

NOTICE INVITING BIDS

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

INFORMATION TECHNOLOGY MANAGEMENT SERVICES

in strict accordance with the Specifications on file in the office of the SAN FERNANDO FINANCE DEPARTMENT, 117 Macneil Street, San Fernando, California, 91340. Copies of specifications and proposal documents may be obtained from the City's website at http://www.ci.san-fernando.ca.us/_overview/pr-rfp-rfq.shtml.

One original and one electronic copy of the proposal must be submitted to the FINANCE DEPARTMENT in a sealed envelope at CITY HALL, 117 Macneil Street, San Fernando, California, 91340, not later than **5:30 p.m. on Thursday, February 21, 2019**. In lieu of providing an original copy, proposals will also be accepted via email and must be received prior to the deadline indicated above. 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 17, 2019**.

REQUEST FOR PROPOSALS



The Finance Department is requesting proposals for:

Information Technology Management Services

RELEASE DATE: January 8, 2019

RESPONSE DUE: February 21, 2019

GENERAL INFORMATION

The City of San Fernando is interested in contracting with an experienced professional firm to provide full service information technology management, including, but not limited to, network analysis and technical support, systems support, computer operations support, PC desktop technical support, software integration support, and IT policy and procedure development. The required services and performance conditions are described in the Scope of Work.

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 100 full-time employees and an additional 50 part-time and seasonal employees with a total Adopted Budget for fiscal year 2018-2019 of \$42.4 million, which includes a General Fund budget of \$19.3 million. The City is a cost conscious provider of outstanding public services to its citizens and local businesses.

The City outsources all IT functions, including client help desk support, desktop technician support, network administration and security, system administration and security, applications development, applications maintenance, data base administration, and specific project development, implementation and support. Information technology consultants are currently managed by the Finance Department with close coordination between all user departments.

The City believes that the open competition for services and products provides the City with the best results for its public dollars. As such, the City is interested in receiving responsive and competitive proposals from experienced and qualified firms to provide information technology management services, specifically in the areas of desktop technician support, network analysis and administration, software support and computer operations. What follows is a description of the technical environment, contractor staffing, qualifications, and performance expectations.

INSTRUCTIONS TO SUBMITTING FIRMS

A. Examination of Proposal Documents

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

B. Questions/Clarifications

Please direct any questions regarding this RFP to Nick Kimball, Deputy City Manager/Director of Finance, via e-mail at nkimball@sfcity.org. Questions must be received by **5:30 p.m. on Monday, February 4, 2019**. All questions received prior to the deadline will be collected and responses will be posted on the City’s website by close of business on **Friday, February 8, 2019**.

C. Submission of Bid Proposals

All bid proposals shall be submitted to:

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

Proposals must be received no later than **5:30 pm on Thursday, February 21, 2019**. All proposals received after that time will be returned to the Proposer unopened.

The prospective firm shall submit one (1) electronic copy in .PDF format (preferably on a Windows compatible thumb drive) and five (5) bound hard copies of its bid proposal in a sealed envelope, addressed as noted above, bearing the firm’s name and address and clearly marked: **“City of San Fernando RFP - Information Technology Management Services”**

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 (Attachment “A”) will be signed subsequent to City Council review and approval of the recommended firm. Please review the contract and submit any requested changes with your proposal.

G. Collusion

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

CURRENT TECHNICAL ENVIRONMENT

The City of San Fernando’s technical environment consists of seven (7) sites, thirty (30) servers, one hundred fifty (150) workstations, as well as a number of network appliances, systems, and software applications. This section will cover the following:

1. Physical Network Layout.
2. Logical Network Layout.
3. Core Systems.
4. Servers and Network Applications.
5. Network Appliances.
6. Workstations.
7. Software and Desktop Applications.

1. Physical Network Layout

The City’s network consists of seven (7) sites: 1) City Hall, 2) Public Works Operations Center, 3) Public Works Yard, 4) Police Department, 5) Las Palmas Park, 6) Recreation Park and 7) Regional Aquatics Facility/San Fernando Courthouse. NOTE: Regional Aquatics Facility/San Fernando Courthouse contain some City network/communications equipment, however, these sites are operated by the County and the City has no IT management responsibility at these sites.

The core network and servers are all housed in City Hall. The Police Department and Public Works Yard connect to City Hall over fiber optic cables. Las Palmas Park and the Aquatics Facility connect to the San Fernando Courthouse over microwave point-to-point links, which in turn connects to City over fiber optic cables. Recreation Park connects to the Aquatics Facility over Ethernet. Additionally, the Police Department vehicles utilize a Motorola Wireless Mesh network and Verizon's MPLS network with a private subnet that connects to the City's network over a T1 line.

At each site, all computers connect to the network over Ethernet. All cables are terminated at a central location and are connected to Cisco switches.

2. Logical Network Layout

The City's network is based on the campus model – consisting of core, distribution, and access layers. It is segmented into multiple networks, including:

- The management network contains the core and distribution switches, as well as various network appliances and network management tools.
- The Dell VRTX blade server and integrated SAN, handles all the traffic between the SAN and three (3) VMware server hosts with room for one (1) additional blade server.
- The City network consists of workstations and network devices in City Hall and the Public Works Operations Center.
- The Police network consists of workstations and network devices in the Police Department. It also handles secure connections to: 1) the Police Department's Virtual Patrol network, a city-wide wireless mesh network that provides access to cameras in multiple locations throughout the City; 2) the Los Angeles Sheriff's Data Network for access to secure law enforcement websites hosted by LASD and the Department of Justice; 3) a Radio IP Multi-IP mobile VPN tunnel that allows Police vehicles to access network resources over the Motorola Mesh or Verizon network.
- The Virtual Patrol Network consists of all network devices, police vehicles, wireless mesh nodes, servers, and network video recorders that make up the Virtual Patrol camera system.
- The Radio IP Network consists of a Multi-IP server that handles the Mobile VPN tunnel and the vehicles that connect it.
- The Public Works Yard Network consist of the computers and network devices at the Public Works Yard, which connects to the City Hall network over a site-to-site VPN.
- The Recreation Park Network consists of all workstations and network devices at Recreation Park and the Regional Pool Facility.
- The Las Palmas Park Network consists of all workstations and network devices at Las Palmas Park.

The network also contains a DMZ for access to web applications over the Internet and an internal wireless network. Additionally, select users can VPN into the network.

3. Core Systems

The core system of the network is made up of a Dell VRTX and three Dell blade servers running VMWare vSphere Standard 6.0. This system runs most of the City's servers – approximately 28 virtual servers – and is managed through vCenter. This system utilizes High Availability and vMotion technologies, as well as a number of other features.

4. Servers and Network Applications

The City utilizes approximately 30 servers to meet its needs for network management, security, specialized applications, databases, messaging, and storage. These include:

- Active Directory/DNS Management
- File Management
- Print Management
- Windows Software Updates Services
- Microsoft Exchange 365 Plan 2
- Microsoft SQL Server 2005/2008/2012
- Microsoft IIS Server
- ESET Antivirus Remote Administrator Server
- Apache Tomcat
- Radio IP Multi-IP
- Edgesoft AIMS
- TriTech InforumRMS
- TriTech VisionCAD
- TriTech VisionMobile
- 3M LPR
- Tyler Eden Financials
- HdL Business License and False Alarm
- Progressive Cashiering
- Silicor Technologies WindowVision DVR Server
- OnSSI Ocularis
- KeyScan Access Control
- Various Legacy Applications

For a complete list of server and network applications in use by the City, see Attachment A.

5. Network Appliances

A number of network appliances perform key functions on the City's network. These appliances include:

- Barracuda Web Filter

- Barracuda Spam Firewall
- Barracuda Message Archiver
- Cisco Meraki Firewalls
- Cisco Meraki Wireless Access Points
- D-Link Print Servers
- Raritian Network KVM
- TrippLite/Eaton Uninterruptable Power Supplies

6. Workstations

The City has approximately 150 workstations across all sites. A breakdown is as follows:

- City Hall: 50 workstations
- Police Department: 40 workstations and 20 vehicle-mounted data terminals (MDTs)
- Public Works Yard: 20 workstations
- Recreation Park: 10 workstations
- Las Palmas Park: 10 workstations

7. Software and Desktop Applications

City workstations utilize a standard software suite, as well as specialized applications. The standard workstation has the following configuration:

- Windows 7/10 pro
- Microsoft Office 2003/2010/2016
- ESET Endpoint Antivirus
- Adobe Acrobat Reader/Standard/Professional

In addition to the standard software suite, individual departments utilize specialized software:

- Finance uses Tyler Technologies' Eden Financial Solutions, HdL Business License, HdL False Alarm, and Progressive Cashiering software.
- Public Works and Community Development use Edgesoft's AIMS for land management, as well as a Map guide server.
- The Police Department uses TriTech's, VisionCAD, VisionMobile and InforumRMS for dispatch, records management, and patrol. Additionally, OnSSI's Ocularis video monitoring software is used to monitor cameras on the Virtual Patrol Network.

8. Current Projects

The following major IT projects are currently underway:

- Backup system upgrade to new hardware and software from the current system running.

- Switches at City hall need to be upgraded.
- PC's with Windows 7 need to upgrade to Windows 10 before end of life support from Microsoft.
- Finish PD MDT upgrade PC installations.
- Dispatch PC's need to be upgraded.
- Upgrade Police File Server ASOK.
- Domain upgrade from Server 2003 to Server 2012.
- AIMS amazon cloud based upgrade.
- VM-Servers with old Windows server OS need to be upgraded to Windows Server 2012.
- VM-Servers with old SQL need to be upgraded to SQL 2012.
- Server for Rec Park needs to be installed but advised to move network out of water damp room.
- GIS server and software project for Public Works.

SCOPE OF SERVICE

A. CITY TO PROVIDE

1. The City will provide training in regard to the City's office, procurement, policies, and behavior standards.
2. The City is responsible for purchasing new equipment and planned replacements.

B. FIRM TO PROVIDE

1. The Firm shall provide adequate backup staffing resources to address major and immediate problems, staffing irregularities, and planned significant upgrades.
2. The Firm shall have advanced level technical resources, or consultants, available to guide and support the on-site technicians and relevant City staff when complex and significant problems arise.

C. MINIMUM PERFORMANCE EXPECTATIONS

The Firm is expected to:

1. Provide timely, professional and effective services.
2. Work harmoniously with City staff and other city contractors.
3. Conduct regular status and information meetings with management.

4. Provide regular and timely reports on outstanding issues, work accomplished, and general network health.
5. Make recommendations on improving City processes.
6. Enforce all City policies relating to the use of information technology resources.

Desktop Support

Desktop Support Technicians are expected to resolve Client/caller generated trouble calls in a professional and efficient manner. Additionally, they will work on special project/task assignments as necessary: to setup and configure new PCs; to maintain current version levels of desktop software; to install, upgrade or troubleshoot software; to conduct hardware and software inventories; to do minor hardware installations and modifications on existing PCs and other related tasks.

1. Desktop Support Technicians will provide desktop support for all problems and project calls to diagnose, upgrade, install, fix, adjust, and general problem resolution during the hours of 7:30 am to 5:30 pm, Monday through Friday.
2. Desktop Support Technicians will respond (call acknowledging assignment of call) to Client/caller, resolution/diagnosis according to prioritization.
3. Desktop Support Technician will make appointment with Client/caller to address the Client/caller support needs at a mutually agreed upon time.
4. Desktop Support Technician will call Client/Caller if appointment cannot be kept or will be delayed.
5. Client/Caller will be apprised of problem status during the entire problem resolution cycle in a timely manner, by the end of the activity service day.
6. Desktop Support Technicians will give Client opportunity to test system while they are present once problem is resolved if at all possible. For long-term problems, Client to be notified weekly of progress until resolved/closed.
7. Desktop Support Technicians will document all actions taken on each call into the tracking system before they leave for the day, on the day that the activity took place whether the call is complete or not.
8. The Firm's staff is expected to provide their own transportation between City sites during their support activities.

Computer Operations

The City's servers are expected to function 24 hours per day with very minimal unplanned service interruptions occurring between 7:30 am and 5:30 pm. Execution of scheduled batch runs and processes include:

1. Review of all process logs for normal execution and performance.
2. Preparation of reports and outputs for distribution on next regular work day.
3. Review of security logs and for unusual activity.
4. Performing backups, backup rotations and restores of all systems, servers, network equipment.
5. Maintaining filing, organizing, storing, status reporting on all operation and network activity records and reports.
6. Monitoring and reporting status of servers (disk allocations, etc.).
7. Monitoring and reporting on status of network.
8. Logging activity event entries into Operations Activity Log.

Additional computer operations duties include:

1. Cleaning and organizing Computer Room.
2. Checking on versions of software that require updates.
3. Maintaining process and operational documentation for Operations and Network Groups.
4. Maintaining inventory of supplies.
5. Keeping and maintaining records on hardware assets: PCs, Servers, Network equipment, etc., including acquisition date, warranty date, maintenance agreement location, maintenance and repair contact number.
6. Keeping and maintaining records on software assets: PCs, Servers, Databases, Applications, OS, etc., including acquisition date, warranty date, maintenance agreement location, maintenance and repair contact number.
7. Preparing and maintaining a Disruption Plan.

Network and Systems Support

The Network and Systems Support function is expected to provide all the necessary network and system technical expertise to the City to have its systems and network operate efficiently and effectively. Network and Systems staff hours are normally 7:30 am to 5:30 pm, Monday through Friday. However, they are expected to work after hours and weekends as necessary to resolve problems, install updates, and perform testing so as not to impact normal production activities of the City. The Network and Systems Support activities are expected to be the standard activities for a similar-sized City IT operation. They are generally described as follows:

1. Network is defined to include all City switches, hubs, routers, bridges, repeaters, firewalls, servers, etc.
2. Maintenance and installation of network cabling outside of the computer room is NOT part of this proposal. Separate proposals will be solicited for network cable installation services.
3. Network and network device performance monitoring, diagnostics, and tuning.
4. Network and network device configuration and version updates to keep within two versions of current.
5. Network and network device configuration management and record keeping.
6. Network, network device and server capacity monitoring and planning.
7. Network, network device and systems security administration and record keeping consistent with City policies.
8. Firewall monitoring for intrusion attempts, attacks, viruses, etc.
9. Firewall configuration and version updates.
10. Server OS configuration and version updates to keep within two versions of current.
11. Network intrusion and Virus software management (keeping current updates and versions).
12. Coordination and cooperation with other City service providers.

Communication and Analysis

The Firm is expected to have an effective communication rapport with the City, providing valuable, accurate information in a timely manner. Proficient writing skills are essential, and firm's analysis should be thorough.

PROPOSED TERM OF CONTRACT

The proposed term of the contract is up to five (5) years.

INFORMATION TO BE SUBMITTED

Prospective Firms must submit one unbound and five complete bound copies of their proposal.

Include a Section 1 with a *Proposal Summary*:

This Chapter 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. Limit this Chapter to a total of up to **three pages** including the separate sheet with contact personnel.

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

This Chapter shall include a brief description of the Firm's size as well as the proposed local organizational structure. Specifically, the City is interested in the potential for a long-term service relationship that would include financial stability. Include a discussion on the Firm's financial stability, capacity, and resources. If applicable, include all other firms participating in this Proposal, including similar information about the firm/subcontractors.

Additionally, this section shall include a listing of any lawsuit and/or subcontractors litigation and the result of that action resulting from (a) any public project undertaken by the Firm or by its subcontractors 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.

Include a Section 3 on *Qualifications of the Firm*:

This Chapter shall include a brief description of the Firm's and sub-contractor's qualifications and previous experience on similar or related projects. Provide a description of pertinent project experience with other public municipalities (maximum of four) and private sector (maximum of two) that includes a summary of the work performed, the total project cost, the percentage of work the Firm was responsible for, 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.

Include a Section 4 on *Work Plan*:

In this Chapter, present a well-conceived service plan. This section of the proposal shall establish that 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 required service, outlining the approach that would be undertaken in providing the requested services. Include a timetable for transition to full operation. Describe related service experience by both the Firm and any subcontractors in similar work. Please describe the role, extent of services (number of people used or saved, engagement duration, and contract value). Provide standard written operating procedures that cover the normal industry standard activities for Desktop Technicians, Network Administration and Security, Computer Operations and any other activities proposed by the Firm.

Include a Section 5 on *Project Staffing*:

In this Chapter, 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's personnel shall be included. Key Firm personnel will be an important factor considered by the Review Team or Committee. **There can be no change of key personnel once the proposal is submitted, without prior approval of City.**

Include Section 6 on *Proposed Innovations*:

The Firm may also suggest technical or procedural innovations that have been used successfully on other engagements and that may provide the City with better service delivery. In this Chapter discuss any ideas, innovative approaches, or specific new concepts included in the Proposal that would provide benefit to the City's assessment of the Proposal. Focus primarily on cost saving or efficiency enhancing innovations.

Include Section 7 on *Proposal Costs Sheet and Rates*:

In this Chapter 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 extra after-hours services or any other services that are considered optional additions.

PROPOSER QUALIFICATIONS

1. The City requires proposals submitted by primary firms only. The prime firm will have completed and exclusive responsibility for satisfying all City conditions and requirements at

all times during the life of the agreement. Any subcontractors mentioned in the RFP and/or used in the implementation of the Agreement will have no formal relationship with the City.

2. All proposed subcontractors must be identified by name with a description of the work they will provide. Any subcontractors change proposed after the submittal date can only be made with prior approval of the City.
3. Prime firm must be responsible for at least half the annual value of the proposed work consistent with the scope of work as noted in the proposal.
4. Prime firm must have experience in providing similar work in at least two similar organizations.
5. Close cooperation and productive working relationships between all parties are essential to the City. If there are irresolvable difficulties in the relationships between parties that impact service delivery to the City, either or both parties' contract will be terminated.

SCHEDULE FOR SELECTION

RFP available on City's website:	January 8, 2019
Optional job walk:	January 24, 2019 @ 2:00pm San Fernando City Hall 117 Macneil Street San Fernando, CA 91340
Deadline for submittal of questions:	February 4, 2019
Response to questions posted to City website:	February 8, 2019
Deadline for submittal of Proposal:	February 21, 2019 @ 5:30pm
Interviews (if necessary)	Late March 2019
Agreement presented to Council for review and approval:	April 22, 2019 (tentative)

METHOD OF SELECTION AND NOTICES

A review team appointed by the City Manager 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.



PROFESSIONAL SERVICES AGREEMENT

[INSERT Name of Consultant]

[INSERT Brief Description of Engagement]

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 [INSERT NAME OF CONSULTANT], a [INSERT TYPE OF ENTITY, E.G., CORPORATION? PARTNERSHIP? SOLE PROPRIETORSHIP? ETC.] (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 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;
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[INSERT Brief Description of Engagement]

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- C. CONSULTANT shall not claim or be entitled to receive any compensation or damage because of the failure of CONSULTANT, or its subconsultants, to have related services or tasks completed in a timely manner;
- D. CONSULTANT shall at all times enforce strict discipline and good order among CONSULTANT's employees; AND
- E. CONSULTANT, at its sole expense, shall pay all sales, consumer, use or other similar taxes required by law.

1.3 COMPENSATION:

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

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

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

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[INSERT Brief Description of Engagement]

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and examine such records, without charge, during normal business hours. CITY shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

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

II. PERFORMANCE OF AGREEMENT

- 2.1 CITY'S REPRESENTATIVES: The CITY hereby designates the City Manager and Deputy City Manager/Director of Finance (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.

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

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knowledge and experience necessary to perform the Work skillfully, competently and to the highest standards of CONSULTANT's profession.

- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONSULTANT are material to CITY's willingness to enter into this Agreement. Accordingly, CITY has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONSULTANT or on behalf of CONSULTANT in the performance of this Agreement. In recognition of this interest, CONSULTANT agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONSULTANT's duties or obligations under this Agreement without the prior written consent of the CITY. In the absence of CITY's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONSULTANT or under CONSULTANT's strict supervision. CONSULTANT will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. CITY retains CONSULTANT on an independent contractor basis and not as an employee. CONSULTANT reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONSULTANT's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of CITY's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONSULTANT are not employees of CITY and shall at all times be under CONSULTANT's exclusive direction and control. CONSULTANT shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONSULTANT shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONSULTANT's officers, employees, agents, contractors, 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.

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- 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, 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.

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

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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 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

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immunity under such statutes or laws as to CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers.

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

V. TERMINATION

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

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pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict CITY's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

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

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additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period.

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

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

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

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

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contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

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

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CONSULTANT:

[INSERT Business Name of Consultant]

[INSERT Business Address]

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

Phone: [INSERT Phone Number]

Fax: [INSERT Fax Number]

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

CITY:

City of San Fernando

Finance Department

117 Macneil Street

San Fernando, CA 91340

Attn: Director of Finance

Phone: (818) 898-7307

Fax: (818) 365-8090

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

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

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

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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 6.16, above.

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

(SIGNATURE PAGE TO FOLLOW)

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

CITY OF SAN FERNANDO

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

By: _____
Alexander P. Meyerhoff, City
Manager

By: _____
Name: _____
Title: _____