA:

Industry Public Facilities Authority  
15625 E. Stafford  
City of Industry, CA 91744  
Attention: Executive Director

With a Copy To: Casso & Sparks, LLP  
13200 Crossroads Parkway North, Suite 345  
City of Industry, CA 91746  
Attention: James M. Casso, General Counsel

To Consultant: Daphnie Munoz, CPA  
White Nelson Diehl Evans, LLP  
2875 Michelle Drive, Suite 300  
Irvine, CA 92606

**15. ASSIGNMENT**

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the IPFA.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide IPFA with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include an indemnity provision similar to the one provided herein and identifying IPFA as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the IPFA for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the IPFA for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the IPFA and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

**16. GOVERNING LAW/ATTORNEYS' FEES**

The IPFA and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Los Angeles County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.



**17. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**18. SEVERABILITY**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**19. COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**20. CAPTIONS**

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

**21. WAIVER**

The waiver by IPFA or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by IPFA or Consultant unless in writing.

**22. REMEDIES**

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the

exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

**23. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

**“IPFA”**  
**Industry Public Facilities Authority**

**“CONSULTANT”**  
**White Nelson Diehl Evans, LLP**

By: \_\_\_\_\_  
Troy Helling, Executive Director

By: \_\_\_\_\_  
Daphnie Munoz, CPA

**Attest:**

By: \_\_\_\_\_  
Julie Gutierrez-Robles, Secretary

**Approved as to form:**

By: \_\_\_\_\_  
James M. Casso, General Counsel

- Attachments:      Exhibit A      Scope of Services  
                         Exhibit B      Rate Schedule  
                         Exhibit C      Insurance Requirements

## EXHIBIT A

### SCOPE OF SERVICES

Consultant shall:

- Conduct a financial audit of all funds of the IPFA and its component units in accordance with auditing standards generally accepted in the United States of America, the standards set forth for financial audits in General Accounting Office's (GAO) Government Auditing Standards (2003), the provisions of the Federal Single Audit Act of 2003 and U.S. Office of Management and Budget (OMB) Circular A-133, Audits of State, Local Governments, and Non-profit Organizations and Article XIII B of the California Constitution Appropriations Limit.
- Review the IPFA Annual Financial Report (CAFR), in full compliance with all current and proposed GASB statements, which will include both Government-Wide Financial Statements and Fund Financial Statements. Apply limited audit procedures to Management's Discussion and Analysis and required supplementary information pertaining to the General Fund and each major fund of the IPFA.
- Issue a separate Management Report and Auditor's Communication Letter that includes recommendations for improvements in internal control that are considered non-reportable conditions.
- Prepare year-end adjusting journal entries as needed.
- Retain all working papers and reports at the audit firm's expense for a minimum of five (5) years. In addition, make working papers available to the IPFA and/or any government IPFA as appropriate.
- Consultant shall issue a SAS 114 report addressed to the IPFA Board at the conclusion of the audit. Consultant shall provide the IPFA one electronic copy in PDF format each year. (A separate SAS 114 letter addressed to the IPFA Board shall be provided during the planning phase of the audit to open the "two-way communication" between the Consultant and the IPFA Board.)

#### **TIMETABLE OF DELIVERABLES**

The IPFA's financial books are generally closed by the beginning of September of each year, and reconciliations completed shortly thereafter. Interim audit fieldwork may begin before the books are closed. Final audit fieldwork is to be completed no later than October 31st. Estimated timetable for the audit as follows:

<b>Item</b>	<b>Responsible Party</b>	<b>Due Date**</b>
Interim Fieldwork	Consultant	July 1 to August 31
Final Trial Balance, audit schedules and draft financial statements	Finance Department	October 1
Audit Field Work	Consultant	October 5 to October 31
Comments on draft financial statements to the Director of Finance	Consultant	November 2
Draft of Internal Control Letter and Audit letter to the Finance Director	Consultant	November 2
All financial reports and letters finalized and issued	Consultant	November 16

EXHIBIT B  
RATE SCHEDULE

Description of Services	Estimated Hours	Cost
Audited Financial Statements of the Industry Public Facilities Authority, Report on Internal Controls Over Financial Reporting, and Auditors' Communication with the Board of Directors	48	\$5,830.00
<b>Total</b>	48	\$5,830.00

**AUDIT STAFF STANDARD HOURLY BILLING RATES**

Partner	\$250
Manager	\$175
Supervisory Staff	\$120
Professional Staff	\$95
Clerical	\$70

## EXHIBIT C

### INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of IPFA, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to IPFA.

**General liability insurance.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile liability insurance.** Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000.00 combined single limit for each accident.

**Professional liability (errors & omissions) insurance.** Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

**Workers' compensation insurance.** Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000.00).

Consultant shall submit to IPFA, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of IPFA, its officers, agents, employees and volunteers.

**Proof of insurance.** Consultant shall provide certificates of insurance to IPFA as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by IPFA's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with IPFA at all times during the term of this contract. IPFA reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of coverage.** Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may

arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

**Primary/noncontributing.** Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by IPFA shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of IPFA before the IPFA's own insurance or self-insurance shall be called upon to protect it as a named insured.

**IPFA's rights of enforcement.** In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, IPFA has the right but not the duty to obtain the insurance it deems necessary and any premium paid by IPFA will be promptly reimbursed by Consultant, or IPFA will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, IPFA may cancel this Agreement.

**Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the IPFA's Risk Manager.

**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against IPFA, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against IPFA, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

**Enforcement of contract provisions (non estoppel).** Consultant acknowledges and agrees that any actual or alleged failure on the part of the IPFA to inform Consultant of non-compliance with any requirement imposes no additional obligations on the IPFA nor does it waive any rights hereunder.

**Requirements not limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the IPFA requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the IPFA.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to IPFA with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

**Additional insured status.** General liability policies shall provide or be endorsed to provide that IPFA and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

**Prohibition of undisclosed coverage limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to IPFA and approved of in writing.

**Separation of Insureds.** A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass Through Clause.** Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to IPFA for review.

**IPFA's right to revise specifications.** The IPFA reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the IPFA and Consultant may renegotiate Consultant's compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by the IPFA. The IPFA reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the IPFA.

**Timely notice of claims.** Consultant shall give the IPFA prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

**Additional insurance.** Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.