



NOTICE OF REQUEST FOR PROPOSALS

FOR

**EXTERIOR BUILDING PAINTING AT THREE (3) CITY-OWNED
BUILDINGS**

All proposals must be submitted in a sealed envelope and received at San Fernando City Hall - City Clerk's Office on or before March 31, 2020 by 4:00 PM with the following notation:

**Proposal for Exterior Building Painting
City of San Fernando**

SECTION ONE - GENERAL INFORMATION

INTRODUCTION

The City is interested in receiving proposals from experienced and qualified contractors to perform Exterior Building Painting of (3) City-owned buildings. 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 (6) departments, including a Police Department, Public Works Department, and Recreation and Community Services Department. The City employs approximately 127 full-time employees from a total Adopted Budget for fiscal year 2019-2020 of \$49.5 million, which includes a General Fund budget of \$19.9 million.

The City is a cost conscious provider of outstanding public services and believes that open competition for services and products provides residents of the city and local business owners with the best for its public dollars.

Mandatory Pre-Bid Meeting

Proposers must attend a mandatory pre-bid meeting on Thursday, March 10, 2020 @ 1:30 PM. Project specific information will be discussed at the meeting along with bid requirements and RFP submittal process. In addition, any non-technical questions that may arise from meeting attendees will be answered. The pre-bid meeting will be held at the Public Works Operations Center, 120 Macneil Street, San Fernando, CA 91340 and will include a walk of each building.

Submission of Questions

Questions regarding this RFP must be submitted via email, on or before March 17, 2020, to Rodrigo Mora, Public Works Superintendent, at rmora@sfcity.org. An addendum with answers to all questions received will be posted on the city's website: www.sfcity.org on March 21, 2020.

Procurement Process Timeline

Listed below are the important dates and times by which the actions noted must be completed. All dates are subject to change. If the Public Works Department finds it necessary to change any of these dates or times prior to the proposal due date, the change will be accomplished by addendum.

| Date | Activity |
|----------------|-------------------------------------|
| March 2, 2020 | Issue Request for Proposals |
| March 10, 2020 | Mandatory Pre-bid Meeting |
| March 17, 2020 | Deadline for Submittal of Questions |
| March 21, 2020 | City’s Response to Questions |
| March 31, 2020 | Proposals Due to the City |
| April 20, 2020 | Award of Contract |

SECTION TWO - SCOPE OF WORK

The primary scope of work is for **Exterior Building Painting of Three (3) City-owned Buildings** which includes, but is not limited to:

Public Works Operations Center Building - 120 Macneil Street, San Fernando, CA 91340

Specifications:

We will be painting the exterior of the City of San Fernando Public Works Building. Surfaces to be painted include:

- Stucco/Block Walls
 - Wood Fascia and Trim
 - Previously painted metal roof flashings
 - Previously painted doors and door frames
 - Previously painted windows
 - The metal pole at the front entrance
-
- Prep work will consist of a thorough pressure wash of all surfaces to be painted. Cracks and blisters in the stucco and areas where stucco is missing will be patched.
 - Wood surfaces should be scraped and sanded to remove loose and peeling paint to ensure proper adhesion.

- New caulking will be applied at any previously caulked areas.
- Any bare wood, areas where stucco has been patched or areas where metal shows signs of rust will be spot-primed prior to painting.

Project Notes:

- Bid assumes that all employees will be paid at a Prevailing Wage rate of \$45.57 per hour.
- Bid assumes that the City of San Fernando will provide sources for water and power.
- Bid assumes that the City of San Fernando will cooperate with limiting pedestrian and vehicle traffic in the areas being painted.
- Bid assumes that the City of San Fernando will cut back any landscaping which limits or prevents access to the painting surfaces.
- Bid assumes that doors will be painted on the exterior side only.
- Wires and conduits will be painted as part of the surfaces they are attached to.

Excluded Items:

- Currently unpainted metal door and window mullions
- Any surfaces in the maintenance yard or parking lot
- Previously unpainted surfaces
- Wood replacement. Contractor should provide necessary carpentry services if needed for an additional charge.
- Landscaping necessary to access the painting surfaces.

| Surface Area | Manufacturer/Paint Type | Color | Coats |
|--------------|---|-------|-------|
| Stucco/Block | Sherwin Williams/Flat/Superpaint | TBD | Two |
| Windows | Sherwin Williams/Gloss/Superpaint | TBD | Two |
| Doors | Sherwin Williams/Semi-gloss/ProIndustrial | TBD | Two |
| Door Frames | Sherwin Williams/Semi-gloss/ProIndustrial | TBD | Two |
| Fascia | Sherwin Williams/Gloss/Superpaint | TBD | Two |
| Metal Post | Sherwin Williams/Semi-gloss/ProIndustrial | TBD | Two |

Clean Up:

To be completed in full daily and upon job completion. All clean up performed shall make sure the property is presentable and fully clean before work is complete. All ladders down and stacked, tools and equipment stored properly each evening in an acceptable safe location determined by the City of San Fernando and the Site Manager.

Notes/Misc.

The goal for this job is to provide the best customer experience possible. This is accomplished by being friendly, courteous, by making sure the building occupants feel comfortable, by doing things right the first time, and by respecting the property.

WARRANTY ON ALL WORK:

All work shall be under warranty for two (2) years against blistering and peeling.

City Hall Building, 117 Macneil Street, San Fernando, CA 91340

We will be painting the exterior of the City of San Fernando City Hall building. Surfaces to be painted include:

- Stucco/Block Walls
- Natural/Stained Overhangs
- Wood Pergolas, Fascia and Trim
- Metal handrails at the front entrance
- Wood benches at the front entrance
- Previously painted doors and door frames
- Previously painted windows
- Gutters and downspouts
- The metal pole on the right side of the building
- The metal gates at the garbage area

- Prep work will consist of a thorough pressure wash of all surfaces to be painted. Cracks and blisters in the stucco and areas where stucco is missing will be patched.
- Wood surfaces should be scraped and sanded to remove loose and peeling paint to ensure proper adhesion.
- New caulking will be applied at any previously caulked areas.
- Any bare wood, areas where stucco has been patched or areas where metal shows signs of rust will be spot-primed prior to painting.

Project Notes:

- Bid assumes that all employees will be paid at a Prevailing Wage rate of \$45.57 per hour.
- Bid assumes that the City of San Fernando will provide sources for water and power.
- Bid assumes that the City of San Fernando will cooperate with limiting pedestrian and vehicle traffic in the areas being painted.
- Bid assumes that the City of San Fernando will cut back any landscaping which limits or prevents access to the painting surfaces.
- Bid assumes that doors will be painted on the exterior side only.

- Wires and conduits will be painted as part of the surfaces they are attached to.
- Natural wood overhangs will need to be completely primed prior to painting.
- Gutters, downspouts, wires and conduits will be painted as part of the surfaces they are attached to.

Excluded Items:

- Currently unpainted metal door and window mullions

GENERAL DESCRIPTION:

Painting To - Soffit/Overhangs, Stucco/Block, Windows, Doors, Door Frames, Gutters, Downspouts, Fascia, Pergolas, Metal, Handrails, Benches, Post, Wrought Iron Gate

INCLUDED DETAILS

| Surface Area | Manufacturer/Paint Type | Color | Coats |
|---------------------|---|-------|-------|
| Soffit/Overhangs | Sherwin Williams/Gloss/Superpaint | TBD | Two |
| Stucco Block | Sherwin Williams/Flat/Superpaint | TBD | Two |
| Windows | Sherwin Williams/Gloss/Superpaint | TBD | Two |
| Doors | Sherwin Williams/Semi-gloss/ProIndustrial | TBD | Two |
| Door Frames | Sherwin Williams/Semi-gloss/ProIndustrial | TBD | Two |
| Gutters/Down Spouts | Sherwin Williams/Gloss/Superpaint | TBD | Two |
| Fascia | Sherwin Williams/Gloss/Superpaint | TBD | Two |
| Posts | Sherwin Williams/Semi-gloss/ProIndustrial | TBD | Two |
| Pergolas | Sherwin Williams/Gloss/Superpaint | TBD | Two |
| Metal Railing | Sherwin Williams/Semi-gloss/ProIndustrial | TBD | Two |
| Benches | Sherwin Williams/Gloss/Superpaint | TBD | Two |
| Wrought Iron Gate | Sherwin Williams/Semi-gloss/ProIndustrial | TBD | Two |

Clean Up

To be completed in full daily and upon job completion. All clean up performed shall make sure the property is presentable and fully clean before work is completed. All ladders down and stacked, tools and equipment stored properly each evening in an acceptable safe location determined by the City of San Fernando and the Site Manager.

Notes/Misc.

The goal for this job is to provide the best customer experience possible. This is accomplished by being friendly, courteous, by making sure the building occupants feel comfortable, by doing things right the first time, and by respecting the property.

WARRANTY ON ALL WORK:

All work shall be under warranty for two (2) years against blistering and peeling.

Police Station Building, 910 First Street, San Fernando, CA 91340

We will be painting the exterior of the City of San Fernando Police Station. Surfaces to be painted include:

- Stucco/Block walls (including previously painted planter walls on the front side of the building)
 - Natural/Stained Overhangs
 - Wood Fascia and Trim
 - The Sally Port Garage including the ceiling
 - The Metal Locker Cabinet inside the Sally Port
 - All previously painted doors and door frames (including those inside the Sally Port)
 - All previously painted window frames
 - The carport cover in the parking lot
 - The small metal railing on the front side of the building
 - The metal roll-up door on the right side of the building
 - The wood Pergola on the back side of the building
- Prep work will consist of a thorough pressure wash of all surfaces to be painted. Cracks and blisters in the stucco and areas where stucco is missing will be patched.
 - Wood surfaces should be scraped and sanded to remove loose and peeling paint to ensure proper adhesion.
 - New caulking will be applied at any previously caulked areas.
 - Any bare wood, areas where stucco has been patched or areas where metal shows signs of rust will be spot-primed prior to painting.

Project Notes:

- Bid assumes that all employees will be paid at a Prevailing Wage rate of \$45.57 per hour.
- Bid assumes that the City of San Fernando will provide sources for water and power.
- Bid assumes that the City of San Fernando will cooperate with limiting pedestrian and vehicle traffic in the areas being painted.
- Bid assumes that the City of San Fernando will cut back any landscaping which limits or prevents access to the painting surfaces.
- Bid assumes that doors will be painted on the exterior side only.
- Wires and conduits will be painted as part of the surfaces they are attached to.

Excluded Items:

- Perimeter stucco/block walls (See Options Below)
- Perimeter wrought iron railings and metal parking bollards (see Options below)
- Currently unpainted metal door and window mullions
- Any items on the roof
- Previously unpainted surfaces
- Wood replacement; any necessary carpentry services needed will be subject to prior approval.
- Landscaping necessary to access the painting surfaces.

Optional Items (Not Included in Pricing Below):

- 1.) Painting of the wrought iron railings and parking bollards around the perimeter of the property. **Bid separately.**
- 2.) Painting of the previously painted perimeter stucco/block walls around the perimeter of the property. **Bid separately.**

GENERAL DESCRIPTION:

Painting to - Soffit/Overhangs, Stucco/Block, Windows, Doors, Door Frames, Fascia, Metal Handrail, Carport Cover, Pergola, Locker Cabinet

| Surface Area | Manufacturer/Paint Type | Color | Coats |
|---------------------|---|-------|-------|
| Soffit/Overhangs | Sherwin Williams/Gloss/Superpaint | TBD | Two |
| Stucco/Block | Sherwin Williams/Flat/A100 | TBD | Two |
| Windows | Sherwin Williams/Semi-gloss/ProIndustrial | TBD | Two |
| Doors | Sherwin Williams/Semi-gloss/ProIndustrial | TBD | Two |
| Door Frames | Sherwin Williams/Semi-gloss/ProIndustrial | TBD | Two |
| Gutters/Down Spouts | Sherwin Williams/Gloss/Superpaint | TBD | Two |
| Fascia | Sherwin Williams/Gloss/Superpaint | TBD | Two |
| Carport Cover | Sherwin Williams/Semi-gloss/ProIndustrial | TBD | Two |
| Pergolas | Sherwin Williams/Gloss/Superpaint | TBD | Two |
| Metal Railing | Sherwin Williams/Semi-gloss/ProIndustrial | TBD | Two |
| Locker Cabinet | Sherwin Williams/Semi-gloss/ProIndustrial | TBD | Two |

Clean Up:

To be completed in full daily and upon job completion. All clean up performed shall make sure the property is presentable and fully clean before work is complete. All ladders down and stacked, tools and equipment stored properly each evening in an acceptable safe location determined by the City of San Fernando and the Site Manager.

Notes/Misc.:

The goal for this job is to provide the best customer experience possible. This is accomplished by being friendly, courteous, by making sure the building occupants feel comfortable, by doing things right the first time, and by respecting the property.

WARRANTY ON ALL WORK:

All work shall be under warranty for two (2) years against blistering and peeling.

SECTION THREE - INSTRUCTIONS

Any contract resulting from this RFP will be awarded to that firm whose proposal is deemed by the City to be most qualified considering the evaluation criteria stated in *SECTION 3.5*, and provides the City with the best value among those proposals deemed acceptable. "Best Value" will be determined solely by the City.

The City reserves the right to meet or communicate with any PROPOSER to clarify the responsiveness of its proposal and the responsibility of the proposer's organization and its sub-proposers, in order to ascertain technical acceptability.

3.1 Proposal Submittal

Each prospective firm must submit one (1) original signed copy and two (2) duplicate copies of the complete proposal in a sealed envelope marked "Proposal for Exterior painting of three (3) city buildings: City of San Fernando." Proposal submissions must contain page numbers and are limited to a total of twenty-five (25) pages (including appendices) using letter sized paper and not less than 12 point font.

To be considered, all proposals shall be completely responsive to the Request for Proposal (RFP) document. "Completely responsive" is hereby defined as meeting all requirements as outlined in Section 3.2, Proposal Requirements. Proposals must be received by the City by Thursday, March 31, 2020, no later than 4:00 PM. If mailing, proposals shall be sent to:

City of San Fernando
Attn: Elena Chávez, City Clerk
117 Macneil Street
San Fernando, CA 91340

The City does not recognize the US Postal Service, or any other organization, as its agent for purposes of accepting proposals. All proposals received after the deadline will be rejected and

returned unopened. No extensions will be granted. All proposals will become the property of the City of San Fernando and will be made available for public inspection after an award is made or all proposals are rejected.

3.2 Proposal Requirements

The proposal shall include the following:

1. Understanding of the Scope of Work.
Describe your understanding of the work to be performed.
2. Experience and Qualifications of Firm.
List similar projects successfully completed within the last five (5) years.
3. Key Personnel.
Please provide the names and qualifications of the key personnel assigned to this contract.
4. References.
Provide a list of references from the past and current clients within the last five (5) years.
5. Schedule.
Contractor shall submit a timeline as to when each task will be completed
6. Fee Proposal.
The fee proposal will be reviewed, but is not the sole factor in the selection process. Submit documentation associated with the pricing of each task.

3.3 Bid Rejection

All proposals will be reviewed to determine conformance with the RFP requirements. Any proposal that the City deems incomplete, conditional, or non-responsive to the RFP requirements may be rejected. The City reserves the right to reject any and all proposals.

3.4 Screening, Selection and Award

Screening and selection will take place through the process described below. An award of contract may be made to the firm that meets the proposal requirements specified in this RFP and whom submits the proposal that is considered most advantageous to the City. Negotiations may or may not be conducted with any prospective firms, therefore, each proposal should include the firm's most favorable terms and conditions since selection may be made without discussion with any firm.

The screening and selection process shall be as follows:

1. Sealed proposals will be opened and evaluated to determine compliance with *Section Five*, Required Qualifications of Contractor. Proposals meeting specified requirements will be considered responsive and will be included in the next phase of review.
2. Responsive proposals will be evaluated by City staff members. Following this review, a decision will be made whether to recommend award of contract for Exterior Painting of Three (3) City buildings to the firm that best meets the needs of the City.

The City reserves the right to withdraw this RFP at any time without prior notice. Further, the City reserves the right to modify the RFP evaluation criteria described below. The City also makes no representations that any contract will be awarded to any firm responding to this RFP. The City expressly reserves the right to reject any and all proposals without indicating any reasons for such rejection(s), to waive any irregularity or informality in any proposal or in the RFP procedure and to be the sole judge of responsiveness to this RFP.

3.5 Evaluation Criteria

After review for compliance to required qualifications, the City will evaluate proposals based on the following criteria. Cost will not be the sole criteria for which an award of contract is made.

Qualifications and Experience of Firm and Key Personnel- 45%

- Qualification and experience of key personnel;
- Experience and past performance for similar scope of work; and
- Verification of references

General Quality and Responsiveness of the Proposal- 30%

- Presentation, completeness, and thoroughness of the proposal;
- Responsiveness to the terms, conditions, and items of performance; and
- Grasp of the scope and services to be performed

Fee Proposal- 25%

- Costs will be evaluated should a firm meet all other criteria. Each firm should provide a current schedule of fees for related services.

SECTION FOUR - CONTRACT TERMS

Professional Services Agreement.

No agreement shall be binding upon the City until a Professional Services Agreement is completely executed by the Firm and the City. A sample agreement has been attached as a reference.

Minimum Insurance Requirements.

The Firm shall, at its own expense, procure and maintain for the duration of the agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the agreement by the firm, its agents, representatives, employees, or subcontractors.

Conflict of Interest.

It shall be the duty of the Contractor to comply with all applicable State and Federal laws relating to prohibited conflicts of interest. As part of its response to this RFP, the Contractor shall disclose in writing, any financial, business, employment, or other relationships with the City or with any of its officers, employees, or agents that are or were in existence during the twelve (12) calendar months immediately preceding, and including, the date the Contractor's response to this RFP is filed. In addition, the Contractor shall disclose in writing any financial, business, employment or other relationships with any contractor who may have a financial benefit in securing design and/or construction contracts for a City project. The Contractor shall have a continuing obligation to keep the foregoing disclosures current and up-to-day during the term of this contract, and the Contractor's failure to timely disclose the existence of such a relationship shall be grounds for immediate termination of the contract.

Permits/Licenses.

The Contractor shall obtain and pay for a business license as necessitated for doing work within the City of San Fernando. Valid licensure shall be in place for the life of the contract as stipulated in the executed Professional Services Agreement.

SECTION FIVE - REQUIRED QUALIFICATIONS OF CONTRACTOR

Proposals to perform Exterior painting of three city buildings for the City of San Fernando will be evaluated by city Staff to determine whether or not they meet the following required qualifications. Proposals which fail to provide documentation responding to all of the required items set forth below may be considered non-responsive and will be rejected.

1. Experience.

In order to be considered eligible and qualified under this RFP, the Contractor must have a minimum of five (5) years of experience conducting Exterior painting to buildings similar in size to the ones stated in this RFP. A statement of qualification demonstrating the foregoing and listing the firm's experience in providing stated services, together with the names, addresses and telephone numbers of other clients for whom similar services have been provided shall be furnished with the proposal. Client references should be located within California, if possible.

2. Organization.

The Contractor should submit a description of its organizational structure, history, legal status (i.e. partnership, corporation, etc.), list of owners and officers, capabilities, and experience.

3. Staffing.

Contractor shall include the resumes of the proposed key personnel showing relevant education, training and experience. Please specifically address any technical resources and staff that will be available to assist the City.

4. Insurance requirements.

- a. Ability to obtain insurance with coverage values that meet minimum requirements evidenced by a letter from an underwriter confirming that the PROPOSER can be insured for the amount required by the City.
- b. PROPOSER agrees to obtain, maintain and pay the premiums for the following types and amounts of insurance coverage for the entire term of the contract to insure against liabilities, claims, losses, or damages resulting from work required by the contract documents:
 - a. Workers' Compensation Insurance as required by the State of California and endorsed to include Broad Form All States Coverage, which shall cover all proposer employees engaged in the performance of the work; and

- Employer's Liability with limits of not less than \$1,000,000 each accident; \$1,000,000 each employee by disease and \$1,000,000 policy limit by disease;
- b. Business Automobile Liability Insurance covering claims for Bodily Injury or Property Damage, including onsite and off-site operations, and including owned, non-owned and hired vehicles with at least a \$1,000,000 combined single limit of liability;
 - c. Commercial General Liability Insurance covering claims that the PROPOSER or any of its employees, agents or sub-proposers become legally obligated to pay as damages due to Bodily Injury or Property Damage with limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall include Products/Completed Operations; Contractual Liability; Personal Injury Liability and Broad Form Property Damage. If insurance is written on a claims-made form, coverage shall continue for a period of not less than 3 years following termination of this contract. Coverage shall also provide for a retroactive date of placement prior to the effective date of the contract. Umbrella Liability Insurance for an amount of not less than \$5,000,000 per occurrence and in the aggregate that follows form and applies excess of the primary coverage stated in a, b & c above.
1. The PROPOSER shall require its sub-proposers, if any, to obtain an amount of insurance coverage which is deemed adequate by the PROPOSER. The sub-proposers, prior to commencing any of the work, shall submit certificates evidencing such insurance coverage to the PROPOSER.
 2. The certificates of insurance will specify that the insurer will endeavor to provide a 30-day written notice to the City of cancellation of such insurance. Coverage provided is primary and is not in excess of or contributing with any insurance or self-insurance maintained by the City.
 3. The policies listed in (a) and (b) above will name the City as an Additional Insured. Proposer will supply proper certificates of insurance to the City prior to the commencement of the agreement and will furnish to the City certificates of insurance annually thereafter for the term of the agreement.
 4. All such insurance as indicated above shall be provided by insurance companies having a Best's rating of not less than AVIII.



PROFESSIONAL SERVICES AGREEMENT

CONTRACTOR

Exterior Painting of three Buildings

City Hall, Police, and Public Works Operations

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 CONTRACTOR], a [INSERT TYPE OF ENTITY, E.G., CORPORATION? PARTNERSHIP? SOLE PROPRIETORSHIP? ETC.] (hereinafter, "CONTRACTOR"). For the purposes of this Agreement CITY and CONTRACTOR may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to CITY or CONTRACTOR interchangeably.

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

I. ENGAGEMENT TERMS

- 1.1 SCOPE OF SERVICES: Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONTRACTOR agrees to perform the services and tasks set forth in **Exhibit "A"** (hereinafter referred to as the "**Exterior painting Of Three City Buildings**"). CONTRACTOR further agrees to furnish to CITY all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Services. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Services shall hereinafter be referred to generally by the capitalized term "Work."
 - 1.2 TERM: This Agreement shall commence May 11, 2020 to June 22, 2020. Nothing in this Section shall operate to prohibit or otherwise restrict the CITY's ability to terminate this Agreement at any time for convenience or for cause.
 - 1.3 COMPENSATION:
 - A. CONTRACTOR shall perform the various services and tasks set forth in the Scope of Work in accordance with the compensation schedule which is (hereinafter, the "Approved Rate Schedule").
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- B. Section 1.3(A) notwithstanding, CONTRACTOR's total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum of \$80,000 (hereinafter, the "Not-to-Exceed Sum"), unless such added expenditure is first approved by the CITY acting in consultation with the City Manager and the Finance Director. In the event CONTRACTOR's charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, CITY may suspend CONTRACTOR's performance pending CITY approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other CITY-approved amendment to the compensation terms of this Agreement.
- 1.4 PAYMENT OF COMPENSATION: Following the conclusion of each calendar month, CONTRACTOR shall submit to CITY an itemized invoice indicating the services and tasks performed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONTRACTOR's monthly compensation is a function of hours worked by CONTRACTOR'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 CONTRACTOR in writing of any disputed amounts included in the invoice. Within forty-five (45) calendar day of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall not withhold applicable taxes or other authorized deductions from payments made to CONTRACTOR.
- 1.5 ACCOUNTING RECORDS: CONTRACTOR shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. CITY shall have the right to access and examine such records, without charge, during normal business hours. CITY shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 ABANDONMENT BY CONTRACTOR: In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Services, CONTRACTOR shall deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR 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,

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costs or additional expenses which CITY may incur as a result of CONTRACTOR's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 CITY'S REPRESENTATIVES: The CITY hereby designates the City Manager and Public Works Superintendent (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. CONTRACTOR shall not accept directions or orders from any person other than the CITY Representatives or their designee.
- 2.2 CONTRACTOR REPRESENTATIVE: CONTRACTOR hereby designates **[INSERT NAME AND TITLE OF PERSON WHO IS CONTRACTOR REPRESENTATIVE FOR PURPOSES OF CONTRACT ADMINISTRATION]** to act as its representative for the performance of this Agreement (hereinafter, "CONTRACTOR Representative"). CONTRACTOR Representative shall have full authority to represent and act on behalf of the CONTRACTOR for all purposes under this Agreement. CONTRACTOR 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 CONTRACTOR Representative shall constitute notice to CONTRACTOR.
- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONTRACTOR 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 CONTRACTOR shall be subject to inspection and approval by CITY Representatives or their designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONTRACTOR represents, acknowledges and agrees to the following:
- A. CONTRACTOR shall perform all Work skillfully, competently and to the highest standards of CONTRACTOR's profession;
 - B. CONTRACTOR shall perform all Work in a manner reasonably satisfactory to the CITY;
 - C. CONTRACTOR 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.);

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Exterior Painting at CH, PD, PW

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- D. CONTRACTOR 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 CONTRACTOR's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONTRACTOR; and
- F. All of CONTRACTOR'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 CONTRACTOR shall perform, at CONTRACTOR's own cost and expense and without any reimbursement from CITY, any services necessary to correct any errors or omissions caused by CONTRACTOR's failure to comply with the standard of care set forth under this Section or by any like failure on the part of CONTRACTOR's employees, agents, contractors, subcontractors and subconsultants. Such effort by CONTRACTOR 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 CONTRACTOR or on CONTRACTOR'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 CONTRACTOR, including but not limited to the representation that CONTRACTOR possesses the skills, training, knowledge and experience necessary to perform the Work skillfully, competently and to the highest standards of CONTRACTOR's profession.

- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONTRACTOR 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 CONTRACTOR or on behalf of CONTRACTOR in the performance of this Agreement. In recognition of this interest, CONTRACTOR 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 CONTRACTOR'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.

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- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONTRACTOR or under CONTRACTOR's strict supervision. CONTRACTOR will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. CITY retains CONTRACTOR on an independent contractor basis and not as an employee. CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR are not employees of CITY and shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR, a threat to persons or property, or if any of CONTRACTOR'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 subconsultants shall be promptly removed by CONTRACTOR and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONTRACTOR 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. CONTRACTOR'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, CONTRACTOR 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 CONTRACTOR and all persons retained or employed by CONTRACTOR are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of CITY. CONTRACTOR shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and

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subconsultants. CONTRACTOR and all persons retained or employed by CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONTRACTOR shall procure and maintain the following insurance coverage, at its own expense:

- A. Commercial General Liability Insurance: CONTRACTOR 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: CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR shall procure and maintain Errors and Omissions Liability Insurance appropriate to CONTRACTOR'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.

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- 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 of 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 CONTRACTOR'S INSURANCE:** All policies of insurance provided by CONTRACTOR 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 CONTRACTOR's insurance and shall not contribute with it.
- 3.5 **WAIVER OF SUBROGATION:** All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR or CONTRACTOR's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against CITY.
- 3.6 **VERIFICATION OF COVERAGE:** CONTRACTOR 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, CONTRACTOR warrants, represents and agrees that it shall furnish CITY with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to CITY in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the CITY if requested.** All certificates of insurance and endorsements shall be received and approved by CITY as a condition precedent to CONTRACTOR's commencement of any work or any of the Work. Upon CITY's written request, CONTRACTOR shall also provide CITY with certified copies of all required insurance policies and endorsements.

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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. CONTRACTOR acknowledges that CITY would not enter into this Agreement in the absence of CONTRACTOR's commitment to indemnify, defend and protect CITY as set forth herein.
- 4.2 To the fullest extent permitted by law, CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR under this Agreement any amount due CITY from CONTRACTOR as a result of CONTRACTOR's failure to pay CITY promptly any indemnification arising under this Article and related to CONTRACTOR'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 CONTRACTOR under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONTRACTOR 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 CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required herein, CONTRACTOR 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 CONTRACTOR's subcontractors or any other person or entity involved by, for, with or on

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behalf of CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR a minimum of five (5) calendar days prior written notice of CITY's intent to terminate this Agreement. Upon such termination for convenience, CONTRACTOR shall be compensated only for those services and tasks which have been performed by CONTRACTOR up to the effective date of the termination. CONTRACTOR 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 CONTRACTOR to provide all finished or unfinished Documents and Data, as defined in Section 6.1 below, and other information of any kind prepared by CONTRACTOR in connection with the performance of the Work. CONTRACTOR 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

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by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.

- B. CONTRACTOR 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 CONTRACTOR to timely provide CITY or CITY's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR 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, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR 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, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall include, but shall not be limited to the following: (i) CONTRACTOR's refusal or failure to perform any of the services or tasks called for under the Scope of Services; (ii) CONTRACTOR'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) CONTRACTOR's and/or its employees' disregard or violation of any federal,

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state, local law, rule, procedure or regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (v) CONTRACTOR'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 CONTRACTOR relating to this Agreement is false, misleading or erroneous in any material respect.

- C. CITY shall cure any Event of Default asserted by CONTRACTOR within forty-five (45) calendar days of CONTRACTOR'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 CONTRACTOR as provided under Section 1.4, above, shall be cured by CITY within five (5) calendar days from the date of CONTRACTOR's Default Notice to CITY.
- D. CITY, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of CITY's intent to suspend CONTRACTOR'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, CONTRACTOR shall be compensated only for those services and tasks which have been rendered by CONTRACTOR 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:

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- i. Upon written notice to CONTRACTOR, the CITY may immediately terminate this Agreement in whole or in part;
- ii. Upon written notice to CONTRACTOR, 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 CONTRACTOR's breach of the Agreement or to terminate the Agreement; or
- iv. The CITY may exercise any other available and lawful right or remedy.

CONTRACTOR 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, CONTRACTOR's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR 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 CONTRACTOR in the performance of this Agreement and

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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. CONTRACTOR shall require all subcontractors and subconsultants working on behalf of CONTRACTOR 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 subconsultants as applies to Documents and Data prepared by CONTRACTOR in the performance of this Agreement.

- 6.2 **CONFIDENTIALITY:** All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR 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. CONTRACTOR 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:** CONTRACTOR warrants and represents that neither CONTRACTOR nor any person who is an officer of, in a managing position with, or has an ownership interest in CONTRACTOR 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:

CONTRACTOR:

Business Name of CONTRACTOR
INSERT Business Address
Attn: Name/Title of CONTRACTOR's
chief contact
Phone:
Fax:

CITY:

City of San Fernando
Public Works Facilities Division
117 Macneil Street
Attn: City manager
Phone: 818-898-1202
Fax: 818-361-7631

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

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: CONTRACTOR 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 CONTRACTORS: CITY reserves the right to employ other contractors in connection with the various projects worked upon by CONTRACTOR.
- 6.8 PROHIBITED INTERESTS: CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR 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 CONTRACTOR, 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.

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- 6.11 ATTORNEYS' FEES: If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.
- 6.12 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.
- 6.13 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.14 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.15 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.16 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to CITY approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.17 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 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 CONTRACTOR 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.

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- 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 CONTRACTOR and the remaining two original counterparts shall be retained by CITY.

(SIGNATURE PAGE TO FOLLOW)

SAMPLE

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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
CONTRACTOR, E.G., ACME CORP. A
CALIFORNIA CORPORATION ETC.]**

By: _____
Nick Kimball, City Manager

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

By: _____
Rick R. Olivarez, City Attorney

