

NOTICE INVITING BIDS

Notice is hereby given that sealed proposals will be received by the City of San Fernando, California, for the following:

SAN FERNANDO REGIONAL PARK INFILTRATION PROJECT

in strict accordance with the Specifications on file in the office of the SAN FERNANDO PUBLIC WORKS DEPARTMENT, 117 Macneil Street, San Fernando, California, 91340. Copies of specifications and proposal documents may be obtained from the City's website at sfcity.org.

Five original and one electronic copy of the proposal must be submitted to the CITY CLERK in a sealed envelope at CITY HALL, 117 Macneil Street, San Fernando, California, 91340, not later than **11:00 a.m. on Thursday, February 22, 2018**. Any bidder may withdraw their proposal, without obligation, at any time prior to the scheduled closing time for receipt of proposals. A withdrawal will not be effective unless made personally or by telephonic notification received prior to the closing date. Proposals may later be referred to the City Council for appropriate action. The City reserves the right to reject any or all proposals as the best interests of the City may dictate.

By: _____
Elena Chavez, City Clerk

Published in **The San Fernando Sun** on **January 18, 2018**.

REQUEST FOR PROPOSALS



The Public Works Department is requesting proposals for:

SAN FERNANDO REGIONAL PARK INFILTRATION PROJECT

RELEASE DATE: January 18, 2018

RESPONSE DUE: February 22, 2018

GENERAL INFORMATION

NATURE OF WORK:

The City of San Fernando is interested in contracting with an experienced professional engineering service firm to design an Infiltration System for the San Fernando Regional Park Infiltration Project located at 208 Park Avenue, San Fernando, CA, 91340. This project is part of a Proposition 1 Grant (Exhibit "A"). The contractor shall comply with all requirements and terms and conditions of the executed agreement between the City of San Fernando and the California State Water Resources Control Board. The project is one of various projects from a group of agencies as part of the Enhanced Watershed Management Program (EWMP) for the Upper Los Angeles Watershed Management Group.

PREVAILING WAGES:

In accordance with the California State Labor Code, prevailing wage rates apply to this project

DEPARTMENT OF INDUSTRIAL RELATIONS COMPLIANCE:

This project is subject to compliance monitoring by the Department of Industrial Relations.

Contractor and/or subcontractor must be registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5. No contractor or subcontractor may be awarded a contract for public works on a Public Works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

DEFINITION:

"Contractor or Subcontractor" shall mean a firm, corporation, partnership or association who will be subsequently responsible or will engage in the performance of any contract for a public works project, subject to labor compliance program as determined by the Department of Industrial Relations.

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 Police Department, Public Works Department, and Recreation and Community Services Department. The City employs approximately 127 full-time employees from a total Adopted Budget for fiscal year 2017-2018 of \$41.6 million, which includes a General Fund budget of \$19,003,087 million. The City is a cost conscious provider of outstanding public services to its citizens and local businesses.

The City believes that the open competition for services and products provides the City with the best results for its public dollars. The City is interested in receiving responsive and competitive proposals from experienced and qualified firms to design an 'Infiltration System' within San Fernando Regional Park.

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 & service-oriented manner.

B. Questions/Clarifications

Please direct any questions regarding this RFP to Kenneth Jones, Management Analyst, via e-mail at kjones@sfcity.org. Questions must be received by 5:30 p.m. on **Monday, February 12, 2018**. All questions received prior to the deadline will be collected and responses will be emailed by **Thursday, February 15, 2018**.

C. Submission of Bid Proposals

All bid proposals shall be submitted to the City Clerk, Elena Chávez, at 117 Macneil Street and the subject line of the email shall read, "City of San Fernando RFP – San Fernando Regional Park Infiltration system." Proposals must be received no later than Thursday, **February 22, 2018 at 11:00 a.m.** All proposals received after that time will not be accepted.

A total of five (5) hardcopies of the proposal and one (1) PDF file on a compact disc (CD) shall be provided. The proposal shall be signed by a company official with the power to bind the company and submitted to the City of San Fernando.

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-contractors;
- 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 contract will be signed subsequent to City Council review and approval of the recommended firm.

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.

H. Proposal Validity

Services, pricing and warranties indicated in the Consultant's Proposal must be valid for a period of 120 days after the submission of the Proposal

I. Joint Offers/Subcontractors

Where two or more Contractors desire to submit a single Proposal, they should do so on a prime-subcontractor basis. If subcontractors are used, the Contractor shall provide the same assurances of competence for the subcontractor plus the demonstrated ability to manage and supervise the subcontracted work. Subcontractors shall not further

subcontract with others for work under this Agreement. The provisions set forth in this agreement shall apply to all subcontractors.

J. City Responsibilities

The City will provide information in its possession relevant to preparation of required information in the RFP. The City will provide only Staff assistance and documentation specifically listed herein.

K. Addenda

Any changes in the RFP from the date of issuance to the due date will result in an addendum or amendment. Notification of such document will be posted on the City's website. It will be the sole responsibility of the Contractor to check the website for updates.

L. Licenses and Permits

The selected Contractor shall be required to obtain a City of San Fernando Business License and provide a copy to the Project Manager.

M. Insurance

1. The selected Contractor shall be required to maintain and comply with the insurance coverages, liabilities and provisions stated in the Professional Services Agreement and/or Amendments. The following insurance policies shall be submitted at the Contractor's own cost and expense and be procured and maintained for the duration of the contract:
 - a) Workers Compensation Insurance as required by law. All subcontractors shall be similarly required to provide such compensation insurance for their respective employees. Notice of Cancellation or Non-Renewal of policy shall be provided to the City at least 30 days prior to such change. The insurer agrees to waive all rights of subrogation against the City, its officers, agents, employees and volunteers for losses arising from work performed by the Contractor for the City.
 - b) General Liability Coverage shall be maintained by the contractor in the amount of two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

- c) Professional Liability Insurance shall be maintained by the contractor at all times during this Agreement. The Contractor shall maintain professional omissions and errors liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from the Contractors operations, whether such operations are by the Contractor or by its employees, subcontractors, or sub consultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single-limit—per-occurrence basis. When coverage is provided on a “claim made basis,” Contractor will continue to renew the insurance for a period of three (3) years after this Agreement expires or is terminated. Such insurance will have the same coverage and limits as the policy that coverage and limits as the policy that was in effect during the term of this Agreement, and will cover Contractor for all claims made by the City arising out of any errors or omissions of Contractor, or its officers, employees or agents during the time this Agreement was in effect.
- 2. Endorsements. Each general liability, automobile liability and professional liability insurance policy shall be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California, or which is approved in writing by the City, and shall be endorsed as follows. This shall apply to all contractors and subcontractors.
 - a) “The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additionally insured with respect to liability arising out of work performed by or on behalf of the Contractor, including materials, parts, or equipment furnished in connection with such work or operations.”
 - b) The policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have shall be considered excess insurance only and shall not contribute with this policy.
 - c) This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
 - d) The issuer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees, agents and volunteers.

- e) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, elected or appointed officers, officials, employees, agents and volunteers.
 - f) The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.
- 3. Contractor agrees to provide immediate notice to the City of any claims or loss against Contractor arising out of work performed under this agreement.
 - 4. Original Certificates of Insurance shall be provided to the City prior to commencing work.

SCOPE OF WORK

DESCRIPTION:

The San Fernando Regional Park Infiltration Project consists of installing an underground pre-manufactured infiltration/detention system, removing/replacing the existing baseball field and irrigation system. The infiltration system would serve a 423 acre drainage area and recharge groundwater sources with approximately 200 acre foot of storm water annually.

This project is partially funded by Proposition 1 Funds and must comply with all the requirements of the Proposition 1 Grant program. The selected firm shall comply and produce the required documents, programs, and all requirements of Proposition 1.

SERVICES:

- **Existing System Inventory** – Contractor shall verify, confirm and document the existing improvements including, but not limited to: invert elevation, size, flow direction, hardscapes, etc. Perform all necessary research to establish the precise location of all utilities based on the latest available records.
- **Records Research** – Contractor shall research all information pertinent to the project including records and documents in order to complete the project. Send a Notice to Relocate and coordinate with all utilities including City of San Fernando utilities. The selected Consultant shall identify all existing utilities and potential conflicts.
- **Preliminary Design Report** – The contractors preliminary design report shall revisit and, if necessary, revise the conceptual design approach based on the site-specific geotechnical

report, refined hydrological and hydraulic model of the project, and any more recent site-specific information.

The contractor shall provide a report defining storm water design issues, identify potential BMP options, analyze up to three (3) project alternatives, and provide project cost estimates for each alternative.

- **Environmental** – Perform environmental studies and provide report as required by California Environmental Quality Act (CEQA) requirement.
- **Permits** – The Contractor shall obtain applicable permits from other public agencies.
- **Survey** – The contractor shall provide all field survey and topographical work necessary to complete design effort. Design level survey and base mapping of the project shall be prepared in U.S. Customary English units by a Licensed California Land Surveyor. Submittals shall be in AutoCAD form and horizontal datum shall be NAD 83 and vertical datum shall be NAVD 88.
- **Hazardous Materials Assessment** – The contractor shall perform hazardous material sampling analysis and survey for all surface/subsurface structures within areas impacted by the project. If the findings determine a likelihood of site contamination the proposal shall include the work required to conduct an Environmental Site Assessment (Assessment). The Assessment should be outlined as additional work.

A report documenting the hazardous material analysis shall be prepared. The report shall include field procedures, sample descriptions, quantities and locations. The report shall also develop an abatement and/or removal specifications for the materials found.

- **Geotechnical Investigation Report** – The Contractor shall provide all work necessary to complete a geotechnical investigation report. The work shall include, but not limited to site visits, permits, subsurface exploration, laboratory testing, analysis and materials report.

A licensed and certified Geotechnical firm shall perform the geotechnical investigation to obtain and present sufficient information about the soil, infiltration, foundation conditions including seismic conditions of the project to allow for adequate design of the infiltration chambers. Perform at least two (2) borings and select samples from each borehole for grain size analysis. The boring depth shall be a minimum of 25 feet.

Excavate one (1) trench with a backhoe to a maximum feasible depth and a length of 20 feet, width of the backhoe bucket. Sediment types in trench sidewalls shall be logged. Trench shall be located adjacent to the edge of the baseball field.

Conduct infiltration tests at multiple depths during boring. These tests shall be used to collect data at the appropriate depths. Supporting data shall include, but not limited to the

following items: Evaluation/analysis of the seismologic conditions, evaluation/analysis of the engineering properties of the solid, evaluation/analysis of infiltration rate for the soils on in the proposed location of the system, types of materials to be encountered during excavation operations, bearing capacity, compaction and settlement characteristics of subgrade materials, fill material and compaction requirements and suitability of on-site solid for trench backfill.

In the event groundwater is encountered, provide testing for volatile organic compounds using EPA method 524.2. Provide information for groundwater level, fluctuation and potential of dewatering required during construction.

Provide recommendation on construction procedures and oversight, maintenance, success and failure and vast cost engineering and design.

- **Landscape and Irrigation Improvements** –The existing baseball field and irrigation system will be disturbed in the process of installing the infiltration system. The contractor shall develop a plan to restore areas affected.
- **Hydrology and Hydraulic Study** – Prepare a Hydrology and Hydraulic Study Report which shall include, but not limited to, project scope, location and hydrology maps, drainage area map, hydrology and hydraulic calculations, and infiltration system calculations.
- **Potholing** – Provide pothole services for all utility crossings and potential conflicts with other projects. Prior to the 50% submittal, potholing will be required to locate active and abandoned utilities within the project site. Potholes shall identify the existing sections (asphalt concrete, native, etc.)

In addition to the estimated potholes required to locate active and abandoned utilities within the project site as aforementioned, an additional five (5) days of potholing work (approximately 30 potholes) shall be included to address unforeseen underground field conditions. The use of his additional potholing task requires City written approval.

- **Plans, Specifications and Estimates** – Prepare Plans, Specifications and Engineer's Estimate for the improvements in the preceding sections. Plans are to be prepared using AutoCAD Civil 3D. The final submittal shall be Engineering Bond sheets and electronic files on disk. Scale on the standard 24"x36" plans shall be 1" = 20' (1" = 40') horizontal and 1" = 2' (1" = 4") vertical. Special Provisions are to be provided in Microsoft Word.

Prepare cost estimates for the construction of all improvements required for the feasibility and compatibility of the project.

Provide a specific list of required submittals

Provide a tentative schedule including all activities and major milestones

Prepare and provide the bid proposal

- **Community Outreach and Coordination** - The consultant shall support Staff with up to two (2) community outreach meetings with the residents, property owners and business owners in coordination with the project. The consultant shall prepare a Power Point presentation providing information including project background, technical information, costs and timeline.
- **Operation and Maintenance Manual** – Prepare Operation and Maintenance (O&M) Manual for all proposed structural storm water BMP's, pre-treatment devices and storm water filtration system. The City may request assistance in seeking a company to provide maintenance based on the O&M Manual.
- **Scheduling** – The consultant should work towards completing all phases (Design, Bidding, Construction, etc.) in a timely manner by satisfying all project objectives by the schedule outline under the Submittal Schedule of the Proposition 1 document (Exhibit "A") or less. The Contractor shall also make the City aware of any potential issues with meeting the deadline or opportunities to accelerate the work.
- **Bid Support** – Provide an on-going support services as required during the bid/award phase for any questions and/or clarifications from the Contractor and/or any revisions that may be necessary due to unforeseen conditions. Assist City Staff in preparation of bidding and awarding documents. Propose a "Not-to-Exceed" dollar amount.
- **Construction Support** – Provide construction phase kick-off meeting and on-going support services as required during the construction phase for any questions and/or clarifications from the Contractor and/or revisions that may be necessary due to unforeseen conditions including responding to RFIO's, revisions to plan and/or specs, assistance with technical issues, conflicts with existing infrastructure, submittal reviews, construction observations, testing observations and preparation of "Record Drawings" from As-builts on the original plan set. Propose a "Not-to-Exceed" dollar amount.

SCHEDULE FOR SELECTION

RFP Available:	January 18, 2018
Deadline for submittal of Questions:	February 12, 2018
Response to Questions:	February 15, 2018
Deadline for submittal of Proposal:	February 22, 2018
Interviews (if necessary)	Early March 2018
Agreement Presented to Council for Review & Approval:	March 19, 2018

METHOD OF SELECTION AND NOTICES

The City will evaluate the information provided in the submitted proposals using the following criteria as a guideline:

- Completeness and Comprehensiveness.
- Responsiveness to City's issues.
- Potential to benefit the City.
- Experience of the firm providing similar services to other municipalities.
- Cost effectiveness.
- Quality of proposed staff.

INFORMATION TO BE SUBMITTED

1. Include a *Proposal Summary* Section

This section shall discuss the highlights, key features, and distinguishing points of the Proposal. A separate sheet shall include all the contact people on the Proposal and how to communicate with them.

2. Include a *Profile of the Proposing Firm(s)* Section

This section shall include a brief description of the Firm, including size, location of office(s), number of years providing service, organizational structure of the responsible division, etc.

Additionally, this section shall include a listing of any lawsuit and the result of that action resulting from (a) any public project undertaken by the Firm where litigation is still pending or has occurred within the last five years or (b) any type of project where claims or settlements were paid by the Firm or its insurers within the last five years.

3. Include a *Qualifications of the Firm* Section

This section shall include a brief description of the Firm's qualifications and previous experience on similar or related projects. Provide a description of pertinent project experience with other public municipalities (maximum of four) that includes a summary of the work performed, the total project cost, the period over which the work was completed, and the name, title, and phone number of clients to be contacted for references. Give a brief statement of the Firm's adherence to the schedule and budget for each project.

4. Include a *Work Plan* Section

In this section, present a well-conceived service plan. This section of the proposal shall establish the Firm's understanding of the City's objectives and work requirements and the Firm's ability to satisfy those objectives and requirements. Describe the proposed approach for addressing the scope of service, outlining the approach that would be undertaken in providing the requested services. Include a timetable for providing the service. Describe related service experience by the Firm in similar work. Please describe the role, extent of services (number of people used, engagement duration, and contract value).

5. Include a *Project Staffing* Section

In this section, discuss how the Firm would propose to staff this project. Firm's key project team members shall be identified by name, specific responsibilities on the project and their qualifications. An organizational chart for the project team and resumes for key Firm personnel shall be included. Key Firm personnel will be an important factor considered by the Finance Director. **There can be no change of key personnel once the proposal is submitted, without prior approval of City.**

6. Include a *Proposal Costs Sheet and Rates* Section

In this section, include the proposed costs to provide the services desired. Include any other cost and price information that would be contained in a potential agreement with the City.

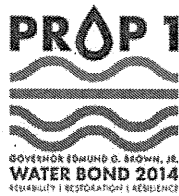
In addition, include the costs for any other services that are considered optional additions.

ATTACHMENTS

Exhibit A – Proposition 1 Grant

Exhibit B – Project Area Map

Exhibit C – Sample Professional Services Agreement



**PROPOSITION 1
STORM WATER**

CITY OF SAN FERNANDO
AND
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



PLANNING GRANT
STORM WATER PLANNING
SAN FERNANDO REGIONAL PARK PLANNING PROJECT

AGREEMENT NO. D1712611

GRANT FUNDS: \$425,000

ELIGIBLE START DATE: NOVEMBER 1, 2017
WORK COMPLETION DATE: JUNE 30, 2019
FINAL DISBURSEMENT REQUEST DATE: JULY 31, 2019
RECORDS RETENTION TERM END DATE: JUNE 30, 2055

WHEREAS,

1. The State Water Board is authorized to provide funding under this Agreement pursuant to the following:

Proposition 1 Storm Water - Section 79747 of the Water Code (Prop 1)

2. The State Water Board determines eligibility for financial assistance, determines a reasonable schedule for providing financial assistance, establishes compliance with Prop 1, and establishes the terms and conditions of a funding agreement.
3. The Recipient has applied to the State Water Board for funding for the Project described in Exhibit A of this Agreement, and the State Water Board has selected the application for funding through a competitive process.
4. The State Water Board proposes to assist in funding the costs of the Project, and the Recipient desires to participate as a recipient of financial assistance from the State Water Board, upon the terms and conditions set forth in this Agreement, all pursuant to Prop 1.

NOW, THEREFORE, in consideration of the premises, mutual representations, covenants and agreements in this Agreement, the State Water Board and the Recipient, each binding itself, its successors and assigns, do mutually promise, covenant, and agree as follows:

1. Definitions

Unless otherwise specified, each capitalized term used in this Agreement has the following meaning:

"Agreement" means this Grant Agreement, including all exhibits and attachments hereto.

"Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the Authorized Representative by title.

"Days" means calendar days unless otherwise expressly indicated.

"Disbursement Period" means the period during which Grant Funds may be disbursed.

"Disbursement Request" means the form used by the Recipient to document Match Funds and request reimbursement of Project Costs.

"Division" means the Division of Financial Assistance of the State Water Board or any other segment of the State Water Board authorized to administer the funding program(s) set forth in this Agreement.

"Eligible Start Date" means the date set forth in Exhibit B, establishing the date on or after which reimbursable Project Costs may be incurred and eligible for reimbursement hereunder.

"Final Disbursement Request Date" means the date established in Exhibit B, after which date no further Grant Funds disbursements may be requested.

"Fiscal Year" means the period of twelve (12) months terminating on June 30 of any year.

"Force Account" means the use of the Recipient's own employees or resources for the Project.

"GAAP" means generally accepted accounting principles, as issued by the Governmental Accounting Standards Board.

"Grant Contact" means the employee of the Recipient who has been delegated by the Project Director to oversee the day-to-day activities of the Project.

"Grant Funds" means funds provided by the State Water Board towards eligible reimbursable Project Costs.

"Grant Manager" means the person designated by the State Water Board to manage performance of the Agreement.

"Guidelines" means the State Water Board's "Proposition 1 Storm Water Grant Program Guidelines," as amended from time to time.

"Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient's organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; generic overhead or markup; and taxes.

"Match Funds" means funds provided by the Recipient towards the Project Costs incurred after November 4, 2014.

"Party Contact" means, for the Recipient, the Authorized Representative of the Recipient or any designee of the Authorized Representative, and, for the State Water Board, the Grant Manager, or the Program Analyst.

"Project" means the Project as described in Exhibit A and in the documents incorporated by reference.

"Project Completion" means, as determined by the Division, that the Project is complete to the reasonable satisfaction of the Division.

"Project Costs" means the incurred costs of the Recipient which are eligible under this Agreement, which are allowable costs as defined under the Guidelines, and which are reasonable, necessary and allocable by the Recipient to the Project under GAAP.

"Project Director" means an employee of the Recipient designated by the Authorized Representative to be responsible for the overall management of the administrative and technical aspects of the executed Agreement. The Project Director is set forth in this Agreement.

"Recipient" means City of San Fernando.

"Regional Water Quality Control Board" or "Regional Water Board" means the appropriate Regional Water Quality Control Board.

"State" means State of California.

"State Water Board" means the California State Water Resources Control Board, an administrative and regulatory agency of the State of California.

"SWRP Guidelines" means the State Water Resources Control Board's "Storm Water Resource Plan

Guidelines" as amended from time to time.

"Technical Advisor" means the person designated by the Los Angeles Regional Water Quality Control Board to provide technical advice on the Project. The Technical Advisor is set forth in Section 2 of this agreement.

"Work Completion" means the Recipient's submittal of all work set forth under Exhibit A for review and approval by the Division. The Division may require corrective work to be performed prior to Project Completion. Any work occurring after the Work Completion Date will not be reimbursed under this Agreement.

"Work Completion Date" means the date set forth in Exhibit A that is the last date on which Project Costs may be incurred under this Agreement.

"Year" means calendar year unless otherwise expressly indicated.

2. Party Contacts

The Party Contacts during the term of this Agreement are:

State Water Board		Recipient: City of San Fernando	
Section:	Division of Financial Assistance	Section:	Department of Public Works
Name:	Rachid Ait-Lasri, Grant Manager	Name:	Kenneth Jones, Project Director
Address:	1001 I Street, 17 th Floor	Address:	117 Macneil Street
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	San Fernando, CA 91340
Phone:	(916) 341-5825	Phone:	(818) 898-1240
Fax:	(916) 341-5296	Fax:	(818) 361-6728
e-mail:	Rachid.Ait-Lasri@waterboards.ca.gov	e-mail:	kjones@sfcity.org

Los Angeles Regional Water Quality Control Board	
Section:	Watershed/Regional Programs/Groundwater
Name:	Alireza Rahmani, Technical Advisor
Address:	320 West 4 th Street, Suite 200
City, State, Zip:	Los Angeles, CA 90013
Phone:	(213) 620-2150
Fax:	(213) 620-6660
e-mail:	Alireza.Rahmani@waterboards.ca.gov

Direct inquiries to:

State Water Board		Recipient: City of San Fernando	
Section:	Division of Financial Assistance	Section:	Department of Public Works
Attention:	Carolyn Saputo, Program Analyst	Name:	Manuel Fabian, Grant Contact
Address:	1001 I Street, 17 th Floor	Address:	117 Macneil Street
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	San Fernando, CA 91340
Phone:	(916) 341-5784	Phone:	(818) 898-1243
Fax:	(916) 341-5296	Fax:	(818) 361-6728
e-mail:	Carolyn.Saputo@waterboards.ca.gov	e-mail:	mfabian@sfcity.org

The Recipient may change its Project Director upon written notice to the Grant Manager, which notice shall be accompanied by authorization from the Recipient's Authorized Representative. The State Water Board will notify the Project Director of any changes to its Party Contacts.

3. Exhibits and Appendices Incorporated

The following exhibits and appendices to this Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made a part of this Agreement:

EXHIBIT A – SCOPE OF WORK

EXHIBIT B – FUNDING PROVISIONS

EXHIBIT C – STANDARD TERMS AND CONDITIONS

4. Representations, Warranties, and Commitments

The Recipient represents, warrants, and commits to the following as of the Eligible Start Date set forth in Exhibit B and continuing thereafter for the term of this Agreement:

- (a) General Commitments. The Recipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Recipient in its application, accompanying documents, and communications filed in support of its request for financial assistance and throughout the term of this Agreement.
- (b) Authorization and Validity. The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized. This Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.
- (c) No Violations. The execution, delivery, and performance by the Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or result in any breach or default under any contract, obligation, indenture, or other instrument to which the Recipient is a party or by which the Recipient is bound as of the date set forth on the first page hereof.
- (d) No Litigation. There are no pending or, to the Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which affect the financial condition or operations of the Recipient, and/or the Project.
- (e) Solvency. None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of the Recipient. As of the date set forth on the first page hereof, the Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due.
- (f) Legal Status and Eligibility. The Recipient is duly organized and existing and in good standing under the laws of the State of California, and will remain so during the term of this Agreement. The Recipient shall at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. The Recipient shall maintain its eligibility for funding under this Agreement for the term of this Agreement.

- (g) Good Standing. The Recipient is currently in compliance with the state requirements set forth in Exhibit C. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with previous state audit disallowances.
- (h) Insurance. Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example, but not necessarily limited to, General Liability, Automobile Liability, Worker's Compensation and Employer's Liability, and Professional Liability.

5. Project Completion

The Recipient shall expeditiously proceed with and complete the Project in accordance with this Agreement.

6. Notice

- (a) The Recipient shall notify the Division in writing within five (5) working days of the occurrence of the following:
 - (1) Bankruptcy, insolvency, receivership or similar event of the Recipient; or
 - (2) Actions taken pursuant to state law in anticipation of filing for bankruptcy.
- (b) The Recipient shall notify the Division within ten (10) working days of any litigation pending or threatened against the Recipient regarding its continued existence, consideration of dissolution, or reincorporation.
- (c) The Recipient shall notify the Division promptly of the following:
 - (1) Any proposed change in the scope of the Project. Under no circumstances may the Recipient make changes to the scope of the Project without receiving prior review and approval by the Division. Most changes will require an amendment to this Agreement;
 - (2) Cessation of work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
 - (3) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Work Completion;
 - (4) Any monitoring activities such that the State Water Board Division of Drinking Water and/or Regional Water Quality Control Board staff may observe and document such activities;
 - (5) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division; or
 - (6) Work Completion and Project Completion.

7. No Obligation of the State; State Budget Act Contingency

Any obligation of the State Water Board contained herein shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys appropriated by the State Legislature to the State Water Board from the special fund associated with this Agreement.

If the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no force and effect. This

provision shall be construed as a condition precedent to the obligation of the State Water Board to make any payments under this Agreement. In this event, the State shall have no liability to pay any funds whatsoever to Recipient or to furnish any other considerations under this Agreement and the Recipient shall not be obligated to perform any provisions of this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for payment over any other recipient.

If this Agreement's funding for any Fiscal Year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to the Recipient to reflect the reduced amount.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CITY OF SAN FERNANDO:

By: Alex Meyerhoff

Name: Alexander P. Meyerhoff

Title: City Manager

Date: 11-8-17

STATE WATER RESOURCES CONTROL BOARD:

By: Leslie S. Laudon

Name: Leslie S. Laudon

Title: Deputy Director
Division of Financial Assistance

Date: 11/16/17

EXHIBIT A – SCOPE OF WORK

A-1. Completion Date.

The Work Completion Date is established as JUNE 30, 2019. Work occurring after the Work Completion Date, including corrective actions, is not eligible for reimbursement with Grant Funds and cannot be paid for using Match Funds.

A-2. Purpose

This grant is for the benefit of the Recipient for the purpose of designing an underground storm water infiltration/retention basin. The planning funded by this agreement is related to the possible implementation project known as the San Fernando Regional Park Project that has a projected useful life of twenty (20) years. The Recipient's receipt of funding under this Agreement is not a commitment to and does not obligate the State Water Board to provide funding for any eventual implementation project.

A-3. Project-Specific Scope of Work

The Recipient agrees to do the following:

1. Project Management

- 1.1 Provide all technical and administrative services as needed for Project completion; monitor, supervise, and review all work performed; and coordinate budgeting and scheduling to ensure the Project is completed within budget, on schedule, and in accordance with approved procedures, applicable laws, and regulations.
- 1.2 Notify the Grant Manager and Technical Advisor at least fifteen (15) working days in advance of upcoming meetings, workshops, and trainings.
- 1.3 Develop and update appropriately a detailed Project schedule, including key Project milestones, and submit to the Grant Manager and Technical Advisor.
- 1.4 Conduct Project status review meetings as requested by the Grant Manager.
- 1.5 Prepare a memorandum of understanding agreement (MOU) between the Recipient, City of Los Angeles, and the County of Los Angeles for technical assistance. Submit the MOU to the Grant Manager.

2. Stakeholder Outreach, Education, and Public Participation

- 2.1 Facilitate the organization, coordination, and collaboration among stakeholders, residents, and non-governmental organizations.
 - 2.1.1 Convene a minimum of two (2) stakeholder outreach meetings during development of the fifty percent (50%) and ninety percent (90%) design plans. Submit the meeting agendas and sign-in sheets to the Grant Manager and Technical Advisor.
 - 2.1.2 Convene a minimum of two (2) public meetings during development of the fifty percent (50%) and one-hundred percent (100%) design plans to distribute Project information and allow the public to comment and ask questions regarding the Project. Submit the meeting agendas and sign-in sheets to the Grant Manager and Technical Advisor.

2.1.3 Post Project updates using the Recipient's social media page and website. Submit the weblinks to the Grant Manager and Technical Advisor.

2.2 Submit a summary of stakeholder outreach, education, public participation, and collaboration activities including meeting agenda(s) and materials, meeting summaries, sign-in sheets, and photos in the associated quarterly progress report(s).

3. Planning and Design

3.1 Develop a Request for Proposal (RFP) to advertise the implementation project based on the recommendations in the previously submitted Preliminary Design Memorandum.

3.1.1 Select an appropriately qualified and licensed engineering consultant to prepare plans, specifications, and cost estimates for the implementation project.

3.1.2 Submit the RFP and a copy of the design contract to the Grant Manager and Technical Advisor.

3.2 Prepare a Feasibility and Preliminary Design Report for the implementation project that includes a geotechnical analysis and hydrology study. The implementation project shall be designed to include capture, treatment, and infiltration of storm water and dry weather runoff collected from a minimum of four hundred (400) acres of contributing drainage area. The design shall include management of at minimum the first flush storm water runoff for the 85th percentile, 24-hour storm event. The design shall include the following facilities:

3.2.1 An underground infiltration gallery that holds a minimum of fifty (50) acre-feet of water.

3.2.2 A pre-treatment system utilizing a low impact development (LID) design to filter storm water pollutants, including metals, toxics, and bacteria.

3.3 Submit the draft Feasibility and Preliminary Design Report to the Grant Manager and Technical Advisor for comment.

3.4 Finalize the Feasibility and Preliminary Design Report, incorporating comments received, and submit to the Grant Manager and Technical Advisor.

3.5 Prepare and submit the fifty percent (50%) engineered design plans, specifications, and cost estimates for the implementation project to the Technical Advisor for review and Grant Manager for approval.

3.6 Complete the one hundred percent (100%) engineered design plans, specifications and updated cost estimate incorporating comments and prepare a summary identifying changes from the fifty percent (50%) plans in Item 3.5. Submit the plans, specifications, and summary of changes to the Technical Advisor for review and Grant Manager for approval.

3.7 Complete documentation required for the implementation project under the California Environmental Quality Act (CEQA). Take all required steps to prepare, circulate, and certify the required CEQA document(s).

3.7.1 Submit the draft CEQA document(s) to the Grant Manager and Technical Advisor for comment.

3.7.2 Submit the final CEQA document(s) to the Grant Manager and Technical Advisor.

- 3.8 Obtain all public agency approvals or permits required for the implementation project. Submit a list and signed copies of such approvals or permits to the Grant Manager and Technical Advisor.
- 3.9 Complete the bid documents in accordance with the approved design plans in Item 3.6, after receiving all required approvals. Submit the completed bid documents to the Grant Manager and Technical Advisor.

A-4. Disclosure

The Recipient shall include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

"Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board using funds from Proposition 1. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

A-5. Reporting

- (a) Progress Reports. The Recipient shall submit quarterly progress reports, using a format provided by the Grant Manager, within forty-five (45) days following the end of the calendar quarter (March, June, September, and December) to the Grant Manager and Technical Advisor. Progress Reports shall provide a brief description of activities that have occurred, milestones achieved, monitoring results (if applicable), and any problems encountered in the performance of the work under this Agreement during the applicable reporting period. Reporting shall be required even if no grant-related activities occurred during the reporting period. The Recipient shall document all activities and expenditures in progress reports, including work performed by contractors.
- (b) As Needed Information or Reports. The Recipient agrees to submit expeditiously, during the term of this Agreement, such reports, data, and information as may be reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the state or federal government.
- (c) Final Reports. At the conclusion of the Project, the Recipient must submit the following to the Grant Manager and Technical Advisor:
 - (1) Draft Final Project Report. Prepare and submit to the Grant Manager and Technical Advisor, for review and comment, a draft Final Project Report in a format provided by the Grant Manager.
 - (2) Final Project Report. Prepare a Final Project Report that addresses, to the extent feasible, comments made by the Grant Manager on the draft Final Project Report. Submit one (1) reproducible master copy and an electronic copy of the final. Upload an electronic copy of the final report in pdf format to the FFAST system.
 - (3) Final Project Summary. Prepare a brief summary of the information contained in the Final Project Report using a format provided by the Grant Manager, and include accomplishments, recommendations, and lessons learned, as appropriate. Upload an electronic copy of the Final Project Summary in pdf format to the FFAST system.

A-6. Submittal Schedule

Failure to provide items by the due dates indicated in the Submittal Schedule below may constitute a material violation of this Agreement. However, the dates in the "Estimated Due Date" column of this Submittal Schedule may be adjusted as necessary during the Disbursement Period with Grant Manager approval. All work or submittals must be achieved with relevant submittals approved by the Division prior to the Work Completion Date, and the final Disbursement Request submitted prior to the Final Disbursement Request Date set forth in Exhibit B.

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A-3 PROJECT-SPECIFIC SCOPE OF WORK			
1.	Project Management		
1.2	Notification of Upcoming Meetings, Workshops, and Trainings		Ongoing
1.3	Detailed Project Schedule	60 Days After Execution	
1.4	Status Review Meetings		Ongoing
1.5	Memorandum of Understanding		December 2017
2.	Stakeholder Outreach, Education, and Public Participation		
2.1.1	Stakeholder Meeting Agendas and Sign-In Sheets		Ongoing
2.1.2	Public Meeting Agendas and Sign-In Sheets		Ongoing
2.1.3	Weblinks		Ongoing
3.	Planning and Design		
3.1.2	Request for Proposal and Copy of Design Contract	February 28, 2018	
3.3	Draft Feasibility and Preliminary Design Report		July 2018
3.4	Final Feasibility and Preliminary Design Report		September 2018
3.5	50% Design Plans and Specifications, and Cost Estimate		November 2018
3.6	100% Design Plans and Specifications, and Summary of Changes		February 2019
3.7.1	Draft CEQA Document		November 2018
3.7.2	Final CEQA Document	February 28, 2019	
3.8	Public Agency Approvals or Permits		February 2019
3.9	Bid Documents		March 2019
EXHIBIT A-5 REPORTING			
(a)	Progress Reports	Quarterly	
(b)	As Needed Information or Reports		
(c)	Final Reports		

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A-5 REPORTING			
(c)(1)	Draft Final Project Report	April 30, 2019	
(c)(2)	Final Project Report	May 31, 2019	
(c)(3)	Final Project Summary	May 31, 2019	
EXHIBIT B – FUNDING PROVISIONS			
4 (b)	Final Disbursement Request		
9 (b)(4)	Disbursement Requests	Quarterly	

EXHIBIT B – FUNDING PROVISIONS

B-1. Project Funding

Subject to the terms of this Agreement, the State Water Board agrees to provide Grant Funds in the amount of up to FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$425,000).

B-2. Match Funds

- (a) The Recipient agrees to provide Match Funds in the amount of FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$425,000).
- (b) This Match Funds amount is based on the budget, funding sources, and amounts submitted by the Recipient in its application and during the negotiation of this Agreement. Any Match Funds changes or adjustments requested by the Recipient must be approved, in advance and in writing, by the Grant Manager and may require an amendment to this Agreement.
- (c) Only expenses that would be considered eligible under the Guidelines will be counted towards the Recipient's Match Funds.
- (d) Any costs incurred prior to the adoption of Prop 1 on November 4, 2014, will not count towards the Recipient's Match Funds.
- (e) If, at Work Completion, the Recipient has provided Match Funds in an amount that is less than the Match Funds amount set forth above, the State Water Board may proportionately reduce the Grant Funds amount and/or the Recipient's Match Funds amount, upon approval of the Deputy Director of the Division, provided the reduced amount(s) satisfy statutory requirements and Guidelines.

B-3. Estimated Reasonable Total Project Cost

The estimated reasonable cost of the total Project is EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$850,000).

B-4. Funding Dates

- (a) The Eligible Start Date is NOVEMBER 1, 2017. Otherwise eligible costs incurred prior to this date will not be reimbursed.
- (b) The Final Disbursement Request Date is JULY 31, 2019. The Deputy Director of the Division may extend this date for good cause. Extensions may require an amendment to this Agreement. All Disbursement Requests must be submitted to the Division such that they are received prior to this date. Late Disbursement Requests will not be honored, and remaining amounts will be deobligated.

B-5. Funding Conditions and Exclusions

- (a) This Agreement reflects planning funding only. If the Recipient desires implementation/construction funding, the Recipient must apply for implementation/construction funding, and execute an implementation/construction funding agreement. Costs associated with the implementation/construction phase of the possible eventual implementation/construction project are not eligible for reimbursement under this Agreement.

- (b) The State Water Board's disbursement of Grant Funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.
- (c) Grant Funds may not be used for any Indirect Costs. Any Disbursement Request submitted including Indirect Costs will cause that Disbursement Request, in its entirety, to be disputed and will not be paid until the dispute is resolved. This prohibition applies to the Recipient and any subcontract or sub-agreement for work on the Project that will be reimbursed with Grant Funds pursuant to this Agreement. (Gov. Code, § 16727.)

B-6. Budget Summary

LINE ITEM	GRANT FUNDS	MATCH FUNDS	TOTAL PROJECT COSTS
Direct Project Administration Costs	\$ 55,692	\$ 55,692	\$ 111,384
Planning/Design/Engineering/Environmental	\$ 369,000	\$ 365,000	\$ 734,000
Construction/Implementation	\$ 0	\$ 0	\$ 0
Monitoring/Performance	\$ 0	\$ 0	\$ 0
Education/Outreach	\$ 308	\$ 4,308	\$ 4,616
TOTAL	\$ 425,000	\$ 425,000	\$ 850,000

B-7. Budget Flexibility

- (a) Subject to the prior review and approval of the Grant Manager, adjustments between existing line item may be used to defray allowable direct costs up to fifteen percent (15%) of the total amount (excluding Match Funds), including any amendment(s) thereto. Line item adjustments in excess of fifteen percent (15%) require an Agreement amendment. If the detailed budget includes an amount for the Recipient's personnel costs, that amount is based on the hours, classifications, and rates submitted by the Recipient in its application. Any changes to the hours, classifications, and rates must be approved, in advance and in writing, by the Grant Manager.
- (b) The Recipient may submit a request for an adjustment in writing to the Grant Manager. Such adjustment may not increase or decrease the total grant amount. The Recipient shall submit a copy of the original Agreement budget sheet reflecting the requested changes and shall note proposed changes by striking out the original amount(s) followed with proposed change(s) in bold and underlined. Budget adjustments deleting a budget line item or adding a new budget line item shall require a formal amendment. The Division may also propose budget adjustments.
- (c) The sum of adjusted line items shall not exceed the total budget amount.

B-8. Amounts Payable by the Recipient

The Recipient agrees to pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Grant Funds are not sufficient to pay the Project Costs in full, the Recipient shall nonetheless complete the Project and pay that portion of the Project Costs in excess of available Grant Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

B-9. Disbursement of Grant Funds; Availability of Grant Funds

- (a) The State Water Board's obligation to disburse Grant Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the State government to appropriate funds necessary for disbursement of Grant Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other recipient. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding. If this Agreement's funding for any fiscal year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an amendment to the Recipient to reflect the reduced amount.
- (b) Except as may be otherwise provided in this Agreement, disbursement of Grant Funds will be made as follows:
- (1) Upon execution and delivery of this Agreement, the Recipient may submit a Disbursement Request for eligible Project Costs as well as to support Match Funds specified in this Exhibit from the Project Costs through submission to the State Water Board using the Disbursement Request form provided by the Grant Manager.
 - (2) Disbursement Requests shall contain the following information:
 - a. The date of the request;
 - b. The time period covered by the request, i.e., the term "from" and "to";
 - c. The total amount requested;
 - d. Documentation of Match Funds used;
 - e. Original signature and date (in ink) of the Recipient's Project Director or his/her designee; and
 - f. The Final Disbursement Request shall be clearly marked "FINAL DISBURSEMENT REQUEST" and shall be submitted NO LATER THAN JULY 31, 2019.
 - (3) Disbursement Requests must be itemized based on the line items specified in the budget in this Exhibit. Disbursement Requests must be complete, signed by the Recipient's Project Director or his/her designee and must be addressed to the Grant Manager as set forth in the Party Contacts section of this Agreement. Disbursement Requests submitted in any other format than the one provided by the State Water Board will cause a Disbursement Request to be disputed. In the event of such a dispute, the Grant Manager will notify the Recipient. Payment will not be made until the dispute is resolved and a corrected Disbursement Request submitted. The Grant Manager has the responsibility for approving Disbursement Requests. Disbursement Requests must be complete and signed by the Recipient's Project Director or his/her designee. Project Costs incurred prior to the Eligible Start Date of this Agreement will not be reimbursed.

- (4) Grant Funds must be requested quarterly via Disbursement Request for eligible costs incurred during the reporting period of the corresponding Progress Report, describing the activities and expenditures for which the disbursement is being requested. Each Disbursement Request must be accompanied by a Progress Report. Failure to provide timely Disbursement Requests may result in such requests not being honored.
- (5) The Recipient agrees that it will not submit any Disbursement Requests that include any Project Costs until such costs have been incurred and are currently due and payable by the Recipient, although the actual payment of such costs by the Recipient is not required as a condition of the Disbursement Requests. Supporting documentation (e.g., receipts) must be submitted with each Disbursement Request as well as to support Match Funds claimed, if any. The amount requested for administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Disbursement of Grant Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Disbursement Request.
- (6) The Recipient will not seek reimbursement of any Project Costs that have been reimbursed from other funding sources.
- (7) The Recipient shall use Grant Funds within thirty (30) days of receipt to reimburse contractors, vendors, and other Project Costs. Any interest earned on Grant Funds shall be reported to the State Water Board and will either be required to be returned to the State Water Board or deducted from future disbursements. In the event that the Recipient fails to disburse Grant Funds to contractors or vendors within thirty (30) days from receipt of the Grant Funds, the Recipient shall immediately return such Grant Funds to the State Water Board. Interest shall accrue on such Grant Funds from the date of disbursement through the date of mailing of Grant Funds to the State Water Board. If the Recipient held such Grant Funds in interest-bearing accounts, any interest earned on the Grant Funds shall also be due to the State Water Board.
- (8) The Recipient shall submit its final Disbursement Request no later than the Final Disbursement Request Date specified herein unless prior approval is granted by the Division. If the Recipient fails to do so, then the undisbursed balance of this Agreement will be deobligated.
- (9) The Recipient agrees that it will not request a disbursement unless that cost is allowable, reasonable, and allocable.
- (10) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner that is in violation of or in conflict with federal or state laws, policies, or regulations.
- (11) The Recipient agrees that it shall not be entitled to interest earned on undisbursed Grant Funds.
- (12) Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources. These rates may be found at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred by the Recipient. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the Grant Manager.
- (13) The Recipient must include any other documents or requests required or allowed under this Agreement.

B-10. Withholding of Disbursements and Material Violations

- (a) Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may retain an amount equal to ten percent (10%) of the Grant Funds until Project Completion. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Project Completion.
- (b) The State Water Board may withhold all or any portion of the funds provided for by this Agreement in the event that:
 - (1) The Recipient has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
 - (2) The Recipient fails to maintain reasonable progress toward Project Completion.

B-11. Remaining Balance

In the event the Recipient does not request all of the Grant Funds encumbered under this Agreement, any remaining Grant Funds revert to the State.

B-12. Fraud and Misuse of Public Funds

All Disbursement Requests submitted shall be accurate and signed under penalty of perjury. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Recipient shall not submit any Disbursement Request containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of Grant Funds and/or termination of this Agreement requiring the repayment of all Grant Funds disbursed hereunder. Additionally, the Deputy Director of the Division may request an audit and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability. (Civ. Code, §§ 1572-1573; Pen. Code, §§ 470, 489-490.)

EXHIBIT C – STANDARD TERMS AND CONDITIONS

C-1. Accounting and Auditing Standards

The Recipient must maintain Project accounts according to GAAP. The Recipient shall maintain GAAP-compliant Project accounts, including GAAP requirements relating to the reporting of infrastructure assets.

C-2. Amendment

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral or written understanding or agreement not incorporated in this Agreement is binding on any of the parties.

C-3. Assignability

This Agreement is not assignable by the Recipient, either in whole or in part.

C-4. Audit

- (a) The Division, at its option, may call for an audit of financial information relative to the Project, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of state or federal requirements. Where such an audit is called for, the audit shall be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit shall be in the form required by the Division.
- (b) Audit disallowances will be returned to the State Water Board. Failure to comply with audit disallowance provisions shall disqualify the Recipient from participating in State Water Board funding programs.

C-5. [Reserved]

C-6. [Reserved]

C-7. Claims

Any claim of the Recipient is limited to the rights, remedies, and claims procedures provided to the Recipient under this Agreement.

C-8. Competitive Bidding

The Recipient shall adhere to any applicable state law or local ordinance for competitive bidding and applicable labor laws.

If the Recipient is a private entity, any construction contracts related in any way to the Project shall be let by competitive bid procedures that ensure award of such contracts to the lowest responsible bidders. Recipient shall not award a construction contract until a summary of bids and identification of the selected lowest responsible bidder is submitted to and approved in writing by the Division. The Recipient must provide a full explanation if the Recipient is proposing to award a construction contract to anyone other than the lowest responsible bidder.

C-9. Compliance with Law, Regulations, etc.

The Recipient agrees that it shall, at all times, comply with and require its contractor and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Recipient agrees that, to the extent applicable, the Recipient shall:

- (a) Comply with the Guidelines; and
- (b) Comply with and require compliance with the list of state laws (cross-cutters) in Section C-32 of this Agreement.

C-10. Conflict of Interest

The Recipient certifies that its owners, officers, directors, agents, representatives, and employees are in compliance with applicable state and federal conflict of interest laws.

C-11. Damages for Breach Affecting Tax-Exempt Status or Federal Compliance

In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the loss of tax-exempt status for any bonds of the State or any subdivision or agency thereof, including bonds issued on behalf of the State Water Board, or if such breach shall result in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government by reason of any arbitrage profits, the Recipient shall immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach. In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the failure of Grant Funds to be used pursuant to the provisions of this Agreement, or if such breach shall result in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient shall immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

C-12. Disputes

- (a) The Recipient may appeal a staff decision within thirty (30) days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within thirty (30) days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.
- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) The Recipient shall continue with the responsibilities under this Agreement during any dispute.

C-13. Financial Management System and Standards

The Recipient agrees to comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal or state government and tracking of Project Costs to a level

of expenditure adequate to establish that such Grant Funds have not been used in violation of federal or state law or the terms of this Agreement.

C-14. Governing Law

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

C-15. Income Restrictions

The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient under this Agreement shall be paid by the Recipient to the State Water Board, to the extent that they are properly allocable to Project Costs for which the Recipient has been reimbursed by the State Water Board under this Agreement.

C-16. Indemnification and State Reviews

The parties agree that review or approval of Project documents by the State Water Board is for administrative purposes only, including conformity with application and eligibility criteria, and expressly not for the purposes of design defect review or construction feasibility, and does not relieve the Recipient of its responsibility to engage in proper planning. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board, and its officers, employees, and agents (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the Project; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement and the discharge of the Recipient's obligation hereunder.

C-17. Independent Actor

The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State Water Board.

C-18. Integration

This Agreement is the complete and final Agreement between the parties.

C-19. Non-Discrimination Clause

- (a) During the performance of this Agreement, the Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.
- (b) The Recipient, its contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Recipient, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (d) The Recipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (e) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

C-20. No Third Party Rights

The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation, or undertaking established herein.

C-21. [Reserved]

C-22. Other Assistance

If funding for Project Costs is made available to the Recipient from sources other than this Agreement and approved match sources, the Recipient shall immediately notify the Grant Manager.

C-23. Permits; Contracting; Disqualification

The Recipient shall comply in all material respects with all applicable federal, state and local laws, rules and regulations. The Recipient shall procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.

For any work related to this Agreement, the Recipient shall not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.shtml. The Recipient shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension."

C-24. Public Records

The Recipient acknowledges that, except for a subset of information regarding archaeological records, the Project records and locations are public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated by reference into this Agreement, and all reports, disbursement requests, and supporting documentation submitted hereunder.

C-25. Prevailing Wages

The Recipient agrees to be bound by all applicable provisions of the State Labor Code regarding prevailing wages. The Recipient shall monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met.

C-26. Professionals

The Recipient agrees that only professionals with valid licenses in the State of California will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, architecture, or geologic sciences shall be prepared by or under the direction of persons registered to practice in California. All technical reports must contain the statement of the qualifications of the responsible registered professional(s). Technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

C-27. Public Funding

This Project is publicly funded. Any service provider or contractor with which the Recipient contracts must not have any role or relationship with the Recipient, that, in effect, substantially limits the Recipient's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

C-28. Recipient's Responsibility for Work

The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for responding to any and all disputes arising out of its contracts for work on the Project. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

C-29. Records

Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient agrees to:

- (a) Establish an official file for the Project, which shall adequately document all significant actions relative to the Project.
- (b) Establish separate accounts, which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement.
- (c) Establish separate accounts, which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement.

- (d) Establish an accounting system, which will accurately depict final total costs of the Project, including both direct and indirect costs. Indirect Costs are not eligible for funding under this Agreement.
- (e) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations.
- (f) If Force Account is used by the Recipient for the Project, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.
- (g) Maintain separate books, records and other material relative to the Project.
- (h) Retain such books, records, and other material for itself and for each contractor or subcontractor who performed work on this Project for a minimum of thirty-six (36) years after Work Completion. The Recipient shall require that such books, records, and other material be subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned, and shall allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar right regarding audit, interviews, and records retention in any subcontract related to the performance of this Agreement. The provisions of this section shall survive the term of this Agreement.

C-30. Related Litigation

A Recipient is prohibited from using Grant Funds or Match Funds to pay costs associated with any litigation the Recipient pursues. Regardless of whether the Project or any eventual construction project is the subject of litigation, the Recipient agrees to complete the Project funded by the Agreement or to repay all Grant Funds plus interest to the State Water Board.

C-31. Rights in Data

The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request.

C-32. State Cross-Cutter Compliance

Recipient represents and certifies that, to the extent applicable, it is in compliance with the following conditions precedent and agrees that it will continue to maintain compliance during the term of this Agreement:

- (a) Agricultural Water Management Plan Consistency. A Recipient that is an agricultural water supplier as defined by section 10608.12 of the Water Code must comply with the Agricultural Water Management Planning Act. (Wat. Code, § 10800 *et seq.*)

- (b) California Environmental Quality Act (CEQA). Implementation and construction activities must comply with CEQA and potentially other environmental review requirements, including the National Environmental Policy Act (NEPA). Proceeding with work subject to CEQA and/or NEPA without environmental clearance by the State Water Board shall constitute a breach of a material provision of this Agreement.
- (c) Charter City Project Labor Requirements. (Labor Code, § 1782 and Pub. Contract Code, § 2503.)

(1) Prevailing Wage

Where the Recipient is a charter city or a joint powers authority that includes a charter city, Recipient certifies that no charter provision nor ordinance authorizes a construction project contractor not to comply with the Labor Code's prevailing wage rate requirements, nor, within the prior two years (starting from January 1, 2015, or after) has the city awarded a public works contract without requiring the contractor to comply with such wage rate requirements according to Labor Code section 1782.

(2) Labor Agreements

Where the Recipient is a charter city or a joint powers authority that includes a charter city, Recipient certifies that no charter provision, initiative, or ordinance limits or constrains the city's authority or discretion to adopt, require, or utilize project labor agreements that include all the taxpayer protection antidiscrimination provisions of Public Contract Code section 2500 in construction projects, and that the Recipient is accordingly eligible for state funding or financial assistance pursuant to Public Contract Code section 2503.

- (d) Contractor and Subcontractor Requirements. (Labor Code, §§ 1725.5 and 1771.1.) To bid for public works contracts, Recipient acknowledges that Recipient and Recipient's subcontractors must register with the Department of Industrial Relations.
- (e) Delta Plan Consistency Findings. (Wat. Code, § 85225 and Cal. Code of Regulations, title 23, § 5002.) If the Recipient is a state or local public agency and the proposed action is covered by the Delta Plan, the Recipient will submit a certification of project consistency with the Delta Plan to the Delta Stewardship Council prior to undertaking the implementation/construction project associated with this Project.
- (f) Eminent Domain Prohibited. (Wat. Code, § 79711.) Where land acquisition is otherwise authorized under this Agreement, Grant Funds and Match Funds shall not be used to acquire land via eminent domain.
- (g) Governor's Infrastructure Plan. (Gov. Code, § 13100.) The Recipient shall ensure that the Project shall maintain consistency with section 13100 of the Government Code (five-year infrastructure plan).
- (h) State Water Board's Drought Emergency Water Conservation regulations. (Cal. Code of Regulations, Title 23, article 22.5.) The Recipient will include a discussion of its implementation in Progress Reports submitted pursuant to this Agreement.
- (i) Urban Water Demand Management. (Wat. Code, § 10631.5.) If the Recipient is an "urban water supplier" as defined by Water Code section 10617, the Recipient certifies that it is implementing water demand management measures approved by the Department of Water Resources.

- (j) Urban Water Management Planning Act. (Wat. Code, § 10610 et seq.). If the Recipient is an "urban water supplier" as defined by Water Code section 10617, the Recipient certifies that it has submitted an Urban Water Management Plan that has been deemed complete by the Department of Water Resources and is in compliance with that plan. This shall constitute a condition precedent to this Agreement.
- (k) Urban Water Supplier. (Wat. Code, §§ 526 and 527.) If the Recipient is an urban water supplier as defined by Water Code section 10617, it shall have complied and maintain compliance with sections 526 and 527 of the Water Code relating to installation of meters and volumetric charging.
- (l) Water Diverter. (Wat. Code, § 5103.) If the Recipient is a water diverter, the Recipient must maintain compliance by submitting monthly diversion reports to the Division of Water Rights of the State Water Resources Control Board.
- (m) Water Quality Compliance. (Wat. Code, § 79707.) The Recipient shall ensure that the Project shall maintain consistency with Division 7 of the Water Code (commencing with section 13000) and Government Code section 13100.
- (n) Water Quality Monitoring. (Wat. Code, § 79704.) If water quality monitoring is required as part of the Project, the Recipient shall collect and report water quality monitoring data to the State Water Board in a manner that is compatible and consistent with surface water monitoring data systems or groundwater monitoring data systems administered by the State Water Board.
- (o) Wild and Scenic Rivers. (Wat. Code, § 79711.) The Recipient shall ensure that the Project will not have an adverse effect on the values upon which a wild and scenic river or any other river is afforded protections pursuant to the California Wild and Scenic Rivers Act or the federal Wild and Scenic Rivers Act.

C-33. State Water Board Action; Costs and Attorney Fees

The Recipient agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Recipient, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own costs and attorney fees.

C-34. Termination; Immediate Repayment; Interest

- (a) This Agreement may be terminated at any time prior to the Work Completion Date set forth on the cover and in Exhibit A, at the option of the State Water Board, upon violation by the Recipient of any material provision of this Agreement after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division.
- (b) In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to Grant Funds disbursed hereunder, accrued interest, penalty assessments, and Additional Payments. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date all monies due have been received by the State Water Board.

C-35. Timeliness.

Time is of the essence in this Agreement.

C-36. Unenforceable Provision.

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

C-37. [Reserved]

C-38. Venue.

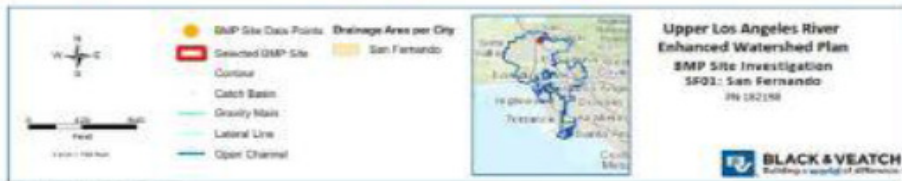
The State Water Board and the Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.

C-39. Waiver and Rights of the State Water Board.

Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.

Any rights and remedies of the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

Project Drainage Area



Stormwater Infiltration BMP



Example Park Infiltration System



Synthetic Turf Fields





PROFESSIONAL SERVICES AGREEMENT

[Consultant]

[San Fernando Regional Park Infiltration Project]

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 [NAME OF CONSULTANT], a [ENTITY TYPE] (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 Services. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Services shall hereinafter be referred to generally by the capitalized term “Work.”
 - 1.2 **TERM:** This Agreement shall have a term of [TERM PERIOD] commencing from [EFFECTIVE DATE]. Nothing in this Section shall operate to prohibit or otherwise restrict the CITY’s ability to terminate this Agreement at any time for convenience or for cause
 - 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 [IN THE SCOPE OF WORK OR STAND-ALONE SCHEDULE (“EXHIBIT)] (hereinafter, the “Approved Rate Schedule”).
 - B. Section 1.3(A) notwithstanding, CONSULTANT’s total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum of [NOT-TO-EXCEED SUM] (hereinafter, the “Not-to-Exceed Sum”), unless such added expenditure is first approved by the CITY acting in
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PROFESSIONAL SERVICES AGREEMENT

[INSERT Brief Description of Engagement]

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consultation with the City Manager and the Finance Director. In the event CONSULTANT's charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, CITY may suspend CONSULTANT's performance pending CITY approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other CITY-approved amendment to the compensation terms of this Agreement.

- 1.4 PAYMENT OF COMPENSATION: Following the conclusion of each calendar month, CONSULTANT shall submit to CITY an itemized invoice indicating the services and tasks performed 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 day 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.
- 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 Services, 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

PROFESSIONAL SERVICES AGREEMENT

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- 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.
- 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;

PROFESSIONAL SERVICES AGREEMENT

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- 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 to subcontractors and subconsultants) 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, subcontractors and subconsultants. 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 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.

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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, subcontractors or subconsultants 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, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the CITY, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONSULTANT and shall not be re-assigned 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, subcontractor, subconsultant, 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,

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employees, departments or subdivisions of CITY. CONSULTANT shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. 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.
- 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.

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- 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.
- 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, 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, subcontractors 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**

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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.
- 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

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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 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:**

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- 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 5.2.B 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 5.2 B.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 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.

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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 Services; (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 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

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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.

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.

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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 if disclosure is 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 is 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.

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- 6.9 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 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, limits, augment, or describe the scope, content, or intent of this Agreement.

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- 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 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 6.15, 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

[NAME OF FIRM]

By: _____
Alexander P, Meyerhoff, City Manager

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

By: _____
Rick R. Olivarez, City Attorney

SAMPLE