

# REQUEST FOR PROPOSALS



The Community Development Department is requesting proposals for:

## **2021-2029 Housing Element Update to General Plan**

**RELEASE DATE: August 11, 2020**

**PROPOSAL DUE DATE: September 14, 2020**

## **GENERAL INFORMATION**

The City of San Fernando (“City”) is soliciting qualified firms to **assist the City in the preparation of a General Plan Housing Element to comply with the 6<sup>th</sup> cycle Regional Housing Needs Allocation (“RHNA”)**

This Request for Proposal is set out in the following format:

- SECTION I - Instructions to Submitting Firms
- SECTION II - Scope of Service
- SECTION III - Proposal Response Requirements
- SECTION IV - Evaluation Criteria

**Proposals are due by September 14, 2020 at 5:00 P.M. PT: See complete instructions in Section I, Instructions to firms and procedures for submittal.**

A staff committee will review proposals, interview potential firms, and ultimately recommend selection of a firm to the San Fernando City Council.

## **BACKGROUND**

The City of San Fernando was incorporated in 1911 and is currently organized according to the City Council/City Manager form of government with six departments, including a Community Development Department, Police Department, Public Works Department, and Recreation and Community Services Department. The City of San Fernando has an area of approximately 2.4 square miles and a population of approximately 25,000 residents.

The City is seeking planning consultant services to assist in the preparation of the Housing Element of the General Plan for the 2021-2029 planning period. The City of San Fernando’s RHNA allocation for the prior 2014-2021 (5<sup>th</sup>) cycle was 217 units. As of the Annual Progress Report for 2019, the City of San Fernando has produced 269 units. The City has fulfilled its low income and moderate income allocation of for this cycle by permitting 151 low income and 46 moderate income units. The City was allocated 55 very low and 95 above moderate income units and has only permitted 28 very low and 44 above moderate income units. This means that the City has a remaining allocation of 78 units, 27 very low income and 51 above moderate income units. The City has received a preliminary 6<sup>th</sup> cycle allocation of 1,790 units. The City seeks the services of a firm to complete a public outreach process, review current documents, and prepare a Housing Element that can accommodate the RHNA allocation assigned by SCAG. The firm is expected to provide all the materials and services that will fulfill or exceed the requirements and conditions as set forth in this Request for Proposal (“RFP”).

## I. INSTRUCTIONS TO SUBMITTING FIRMS

### A. Examination of Proposal Documents

By submitting a proposal, the prospective firm represents that it has thoroughly examined and become familiar with the services required under this RFP, and that it is capable of delivering quality services to the City in a creative, cost-effective and service-oriented manner.

### B. Questions/Clarifications

Please direct any questions regarding this RFP to Julia Fritz, City Clerk, via e-mail at [jfritz@sfcity.org](mailto:jfritz@sfcity.org). Questions must be received by **5:00 p.m. on Monday, August 31, 2020**. All questions received prior to the deadline will be collected and responses will be posted to the City's website by **5:00 p.m. on Friday, September 4, 2020**.

### C. Submission of Bid Proposals

Prospective firms must submit two (2) originals and one (1) electronic copy of their proposal in a sealed envelope marked "*2021-2029 Housing Element Update*" to:

City of San Fernando  
City Clerk's Office  
117 Macneil Street  
San Fernando, CA 91340

Proposals must be received no later than Monday, **September 14, 2020 by 5:00 p.m.** All proposals received after that time will not be accepted.

### D. Withdrawal of Proposals

A firm may withdraw its proposal at any time before the due date for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of the prospective firm.

### E. Rights of City of San Fernando

This RFP does not commit the City to enter into a Contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract.

The City reserves the right to:

- 1) Make the selection based on its sole discretion;

- 2) Reject any and all proposals without prejudice;
- 3) Issue subsequent Requests for Proposal;
- 4) Postpone opening for its own convenience;
- 5) Remedy technical errors in the Request of Proposal process;
- 6) Approve or disapprove the use of particular sub-firms;
- 7) Negotiate with any, all, or none of the prospective firms;
- 8) Solicit best and final offers from all or some of the prospective firms;
- 9) Accept other than the lowest offer; and/or
- 10) Waive informalities and irregularities in the proposal process.

**F. Contract Type**

It is anticipated that a standard form professional services agreement (Exhibit “A”) will be signed subsequent to City Council review and approval of the recommended firm. Please review the contract and submit any requested changes with your proposal.

**G. Collusion**

By submitting a proposal, each prospective firm represents and warrants that its proposal is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein, that the prospective firm has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal, and that the prospective firm has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

**II. SCOPE OF SERVICE**

The firm will prepare an update of the City’s Housing Element for the 2021-2029 housing cycle with assistance and oversight from the City. At a minimum, the firm is expected to complete the following tasks:

1. Project Initiation
  - a. Review the City’s certified 2014-2021 Housing Element along with other applicable General Plan Elements and regulatory documents as needed. This review should evaluate the implementation status of the adopted [Housing Element programs and policies](#).
  - b. Investigate, analyze and address all new state housing laws (including, but not limited to: SB 35, AB 2162, AB 881, SB 330, AB 101, AB 1763, AB 1255, SB 6, AB 1483, and AB 1486) and make recommendations to the City on their implementation and incorporation into applicable City codes and regulations.
  - c. Prepare project timeline to ensure adequate time is allotted for City staff review, public review, adoption, and certification from the California Department of

Housing and Community Development (“HCD”) by **September 2021**.

- d. Review City’s allocation for 2021-2029 planning period and meet with City staff to discuss firm’s assessment of all tasks identified in project initiation of this scope of work.

## 2. Administrative Draft Housing Element

- a. Prepare an Administrative Draft Housing Element Update for City staff review in compliance with State Government Code Sections (65580-65589.11) and all applicable state and federal housing laws and shall include the following components;
  - i. Assessment of Existing Conditions, which shall include the following:
    - Updated housing, population, demographic, and employment data to coincide with recent SCAG growth projections and data from the U.S. Census, and the California Department of Finance.
    - Assessment of the housing market conditions and immediate needs within the City, including special housing needs.
    - Assessment of housing need and the City’s Regional Housing Need Allocation.
  - ii. Identification of actual and potential constraints on the maintenance, improvement, and development of housing for all income levels.
  - iii. Analysis of housing opportunities, along with the inventory of suitable sites as provided by the City and the City’s capacity to meet its RHNA.
  - iv. An implementation program including quantifiable objectives and programs to address the City’s RHNA and special needs housing for the elderly, veterans, homeless, farmworkers, and populations with disabilities.
  - v. Incorporation of Safety and Environmental Justice Element component to the General Plan in compliance with SB 1000.
- b. Identify amendments to the City’s General Plan Land Use Element and Zoning Code that may be required to implement recommended housing programs and compliance with State law.
- c. Coordinate with HCD as needed to obtain direction and feedback on the contents of the Housing Element.

## 3. Draft Housing Element

- a. Revise the Administrative Draft Housing Element per City staff comments and prepare the Draft Housing Element Update for public review and adoption.
- b. Conduct a minimum of three community workshops to review and receive input on the Draft Housing Element Update.
- c. Prepare and file all the appropriate environmental documents, up to an

environmental impact report (“EIR”) in compliance with the California Environmental Quality Act (CEQA). In addition, the firm will be responsible for preparing all notices and mailings for SB 18 and AB 52.

- d. Prepare notice and circulate draft and final environmental documents, including all supporting notices, to all required State agencies and responsible agencies. These shall include all public notices, responses to comments, mitigation measures, mitigation monitoring plan, findings of fact, resolutions, ordinances, and notice of determination.
- e. Conduct a Scoping Meeting, attend Planning and Preservation Commission and City Council public hearings and amend the environmental document as needed following Planning and Preservation Commission and City Council review. There is a minimum of one scoping meeting, two Planning and Preservation Commission meetings and one City Council meeting.

#### 4. Final Housing Element

- a. Prepare Final Housing Element Update Document for submittal to City. File CEQA Notice of Determination with Los Angeles County Clerk.
- b. Coordinate with HCD following adoption of the Housing Element Update. Coordination must be ongoing until such time that the document is certified by HCD, including addressing recommended modifications and comments by HCD.

#### 5. Deliverables

- a. Provide the City with two printed copies of the final documents (Adopted Housing Element and CEQA document) and one editable electronic copy.
- b. All materials resulting from this task become the property of the City. Draft documents for review shall be submitted in both hard copy and editable electronic format. All map-based exhibits must be provided in ESRI ArcGIS geodatabase format (shapefile).

Proposing firms are expected to use the Scope of Services and Deliverables as a guide only. The firm shall identify all of the tasks required and recommended deliverables to complete the project.

### III: PROPOSAL RESPONSE REQUIREMENTS

#### Response Items

Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content with sufficient detail to allow for accurate evaluation and comparative analysis. Responses must provide the required information in the following order for each underscored item. Firms shall respond by repeating the section and sub-sections number(s) and statement/question and by providing the appropriate response hereunder.

1. Letter of Introduction: Include the firm's basic understanding of the proposal and why the firm is the best firm to complete the scope of services.
2. Firm Qualifications and Experience: Provide a brief overview of the firm(s) performing similar planning policy and/or design guidelines, their qualifications in working with various municipal departments, commissions, elected officials, and community members, and a description of any special services, expertise, or abilities that the firm(s) can utilize in the performance of the scope of services described herein. Describe experience related to creation and adoption of Housing Elements, zoning codes, neighborhood design guidelines, and/or policy planning projects, with projects of similar size and scope. Provide references from at least three (3) municipalities and/or public agencies with relevant projects.
3. Project Team: The project team should include planners and architects with experience in outreach, planning policy and design guidelines.
  - Provide an organization chart that identifies the key members of the project, their firm, title, and assigned role within the project team.
  - Designate the individual who will be the primary point person with City staff and oversee the scope of services. Describe the project leader's qualifications, outline their primary responsibilities, and provide examples of relevant projects of similar scope and size that demonstrate the project leader's ability to successfully oversee projects that are completed on time and within budget.
  - Briefly summarize the major responsibilities of each team member and the primary tasks they will be working on.
  - Include resumes for all team members that highlight relevant projects and qualifications to complete the tasks assigned.
  - A list of sub-firms, if any, proposed to assist the prime firm. This list shall also include the sub-firms' qualifications pertinent to this project. May include resumes as exhibits.
4. Approach and Work Plan: Describe the firm's approach and work plan for completing the Scope of Services in this RFP, as well as the level of involvement and interaction with City staff anticipated. Include any other tasks your team will perform that may not be listed in the Scope of Services.

5. Project Timeline: Detail an anticipated project timeline from start of work to deliverables. Provide your anticipated project schedule based on commencing the project in late October 2020 and completing the project in September 2021.

6. Company Data

Each firm shall submit the following information:

- a. State the company's official name and address and the names and titles of its principal officers; indicate what type of entity, such as corporation, partnership, joint venture, sole proprietorship, etc., and indicate if the firm is incorporated;
- b. If the firm is a sole proprietorship doing business under a different name, indicate the sole proprietorship's name and the name(s) you are doing or *have* done business as (DBA) or also known as (AKA);
- c. Provide the firm's Federal Employer I.D. Number;
- d. Provide the name and address of the person to receive notices who is authorized to make decisions and represent the company. Specify in what capacity the person shall be representing the entity and any limitations to their authority;
- e. State any failures or refusals to complete any contracts and a complete explanation;
- f. Indicate the number of years in business under the present business name;
- g. Indicate the number of years of the firm's experience in providing required, equivalent or related products and services; and,
- h. Submit a detailed statement indicating whether the firm is totally or partially owned by another business organization or individual that will be providing the services to meet the requirements of the Proposal.

Items 1 – 6 of this section shall not exceed 20 pages.

Fee:

The “Project fee schedule” shall be broken down by tasks and shall include, but not be limited to, all professional services necessary to complete the work covered by this proposal. The fee should be broken down, at a minimum:

1. A “project fee schedule” indicating the fee for individual tasks with a “not to exceed fee” which shall be the sum of all tasks.
2. The number and classification of personnel required and the number of anticipated hours. The hourly rates for all employee classifications that may be billed to the project.
3. The cost of printing materials submitted to the City and others for review, mileage, telephone services, mailing/delivery, and incidental costs associated with the preparation of the deliverables shall be included in the cost proposed for other tasks.

Certificate of Insurance



The firm shall demonstrate the willingness and ability to provide the required insurance coverage as set forth in City requirements within ten (10) calendar days of notification of selection for award of this Agreement. The insurance requirements are detailed in the sample City Professional Services Agreement which is included with this RFP, as Exhibit "A."

#### Resources to be provided by the City

The City will provide the following items and/or services to the firm for use in preparing the Study when applicable:

1. Applicable Zoning Code Sections;
2. General Plan Land Use Element;
3. Annual Housing Reports submitted to HCD and,
4. Other items as identified and requested by the firm that may be provided by the City.

#### Project Understanding

The City assumes no responsibility for any understanding or representation made by any of its officers or agents during or prior to the execution of any Agreement resulting from this RFP unless:

1. Such understanding or representations are expressly stated in the Agreement; and,
2. The Agreement expressly provides that the responsibility therefore is assumed by the City. Representations made but not so expressly stated and for which liability is not expressly assumed by the City in the Agreement shall be deemed only for the information of the firm.

### **IV: EVALUATION CRITERIA**

The following criteria will be considered in the evaluation process:

1. Firm experience and demonstrated ability to deliver high quality, innovative work for relevant projects of similar complexity.
2. Ability to perform the required services competently and expeditiously. Record of the firm in accomplishing similar work within required time and budget constraints. Staff experience and demonstrated ability to work well with community groups, commission members, elected officials, and City staff.
3. Demonstrated ability to provide clear and compelling presentations to community members, commission members, and elected officials.
4. Demonstrated ability to deliver planning, projects and/or design guidelines that exhibit excellent writing quality and use of high quality graphic design that communicate clearly and are engaging and accessible to the general public.
5. Responsiveness to this RFP and the completeness and clarity of the information provided.
6. Understanding of the approach, tasks, and methodology necessary to complete the required

services, including any innovative or advanced techniques.

7. References from at least three (3) municipalities and/or public agencies with relevant projects.

The highest ranking firm(s) may be asked to participate in an interview. After a firm is selected, the Community Development Director will initiate final contract negotiations. If an agreement on the fee cannot be reached, the City reserves the right to end negotiations and enter into negotiations with another firm. The proposed fee is not intended to be the governing factor in the selection process but will be considered.

While it is the intention of the City to complete the full Scope of Services provided above in an uninterrupted sequence, the City reserves the right in consultation with the top candidates to narrow the final scope of services to reflect project budget constraints. As such, the final scope of services could be revised.

## **EXHIBITS**

A: Standard Form Professional Services Agreement



## PROFESSIONAL SERVICES AGREEMENT

**[INSERT Name of Consultant]**

Planning Consultant Services for 2021-2029 Housing Element Update to General Plan

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ (hereinafter, the "Effective Date"), by and between the CITY OF SAN FERNANDO, a municipal corporation ("CITY") and \_\_\_\_\_ (hereinafter, "CONSULTANT"). For the purposes of this Agreement CITY and CONSULTANT may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to CITY or CONSULTANT interchangeably.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, CITY and CONSULTANT agree as follows:

### **I. ENGAGEMENT TERMS**

1.1 **SCOPE OF SERVICES:** Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONSULTANT agrees to perform the services and tasks set forth in **Exhibit "A"** (hereinafter referred to as the "**Scope of Work**"). CONSULTANT further agrees to furnish to CITY all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term "Work." CONSULTANT shall not commence with the performance of the Work until such time as CITY issues a written Notice to Proceed.

1.2 **PROSECUTION OF WORK:** The Parties agrees as follows:

- A. Time is of the essence of this Agreement and each and every provision contained herein. The Work shall be commenced within \_\_\_\_\_ (\_\_\_\_\_) calendar days of CITY's issuance of a Notice to Proceed, and shall be completed on a date not more than \_\_\_\_\_ calendar days from the issuance of the Notice to Proceed (the "Completion Date");
  - B. CONSULTANT shall perform the Work continuously and with due diligence so as to complete the Work by the Completion Date. CONSULTANT shall cooperate with CITY and in no manner interfere with the work of CITY, its employees or other consultants, contractors or agents;
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- C. CONSULTANT shall not claim or be entitled to receive any compensation or damage because of the failure of CONSULTANT, or its sub-consultants, to have related services or tasks completed in a timely manner;
- D. CONSULTANT shall at all times enforce strict discipline and good order among CONSULTANT's employees; AND
- E. CONSULTANT, at its sole expense, shall pay all sales, consumer, use or other similar taxes required by law.

### 1.3 COMPENSATION:

- A. CONSULTANT shall perform the various services and tasks set forth in the Scope of Work in accordance with the compensation schedule which is **[THIS LANGUAGE MAY VARY DEPENDING ON THE LOCATION OF ANY APPLICABLE COMPENSATION SCHEDULE – SOME SCHEDULES ARE EMBEDDED IN THE SCOPE OF WORK WHILE OTHERS CAN BE FOUND IN A SEPARATE STAND-ALONE SCHEDULE WHICH SHOULD BE ATTACHED AS AN EXHIBIT TO THE AGREEMENT]** (hereinafter, the "Approved Rate Schedule").
- B. Section 1.3(A) notwithstanding, CONSULTANT's total compensation for the performance and completion of the Work shall not exceed the sum of **[REDACTED]** DOLLARS (\$ **[REDACTED]**) (hereinafter, the "Not-to-Exceed Sum"). CONSULTANT further agrees that the Not-to-Exceed Sum is inclusive of compensation for all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the Work.

- 1.4 PAYMENT OF COMPENSATION: The Not-to-Exceed Sum shall be paid to CONSULTANT in monthly increments as the Work is completed. Following the conclusion of each calendar month, CONSULTANT shall submit to CITY an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONSULTANT's monthly compensation is a function of hours worked by CONSULTANT's personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each task and service performed and a grand total for all services performed. Within **thirty (30) calendar days** of receipt of each invoice, CITY shall notify CONSULTANT in writing of any disputed amounts included in the invoice. Within **forty-five (45) calendar days** of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall not withhold applicable taxes or other authorized deductions from payments made to CONSULTANT.

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**[EDITOR'S NOTE: THIS SECTION MAY BE SUBJECT TO MODIFICATION DEPENDING ON THE PAYMENT TERMS AGREED TO WITH THE CONSULTANT]**

- 1.5 ACCOUNTING RECORDS: CONSULTANT shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. CITY shall have the right to access and examine such records, without charge, during normal business hours. CITY shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 ABANDONMENT BY CONSULTANT: In the event CONSULTANT ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONSULTANT shall deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONSULTANT in the performance of this Agreement. Furthermore, CONSULTANT shall only be compensated for the reasonable value of the services, tasks and other Work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which CITY may incur as a result of CONSULTANT's cessation or abandonment.

## **II. PERFORMANCE OF AGREEMENT**

- 2.1 CITY'S REPRESENTATIVES: The CITY hereby designates the City Manager and **[INSERT TITLE OF CITY REPRESENTATIVE WHO WILL BE ENGAGED IN THE DAY-TO-DAY ADMINISTRATION OF THE CONTRACT]** (hereinafter, the "CITY Representatives") to act as its representatives for the performance of this Agreement. The CITY Manager shall be the chief CITY Representative. The CITY Representatives or their designee shall act on behalf of the CITY for all purposes under this Agreement. CONSULTANT shall not accept directions or orders from any person other than the CITY Representatives or their designee.
- 2.2 CONSULTANT REPRESENTATIVE: CONSULTANT hereby designates **[INSERT NAME AND TITLE OF PERSON WHO IS CONSULTANT REPRESENTATIVE FOR PURPOSES OF CONTRACT ADMINISTRATION]** to act as its representative for the performance of this Agreement (hereinafter, "CONSULTANT Representative"). CONSULTANT Representative shall have full authority to represent and act on behalf of the CONSULTANT for all purposes under this Agreement. CONSULTANT Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONSULTANT Representative shall constitute notice to CONSULTANT.

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- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONSULTANT agrees to work closely with CITY staff in the performance of the Work and this Agreement and shall be available to CITY staff and the CITY Representatives at all reasonable times. All work prepared by CONSULTANT shall be subject to inspection and approval by CITY Representatives or their designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONSULTANT represents, acknowledges and agrees to the following:
- A. CONSULTANT shall perform all Work skillfully, competently and to the highest standards of CONSULTANT's profession;
  - B. CONSULTANT shall perform all Work in a manner reasonably satisfactory to the CITY;
  - C. CONSULTANT shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 et seq.);
  - D. CONSULTANT understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
  - E. All of CONSULTANT's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONSULTANT; and
  - F. All of CONSULTANT's employees and agents (including but not limited sub-contractors and sub-consultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to CITY for copying and inspection.

The Parties acknowledge and agree that CONSULTANT shall perform, at CONSULTANT's own cost and expense and without any reimbursement from CITY, any services necessary to correct any errors or omissions caused by CONSULTANT's failure to comply with the standard of care set forth under this Section or by any like failure on the part of CONSULTANT's employees, agents, contractors, sub-contractors and sub-consultants. Such effort by CONSULTANT to correct any errors or omissions shall be commenced immediately upon their discovery by either Party and shall be completed within seven (7) calendar days from the date of discovery or such other extended period of time authorized by the CITY Representatives in writing and in their sole and absolute discretion. The Parties acknowledge and agree that CITY's acceptance of any work

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performed by CONSULTANT or on CONSULTANT's behalf shall not constitute a release of any deficiency or delay in performance. The Parties further acknowledge, understand and agree that CITY has relied upon the foregoing representations of CONSULTANT, including but not limited to the representation that CONSULTANT possesses the skills, training, knowledge and experience necessary to perform the Work skillfully, competently and to the highest standards of CONSULTANT's profession.

2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONSULTANT are material to CITY's willingness to enter into this Agreement. Accordingly, CITY has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONSULTANT or on behalf of CONSULTANT in the performance of this Agreement. In recognition of this interest, CONSULTANT agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONSULTANT's duties or obligations under this Agreement without the prior written consent of the CITY. In the absence of CITY's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.

2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONSULTANT or under CONSULTANT's strict supervision. CONSULTANT will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. CITY retains CONSULTANT on an independent contractor basis and not as an employee. CONSULTANT reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONSULTANT's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of CITY's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONSULTANT are not employees of CITY and shall at all times be under CONSULTANT's exclusive direction and control. CONSULTANT shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONSULTANT shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.

2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONSULTANT's officers, employees, agents, contractors, sub-contractors or sub-consultants is determined by the CITY Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONSULTANT, a threat to persons or property, or if any of CONSULTANT's officers, employees, agents, contractors, sub-contractors or sub-consultants fail or refuse to perform the Work in a manner acceptable to the CITY, such officer, employee, agent, contractor, sub-contractor or sub-consultant shall be

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promptly removed by CONSULTANT and shall not be reassigned to perform any of the Work.

- 2.8 COMPLIANCE WITH LAWS: CONSULTANT shall keep itself informed of and in compliance with all applicable federal, state or local laws to the extent such laws control or otherwise govern the performance of the Work. CONSULTANT's compliance with applicable laws shall include, without limitation, compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, sub-contractor, sub-consultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONSULTANT and all persons retained or employed by CONSULTANT are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of CITY. CONSULTANT shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, sub-contractors and sub-consultants. CONSULTANT and all persons retained or employed by CONSULTANT shall have no authority, express or implied, to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, CITY, whether by contract or otherwise, unless such authority is expressly conferred to CONSULTANT under this Agreement or is otherwise expressly conferred by CITY in writing.

### III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONSULTANT will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONSULTANT shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONSULTANT shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.



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- B. Automobile Liability Insurance: CONSULTANT shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
- C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONSULTANT and CITY against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONSULTANT in the course of carrying out the Work contemplated in this Agreement.
- D. Errors & Omissions Insurance: For the full term of this Agreement and for a period of three (3) years thereafter, CONSULTANT shall procure and maintain Errors and Omissions Liability Insurance appropriate to CONSULTANT's profession. Such coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall be endorsed to include contractual liability.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers who, according to the latest edition of the Best's Insurance Guide, have an A.M. Best's rating of no less than A:VII. CITY may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the CITY Representatives are authorized to authorize lower ratings than those set forth in this Section.

**[EDITOR'S NOTE: PLEASE CONFER WITH CITY'S RISK MANAGER ON THE ISSUE OF CARRIER RATINGS]**

- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONSULTANT shall be primary to any coverage available to CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by CITY or CITY's elected or appointed officials, officers,

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employees, agents or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.

- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONSULTANT or CONSULTANT's officers, employees, agents, sub-contractors or subconsultants from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against CITY.
- 3.6 VERIFICATION OF COVERAGE: CONSULTANT acknowledges, understands and agrees, that CITY's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding CITY's financial well-being and, indirectly, the collective well-being of the residents of the CITY. Accordingly, CONSULTANT warrants, represents and agrees that it shall furnish CITY with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to CITY in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the CITY if requested.** All certificates of insurance and endorsements shall be received and approved by CITY as a condition precedent to CONSULTANT's commencement of any Work or any of the Work. Upon CITY's written request, CONSULTANT shall also provide CITY with certified copies of all required insurance policies and endorsements.

### IV. INDEMNIFICATION

- 4.1 The Parties agree that CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "CITY Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the CITY Indemnitees with the fullest protection possible under the law. CONSULTANT acknowledges that CITY would not enter into this Agreement in the absence of CONSULTANT's commitment to indemnify, defend and protect CITY as set forth herein.
- 4.2 To the fullest extent permitted by law, CONSULTANT shall indemnify, hold harmless and defend the CITY Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's performance of Work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the CITY.

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- 4.3 CITY shall have the right to offset against the amount of any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Article and related to CONSULTANT's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONSULTANT under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONSULTANT expressly waives its statutory immunity under such statutes or laws as to CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations from others as required herein, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT's subcontractors or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of CITY's choice.
- 4.6 CITY does not, and shall not, waive any rights that it may possess against CONSULTANT because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the CITY may have at law or in equity.

## **V. TERMINATION**

- 5.1 TERMINATION WITHOUT CAUSE: CITY may terminate this Agreement at any time for convenience and without cause by giving CONSULTANT a minimum of five (5) calendar days' prior written notice of CITY's intent to terminate this Agreement. Upon such termination for convenience, CONSULTANT shall be compensated only for those services and tasks which have been performed by CONSULTANT up to the effective date of the termination. CONSULTANT may not terminate this Agreement except for cause

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as provided under Section 5.2, below. If this Agreement is terminated as provided herein, CITY may require CONSULTANT to provide all finished or unfinished Documents and Data, as defined in section 6.1 below, and other information of any kind prepared by CONSULTANT in connection with the performance of the Work. CONSULTANT shall be required to provide such Documents and Data within fifteen (15) calendar days of CITY's written request. No actual or asserted breach of this Agreement on the part of CITY pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict CITY's ability to terminate this Agreement for convenience as provided under this Section.

### 5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2B and 5.2C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONSULTANT shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) business days of CITY's issuance of a Default Notice for any failure of CONSULTANT to timely provide CITY or CITY's employees or agents with any information and/or written reports, documentation or work product which CONSULTANT is obligated to provide to CITY or CITY's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
  - ii. Within fourteen (14) calendar days of CITY's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of

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the 14-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period.

In addition to any other failure on the part of CONSULTANT to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONSULTANT shall include, but shall not be limited to the following: (i) CONSULTANT's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONSULTANT's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONSULTANT's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONSULTANT, whether voluntary or involuntary; (v) CONSULTANT's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vi) CITY's discovery that a statement representation or warranty by CONSULTANT relating to this Agreement is false, misleading or erroneous in any material respect.

- C. CITY shall cure any Event of Default asserted by CONSULTANT within forty-five (45) calendar days of CONSULTANT's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, CITY may submit a written request for additional time to cure the Event of Default upon a showing that CITY has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with CITY's failure to timely pay any undisputed sums to CONSULTANT as provided under Section 1.4, above, shall be cured by CITY within five (5) calendar days from the date of CONSULTANT's Default Notice to CITY.
- D. CITY, in its sole and absolute discretion, may also immediately suspend CONSULTANT's performance under this Agreement pending CONSULTANT's cure of any Event of Default by giving CONSULTANT written notice of CITY's intent to suspend CONSULTANT's performance (hereinafter, a "Suspension Notice"). CITY may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONSULTANT shall be compensated only for those services and tasks which have been rendered by CONSULTANT to the

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reasonable satisfaction of CITY up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of CITY shall operate to prohibit or otherwise restrict CITY's ability to suspend this Agreement as provided herein.

- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to CITY at law or under this Agreement in the event of any breach of this Agreement, CITY, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
  - i. Upon written notice to CONSULTANT, the CITY may immediately terminate this Agreement in whole or in part;
  - ii. Upon written notice to CONSULTANT, the CITY may extend the time of performance;
  - iii. The CITY may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONSULTANT's breach of the Agreement or to terminate the Agreement; or
  - iv. The CITY may exercise any other available and lawful right or remedy.

CONSULTANT shall be liable for all legal fees plus other costs and expenses that CITY incurs upon a breach of this Agreement or in the CITY's exercise of its remedies under this Agreement.

- G. In the event CITY is in breach of this Agreement, CONSULTANT's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONSULTANT under this Agreement for completed services and tasks.
- 5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

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- 5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

## VI. MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of CITY without restriction or limitation upon their use or dissemination by CITY. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONSULTANT in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to CITY, a perpetual license for CITY to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONSULTANT shall require all subcontractors and subconsultants working on behalf of CONSULTANT in the performance of this Agreement to agree in writing that CITY shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONSULTANT in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONSULTANT or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONSULTANT without prior written consent by CITY. CITY shall grant such consent of disclosure as legally required. Upon request, all CITY data shall be returned to CITY upon the termination or expiration of this Agreement. CONSULTANT shall not use CITY's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CITY.
- 6.3 FALSE CLAIMS ACT: CONSULTANT warrants and represents that neither CONSULTANT nor any person who is an officer of, in a managing position with, or has an ownership interest in CONSULTANT has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 et seq. and the California False Claims Act, Government Code Section 12650 et seq.
- 6.4 NOTICES: All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

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## CONSULTANT:

[INSERT Business Name of Consultant]

[INSERT Business Address]

Attn: [INSERT Name/Title of Consultant's chief contact]

Phone: [INSERT Phone Number]

Fax: [INSERT Fax Number]

Email: [If available, INSERT e-mail or delete]

## CITY:

City of San Fernando

[INSERT Name of Department/Division]

[INSERT Address]

Attn: [INSERT Title of CITY Contact]

Phone: [INSERT Dept Phone]

Fax: [INSERT Dept Fax]

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepaid and addressed to the Party at its applicable address.

- 6.5 COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as are reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 6.6 SUBCONTRACTING: CONSULTANT shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of CITY. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.
- 6.7 CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS: CITY reserves the right to employ other contractors in connection with the various projects worked upon by CONSULTANT.
- 6.8 PROHIBITED INTERESTS: CONSULTANT warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONSULTANT, to solicit or secure this Agreement. Further, CONSULTANT warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 6.9 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.



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- 6.10 **GOVERNING LAW AND VENUE**: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Los Angeles County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Central District of California located in the City of Los Angeles, California.
- 6.11 **ATTORNEYS' FEES**: If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.
- 6.12 **SUCCESSORS AND ASSIGNS**: This Agreement shall be binding on the successors and assigns of the Parties.
- 6.13 **NO THIRD PARTY BENEFIT**: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.14 **CONSTRUCTION OF AGREEMENT**: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.15 **SEVERABILITY**: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.16 **AMENDMENT; MODIFICATION**: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to CITY approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.17 **CAPTIONS**: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.
- 6.18 **INCONSISTENCIES OR CONFLICTS**: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.19 **ENTIRE AGREEMENT**: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral

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or written, or entered into between CITY and CONSULTANT 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 or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.16, above.

- 6.20 COUNTERPARTS: This Agreement shall be executed in three (3) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.16, above. One fully executed original counterpart shall be delivered to CONSULTANT and the remaining two original counterparts shall be retained by CITY.

**(SIGNATURE PAGE TO FOLLOW)**

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**CITY OF SAN FERNANDO**

**[INSERT BUSINESS NAME OF CONSULTANT,  
E.G., ACME CORP. A CALIFORNIA  
CORPORATION ETC.]**

By: \_\_\_\_\_  
Nick Kimball, City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Richard Padilla, City Attorney