



Request for Proposals

For an Energy Efficiency Resources Audit

**City of San Fernando
DEPARTMENT of PUBLIC WORKS
117 MACNEIL STREET
SAN FERNANDO, CA 91340-2993**

All Proposals must be submitted in a sealed envelope
and received at San Fernando City Hall on or before
Tuesday, January 22, 2019 at 4:00 PM with the following notation:

Proposal for
Energy Efficiency Resources Audit
City of San Fernando, California

I. REQUEST FOR PROPOSALS (RFP)

The San Fernando (hereinafter "City") hereby solicits proposals from qualified firms to first perform an audit of all city facilities (Attachment "A") to identify and then to ultimately implement a full range of energy services, energy generation and water-related improvements and related programs (hereinafter "Project"). The City is seeking to partner with an entity that is qualified to provide holistic, turn-key energy and water savings projects that further advance the City's goal to reduce its impact on the environment.

The City anticipates working with a single firm or consultant's team through three (3) phases of project activity, each of which shall be subject to individual negotiations for price and scope subject to City approval:

1. **Phase I** - Preparation of energy/water resources audit and identification of potential efficiency projects;
2. **Phase II** - Project development (engineering assessment, design, project budget, financial options for viable projects, workshop to City Council for selection of projects and financing instruments);
3. **Phase III** - Project implementation (bid, construction, commissioning, and training).

Please note that this RFP is only requesting proposals for Phase I. Depending on the results of the Phase I project, separate RFPs may be issued for Phase II and Phase III.

For your proposal to be considered, submit one (1) digital copy on a flash drive, and five (5) hard copies of the proposal in a sealed envelope marked "Proposal to Provide Energy Performance Auditing Services" to:

Mr. Yazdan Emrani, P.E.
Director of Public Works/City Engineer
117 Macneil Street
San Fernando, California 91340-2993

The deadline to submit a proposal is Tuesday, January 22, 2019 at 4:00 P.M. If your proposal is not received on or before that date and time, then that proposal will not be considered.

Sealed proposals may be submitted in person at San Fernando City Hall, or via U.S. Mail or express courier at the address above. Fax or email submittals will not be accepted. Proposals must address the requirements of this Request for Proposals (RFP).

Please direct all questions regarding the RFP, in writing only, to Kenneth Jones, Management Analyst, at kjones@sfcity.org no later than Wednesday, January 2, 2019. The City will provide written responses to all questions received, by Friday, January 9, 2019.

PROJECT GOALS

The objectives of this project are to identify energy and water saving solutions through a citywide audit to develop and implement a comprehensive package of energy and water savings measures and related City infrastructure improvements with zero capital outlay from the City that will pay for themselves over time from cost savings, and continue to reduce operational costs to the City once paid for. The ultimate goal for the City is to have the services and capital improvements financed through an energy performance and/or water use contract which can accomplish the following:

- Achieves significant long-term cost savings through reduced energy and water use, and related operating cost savings, utilizing renewable energy sources such as solar energy;
- Achieves an annual guarantee for cost savings for each year of the contract;
- Turn-key project design and implementation of improvements and updates to the City's infrastructure;
- Upgrades old and/or inefficient systems;
- Maintains consistent and reasonable levels of occupant comfort;
- Maintains building functionality and compatibility with existing equipment;
- Improves utilization of technology to achieve optimum performance and savings;
- Provides additional benefits that directly result from energy related services and capital improvements, reduced maintenance needs, improved indoor air quality, building improvements, etc.;
- Minimizes financial and technical risk to the City;
- Provides training to employees on maintenance and repair of equipment and controls;
- Provides comprehensive funding solutions;
- Create, implement and fund innovative programs or measures within the overall project that create benefits and contribute to the City's goals and objectives related to: Greenhouse gas reduction and carbon mitigation
 - Economic development within the City
 - Community workforce training and development
- Publicity, branding and marketing of the City as a leader in energy and environmental stewardship.

III. MINIMUM REQUIREMENTS

The City would prefer all firms to meet the following minimum requirements to participate in the City's RFP process:

- Accredited by the National Association of Energy Services Companies (NAESCO) and is included on the U.S. Department of Energy's (DOE) Qualified List of Energy Service Companies.
- Local full service support office with trained technicians, engineers, and project managers within a one hundred (100) mile radius of the City.
- Successfully implemented at least three (3) energy performance contracts for public sector clients in the last 5 years.
- Demonstrated experience in retrofitting municipal infrastructure to reduce

energy and water consumption;

- Savings Methodology shall be a bill to bill comparison – International Performance Measurement and verification protocol (IPMVP) Option C (whole facility savings are determined by measuring energy use at the whole facility or sub-facility level) and include examples of Measurement and Verification (M&V) Reports; and
- No pending or recent litigation in the past (36) months associated with the savings performance and/or measurement and verification (M&V) of a guaranteed energy savings project.

IV. SCOPE OF WORK

The successful proposer/team will evaluate and propose applicable Energy Conservation Measures (ECM's) including but not limited to:

- Heating ventilation & air conditioning (HVAC) system optimization, retrofit, upgrade or replacement
- Interior and exterior lighting retrofit or replacement
- Outside, street, and area lighting retrofit or replacement
- Open standards wireless platform and applications to control, dim, monitor, and help maintain street lighting LED retrofit investment, plus enable a platform for future City applications such as parking, automated meter reading, charging stations, traffic, etc.
- Building Automation System (BAS) installation, upgrade, or expansion leveraging existing technology
- Building envelope upgrades
- Infrastructure improvements that reduce energy and/or reduce operating costs through the use of renewable energy sources such as solar energy
- Other training, remote monitoring services, and on-going support services that will ensure objectives of program are met over the term of the agreement

All proposed Energy Conservation Measures must be provided on a turn-key basis, including all necessary permits, engineering, design, installation, commissioning, delivery, training, warranty service, and regulatory compliance. City of San Fernando would like to implement all tasks associated with achieving the above project goals and objectives, via the following, at a minimum:

Phase 1: Energy Efficiency Resources Audit

- Conduct a comprehensive investment-grade audit of City facilities and infrastructure, including, but not limited to, buildings, parks, water facilities, and city-owned street lights. The investment grade audit shall identify and analyze all opportunities for water and energy cost savings;
- Conduct a comprehensive feasibility analysis of distributed generation opportunities for City facilities, including solar PV and solar arrays, and any other economically and environmentally viable distributed generation (DG) solutions. The City has identified several City facilities as possible locations for a solar array, but no specific studies for this site (or other potentials citywide for solar PV) have been made;
- Perform an analysis of the information gathered and determine whether improvements can be implemented to reduce energy and water consumption, or increase efficiency to generate cost savings;
- Prepare a detailed report summarizing the results of the energy and water audit and analysis, and DG feasibility study, including all costs and benefits of each individual measure analyzed;
- Make recommendations for viable energy and water projects in City facilities based on the audit/analyses and the goals of the program. Recommendations including, but not limited to, energy and water savings measures, cost and payback shall be broken down for each City facility by energy and water savings measure;
- During this phase Consultant shall develop schematic designs to obtain preliminary budgets. Consultant shall prepare preliminary estimate of project payback and identify potential funding sources for the project.
- Prepare and conduct presentations to City, and provide support to City staff for presentation to the City Commissions and City Council, summarizing activities, analyses, and recommendations of the energy and water audit. It is anticipated that there will be up to three (3) presentations during this audit phase.

Upon award, the selected firm will be required to perform site walks at City facilities to evaluate facility infrastructure improvements. The Firm shall also provide all labor, equipment, tools, materials, insurance, supervision, fuel, and all other items needed to deliver excellent energy performance services.

V. CONTRACT TERMS ANTICIPATED

Contract terms may include, but will not be limited to:

- Life-cycle pro-forma of proposed energy improvements, including reasonable and fully documented annual energy, water, and operations and maintenance costs and savings;

- Full documentation of project labor and materials costs, by measure, with negotiated and agreed-to NAESCO mark-ups, fees and profit clearly presented in an open-book pricing/cost structure. Payment bonds will be required for construction;
- Detailed description of services to be provided;
- Project key staffing assignments and guarantee of availability of assigned key staff to work on the project;
- Specific financing arrangements and terms;
- Estimates of water and energy savings in annual and life-cycle kwh, kW, therms, gallons, acre-feet or other appropriate units;
- A detailed description of, and plan for, ongoing measurement and verification to quantify and document project water and energy and cost savings and performance;
- A requirement for a performance bond guaranteeing that the facility will be either completed as planned or restored to the original condition in the event of default;
- A clause specifying who will be responsible for maintaining the equipment to ensure cost savings and continued equipment optimum performance.

As an example of the contract for the audit portion of the project, a copy of the City's standard Professional Services Agreement, with insurance requirements, is included as Attachment "B".

VI. SPECIFIC REQUIRED TASKS

The City anticipates that the following specific tasks will be performed by the successful proposer:

- A. Project Kick-Off Meeting: Introduce staff, provide any background information/data needs of the Consultant, confirm work order and tasks to be performed, prioritize the facilities, and discuss expectations, reporting requirements and the communications process.
- B. Report on Current and Potential City Energy and Water Efficiencies; and On-site Generation Options:
 1. Analyze and report on energy efficiency (electricity and natural gas) and water usage at all City facilities, providing an analysis of building systems, equipment, operations, and operational procedures for optimal performance, include the following thorough assessments:
 - a. Existing equipment;
 - b. Equipment replacement, repair, or rehabilitation;
 - c. Potential alternative processes;
 - d. Proposed energy and water efficiency and conservation projects;
 - e. Equipment controls;
 - f. Lighting (internal/external for buildings/parks and remaining non-LED street lights);
 - g. HVAC equipment;

- h. Well equipment;
 - i. Automation;
 - j. Space utilization and programming;
 - k. Pumps;
 - l. Non Computerized Irrigation Systems (CIS) Irrigation Controllers;
 - m. Building envelope performance with evaluation for cooling/heat gain or loss, transmission and leakage. The site visit will include: review of historical data of existing energy usage, meeting with the facilities' staff, touring the facilities, identifying all major lighting, HVAC equipment and systems, determining occupancy schedules, energy use patterns, etc.
 - n. Solar potential, alternative fuel sources, and identifying facility or occupancy changes that could affect energy/water use; and
 - o. Each proposed project will be discussed on a facility-by-facility basis with separate savings and cost. All project cost analysis shall include cost of materials, lifecycle analysis, labor, engineering design, permits, project management, commissioning of the measures, and staff training.
2. Conduct a feasibility review for onsite power generation using fuel cells, micro-turbines, heat recovery systems, solar photovoltaic cells, solar water heating and cogeneration, including, without limitation, serving some or all of the City's electrical load with onsite generation options or other efforts as applicable.
 3. Identify any other cost efficient energy/water-efficient equipment, on-site power generation, heat recovery or renewable energy systems that would provide a benefit to the City.
 4. Conduct an assessment of City usage and policies as they affect energy/water usage and cost.
 5. Identify suitable enterprise software programs that could be used for monitoring and reporting the energy consumption and GHG emissions.
 6. Develop and provide a template/matrix that can subsequently be used by the City for future facility energy/water evaluations and audits.
 7. Summarize pre-existing energy/water conditions at City facilities and quantify energy/water savings that are projected to be realized as a result of future projects and projects that may be in progress.
 8. Provide a comprehensive list of specific energy/water efficiency projects to be considered during the next three to five years, including descriptions of the projects, job creation and/or retention, GHG reduction benefits, any restrictions or limitations, and permits required, with a cost/benefit analysis prepared for all potential energy/water efficiency projects proposed for implementation.
 9. Provide a comprehensive list of potential revenue and funding sources/grants/incentive programs or rebates, including regional programs, that could result in revenue to the City to offset rising energy and water costs, including a description of the funding source/program, the method for applying for those funds, any requirements or limitations (such as matching funds from the City), and the estimated funds the City could receive.
 10. For all proposed recommendations, provide a full lifecycle economic assessment with and without available federal, state or utility company rebates, including estimated installation cost, cost of maintenance, insurance, and all other costs.

The City retains the final decision on which potential projects to ultimately implement (some or all), and the prioritization/timing for project implementation. The City further retains the exclusive right to modify the project list prioritization and whether or not a potential project is ultimately contracted for implementation.

VII. PROPOSAL REQUIREMENTS

Six (6) copies of the proposal shall be submitted, one (1) digital (both PDF and Word Document) and five (5) physical copies. The proposal shall be based on the Scope of Work and must also respond and conform to the overall RFP requirements. The proposal shall include, but not be limited to, the following information:

1. The Firm's Background

Describe your firm and include the following:

- a. Brief history of the firm
- b. Location of offices
- c. Key differentiating factors and areas of expertise
- d. Prior experience performing similar services, particularly for municipal governments
- e. Listing of firm's resources and financial capacity to perform the Scope of Work and meet all requirements of this RFP
- f. List of personnel to be used on this project including resumes describing their qualifications and experience with projects of a similar size and scope
- g. Proof of accreditation by NAESCO and inclusion on the US DOE's Qualified List of Energy Service Companies
- h. Provide a list of all proposed sub-consultants (if any), their background, qualifications and degree of involvement.

2. Project Understanding & Approach

- a. Provide a brief statement of the firm's understanding and a list of the project's critical elements.
- b. Provide a description of the firm's approach to performing audits and identifying improvement measures.
- c. Provide a description of the firm's approach to managing the project and procedures for minimizing occupant disruptions.
- d. Provide a description of the firm's approach to researching and identifying funding sources such as grants, loans, etc.

3. Additional Benefits and Value Added Elements

Please describe any additional benefits that may result from energy conservation measure implementation including, but not limited to, the potential greenhouse emissions reductions and the number of jobs created. Discuss the firm's added value elements in implementing this energy program including managing the application process and other associated requirements.

4. Savings and Measurement and Verification (M&V) Methodologies

- a. Describe the firm's approach to projecting and proving energy savings.
- b. Describe the methodology, formulas and reporting of the savings and the associated International Performance Measurement & Verification

Protocol (IPMVP) option used to quantify savings.

- c. Provide a description of monitoring services available after installation to ensure continued savings.

5. References

Provide detailed project history for a minimum of three (3) public sector clients the firm has contracted with for similar Energy Performance Consulting Services. Describe the Scope of Work of the project indicating start/completion date, services and equipment provided, project size, total project savings, funding description, and any additional benefits to the customer.

6. Schedule

Submit a detailed schedule as well as description of tasks, subtasks and deliverables.

7. Fee Proposal

The fee proposal shall be submitted in a separate envelope. Refer to Exhibit B.

8. Statement

A statement that the firm accepts all terms and conditions outlined in the City's Standard Professional Service agreement and that all insurance requirements can be met as part of this agreement. A copy of the City's standard Professional Services Agreement is included as Exhibit C for reference.

9. Additional Information

Provide any additional information you believe will be helpful to assist in the review of your proposal. Include any attachments, exhibits, or reports which may help us gain an understanding of your firm's ability to provide this service to the City of San Fernando.

VIII. FIRM SELECTION PROCESS & CRITERIA / SCHEDULE

All proposals will be reviewed by City Staff. The various significant criteria that will be considered in the evaluation of proposals are summarized below. The City's final selection will not be dictated on any single factor or criteria including price. The relative importance of those factors involves judgment on the part of City Staff and will include both objective and subjective analysis. A consultant may be eliminated from consideration for failure to comply with any of the requirements, depending upon the critical nature of such requirements.

- 1. Background:** Includes qualifications, meaningful experience providing Energy Performance Consulting Services, resources and financial solvency.
- 2. Personnel:** Amount of work self-performed, qualifications of proposed team, trainers, and management structure, verification of certification, if applicable, and ability to satisfy insurance requirements.
- 3. Past Experience and References:** Reference checks and relevant past project experiences.
- 4. Project Understanding & Approach:** Understanding of project's critical components and the firm's approach to audits, project management, training, etc.
- 5. Additional Benefits and Added Value:** Additional benefits resulting from

energy conservation measure implementations and firm's added value elements.

6. **Savings:** Savings approach, measurement and verification practices.
7. **Response:** Responsiveness and compliance with the requirements of the proposal.
8. **Cost:** Cost proposal to complete services, separated by service type.
9. **Other:** Any other factors determined by the City to be relevant to the performance of these services.

The City of San Fernando reserves the right to request clarification of additional information from any firm at any time. After evaluating the proposals and discussing them further with the finalists, the City of San Fernando reserves the right to further negotiate the proposed work and/or method and amount of compensation.

The agreement will be awarded to the firm who meets all of the RFP requirements, offers the most advantageous combination of low price and high ranking for various components contained herein, and whose proposal best serves the interest of the City as determined by City Council.

At any point, if the City determines the work is not progressing in a satisfactory manner, then the City has the right to request a new project manager and/or terminate the contract with the selected firm(s).

Any changes to the RFP requirements will be made by addendum. All addenda shall be signed by proposers and attached to the proposal. Failure to attach any addenda may render the proposal non-responsive and cause it to be eliminated from consideration.

IX. RIGHT TO REJECT ALL PROPOSALS

The City reserves the right to reject any or all proposals submitted, and no representation is made hereby that any contract will be awarded pursuant to this RFP. Receipt of a proposal by the City does not constitute a contract with the City. All costs incurred in the preparation of the proposal and subsequent material, including a proposal, in the submission of additional information, and/or in any other aspect of a proposal prior to the award of a written contract will be borne by the proposer. The City will provide only the staff assistance and documentation specifically referred to herein and will not be responsible for any cost or obligation of any kind, which may be incurred by a proposer. All quotes, inquiries, responses, correspondence, proposals, reports, charts, displays, schedules, exhibits, and other documentation or other information submitted to the City in response to this RFP will become the property of the City and a matter of public record.

The City retains the right to abandon the proposal process at any time prior to the actual execution of a contract with no financial or other responsibility in the event of such abandonment. The City reserves the right to negotiate all final terms and conditions of any agreement entered into.

X. INSURANCE REQUIREMENTS

The selected firm will be required to provide proof of insurance in accordance with the requirements outlined in the attached Professional Services Agreement (Attachment "B").

XI. ATTACHMENTS:

- A. List of City Facilities
- B. Sample Professional Service Agreement

CITY FACILITIES

Facility Name	Address
City Hall	117 Macneil Street
Operations Center	120 Macneil Street
Police Department	910 First Street, San Fernando, CA
City Yard	501 First Street, San Fernando, CA
Upper Reservoir	13655 Foothill Boulevard, Sylmar, CA
Lower Reservoir	13180 Dronfield Avenue, Sylmar, CA
Well #2A	14060 Sayre Street, Sylmar, CA
Well #3	13003 Borden Avenue, Sylmar, CA
Well # 4A	12900 Dronfield Avenue, Sylmar, CA
MWD Station	60 Jessie Street, San Fernando, CA
Hubbard Boosters 1 & 2	13785 Hubbard Avenue, Sylmar, CA
Arroyo Boosters 1, 2, & 3	673 Glenoaks Boulevard, San Fernando, CA
Parking Lot 1	1216 Pico Street
Parking Lot 2	800 Truman Street
Parking Lot 3	1131 Celis Street
Parking Lot 4	1000 Truman Street
Parking Lot 5	1130 Truman Street
Parking Lot 6N	1000 First Street
Parking Lot 7	1200 Truman Street
Parking Lot 8	1010 Celis Street
Parking Lot 9	1001 Hollister Street
Parking Lot 10	1000 Celis Street
Parking Lot 11	1019 Celis Street
Parking Lot 12	1035 Celis Street
La Palma Park	505 South Huntington Street, San Fernando, CA
Pioneer Park	828 Harding Street, San Fernando, CA
Rudy Ortega Sr. Park (Heritage Park)	2025 Fourth Street, San Fernando, CA
Recreation Park	208 Park Avenue, San Fernando, CA
Layne Park	120 North Huntington Street, San Fernando, CA
Cesar E. Chavez Park	Corner of Wolfskill Street and Truman Street, San Fernando, CA
Pacoima Wash Natural Park (8 th Street Park)	801 8 th Street, San Fernando, CA
Lopez Adobe	1100 Pico Street, San Fernando, CA
Skate Park	1320 San Fernando Road, SF CA
Park Ave. Street scape	Front of 208 Park Ave.
Bank Of America Parking	120 S. Brand BLVD.
Gateway on San Fernando Road and Truman	603 San Fernando Road, San Fernando CA
Street Lighting	Throughout the City



PROFESSIONAL SERVICE AGREEMENT

Energy Efficiency Resources Audit Agreement

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

1.2 PROSECUTION OF WORK: The Parties agrees as follows:

- A. Time is of the essence of this Agreement and each and every provision contained herein. The Work shall be commenced within _____ (____) calendar days of CITY's issuance of a Notice to Proceed, and shall be completed on a date not more than _____ calendar days from the issuance of the Notice to Proceed (the "Completion Date");
- B. CONSULTANT shall perform the Work continuously and with due diligence so as to complete the Work by the Completion Date. CONSULTANT shall cooperate with CITY and in no manner interfere with the work of CITY, its employees or other consultants, contractors or agents;
- C. CONSULTANT shall not claim or be entitled to receive any compensation or damage because of the failure of CONSULTANT, or its subconsultants, to have related services or tasks completed in a timely manner;

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

- D. CONSULTANT shall at all times enforce strict discipline and good order among CONSULTANT's employees; AND
- E. CONSULTANT, at its sole expense, shall pay all sales, consumer, use or other similar taxes required by law.

1.3 COMPENSATION:

- A. CONSULTANT shall perform the various services and tasks set forth in the Scope of Work in accordance with the compensation schedule which (hereinafter, the "Approved Rate Schedule").
- B. Section 1.3(A) notwithstanding, CONSULTANT's total compensation for the performance and completion of the Work shall not exceed the sum of _____ DOLLARS (\$ _____) (hereinafter, the "Not-to-Exceed Sum"). CONSULTANT further agrees that the Not-to-Exceed Sum is inclusive of compensation for all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the Work.

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

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.

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

- 1.6 ABANDONMENT BY CONSULTANT: In the event CONSULTANT ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONSULTANT shall deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONSULTANT in the performance of this Agreement. Furthermore, CONSULTANT shall only be compensated for the reasonable value of the services, tasks and other Work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which CITY may incur as a result of CONSULTANT's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 CITY'S REPRESENTATIVES: The CITY hereby designates the DIRECTOR OF PUBLIC WORKS/CITY ENGINEER (hereinafter, the "CITY Representatives") to act as its representatives for the performance of this Agreement. The DIRECTOR OF PUBLIC WORKS/CITY ENGINEER 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 CONSULTANT Representative 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;

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

- B. CONSULTANT shall perform all Work in a manner reasonably satisfactory to the CITY;
- C. CONSULTANT shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 et seq.);
- D. CONSULTANT understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
- E. All of CONSULTANT's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONSULTANT; and
- F. All of CONSULTANT's employees and agents (including but not limited 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) calendars 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

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

performance of this Agreement. In recognition of this interest, CONSULTANT agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONSULTANT's duties or obligations under this Agreement without the prior written consent of the CITY. In the absence of CITY's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.

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

2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONSULTANT's officers, employees, agents, contractors, 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 reassigned to perform any of the Work.

2.8 COMPLIANCE WITH LAWS: CONSULTANT shall keep itself informed of and in compliance with all applicable federal, state or local laws to the extent such laws control or otherwise govern the performance of the Work. CONSULTANT's compliance with applicable laws shall include, without limitation, compliance with all applicable Cal/OSHA requirements.

2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, subcontractor, subconsultant, or applicant for

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.

- 2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONSULTANT and all persons retained or employed by CONSULTANT are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of CITY. CONSULTANT shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, 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.

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

- 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 its shall furnish CITY with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to CITY in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the CITY if requested.** All certificates of insurance and endorsements shall be received and approved by CITY as a condition precedent to CONSULTANT's commencement of any work or any of the Work. Upon CITY's written

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

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 WORK OF CONSULTANT'S DESIGN PROFESSIONALS SERVICES: The duty to indemnify, defend and hold harmless as set forth under this subsection shall apply to the negligence, recklessness or willful misconduct of any individual who qualifies as a "design professional" within the meaning of subsection (c)(2) of Section 2782.8 of the California Civil Code in so far as such negligence, recklessness or willful misconduct occurs in the performance, work or activities that must be performed by a "design professional." Subject to the limitation of the preceding sentence, to the fullest extent permitted by law, CONSULTANT shall immediately defend and indemnify and hold harmless the City Indemnities, defined above, from and against any and 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 the negligence, recklessness, or willful misconduct of CONSULTANT or any of CONSULTANT's officers, employees, servants, agents, contractors, subcontractors or authorized volunteers or any other person or entity involved by, for, or with or on behalf of CONSULTANT in the performance of design professional services under this Agreement. The Parties understand and agree that the duty of CONSULTANT to indemnify, defend and hold harmless pursuant to this subsection includes the duty to defend as set forth in Section 2778 of the California Civil Code. CONTRACTOR's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, then CONSULTANT's indemnification obligation shall be reduced in proportion to the established comparative liability.
- 4.3 WORK OF ALL OTHER PERSONS/NON-DESIGN PROFESSIONALS: Except as otherwise provided under Section 4.2 of this Article, above, to the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless the CITY Indemnitees from and

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

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 to the extent caused by CONSULTANT's negligent performance under this Agreement, including but not limited to the negligent acts, errors or omissions of CONSULTANT or CONSULTANT's officers, employees, agents, servants, contractors, subcontractors or subconsultants or the failure of the same to comply with any of the duties, obligations or standards of care set forth herein. The duty to indemnify, defend and hold harmless under this subsection shall not encompass a duty to indemnify, defend or hold harmless for liability, loss, suit, damage, expense, or cost caused by the negligence or willful misconduct of any or all of the City Indemnitees. The duty to indemnify, defend and hold harmless as set forth under this subsection is intended to encompass liabilities, losses, damages, expense and costs not otherwise subject to subsection 4.2, above.

- 4.4 As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, 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.
- 4.5 As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, 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 authorized volunteers.
- 4.6 As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations from others as required herein, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend CITY and CITY's elected and appointed officials, officers, employees, agents and authorized 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.
- 4.7 As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, CITY does not, and shall not, waive any rights that it may possess against CONSULTANT because of

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

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.

- 4.8 As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, the duties to indemnify, defend and hold harmless as set forth under this Section, shall survive the early termination or normal expiration of this Agreement and shall be 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:

- 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.

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

- 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.

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.

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

- 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 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

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

- 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.

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.

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

- 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:

CONSULTANT:

Attn:
Phone:
Fax:
Email:

CITY:

Attn:
Phone:
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.

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

- 6.8 PROHIBITED INTERESTS: CONSULTANT warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONSULTANT, to solicit or secure this Agreement. Further, CONSULTANT warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 6.9 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 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.

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

- 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.
- 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)

PROFESSIONAL SERVICE AGREEMENT

[INSERT Description of Engagement]

Page No.

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

By: _____
Alexander P. Meyerhoff
City Manager

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____
Rick R. Olivarez, City Attorney