

# REQUEST FOR PROPOSALS



The Recreation and Community Services Department is requesting proposals for:

## PROGRAM MANAGEMENT SERVICES OPEN STREETS EVENT

RELEASE DATE: February 6, 2023

RESPONSE DUE: March 6, 2023

## **GENERAL INFORMATION**

The City of San Fernando is located in the northeast San Fernando Valley and is encircled by the City of Los Angeles. The City of San Fernando is approximately 2.4 square miles and has a population of nearly 24,000 residents. The Recreation and Community Services Department is collaborating with the City of Los Angeles Council District Seven, in particular the communities of Pacoima and Sylmar with a population of nearly 170,457 citizens, to host a Metro Open Streets Grant Event. The Open Streets Event will transform busy roads and thoroughfares into open spaces for walking, bike riding, skateboarding, or any non-motorized modes of transportation. The event also provides an opportunity for local businesses and community-based organizations to promote their goods and services to the event participants.

The Open Streets Event billed as the Northeast Valley Community Street Festival (NVCSF) will connect the City of San Fernando with the neighborhoods of Sylmar and Pacoima along a 7.5-mile route utilizing San Fernando Road, Maclay Avenue, and Van Nays Blvd. The NVCSF event is scheduled to take place on Saturday, September 23, 2023, between the hours of 10:00 am and 2:00 pm. The route will feature a minimum of five themed legs or activity zones where community members will interact with exercise demos, public art displays, and cultural and live performances. A more detailed description of the activity zones is available in the NVCSF Event Description (Exhibit A) of this Request for Proposals (RFP).

The City of San Fernando ("City") is seeking proposals from qualified firms ("Consultant") to provide Event Management services (hereinafter referred to as "Services") for the City's 2023 Northeast Valley Community Street Festival, in accordance with the terms and conditions prescribed in this RFP. Respondents are advised to read this information carefully prior to submitting a proposal.

## **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 Administration, Police Department, Public Works Department, Recreation and Community Services Department, Community Development Department, and Finance Department. The City employs approximately 100 full-time employees from a total Adopted Budget for the fiscal year 2022-2023 of \$53.8 million, which includes a General Fund budget of \$25.3 million. The City is a cost-conscious provider of outstanding public services to its citizens and local businesses.

The City actively pursues grant funding to augment and enhance the programs and services provided to the public. One such grant is the Metro Open Streets Event program, which is funded by Proposition C. As a recipient of public funds, the City believes in an open competitive process for awarding product and service contracts. The City evaluates all proposals submitted to select the best Consultant for the public dollar. The City is interested in receiving responsive and

competitive proposals from experienced and qualified Consultants to provide Services for the NVCSF event. The following describes the technical environment, contractor staffing, qualifications, and performance expectations for this RFP.

## **INSTRUCTIONS FOR SUBMITTING CONTRACTORS**

### **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 work to the City in a creative, cost-effective & service-oriented manner.

### **B. Questions/Clarifications**

Please direct any questions regarding this RFP to Julian Venegas, Recreation and Community Services Director, via e-mail at [jvenegas@sfcity.org](mailto:jvenegas@sfcity.org). Questions must be received by 5:00 p.m. on **Wednesday, February 22, 2023**. Responses to all questions received prior to the deadline will be posted on the City's website on **Monday, February 27, 2023**.

### **C. Submission of Bid Proposals**

Firms must submit their proposals as a hard copy and as an electronic copy. Hard copies may be sent in a sealed envelope to the San Fernando City Clerk's Office, located at 117 Macneil Street, San Fernando, California, 91340. Electronic copies may be sent to Julian Venegas, Recreation and Community Services Director, at [jvenegas@sfcity.org](mailto:jvenegas@sfcity.org), with the subject line "City of San Fernando RFP – Program Management Services for Open Streets Event." All bid proposals must be received on or before **Monday, March 6, 2023, at 4:30 p.m.** All proposals received after the due date will not be accepted.

### **D. Withdrawal of Proposals**

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

### **E. Rights of the 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 the 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 for 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 Professional Services Agreement (PSA) contract will be executed subsequently to City Council review and approval of the recommended firm. A sample of the standard PSA agreement is enclosed as Exhibit "B".

**G. Collusion**

By submitting a proposal, each prospective Consultant 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 Consultant 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 Consultant has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

**SCOPE OF WORK**

The City of San Fernando is soliciting proposals from qualified and experienced firms to manage the Northeast Valley Community Street Festival, a Metro Open Streets Event. The NVCSF is a 7.5-mile street closure event that connects the City of San Fernando, Sylmar, and Pacoima through the corridors of San Fernando Road, Maclay Avenue, and Van Nays Boulevard. The event utilizes communal gathering locations such as the Downtown District, Westside Park, Bradly Plaza, and Pacoima City Hall to serve as activity zones. The event will highlight alternative modes of transportation at the San Fernando/Sylmar Metrolink Station, and the Mission City Bike Trail.

The streets closures void of motor vehicles will allow the public to walk, bike, or take transit, possibly for the first time. The route activities will include, but not be limited to, walking fun zones, farmers markets, physical activity challenges, music and dance performances, and street art exhibitions. A 5K Run/Walk activity may be hosted if feasible within the greater Open Streets event. Hubs or legs along key communal gathering places will host the activities mentioned. A description of the legs' activities is available in the Event detailed attached as Exhibit "A".

Prospective Consultants should have significant and relevant experience and familiarity in hosting events that promote bicycle and pedestrian awareness, the safe use of bicycles, and pedestrian

activity by connecting diverse portions of the Northeast San Fernando Valley region through temporary public spaces, free of cars and traffic, and open to non-motorized modes of mobility. The projected timeline for implementation of the program management services is nine (9) months from the date the agreement is executed by all parties.

The Event Project Management is subdivided into five major service areas that include Administration, Marketing and Community Engagement, Management/Program Coordination (Day of Event), Safety Management, and Grant Compliance. The Services may be sub-contracted provided sub-contractors are listed in the proposal detailing their experience and qualifications to provide such services. The City may modify the Scope of Work through negotiation and/or by a written addendum issued by the City, which becomes part of the original agreement. The successful Consultant is expected to furnish all personnel to provide the following services in the following areas:

**A. Administration**

The Consultant shall assign a Project Manager (PM) to this event that will be the main point of contact with City staff. The PM must be available to:

1. Coordinate Project Kick-Off Meetings involving the City, DC& and LADOT staff.
2. Attend meetings and provide written reports to City staff after each meeting regarding progress in performing required tasks needed to host a successful event.
3. Host monthly Technical Advisory Meetings to discuss and guide event implementation, key stakeholders will be invited to participate in such meetings.
4. Provide a list of partners and the roles they play in the event planning and production of the event.
5. Coordinate with Health providers to implement health activities as part of this Open Streets Event.
6. Coordinate with local merchants and Community Base Organizations.
7. Submit appropriate procurement forms, permits, and licenses for the event.

**B. Marketing and Community Engagement**

1. Establish a Community Advisory Committee for Sylmar, Pacoima, and the City.
2. Targeted Market Identification and Event Branding.
3. Communications, Public Relations, and Marketing Plan.
4. Multilingual Marketing Materials Development.
5. Develop a Sponsorship Plan for the event.
6. Community Engagement – Website and Social Media Outreach, PSAs, Radio, etc.
7. Conduct workshops prior to the event to educate residents - Bike Educational Workshops, alternative transportation, etc. in each community (Sylmar, Pacoima, and City of San Fernando).
8. Recruit, train, and manage volunteers to work the day of the event.
9. Present to City Council and CD7 representatives.

**C. Management/Program Coordination Day of Event**

1. Consult with Public Works and Public Safety on the finalized route. Ensure that all soft and hard closures are feasible for the day of the event.
2. Establish and promote a Community Engagement platform to gather statistical data on the day of the event.
3. Identify a wide array of eateries, cafes, boutiques, entertainment, art galleries, and other businesses to serve in the assigned activity zone/hub area.
4. Coordinate with Metro and municipal transit service operators to provide access to the event.
5. Provide an outline of the general elements/ideas/goals that will be represented in the activities along the route. Implement these elements/ideas/goals in the assigned activity zones/hub areas.
6. Set up activity zones, activity signage for hub areas, booths, decorations, etc.
7. Promote and implement healthier environments, active living, and sustainable communities.
8. Obtain event insurance (including applicable waivers/permits) and ensure compliance with all City/County permitting procedures and guidelines.

**D. Safety Management**

1. Develop a Traffic Management Plan for the entire 7.5-mile event route.
2. Notification of street closures affecting public transit agencies (Buses and Rail).
3. Coordination with Fire, Police, and Public Works in respective jurisdictions (City of Los Angeles, City of San Fernando).
4. Create Map Guides for the event.
5. Participant Safety – hydration zones, restrooms, bike dismount areas, pedestrian crossings, etc.
6. Create a Vendor and volunteer management Plan.
7. Coordinate with vendors and businesses along the route.
8. Surveying all aspects of the event for optimal security.
9. Develop a Clean-Up and tear-down plan.

**E. Grant Compliance Project Close-Out**

1. Grant Reporting shall comply with all applicable requirements of Metro regarding Project reporting and audit requirements.
2. Data Analysis & Event Evaluation Narrative and Financial Report on Project Progress as required.
3. Complete all Federal procurement forms.
4. Conduct participant / volunteer anecdotal interviews
5. Project Closeout Report.

## INFORMATION TO BE SUBMITTED

The content and sequence of the information contained in each copy of the proposal shall be as follows:

### **A. Cover Letter**

Introduction of the firm submitting the proposal, including a general description of the firm's qualifications and experience relevant to the requested services, with emphasis on previous projects similar to the one proposed here. Along with introductory remarks, the proposal shall include the following information:

1. Complete name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity with which contract would be written.
2. Complete the name, title, address, e-mail address, and telephone number of each principal officer.
3. Identify the legal entity of the Consultant and state the number of years the entity has been organized and doing business under this legal structure.
4. Documentation of the financial status of the firm to ensure the firm will continue to be in business through the contract period and finance the costs of adequate personnel and other support requirements.

### **B. Organizational Information**

The consultant will include an organizational chart and staffing plan for key personnel the Consultant plans to assign to the ongoing management of the services described in the Scope of Work. A section titled "Proposed City of San Fernando Team" shall be included and will include resumes, certifications, etc. for the proposed team that will be assigned to the City that demonstrates their abilities, skill level, and experience to accomplish the required tasks.

### **C. Qualifications and Experience**

The Consultant will demonstrate that the firm expresses a clear understanding of the Scope of Work and indicate features, skills, and/or services that distinguish the firm as the better choice for the City. The Consultant will provide a minimum of three (3) examples of comparable work performed during the last three years that best demonstrates the qualifications and ability of the proposed team to accomplish the work as outlined in the Scope of Work section of this RFP. Include dates and descriptions of the services that were provided.

Consultant shall provide a minimum of three (3) and maximum of five (5) references and should include any California governmental clients or similar public agencies for which

contracts were performed. For each reference, the information shall include the name of the client with current address, telephone number, e-mail address, and contact person of each client who would be most familiar with the services provided. The City reserves the right to contact any of the listed references at any time and make any other reasonable investigation into the consultant's background and experience.

1. **Procedures and Methodology** – The proposal shall provide a detailed description of the firm's proposed approach demonstrating how the goals and objectives will be accomplished as outlined in the Scope of Work.
2. **Quality Control** – The Consultant shall describe the firm's policies and procedures for assuring high-quality work, including monitoring of any proposed sub-contracts.
3. **Schedule Detail/Schedule Control** – The Consultant shall provide a detailed schedule outlining the tasks, activities, deliverables, milestones, and duration required for the completion and submission of each of the following deliverables.

**D. Cost Summary**

The cost summary shall be submitted in a separate sealed envelope. All costs should reflect "not to exceed" figures. Fee schedules, including hourly rates for the prime consultant and all sub-consultants, meetings, and reproduction costs, should accompany the cost summary.

**E. Compensation Schedule**

In a separate sealed envelope labeled "Compensation Schedule," the Consultant shall include an appropriate compensation schedule to meet its workload and staffing needs. Include the hourly rate for all personnel assigned to the City, the number of hours each staff member will be assigned for each major task in the Scope of Work, as well as a list of all other reimbursable costs incurred in the performance of services required in the Scope of Work. A discussion on how the firm controls overall costs for Services to the City should be included as well.

**F. Conflict of Interest Statement**

Include a statement disclosing any involvement with plan/development projects in the City of San Fernando by the consultant (and sub-consultants) within the last year. The City of San Fernando reserves the right to reject any proposals having the potential for a conflict of interest.

**G. Signature**

The proposal shall be signed by an official who is authorized to bind the consulting firm and shall contain a statement that guarantees that the proposal/cost estimate is valid for ninety (90) days.



## **SCHEDULE FOR SELECTION**

RFP Available:	February 6, 2023
Question Submittal Deadline:	February 22, 2018
Response to Questions:	February 27, 2023
RFP Due:	March 6, 2023
Interviews/Contract Negotiations (if necessary):	March 9, 2023
Agreement Presented to Council for Review & Approval:	March 20, 2023

## **METHOD OF SELECTION AND NOTICES**

The Recreation and Community Services Director and staff from Los Angeles Council District 7 and the Los Angeles Department of Transportation will evaluate the information provided in the submitted proposals using the following criteria as a guideline:

- Completeness and Comprehensiveness of the Event
- Responsiveness to Service Needs
- Potential Benefits of the Northeast Valley Region
- Experience of the firm providing similar services to other municipalities
- Cost-effectiveness
- Quality of proposed staff

## Event Description

**Event Name:** The Northeast Valley Community Street Festival

**Event Date and Time:** Saturday, September 24, 2023, | 10 am to 2 pm

The Northeast Valley Community Street Festival (NVCSF) aligns with the adopted City of San Fernando City Council’s strategic goals (2022-2027) to provide a blueprint for programs and services provided to the residents of San Fernando. The event also serves as a venue for the Los Angeles City Council District 7 to engage its constituents in the communities of Sylmar and Pacoima.



NVCSF is a collaborative effort to bring together various factions of the community to make participants aware of the alternative modes of transportation available in the region. The event closes down miles of streets creating open space for local businesses, Community Based Organizations, Faith Based groups, Artisans, and Health Organizations to engage the public. The NVCSF Open Streets event effectively turns 7.5 miles of streets into a paved, urban playground, devoid of all motorized forms of transportation. Allowing participants to run, walk, skate, and bike along the route and interact with the vendors along the route.

The Northeast Valley’s largest regional hospital, Providence Holy Cross Medical Center, will collaborate with the NVCSF to increase public awareness of obesity-related diseases while educating the community on the prevention of diseases through active living and healthy eating. A proposed 5K/10K Run and Walk link the three communities together. The event incorporates alternative modes of transportation at the San Fernando Sylmar Metrolink Station (a major transit hub), and the Mission Trail Bike path that runs through the communities of Sylmar and Pacoima.

The NVCSF Open Streets route will include a minimum of five (5) destination “Legs,” or activity areas with different family-friendly activities for all age groups at each entry point of the route. Participants are encouraged to physically bike to each leg of the route to reach a different activity zone. The NVCSF event map shows the 7.5-mile route where the City, Sylmar, and Pacoima will host these legs for programming activities, and provide open space for vending.

The City has potential programming in place for each hub. A description of the programming and activities for each hub/leg is provided below:

Hub 1. Active Transportation – With its proximity (less than .5 miles) to the MetroLink Sylmar/San Fernando Station, this leg of the route will promote the use of active transportation.

- a) All age groups will get to learn about the local San Fernando Valley and Los Angeles County transit system through an interactive workshop and booth.
- b) The leg will include route-wide games, such as a Healthy San Fernando “Passport” game, in which participants get prizes for completing each leg.
- c) Bike feeders, organized through the City’s Open Streets event webpage, will also congregate in this area.
- d) Other Activities/Amenities: Roving Bike Repair Support, Hydration Station, Selfie Station.

Hub 2. Refuel Right! Fest – This leg of the route will promote healthy eating and nutrition.

- a) Making smarter food choices will be highlighted in this area with a “Guess those Macronutrients” pop-up display, in which participants will get to guess macronutrients in various food displays. For example, a hamburger will be displayed in a glass case, with the question: “How much protein is in this hamburger?” People will get to cast a ballot with their guesses. An hour before the Open Streets event ends, winners will be announced and provided prizes. Similar food/beverage demos will also be incorporated.
- b) All age groups will get to enjoy the flavors of San Fernando Valley’s local cuisines and restaurants, along with healthy food trucks.
- c) Other Activities/Amenities: Music/DJ, Healthy Eating Contests.

Hub 3. Downtown Art Walk – The City of San Fernando is the oldest city in the San Fernando Valley and therefore has a rich, diverse, and colorful history. This “leg” of the route will showcase and highlight the City’s historic Downtown district, mall, and businesses. It will be the central hub connecting the entire route.

- a) All age groups will get to draw with chalk on the streets and watch live, local artists draw and paint. Local artists will also be able to display and sell their art, creating a true, art walk.
- b) A parade will be organized consisting of local, cultural dance groups and performances representing multicultural communities in the San Fernando Valley, such as Bollywood, Folklorico, and Aztec Dance JAM sessions.
- c) The historically significant Lopez Adobe will be included in this leg of the route, offering a dance floor where children can dance and move.
- d) A historic Downtown bike tour will also lead participants through the route to learn about the history of the City and the San Fernando Valley.
- e) Other Activities/Amenities: Spin Art (art made using bikes/wheels), Hair Art and Braiding, Face Painting, Music/DJ, Selfie Station.

Hub 4. In Motion: Bike/Ped Safety – This leg of the route will promote bicycle and pedestrian safety awareness, which is in line with the City’s current endeavor to create an Active Transportation and Safe Routes to School Plan.

- a) Children will get to enjoy various activity challenge booths. Once each is completed, children will be able to dash, pedal, and move through a larger obstacle course to obtain a health-related prize.
- b) Teens and young adults will get to watch a BMX biking stunt show while also learning safety tips. They will also have chances to win helmets and other safety gear through raffles and contests.
- c) In addition to biking the area, adults will get to “Map Your Ride,” which will be an interactive experience, allowing adults to map their ride to work using existing multimodal modes of transportation. This will effectively allow them to learn new ways of getting to work that they may not have considered previously. They will also be able to visually compare active modes of transportation vs. automobiles against their health and financial benefits.
- d) Other Activities/Amenities: Roving Bike Repair Support, Spa Water, Selfie Station.

Hub 5: 5K Relay Run/Walk: – This leg of the route is a self-challenging Physical Fitness zone meant to increase awareness of the participant’s fitness.

- a) Children, adults, and seniors will have an opportunity to participate in the Relay Run, Individual Run, and the Kid’s Fun Tot Run in addition to various activity challenge booths.
- b) Participants will take advantage of the health fair and learn the benefits of physical activity, proper nutrition, and disease prevention through interactive experience and screenings testing strength, cardio, aerobics, and other measures of physical fitness.
- c) Other Activities/Amenities: Live entertainment, community altars, cultural performances, and vendors. Pop Up Arcade, Selfie Station.

Booths will be spread throughout the route to include local merchants, non-profit/faith-based organizations, and private corporations.

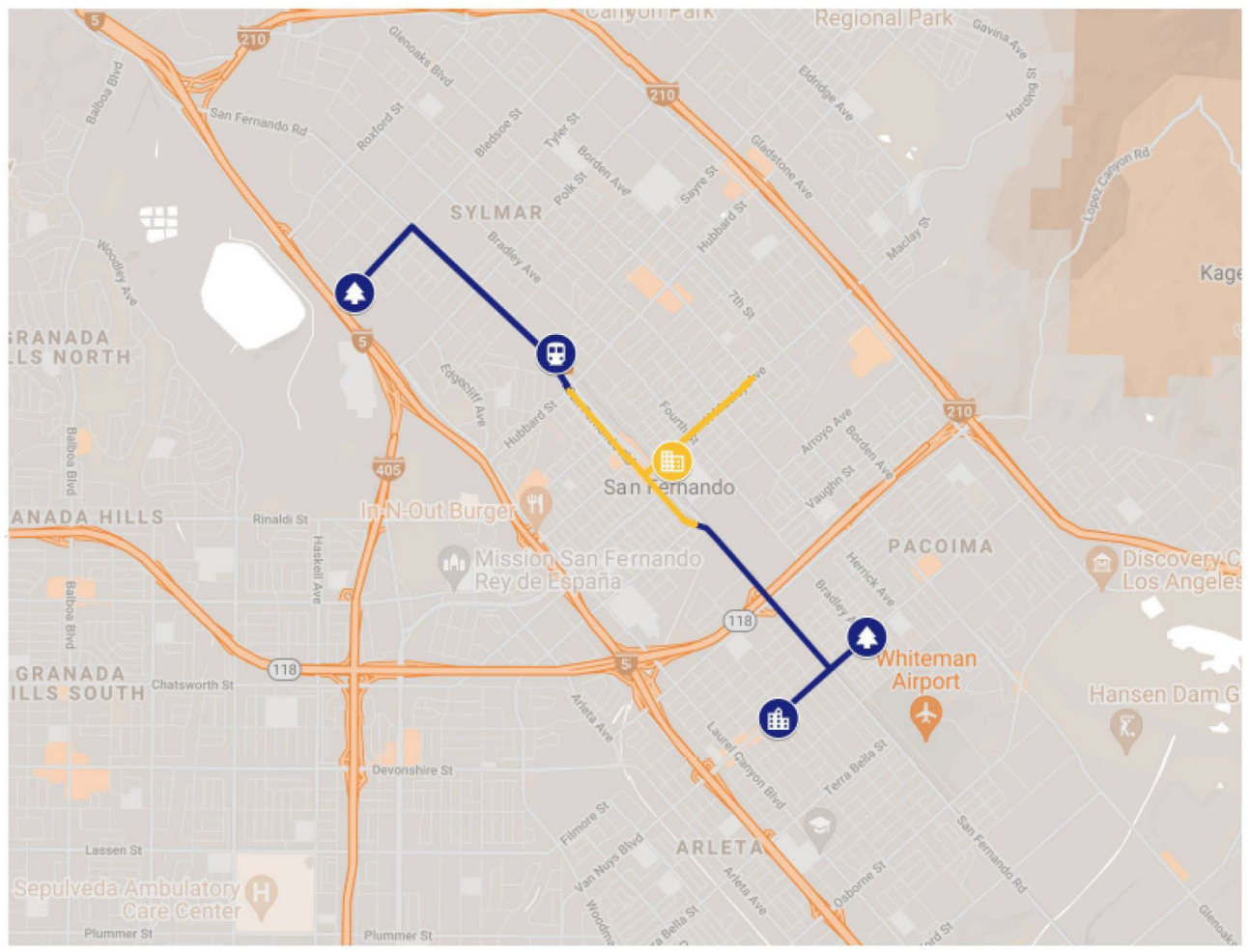
#### Propose Event Day Agenda

- 1. Street Closures 5:00 a.m.
- 2. Vendor Set up 7:00 a.m.
- 3. 5K Walk or Run
  - 8:00 a.m. 5K individual run
  - 8:30 p.m. 5K relay run
  - 9:30 p.m. Kid’s Fun Run
- 4. Northeast Valley Community Street Festival 10:00 a.m. to 2:00 p.m.

**Event Location:** City of San Fernando and City of Los Angeles, specifically along San Fernando Road (from Bledsoe St. to Van Nuys Blvd.), along Maclay St. (from San Fernando Road to Glenoaks Blvd.), along Van Nuys Blvd. (from Brandley Ave. to Oneida Ave.).

**Contact Information:** Julian Venegas, Recreation and Community Services Director Phone: (818) 898-1290, Email: [jvenegas@sfcity.org](mailto:jvenegas@sfcity.org)

## Event Map





2022

CONTRACT SERVICES AGREEMENT

(Contractor: **INSERT NAME**)

(Nature of Engagement: **INSERT DESCRIPTION OF ENGAGEMENT**)

THIS CONTRACT SERVICES AGREEMENT (hereinafter, "Agreement") is made and entered into this **\_\_\_\_\_** day of **\_\_\_\_\_**, 2022 by and between the CITY OF SAN FERNANDO, a municipal corporation (hereinafter, "CITY") and **INSERT CONTRACTOR NAME** (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.

RECITALS

WHEREAS, CITY is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose; and

WHEREAS, CITY requires **INSERT THE KIND OF SERVICES REQUIRED**; and

WHEREAS, CITY staff has determined that CONTRACTOR possess the skills, experience and expertise required to competently provide the services and tasks contemplated under this Agreement; and

WHEREAS, the execution of this Agreement was approved by the San Fernando City Council at its Regular Meeting of **\_\_\_\_\_, 2022** under Agenda Item No. **\_\_\_\_\_**.

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

**SECTION 1. SCOPE OF WORK.**

- A. Subject to the terms and conditions of this Agreement, CONTRACTOR agrees to provide CITY **INSERT SERVICES REQUIRED**. The various tasks and related services to be performed by CONTRACTOR are more specifically described in the CITY's "**INSERT NAME OF CITY REQUIREMENTS**" (hereinafter the "CITY REQUIREMENTS") and the written proposal of CONTRACTOR entitled "**INSERT TITLE OF PROPOSAL**" (hereinafter, the "CONTRACTOR PROPOSAL") dated **INSERT DATE OF PROPOSAL**. The CITY REQUIREMENTS and the CONTRACTOR PROPOSAL are attached and incorporated hereto as **Exhibits "A" and "B" respectively**. The term "Scope of Work" shall be a collective reference to the CITY

REQUIREMENTS and the CONTRACTOR PROPOSAL. The capitalized term "Work" shall be a collective reference to all the various services and tasks referenced in the Scope of Work. In the event of any conflict or inconsistency between the provisions of the document entitled CITY REQUIREMENTS and the provisions of the document entitled CONTRACTOR PROPOSAL, the requirements of the document entitled CITY REQUIREMENTS shall govern and control but only to the extent of the conflict or inconsistency and no further. In the event of any conflict or inconsistency between the provisions of the Scope of Work and the provisions of this Agreement to which the Scope of Work is attached, the provisions of this Agreement shall govern and control.

- B. **IF NO CITY REQUIREMENTS ISSUED:** Subject to the terms and conditions of this Agreement, CONTRACTOR agrees to provide the services and tasks described in that certain proposal of CONTRACTOR entitled **"INSERT TITLE OF PROPOSAL"** dated **INSERT DATE OF PROPOSAL** (hereinafter, the "CONTRACTOR PROPOSAL") which is attached and incorporated hereto as **Exhibit "A"**. **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 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."
- C. CONTRACTOR shall provide all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the Work. CONTRACTOR shall perform the Work in accordance with the terms and conditions of this Agreement and in accordance with such other written or verbal directives as may be issued by CITY.
- D. By executing this Agreement, CONTRACTOR warrants that CONTRACTOR: (i) has thoroughly investigated and considered the nature of the work, services and tasks to be performed under this Agreement; (ii) has carefully considered how the Work should be performed; and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement. CONTRACTOR warrants that CONTRACTOR has or will investigate any location where the Work is to be performed and is or will be fully acquainted with the conditions there existing, prior to undertaking any service or task requested by CITY in the manner described under Section 3, below. Should the CONTRACTOR discover any latent or unknown conditions which will materially affect the performance of the services hereunder, CONTRACTOR shall immediately inform the CITY of such fact and shall not proceed except at CONTRACTOR's risk until written instructions are received from the City Representative as defined herein.
- E. In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons any undertaking contemplated herein prior to completion and acceptance of the Work, 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, costs or additional expenses which CITY may incur as a result of CONTRACTOR's cessation or abandonment.

## **SECTION 2. PROSECUTION OF WORK.**

- A. Time is of the essence of this Agreement and each and every provision contained herein. The Work shall be commenced within three (3) calendar days of CITY's issuance of a written notice to proceed ("Notice to Proceed"). The Work shall be completed by [insert time to be completed by or Insert date to be completed by of CITY's issuance of the Notice to Proceed] (hereinafter, the "Completion Date").
- B. CONTRACTOR shall perform the Work continuously and with due diligence so as to complete the Work by the Completion Date. CONTRACTOR shall cooperate with CITY and in no manner interfere with the Work of CITY, its employees or other consultants, contractors or agents.
- C. CONTRACTOR may submit a written request for additional time to complete the Work, which request must be submitted to the CITY no later than fifteen (15) calendar days prior to the Completion Date or any extended Completion Date granted by CITY. The written request for additional time must identify (i) what specific tasks or services remain to be completed by CONTRACTOR in order to complete the Work; (ii) how much additional time CONTRACTOR requires; (iii) identification of the circumstances that have caused the need for additional time, according to CONTRACTOR, including, if applicable, identification of any tasks that must be completed by CITY as prerequisite to CONTRACTOR being able to complete any other service or task; and (iv) what proactive steps CONTRACTOR has taken up to the date of the request to mitigate the need for additional time, including, if applicable, any effort on the part of CONTRACTOR to alert CITY of the need to provide information or complete certain tasks to be performed by CITY. CITY in its sole and absolute discretion may grant, deny or conditionally grant a request for additional time, provided that no individual grant of additional time may exceed a maximum of fifteen (15) calendar days.
- D. CONTRACTOR shall not claim or be entitled to receive any compensation or damage because of the failure of CONTRACTOR, or its subcontractors, to have related services or tasks completed in a timely manner.
- E. CONTRACTOR shall at all times enforce strict discipline and good order among CONTRACTOR's employees.
- F. CONTRACTOR, at its sole expense, shall pay all sales, consumer, use or other similar taxes required by law.



### **SECTION 3. COMPENSATION.**

- A. CONTRACTOR shall perform all the Work in accordance with the rates set forth in CONTRACTOR's **INSERT DATE** quote (hereinafter "CONTRACTOR QUOTE"), which is attached and incorporated hereto **as Exhibit "C"**.
- B. CONTRACTOR's total compensation during the Term of this Agreement shall not exceed the sum of **INSERT WRITTEN AMOUNT (\$INSERT NUMBER)** (hereinafter, the "Not-to-Exceed Sum"). CONTRACTOR 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. CONTRACTOR shall have no right or entitlement to any overage contingency sums authorized by the City Council as part of the approval of this Agreement, unless the City Representative authorizes the expenditure of such overage contingency funds in writing in the City Representative's sole and absolute discretion.
- C. Following the conclusion of Work requested pursuant to Section 1 above, CONTRACTOR shall submit to CITY an itemized invoice indicating the services and tasks performed. If the amount of CONTRACTOR's compensation includes hours worked by CONTRACTOR's personnel, the invoice shall indicate the number of hours worked in connection with the specific service or task requested, 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 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 CONTRACTOR.

### **SECTION 4. STANDARD OF CARE.**

CONTRACTOR represents, acknowledges and agrees as follows:

- A. CONTRACTOR shall perform all work skillfully, competently and to the highest standards applicable to the CONTRACTOR's field;
- B. CONTRACTOR represents and maintains that it is skilled in the professional calling necessary to perform the Services;
- C. CONTRACTOR shall perform all work in a manner reasonably satisfactory to the CITY;
- D. 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.*). CONTRACTOR's compliance with applicable laws will include, without limitation, compliance with all applicable Cal/OSHA

requirements and applicable regulations of the Federal Department of Housing and Urbanization;

- E. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
- F. All of CONTRACTOR's employees and agents (including but not limited to CONTRACTOR's subcontractors and subconsultants) possess sufficient skill, knowledge, training and experience to perform those services and tasks contemplated under this Agreement;
- G. All of CONTRACTOR's employees and agents (including but not limited to CONTRACTOR's 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
- H. CONTRACTOR shall at all times employ such force, plant, materials, and tools as will be sufficient in the opinion of the CITY to perform the Services within the time limits established, and as provided herein. It is understood and agreed that said tools, equipment, apparatus, facilities, labor, and material shall be furnished and said Services performed and completed as required by the Agreement, and subject to the approval of the CITY's authorized representative. The quality of Services shall meet or exceed those standards established by the CITY or County of jurisdiction.

The Parties acknowledge and agree that CONTRACTOR shall perform, at CONTRACTOR's own cost and expense and without any reimbursement from CITY, any services or tasks 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 Representative in writing and absolute discretion. The Parties acknowledge and agree that CONTRACTOR'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 CONTRACTOR 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 in a skillful and competent manner equivalent to, the standard of performance generally recognized as being employed by professionals performing the same type of work and services in the State of California.

**SECTION 5. REPRESENTATIVES.**

- A. City Representative. For the purposes of this Agreement, the contract administrator and

CITY's representative shall be **INSERT CITY REPRESENTATIVE** (hereinafter, the "City Representative"). It shall be CONTRACTOR's responsibility to assure that the City Representative is kept informed of the progress of the performance of the services, and CONTRACTOR shall refer any decisions which must be made by CITY to the City Representative. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the City Representative.

- B. Contractor Representative. For the purposes of this Agreement, **INSERT CONTRACTOR REPRESENTATIVE**, is hereby designated as the principal and representative of CONTRACTOR authorized to act on its behalf with respect to CONTRACTOR's performance under this Agreement and to make all decisions in connection therewith (hereinafter, the "Contractor Representative"). Notice to the Contractor Representative whether written or verbal shall constitute notice to CONTRACTOR. The Contractor's Representative shall supervise and direct the Services, using their 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 Services under this Agreement.

#### **SECTION 6. CONTRACTOR'S PERSONNEL.**

- A. CONTRACTOR represents that it has, or will secure at its own expense, all personnel required to perform the Work and all other services and tasks necessary for CONTRACTOR to competently and timely complete the improvements contemplated under this Agreement. All work, services and tasks will be performed under CONTRACTOR's supervision, and CONTRACTOR's personnel engaged in the performance of the Work, services and tasks contemplated under this Agreement shall possess the qualifications, permits and licenses required by applicable law to perform such work, services and tasks.
- B. CONTRACTOR shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the Work. CONTRACTOR shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the CONTRACTOR's performance of the Work, and shall indemnify, defend and hold harmless CITY against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against CITY hereunder.
- C. CONTRACTOR shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the Work.
- D. In the event that CITY, in its sole reasonable discretion, at any time during the duration of the Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement, CONTRACTOR shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

- E. CONTRACTOR shall be responsible for payment of all employees' and subconsultants' wages and benefits and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security.
- F. CONTRACTOR shall obtain and maintain during the duration of the Agreement, all necessary licenses, permits and certificates required by law for the performance of the Work contemplated under this Agreement.

**SECTION 7. SUBSTITUTION OF KEY PERSONNEL.** CONTRACTOR has represented to CITY that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, CONTRACTOR may substitute other personnel of at least equal competence upon written approval of CITY. In the event that CITY and CONTRACTOR cannot agree as to the substitution of key personnel, CITY shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the CITY, or who are determined by the CITY to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the CONTRACTOR at the request of the CITY. The key personnel for performance of this Agreement are as follows: **[INSERT NAME AND TITLE].**

**SECTION 8. PREVAILING WAGES AND GENERAL LABOR COMPLIANCE AND REPORTING.**

- A. CONTRACTOR and any subcontractor performing or contracting any portion of the Work shall comply with all applicable provisions of the California Labor Code for all workers, laborers and mechanics of all crafts, classifications or types, including, but necessarily limited to the following:
  - 1. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Work shall constitute a legal day's work under this Contract. CONTRACTOR and any subcontractor shall pay workers overtime pay (not less than 1 1/2 times the base rate of pay) as required by California Labor Code Section 1815. CONTRACTOR and any subcontractor shall, as a penalty to the CITY, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation to the provisions of Article 3 of Chapter 1 of Part 7, Division 2 of the California Labor Code, which is incorporated by this reference as though fully set forth herein.
  - 2. Pursuant to the provisions of California Labor Code, Sections 1770 et. seq., CONTRACTOR and any subcontractor under CONTRACTOR shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Pursuant to the provisions of California Labor Code Section 1773.2, CONTRACTOR is hereby advised that copies of the prevailing rate of per diem wages and

a general prevailing rate for holidays, Saturdays and Sundays and overtime work in the locality in which the work is to be performed for each craft, classification, or type of worker required to execute the Contract, are on file in the office of the District Secretary, which copies shall be made available to any interested party on request. CONTRACTOR shall post a copy of said prevailing rate of per diem wages at each job site.

- B. As required by Section 1773.1 of the California Labor Code, CONTRACTOR shall pay travel and subsistence payments to each worker needed to execute the Work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with this Section.
- C. To establish such travel and subsistence payments, the representative of any craft, classification, or type of workman needed to execute the contracts shall file with the Department of Industrial Relations fully executed copies of collective bargaining agreements for the particular craft, classification or type of work involved. Such agreements shall be filed within ten (10) days after their execution and thereafter shall establish such travel and payments.
- D. CONTRACTOR shall comply with the provisions of Section 1775 of the California Labor Code and shall, as a penalty to CITY, forfeit up to fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages for each craft, classification, or type of worker needed to execute the contract. CONTRACTOR shall pay each worker an amount equal to the difference between the prevailing wage rates and the amount paid worker for each calendar day or portion thereof for which a worker was paid less than the prevailing wage rate. CONTRACTOR is required to pay all applicable penalties and back wages in the event of violation of prevailing wage law, and CONTRACTOR and any subcontractor shall fully comply with California Labor Code Section 1775, which is incorporated by this reference as though fully set forth herein.
- E. CONTRACTOR and any subcontractor shall maintain and make available for inspection payroll records as required by Labor Code Section 1776, which is incorporated by this reference as though fully set forth herein. CONTRACTOR is responsible for ensuring compliance with Labor Code Section 1776 and shall keep accurate payroll records containing all such information as maybe called for under Labor Code Section 1776 and other applicable provisions of State law.
- F. CONTRACTOR and any subcontractors shall, when they employ any person in any apprenticeable craft or trade, apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the work site for a certificate approving CONTRACTOR or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected; and shall comply with all other requirements of Section 1777.5 of the California Labor Code, which is incorporated by this reference as though fully set forth herein. The responsibility of compliance with California Labor Code Section 1777.5 during the performance of this

contract rests with CONTRACTOR. Pursuant to California Labor Code Section 1777.7, in the event CONTRACTOR willfully fails to comply with the provisions of California Labor Code Section 1777.5, CONTRACTOR shall be denied the right to bid on any public works contract for up to three (3) years from the date noncompliance is determined and be assessed civil penalties.

- G. In accordance with the provisions of Article 5, Chapter 1, Part 7, Division 2 (commencing with Section 1860), and Chapter 4, Part 1, Division 4 (commencing with Section 3700) of the California Labor Code, CONTRACTOR is required to secure the payment of compensation to its employees and for that purpose obtain and keep in effect adequate Workers' Compensation Insurance and Employers Liability Insurance. If CONTRACTOR, in the sole discretion of the CITY satisfies the CITY of the responsibility and capacity under the applicable Workers' Compensation Laws, if any, to act as self-insurer, CONTRACTOR may so act, and in such case, the insurance required by this paragraph need not be provided. CONTRACTOR is advised of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and shall comply with such provisions and have Employer's General Liability limits of \$1,000,000 per accident before commencing the performance of the Work of this Contract. The Notice to Proceed with the Work under this Contract will not be issued, and CONTRACTOR shall not commence Work, until CONTRACTOR submits written evidence that it has obtained full Workers' Compensation Insurance coverage for all persons whom it employs or may employ in carrying out the Work under this Contract. This insurance shall be in accordance with the requirements of the most current and applicable state Workers' Compensation Insurance Laws. In accordance with the provisions of Section 1861 of the California Labor Code, CONTRACTOR in signing this Contract certifies to the CITY as true the following statement: "I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this contract." A subcontractor is not allowed to commence the Work on the project until verification of Workers' Compensation Insurance coverage has been obtained and verified by CONTRACTOR and submitted to the City Engineer for the CITY's review and records.
- H. In accordance with the provisions of Section 1727 of the California Labor Code, the CITY, before making payment to CONTRACTOR of money due under a contract for public works, shall withhold and retain therefrom all wages and penalties which have been forfeited pursuant to any stipulation in the contract, and the terms of Chapter 1, Part 7, Division 2 of the California Labor Code (commencing with Section 1720). But no sum shall be withheld, retained or forfeited, except from the final payment, without a full investigation by either the Division of Labor Standards Enforcement or by the CITY.

**SECTION 9. 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 absolute and unfettered right to rescind this Agreement without liability or penalty. For the duration 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.

**SECTION 10. INDEPENDENT CONTRACTOR.**

- A. All acts of CONTRACTOR, its agents, officers, subcontractors and employees and all others acting on behalf of CONTRACTOR relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers, or employees of CITY. CONTRACTOR, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of CITY. CONTRACTOR has no authority or responsibility to exercise any rights or power vested in CITY. No agent, officer, or employee of CITY is to be considered an employee of CONTRACTOR. It is understood by both CONTRACTOR and CITY that this Agreement shall not, under any circumstances, be construed or considered to create an employer-employee relationship or a joint venture.
- B. CONTRACTOR, its agents, officers, subcontractors and employees are and, at all times during the duration of this Agreement, shall represent and conduct themselves as independent contractors and not as employees of CITY.
- C. CONTRACTOR shall determine the method, details and means of performing the Work. CONTRACTOR shall be responsible to CITY only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to CITY's control with respect to the physical action or activities of the CONTRACTOR in fulfillment of this Agreement. CONTRACTOR has control over the manner and means of performing the services under this Agreement. CONTRACTOR is permitted to provide services to others during the same period as it provides services to CITY under this Agreement. If necessary, CONTRACTOR has the responsibility for employing other persons or firms to assist CONTRACTOR in fulfilling the terms and obligations under this Agreement.
- D. If in the performance of this Agreement any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by the CONTRACTOR.
- E. It is understood and agreed that as an independent contractor and not an employee of CITY neither the CONTRACTOR nor CONTRACTOR'S assigned personnel shall have any entitlement

as a CITY employee, right to act on behalf of CITY in any capacity whatsoever as an agent, or to bind CITY to any obligation whatsoever.

- F. As an independent contractor, CONTRACTOR hereby indemnifies and holds CITY harmless from any and all claims that may be made against CITY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

**SECTION 11. CONFLICTS OF INTEREST.** CONTRACTOR hereby warrants for itself, its employees, and subcontractors that those persons presently have no interest and shall not obtain any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having such conflicting interest shall be employed by or associated with CONTRACTOR in connection with this project. CONTRACTOR hereby warrants for itself, its employees, and subcontractors that no such person shall engage in any conduct which would constitute a conflict of interest under any CITY ordinance, state law or federal statute. CONTRACTOR agrees that a clause substantially similar to this Section shall be incorporated into any sub-contract that CONTRACTOR executes in connection with the performance of this Agreement.

**SECTION 12. NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. CONTRACTOR and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. CONTRACTOR and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12990 et seq.) and the applicable regulations promulgated hereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. CONTRACTOR and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This CONTRACTOR shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform the Work under this Agreement.

**SECTION. 13. INDEMNIFICATION.**

- A. To the fullest extent permitted by law, CONTRACTOR hereby agrees, at its sole cost and expense, to defend, protect, indemnify, and hold harmless CITY and CITY's elected and appointed officials, officers, attorneys, agents, employees, volunteers, successors, and assigns (collectively "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith (collectively "Liabilities"), arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to any act, failure to act, error, or omission of CONTRACTOR or any of CONTRACTOR's officers,



agents, servants, employees, subcontractors, materialmen, suppliers or their officers, agents, servants or employees, arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to this Agreement and the performance or failure to perform any term, provision, covenant, or condition of the Agreement, including this indemnity provision. This indemnity provision is effective regardless of any prior, concurrent, or subsequent active or passive negligence by CONTRACTOR and shall operate to fully indemnify Indemnitees against any such negligence. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies which Indemnitees may have under the law or elsewhere under this Agreement. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against any one or more of the Indemnitees shall be conclusive in favor of the Indemnitees' right to recover under this indemnity provision. CONTRACTOR shall pay Indemnitees for any attorney's fees and costs incurred in enforcing this indemnification provision. Notwithstanding the foregoing, nothing in this instrument shall be construed to encompass (a) Indemnitees' sole negligence or willful misconduct to the limited extent that the underlying Agreement is subject to Civil Code § 2782(a), or (b) the contracting public agency's active negligence to the limited extent that the underlying Agreement is subject to Civil Code § 2782(b). This indemnity is effective without reference to the existence or applicability of any insurance coverage(s) which may have been required under the Agreement or any additional insured endorsements which may extend to Indemnitees. Accountants, attorneys, or other professionals employed by Indemnitor to defend Indemnitees shall be selected by Indemnitees. CONTRACTOR, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the Indemnitor regardless of any prior, concurrent, or subsequent active or passive negligence by the Indemnitees.

- B. CONTRACTOR's obligations under this or any other provision of this Agreement 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 the Indemnities.
- C. CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those in this Section 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 for the benefit of CITY, CONTRACTOR agrees to be fully responsible and indemnify, hold harmless and defend CITY, its officers, agents, employees 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 or any of its officers, employees, servants, agents, subcontractors, volunteers or any other person or entity involved by, for, with or on 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.

- D. 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. CONTRACTOR agrees that CONTRACTOR's covenant under this Section shall survive the termination of this Agreement.
- E. CONTRACTOR shall fully comply with the workers' compensation laws regarding CONTRACTOR and CONTRACTOR's employees. CONTRACTOR further agrees to indemnify and hold CITY harmless from any failure of CONTRACTOR to comply with applicable workers' compensation laws. CITY shall have the right to offset against the amount of any fees due to CONTRACTOR under this Agreement any amount due to CITY from CONTRACTOR as a result of CONTRACTOR's failure to promptly pay to CITY any reimbursement or indemnification arising under this Section.

**SECTION 14. INSURANCE.**

- A. CONTRACTOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:
  - 1. Commercial General Liability Insurance with minimum limits of One Million Dollars (\$1,000,000) for each occurrence and in the aggregate for any personal injury, death, loss or damage.
  - 2. Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
  - 3. Worker's Compensation insurance as required by the State of California.
- B. CONTRACTOR shall require each of its sub-consultants or sub-contractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- C. The policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- D. CONTRACTOR agrees that if it does not keep the insurance required in this Agreement in full force and effect, CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONTRACTOR'S expense, the premium thereon.
- E. Prior to commencement of Work under this Agreement, CONTRACTOR shall file with CITY's

Risk Manager a certificate or certificates of insurance showing that the insurance policies are in effect and satisfy the required amounts and specifications required pursuant to this Agreement.

- F. CONTRACTOR shall provide proof that policies of insurance expiring during the duration of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- G. The general liability and automobile policies of insurance shall contain an endorsement naming CITY, its elected officials, officers, agents, employees, attorneys, servants, volunteers, successors and assigns as additional insureds. All of the policies shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days' prior written notice to CITY. CONTRACTOR agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- H. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the CITY, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.
- I. All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR, and CONTRACTOR's employees, agents, subcontractors, or volunteers from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against CITY, its officials, officers, employees, agents and volunteers.
- J. Any deductibles or self-insured retentions must be approved by CITY. At the option of CITY, CONTRACTOR shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONTRACTOR shall procure a bond guaranteeing payment of losses and expenses.
- K. If CONTRACTOR is a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its managers, affiliates, employees, agents, and other persons necessary or incidental to its operation are insureds.
- L. Procurement of insurance by CONTRACTOR shall not be construed as a limitation of CONTRACTOR's liability or as full performance of CONTRACTOR's duties to indemnify, hold harmless and defend under Section 15 of this Agreement.
- M. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, CITY has the right but not the duty to obtain the insurance it deems

necessary and any premium paid by CITY will be promptly reimbursed by CONTRACTOR or CITY will withhold amounts sufficient to pay premium from CONTRACTOR payments. In the alternative, CITY may cancel this Agreement effective upon notice.

- N. CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**SECTION 15. RECORDS AND INSPECTION.** CONTRACTOR shall keep, and require subcontractors to keep, such books and records as shall be necessary to document the performance of the Work and enable the CITY to evaluate the performance the Work. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of CITY, including the right to inspect, copy, audit, and make records and transcripts from such records. Such records shall be maintained for a period of four (4) years following completion of the services hereunder, and the CITY shall have access to such records in the event any audit is required.

**SECTION 16. TERMINATION.**

- A. Termination for Convenience. CITY may immediately terminate this Agreement for convenience, without cause and without penalty or liability at any time upon the issuance of written notice to CONTRACTOR specifying the effective date of such termination. Such termination for convenience shall be made in writing signed by either the City Representative, the City Manager or the Assistant City Manager. CONTRACTOR may only terminate this Agreement for cause.
  
- B. Termination for Cause. 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 in this Section 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. An Event of Default shall include, but shall not be limited to the following: (i) 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; (ii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or regulation; (iii) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (iv) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (v) CITY's discovery that a statement representation or warranty by

CONTRACTOR relating to this Agreement is false or erroneous in any material respect, including any statement, representation or warranty set forth in the Equipment Specifications.

1. CONTRACTOR shall cure the following Event of Default 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 subsection that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
  - ii. Within thirty (30) 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 30-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 30-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 subsection that exceeds thirty (30) calendar days from the end of the initial 30-day cure period.

If an Event of Default relates to a material falsehood or misrepresentation set forth in Exhibit "[insert letter of exhibit relevant to proposal]" that is not susceptible to a cure, CITY in its sole and absolute discretion may elect to treat the falsehood or misrepresentation as a breach of this Agreement or waive the falsehood or misrepresentation. The foregoing notwithstanding, the prior waiver of a falsehood or misrepresentation as an Event of Default shall not operate as a waiver or any other falsehood or misrepresentation later discovered by CITY.

2. Except as otherwise specified in this Agreement, CITY shall cure any Event of Default asserted by CONTRACTOR within thirty (30) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 30-day cure period. Prior to the expiration of the 30-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 30-day cure period. The foregoing

notwithstanding, an Event of Default dealing with CITY's failure to timely pay any undisputed sums to CONTRACTOR shall be cured by CITY within five (5) calendar days from the date of CONTRACTOR's Default Notice to CITY.

3. CITY, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement (or the performance of any specific task or function performed by CONTRACTOR 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.
4. 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.
5. 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 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.

6. 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. In no event shall CONTRACTOR be entitled to receive more than the amount that would be paid to CONTRACTOR for the full performance of the services required by this Agreement.
7. 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.

**SECTION 17. FORCE MAJEURE.** The Completion Date shall be extended in the event of any delays due to unforeseeable causes beyond the control of CONTRACTOR and without the fault or negligence of CONTRACTOR, including but not limited to severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the CITY, if the CONTRACTOR shall within three (3) calendar days of the commencement of such delay notify the City Representative in writing of the causes of the delay. The City Representative shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the City Representative such delay is justified. The City Representative's determination shall be final and conclusive upon the parties to this Agreement. In no event shall CONTRACTOR be entitled to recover damages against the CITY for any delay in the performance of this Agreement, however caused, CONTRACTOR'S sole remedy being extension of the Agreement pursuant to this Section.

**SECTION 18. NOTICES.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (a) the day of delivery if delivered by hand or overnight courier service during CONTRACTOR's and CITY's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing.

**If to CITY:**

City of San Fernando  
 117 Macneil Street  
 San Fernando, CA 91340  
 Attn: INSERT DEPARTMENT  
 Phone: (818) 898-1212

**If to CONTRACTOR:**

INSERT CONTRACTOR NAME  
 INSERT ADDRESS  
 Attn: INSERT CONTACT NAME  
 Phone: INSERT PHONE NUMBER

**SECTION 19. PROHIBITION.** CONTRACTOR shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without CITY's prior written consent, and any attempt to do so shall be void and of no effect. CITY shall not be obligated or liable under this

Agreement to any party other than CONTRACTOR.

**SECTION 20. ATTORNEY FEES.** In the event that CITY or CONTRACTOR commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorney's fees.

**SECTION 21. ENTIRE AGREEMENT.** All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. Except as expressly provided in this Agreement or its Exhibits, in the event of any conflict or inconsistency between the express provisions of this Agreement and provisions of any document incorporated by reference, the provisions of this Agreement shall prevail and control. This instrument contains the entire Agreement between CITY and CONTRACTOR with respect to the subject matter herein. No other prior oral or written agreements are binding on the parties. Any modification of this Agreement will be effective only if it is in writing and executed by both CITY and CONTRACTOR.

**SECTION 22. GOVERNING LAW; JURISDICTION.** 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.

**SECTION 23. SEVERABILITY.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

**SECTION 24. CAPTIONS.** The captions used in this Agreement are solely for reference and the convenience of the Parties. The captions are not a part of the Agreement, in no way bind, limit, or describe the scope or intent of any provision, and shall have no effect upon the construction or interpretation of any provision herein.

**SECTION 25. EXECUTION.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

**SIGNATURES ON NEXT PAGE**



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**

**CONTRACTOR NAME:**

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

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM**

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

**EXHIBIT "A"**  
**CITY REQUIREMENTS**

**EXHIBIT "B"**  
**CONTRACTOR PROPOSAL**

**EXHIBIT "C"**  
**CONTRACTOR QUOTE**