

REQUEST FOR PROPOSALS



The Public Works Department is requesting proposals for:

Public Water System Laboratory Qualification Specifications

RELEASE DATE: May 1, 2023

RESPONSE DUE: May 29, 2023

GENERAL INFORMATION / BACKGROUND

The City of San Fernando is requesting proposals from qualified commercial laboratory firms to provide full-service environmental testing under the Safe Drinking Water Act and/or the National Environmental Laboratory Accreditation Program (TNI). The City is seeking a reliable contract laboratory and regulatory information resource who routinely analyzes more than 200 individual water quality parameters for water and analyses according to 40 CFR 141 and 40 CFR 136 and other acceptable water quality test methodologies.

The City anticipates executing a multi-year contract with the option to renew on a fiscal-year basis for up to five (5) years.

MINIMUM REQUIREMENTS

All firms must meet the following minimum requirements to participate in the City's RFP process:

1. Certifications

- The NELAC Institute (TNI) Licensure
- State of California ELAP Licensure for Specialized Methods
 - Hexavalent Chromium BY EPA 218.6 and EPA 218.7
 - 1,2,3-TCP BY SRL Method
 - TBA by EPA 524.2m
 - Volatiles by EPA 524.3
 - Perchlorate by EPA 331
 - Cryptosporidium/Giardia by EPA 1623
- EPA Lab Approval for UCMR5
- Ninety-Five percent of all analyses listed in the RFP conducted in-house without subcontracting

2. Capacity

- At least 1 dedicated instrument for each analysis
- At least 2 dedicated instruments and 2 dedicated staff members for all major methods (Volatile Organics, Perchlorate, Nitrate, Hexavalent Chromium)
- At least 1 dedicated in-house Courier staff

3. Customer Services

- Located within 75 miles of the requesting public water system
- Available for deliveries and pick-ups 5 days per week
- Web-based client access portal and data reporting system
- EDT to State Water Board (Write On, Geotracker)
- EDT to the EPS CDX systems
- EDD capability and example (SAMS, WaterTrax, HachWIMS)
- CLIP

SCOPE OF SERVICES

To provide full-service environmental testing under the Safe Drinking Water Act and/or the National Environmental Laboratory Accreditation Program (NELAP), contractor shall provide the following services:

1. Project coordination to ensure all scheduling of analysis meets project specific requirements and regulatory deadlines.
2. Vendor must have the ability to supply bottles and materials for collection and handling of samples, including sample bottle kits and properly sized ice chests.
3. Provide courier services for the pick-up and delivery of samples to the laboratory facility.
4. Acknowledge receipt of samples by completing the chain-of-custody form for each set of samples and returning a copy of the completed chain-of-custody form with the corresponding analysis reports.
5. Analysis shall be performed only within the procedures approved for the Vendor under certification by CA-ELAP, and with appropriate quality assurance/quality control practices.
6. Methods shall be as described in accordance with Title 22 and 40 CFR Part 141 for the drinking water program.
7. The Vendor must ensure that analysis performed shall have verifiable method detection levels (MDLs), Method Reporting Limits (MRLs), Practical Quantitation limits (PQLs), instrument limits (ILs), and other limits consistent with USEPA and/or the City's accepted standards.
8. Analyses will be conducted in the standard turnaround. The Vendor will also have facility to complete expedited service.
9. If there is need for the City to re-sample due to an error that is the fault of the contracted laboratory (i.e. requested analysis is not completed by the lab, sample is dropped, holding times are expired before analysis is complete, etc.), the analysis of the re-sample will be done at no extra charge to the City.
10. Vendor shall submit the analysis reports with the corresponding invoices for services.
11. Vendor must be able to provide reports in both electronic deliverable format such that data can be integrated into LIMS, electronic data transfer to Regional Water Quality Control Board's Geotracker site, electronic data transfer to state CLIP database such that

data can be reported to the state, and other electronic formats as requested by the City (CD, email, etc.).

12. Vendor shall submit the report within the requested turnaround time.
13. Vendor shall complete the copy of the current Chain-of-Custody form initiated by the City and provide the Sample Receiving and Chain-of-Custody standard operating procedure
14. Data shall be available on the online portal for City use within the requested turnaround time.
15. The Vendor will furnish SDS forms for every product delivered, as required.
16. During the emergency, Vendor will provide the City of San Fernando with all available supplies, materials, equipment and/or services on a priority basis.

LABORATORY SERVICES

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

1. Full documentation of laboratory testing and materials costs, by measure, with negotiated and agreed-to mark-ups or fees presented in an open-book pricing/cost structure;
2. Detailed description of services to be provided;
3. Key staffing assignments and guarantee of availability of assigned key staff to provide laboratory results regulatory resource information;
4. Specific financing arrangements and terms;
5. A requirement for a performance bond guaranteeing that the facility will be either available as indicated, or plan of action in the event of default.

ANTICIPATED REQUIRED TESTING

The following list consists of what the City deems the most frequently ordered “water quality laboratory test” to be performed.

- Total/Fecal Coliform w/E.Coli (presence/absence)
- Total Coliform (MPN)
- Heterotrophic Plate Count
- Nitrate as N
- Nitrate as N (same day results)
- Nitrite as N
- Sulfate
- Fluoride
- Conductivity
- General Mineral & Inorganics

- General Physical
- Perchlorate (2ppb)
- Perchlorate (1ppb)
- Hexavalent Chromium
- Asbestos
- Trihalomethanes
- Haloacetic Acids
- Gross Alpha
- Volatile Organics (short list)
- Volatile Organics (extended list)
- 1,2,3-Trichloropropane
- Nitrosamines (NDMA only)
- Nitrosamines (extended list)
- Synthetic Organics (551, 525, 505, 515, 531, 547, 548, 549, 1613)
- UCMR 5
- PFAS
- Title 22

*Firm must state within proposal the ability to perform each test stated above. If not able to perform a particular test, Firm must provide an alternate method.

INSTRUCTIONS TO SUBMITTING FIRMS

A. Examination of Proposal Documents

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

B. Questions/Clarifications

Please direct any questions regarding this RFP to Alex Mendez, Water Superintendent, via email at Amendez@sfcity.org. Questions must be received by 2:30 p.m. on **Friday, May 19, 2023**. All questions received prior to the deadline will be collected and responses will be posted on City's website by **Tuesday, May 23, 2023**.

C. Submission of Bid Proposals

All proposals shall be submitted via email to David Hillyer, Water Operations Manager, at Amendez@sfcity.org and the subject line of the email shall read, "City of San Fernando RFP – **Public Water System Laboratory Qualification Specifications.**"

Proposals must be received on or before **2:30 p.m. Monday, May 29, 2023. All proposals received after that time will not be accepted.*

D. Withdrawal of Proposals

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

E. Rights of City of San Fernando

This RFP does not commit the City to enter into a Contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract.

The City reserves the right to:

- 1) Make the selection based on its sole discretion;
- 2) Reject any and all proposals without prejudice;
- 3) Issue subsequent Requests for Proposal;
- 4) Postpone opening for its own convenience;
- 5) Remedy technical errors in the Request of Proposal process;
- 6) Approve or disapprove the use of particular sub-contractors;
- 7) Negotiate with any, all, or none of the prospective firms;
- 8) Solicit best and final offers from all or some of the prospective firms;
- 9) Accept other than the lowest offer; and/or
- 10) Waive informalities and irregularities in the proposal process.

F. Contract Type

A standard form professional services agreement (**Attachment A**) will be executed subsequent to the Director of Public Works' review and City Council approval of the recommended firm.

G. Collusion

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

SCHEDULE FOR SELECTION

RFP Available:	May 1, 2023
Deadline for submittal of Questions:	May 19, 2023
Response to Questions:	May 23, 2023
Deadline for submittal of Proposal:	May 29, 2023
Interviews (if necessary)	June 2023
Execute Agreement:	June 2023

SELECTION CRITERIA

The City of San Fernando will select the firm on the basis of qualifications and experience. The following general selection criteria will be used to evaluate each firm:

1. Qualifications and knowledge of Firm and key personnel's experience most closely related to the stated scope of services
2. Relevant experience within the past 10 years and references
3. Responsiveness to and clarity of the Request for Proposal
4. Cost Proposal

CONTENTS OF PROPOSAL

The following information shall be submitted in response to this RFP:

1. The Firm's Qualifications and Experience
 - Profile of Firm
 - Positive references from Water Agencies
 - Similar work experience
 - Statement of qualifications
2. Firm/Staff Availability
 - Staffing expertise
 - Strength and stability of Firm
 - Current work load/availability
3. Service Understanding
 - Understanding of service objectives
 - Understanding of needs
 - Knowledge of the Water Industry and Laboratory Industry

4. Scope of Work

- Detailed and addresses the minimum requirements
- Reasonableness of Proposed Service Approach
- Turn Around Time / Commitment to Customer Service

5. Proposal Quality

- Meet General submission Requirements
- Meet Proposal Presentation Criteria
- Follow Required Format

6. Schedule

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

7. Fee Proposal

- Fee shall be shown on last page of proposal

8. References

- Three (3) references from public sector clients the firm has contracted with for similar Water System Laboratory Testing Services within the last five (5) years. Describe work provided and dates work was performed



2023
CONTRACT SERVICES AGREEMENT
(Contractor)
Water Testing & Analysis Services

THIS CONTRACT SERVICES AGREEMENT (hereinafter, "Agreement") is made and entered into this [REDACTED] day of [REDACTED], 2023 by and between the CITY OF SAN FERNANDO, a municipal corporation (hereinafter, "CITY") and **CONTRACTOR** (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; and Water Testing & Analysis Services

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 [REDACTED], 2023 under Agenda Item No. [REDACTED].

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

SECTION 1. SCOPE OF SERVICES.

- A. Subject to the terms and conditions of this Agreement, CONTRACTOR agrees to provide CITY Water Testing & Analysis Services. The various tasks and related services to be performed by CONTRACTOR are more specifically described in the CITY's "SCOPE OF SERVICES" (hereinafter the "CITY REQUIREMENTS") and the written proposal of CONTRACTOR entitled "**City of San Fernando RFP – Public Water System Laboratory Qualification Specifications**" (hereinafter, the "CONTRACTOR PROPOSAL") dated **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 Services" shall be a collective reference to the CITY REQUIREMENTS and the CONTRACTOR PROPOSAL. The capitalized term "Services" 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. 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.

- C. 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.

- D. 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. TERM.

- A. This Agreement shall have a term of **Three (3) years** (hereinafter, the “Term”). The Agreement may be extended by the CITY subject to its same terms and conditions for a maximum of **Two (2) additional one-year extension terms**, provided the CITY issues written notice of its intent to extend the Term of the Agreement prior to the expiration of the initial Term.
- B. 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.
- C. CONTRACTOR shall perform the Work continuously and with due diligence. CONTRACTOR shall cooperate with CITY and in no manner interfere with the Work of CITY, its employees or other consultants, contractors or agents.
- 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.
- G. CONTRACTOR shall complete the services within the term of this Agreement, and shall meet any other established schedules and deadlines.

SECTION 3. PROSECUTION OF WORK.

- A. CONTRACTOR shall perform the Work contemplated under this Agreement on an as-needed, as requested basis. Nothing in this Agreement shall be construed to grant CONTRACTOR the exclusive right to perform any of the types of services or tasks contemplated under this Agreement nor shall anything in this Agreement be construed to entitle CONTRACTOR to the receipt of any sums under this Agreement, except to the extent CITY requests the performance of any Work in the manner described below and such Work is in fact performed and completed by CONTRACTOR and accepted by CITY. CITY requests for the performance of specific services or tasks contemplated under this Agreement shall be made in the form of a written work order(s) issued by the City Representative (each such written request hereinafter referred to as a “Work Order”). Each Work Order shall include the following information:
 - 1. A detailed description of the specific services or tasks requested;
 - 2. The location of where the particular services or tasks are to be performed, if applicable;
 - 3. A not-to-exceed budget for performing the services or tasks;

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4. A timeline for completing the requested services or tasks;
 5. Any other information CITY deems necessary and relevant to the requested services or tasks; and
 6. The signature of the City Representative, confirming that the services or tasks have been authorized by the City Representative.
- B. CONTRACTOR shall perform no Work under this Agreement without a written request from the City Representative, containing the information set forth in Section 3(A), above.
- C. Time is of the essence in the performance of Work under this Agreement, and in the absence of a specific schedule or other instructions from the City Representative, CONTRACTOR shall begin and complete performance of the Work to completion in a timely and a diligently manner as possible.

SECTION 4. COMPENSATION.

- A. CONTRACTOR shall perform all the Work in accordance with the rates set forth in CONTRACTOR's **DATE** quote (hereinafter "CONTRACTOR QUOTE"), which is attached and incorporated hereto as **Exhibit "C"**.
- A. CONTRACTOR's total compensation during the Term of this Agreement shall not exceed the annual sum of **WRITTEN AMOUNT (\$INSERT NUMBER)** (hereinafter, the "Annual Not-to-Exceed Sum"). CONTRACTOR further agrees that the Annual 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.

The Annual Not-to-Exceed Sum will be paid to CONSULTANT in monthly increments as the Work is completed. Following the conclusion of each calendar month, CONSULTANT will submit to CITY an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONSULTANT's monthly compensation is a function of hours worked by CONSULTANT's personnel, the invoice should 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 will notify CONSULTANT in writing of any disputed amounts included in the invoice. Within forty-five (45) calendar days of receipt of each invoice, CITY will pay all undisputed amounts included on the invoice. CITY will not withhold applicable taxes or other authorized deductions from payments made to CONSULTANT

- B. The **Annual Not-to-Exceed Sum** will be paid to CONTRACTOR in monthly increments as the Work is completed. Following the conclusion of each calendar month, CONTRACT will

submit to CITY an itemized invoice indicating the work performed and the tasks completed during the recently concluded calendar month, including the Work and tasks performed and the reimbursable out-of-pocket expenses incurred. 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 5. 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) calendars 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 6. REPRESENTATIVES.

- A. City Representative. For the purposes of this Agreement, the contract administrator and CITY's representative shall be ALEX MENDEZ (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, **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 7. 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 term of this 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 Agreement term all necessary licenses, permits and certificates required by law for the performance of the Work contemplated under this Agreement.

SECTION 8. 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: **[NAME AND TITLE]**.

SECTION 9. 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 the 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 10. 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 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.

SECTION 11. 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.

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- B. CONTRACTOR, its agents, officers, subcontractors and employees are and, at all times during the Term 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 12. 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 13. 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. 14. 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, 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 15. 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 Term 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 16. 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 of 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 17. 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 18. 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 19. 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: Public Works
Phone: (818) 898-1293

If to CONTRACTOR:

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

SECTION 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 26. 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.

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