

REQUEST FOR PROPOSALS

Notice is hereby given that Request for Proposals (RFP) will be received by the City of San Fernando, California, for furnishing the following:

PROFESSIONAL ON-CALL BUILDING AND SAFETY SERVICES

The City of San Fernando Community Development Department is requesting RFPs from qualified firms to provide on-call as needed professional Building & Safety services. The contract term will be for a period of three (3) years.

Three original and one electronic copy of the proposal must be submitted to the COMMUNITY DEVELOPMENT DEPARTMENT in a sealed envelope labeled “City of San Fernando RFP- **Professional On-Call Building & Safety Services**” at CITY HALL, 117 Macneil Street, San Fernando, California, 91340, no later than **Thursday, January 11, 2024 at 5:30pm**. All RFPs received after that time will not be accepted.

A copy of the RFP may be obtained from the City’s website at SFCITY.ORG/rfps-rfqs-nibs-nois/.

Any bidder may withdraw their proposal, without obligation, at any time prior to the scheduled closing time for receipt of proposals. A withdrawal will not be effective unless made in writing or email received prior to the closing date. Proposals may later be referred to the City Council for appropriate action. The City reserves the right to reject any or all proposals as the best interests of the City may dictate.

By: _____
Julia Fritz, City Clerk

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REQUEST FOR PROPOSALS



The Community Department is requesting proposals for:

Professional On-Call Building & Safety Services

RELEASE DATE: December 7, 2023

RESPONSE DUE: January 11, 2024

GENERAL INFORMATION

The City of San Fernando' Community Development Department ("City") is seeking proposals from qualified consulting professionals or firms ("Consultant") interested in providing on-call as needed professional consulting services to the Building & Safety Division of the Community Development Department. The City is requesting proposals that provide the following: 1) building administration; 2) building permit inspection services; 3) building permit plan check services including landscape and irrigation plan check and inspection services; 4) specialized plan check and inspection services; 5) counter and permit issuance services; or 6) any of the combined services.

Agreements with selected Consultant(s) will be for three-year term with optional extensions at the discretion of the City.

A list of the scope of services if provided herein. Consultants responding to this proposal must indicate the skills, ability, and/or services which distinguish the consulting professionals or firms from other consulting professionals or firms to make the proposal the best choice for the City.

BACKGROUND

The City of San Fernando (City) is a general law city incorporated in 1911. The City is governed by a five-member city Council who members are elected at large and operates under a Council/City Manager form of government. It is located in the San Fernando Valley region of Los Angeles County and is approximately 2.4 square miles with a residential population of 24, 564.

The Community Development Department includes the divisions of Planning, Building & Safety, Community Preservation and Housing. The Community Development Department intends to utilize this RFP to select one or more Consultants that are capable of providing on-call as needed building and safety services such as administrative, plan check, permit issuance and inspection services.

On-Call Building & Safety Services

The City currently has separate contracts for on call as needed plan check services which will expire April 2024 and for on call as needed building inspection services that will expire June 2024; and is therefore, seeking to contract with qualifying Consultants that can provide comprehensive on-call as needed building and safety services including administration, permit issuance, plan checks, inspections, and public counter services. The building and safety services being requested should not be construed as mutually exclusive services. The City retains the right to accept or reject any and all of the proposals; or any item or part thereof at its discretion; make an award for a portion of the scope of work/services; or award contracts to one or more proposers for any portion of the described services.

Proposing firms should also highlight any additional certifications or specialized plan reviews or inspections that may be required in association with development projects that are within the firm's expertise. This should include landscape and irrigation plan check and inspection services as well as plan reviews and inspections in accordance to the City of Los Angeles Fire Code-specifically related to Fire Sprinklers. The Community Development Department desires firms that can also provide assistance in analyzing and amending the Municipal Code, developing policy documents; and recommending implementation procedures for effective and efficient plan review, permit issuance and inspection processing in accordance to building and safety related enacted state legislation.

The Consultant(s) will enter into an agreement to provide building and safety services on an on-call as needed basis for a period of three (3) years. The City has the discretion to request any of the listed services on an as need basis for specific durations of time during the three year period. The selection does not guarantee the use of all aspects of the services listed. Services will be requested when needed. When the firm is requested to provide a building and safety service, the firm and its staff shall work as extension of City staff and under the direction of the Director or their designee. Depending on the specific work the firm is selected to perform, work may be required to be conducted on-site at City Hall or remotely according to the Division needs. This means selected firms shall have the required software and hardware to receive and return electronic plans as well as to perform electronic review and approval of plans in addition to hard copies. The successful firms shall also have the resources to provide cost effective and timely services to the City. Additionally, the City has an option to interview the Consultant's candidate who will provide on-call service(s). If sub-consultants are necessary to complete the work, the consultant shall advise the City of the name of the firm(s) proposed to complete those studies. Sub-consultants shall have all the appropriate licenses, certifications, and registrations necessary to perform the scope of work. The consultant shall be fully responsible to the City for the performance of their subcontractors, and of persons either directly or indirectly employed by them.

INSTRUCTIONS TO SUBMITTING FIRMS

A. Examination of Proposal Documents

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

B. Questions/Clarifications

Please direct any questions regarding this RFP to Erika Ramirez, Director of Community Development, via e-mail at eramirez@sfcity.org. Questions must be received by 5:30 p.m. on **Tuesday, December 12, 2023**. All questions received prior to the deadline will be collected and responses will be emailed by **Thursday, December 14, 2023**.

C. Submission of Bid Proposals

All bid proposals shall be submitted via email to Erika Ramirez at eramirez@sfcity.org and the subject line of the email shall read, "City of San Fernando RFP –Professional On-Call Building & Safety Services." Proposals must be received no later than Thursday, **January 11, 2024 at 5:30 p.m.** 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

It is anticipated that a standard form professional services agreement contract will be signed subsequent to City Council review and 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.

SCOPE OF SERVICE

The following section describes the specific services being requested by this Request for Proposal. The City of San Fernando Community Development Department requires the services of consulting firms on an on-call as needed basis to assist from time to time for various services within the Building & Safety Division. Therefore, the Department seeks to select a Consultant(s) capable of providing comprehensive services related to building and safety on an on-call as needed basis. This will allow firms to be selected for required services staff is not licensed or certified to provide as part of the development review process as well as to engage professional experts to assist with City initiated projects or programs.

While the City has historically utilized vendors for these services, this RFP is being issued in compliance with internal requirements to periodically solicit proposals and maintain an updated list of qualified vendors.

Required Services:

On-Call Building & Safety Services

The City of San Fernando has adopted the City of Los Angeles Building Code by preference and contracts with the City of Los Angeles Fire Department for Fire Plan Check, Permitting and Inspections associated with development projects. The City has currently contracts with a professional consulting firm to provide remote plan check review services. Therefore, plan review is primarily electronic, however, the City does not prohibit physical plans from being submitted if the applicant prefers. The City has recently purchased Bluebeam software for staff to electronically review plans. The City also provides an online portal for the issuance of permits. The Building and Safety Division currently utilizes Edgesoft AIMS system for permits, inspections and keeping property records.

Over the past five years, the Building and Safety Division has seen the following levels of activity through the noted fiscal cycles:

FISCAL YEAR	2020/2021	2021/2022	2022/2023	2023/2024*
Permit Valuation	\$15,110,838.00	\$19,982,065.00	\$138,368,651.00	\$98,374.18*
No. of Permits	1,219	1,059	1,034	404*
No. of Inspections	1,116	1,233	1,177	435*

**Includes dates from July 1, 2023 through October 30, 2023*

The City of San Fernando is seeking a Consultant(s) to provide comprehensive professional building and safety consulting services (Registered California Engineers, CASP, ICC or IAPMO certified Building Official, Plan Examiners, Inspectors, Permit Technicians). Proposals shall include a proposed staffing plan on how to provide the required services in a cost effective manner. The staffing plan shall identify the number of persons for each position that would be assigned to the City upon request. Indicate by name and title those persons that will be providing Administration, Plan Check, Landscape Plan Check, and Inspection services. Capacity by certified Specialized Plan Check and Inspection services and Permit issuance and counter services can be described and specific personnel can be provided upon request. Clearly indicate if each person will be assigned to off-site, on-site and whether persons assigned will be providing multiple services (i.e. Administration and Inspections). Multiple staffing level options may be proposed that are based upon a certain level of permit activity. Proposals must include the option for a certified permit technician for permit issuance and counter services. The City has a desire to have a qualified person onsite at a minimum of 4 hours a day for 4 days a week that can fulfill administrative, plan check (limited over the counter) and inspection services. Activities listed below included but are not limited to all those desired by the City.

a) Building Administration.

- a. Building Official. Consultant should propose an International Code Council (ICC) Certified Building Official. The Building Official shall perform the following services, including but not limited to:
 - i. Function as the Building Official as set forth in the California Building Code, in other municipal government adopted building codes and ordinances, as specified in Federal and State law.
 - ii. Issue Certificate of Occupancies (C of O) for buildings and structures.
 - iii. Manage, coordinate and oversee building permit, plan check and building inspections.
 - iv. Maintain, amend and develop ordinances and regulations necessary to implement and enforce the latest editions of the City of Los Angeles Building Code, California Building Codes, including any and all related Codes, or other uniform safety code, laws, or regulations as adopted or amended by the City deemed necessary by the City to protect the health, safety and welfare of its constituents.
 - v. Make determinations on the approval and use of alternative materials and methods of construction.
 - vi. Process and prepare Planning and Preservation Commission and City Council reports and recommendations, and assist in the presentations of appeals regarding building and safety matters. Attend City Council, Planning and Preservation Commission meetings and other meetings as directed.
 - vii. Assist other Divisions such as Code Enforcement and Planning, with the preparation of necessary documents when prosecution action is necessary to obtain compliance with the above codes and regulations.

- viii. Make final interpretations concerning the application of building and safety codes.
 - ix. Monitor the collection of building plan checks, inspections, permits fees, and other building activity level indicators, and submit monthly activity reports to the City.
 - x. At the direction of the Director, assist with other administrative building and safety related duties, including developing and implementing policies and procedures, creating handouts and forms, drafting content for the website, etc.
 - xi. Meeting with developers, homeowners, business owners, architects, engineers, and the general public at the City or in the field, as the need dictates to resolve grievances, and/or respond to questions to ensure timely project processing in compliance with State, Federal, City laws and ordinances.
 - xii. Ensure all building related activities are entered into the City's tracking system in an accurate, complete, timely manner.
- b. Consultant shall provide the City the technical assistance necessary to prepare the periodic updates to the uniform building and safety and fire codes, including any local amendments, in accordance with the schedules established by the State of California, including:
- i. Prepare the City's ordinance updates, staff reports and attend the City Council meetings.
 - ii. Coordinate with the Los Angeles City Fire Department and prepare city code ordinance update, regarding periodic updates to the Uniform Fire Code, including any local amendments, and ensure that the City's building and safety codes and the changes to the Uniform Fire Code are crossed referenced.

b) Building Inspector.

- a. Provide building inspection services by fully trained/certified inspectors for all construction regulated by all applicable Federal, State and City building and safety codes/ordinances.
- b. Inspect buildings and structures, for which building permits have been issued for compliance with the approved plans and applicable code and ordinances.
- c. Inspect for compliance and conditions of approval set forth by the City's Development Services Department, Planning Commission, and/or City Council.
- d. Coordinate with various City, County, and other agencies and departments, including but not limited to City of Los Angeles Fire Department, Los Angeles County Environmental Health Department, and the other governmental agencies providing services, and/or having jurisdiction over any aspects of a development project in order to obtain compliance with the above building and safety code regulations.
- e. Enforce conditions of approval associates with discretionary permits regarding building and safety regulations, as adopted by the City.
- f. During inspections, issue stop work orders or correction notices or notices of violation when violations of the above referenced codes and regulations occur.

- g. At the Consultants expense, provide all vehicles, fuel, maintenance and other equipment necessary for field personnel to carry out building permit inspections and all required duties.
 - h. Provide special inspections by qualified inspectors and conduct investigations as directed by City, including field and office research and the preparation of letters and/or documents.
 - i. Input daily inspection information into the City's computer permit tracking system.
 - j. As directed provide inspection, investigation and enforcement for violations to all the above- referenced building and safety codes and regulations, as well as other adopted City ordinances, which relate to building and safety issues.
 - k. The Building Inspector/Official will conduct daily inspections during a designated block of time as determined by the Director.
 - l. As special circumstances dictate, after hour or weekend inspections will be conducted. Building Official will response to emergency calls from the City (i.e., staff, police dispatch) at any time as deemed necessary.
- c) Plan Check Services.
- a. Perform architectural, structural, plumbing, mechanical and electrical plan check review for buildings and structures for compliance with applicable City of Los Angeles (as adopted by reference) Federal and State laws, building and safety codes, City ordinances, and acceptable engineering practices. Type of proposed plans check work may include new construction (residential, commercial, or industrial), remodel, additions, green building, Accessibility, Low Impact Development (LID), etc.
 - i. Perform transitional initial building plan check (first review) of submitted plans to determine compliance with City adopted codes, City of Los Angeles Building Code, California Building Code, California Plumbing Code, California Mechanical Code, California Energy Code, California Green Building Code, California Residential Code, California Historical Code, etc.
 - ii. Provide the applicant and the City with a written list of items needed for clarification or correction in order to achieve compliance with the building requirements.
 - iii. Perform all necessary liaison services with the Director, Building Official, or designee, either by mail, e-mail, telephone or virtual capacity, or in the Consultant's main office to ensure compliance with local policy interpretation.
 - iv. Perform building permit plan check services of plan revisions that have been previously submitted and/or have been previously approved for permit issuance.
 - v. Identify any approvals from outside agencies, departments prior to issuance of permits.
 - vi. Perform accessibility surveys upon request and demonstrate that designated staff providing this service are CASp certified.
 - vii. Provide a Structural Inventory for the project such as Use, Occupancy Type, Construction Type, Number of Stories, total floor area for each occupancy type, Fire Sprinkler requirements, etc.

- viii. Perform plan review within 10 working days from the date the City subs the plans to consultant for plan review for both initial plan reviews and subsequent plan review cycles.
- d) Landscape and Irrigation Plan Check and Inspection Services.
 - a. Landscape and irrigation plan check reviews shall be conducted by a licensed landscape architect to confirm plans are in compliance with all applicable City, State or any other applicable regulations and codes.
 - i. Provide the applicant and the City with a written list of items needed for clarification or correction in order to achieve compliance.
 - ii. Perform all necessary liaison services with the Director, Building Official, or designee, either by mail, e-mail, telephone or virtual capacity, or in the Consultant's main office to ensure compliance with local policy interpretation.
 - iii. Perform landscape and irrigation plan check services of plan revisions that have been previously submitted and/or have been previously approved for permit issuance.
 - iv. Perform plan review within 10 working days from the date the City subs the plans to consultant for plan review for both initial plan reviews and subsequent plan review cycles.
 - v. Advise applicant and City when an inspection shall be requested.
 - vi. Conduct inspections during the City set inspection days and times upon request for scheduling.
 - vii. Maintain records for State reporting purposes.
- e) Specialized Plan Review and Inspection Services including but not limited to Fire Examiner Plan Check services and Fire Inspection Services
 - a. Upon need, the City may require specialized plan review or inspection services.
- f) Permit issuance and counter services staffing. From time to time the City may require the service of a technician to issue permits or provide additional counter services. Qualified individuals shall be an ICC Certified Counter Technician/Plan Checker capable of but not limited to the following activities.
 - a. Receiving, processing and issuing building permits and coordinating plan check and inspection process, including tracking, routing, storing of building plans, and filing of building permits. Input information into the City's computer tracking system.
 - b. Cooperate with the Los Angeles County Assessor's office to provide statistical and related information required for the efficient assessment of new developments and/or building permits.
 - c. Monitor and track the status of building permit applications and plan check for expiration and notify applicants prior to the expiration of their building permits.
 - d. Provide public information regarding building permit applications and other Building Division services.
 - e. Identify and collect all required fees for building permit applications and other Building Division services. Facilitates the collection of fees from other departments and/or

agencies that are due and payable prior to or concurrent with the issuance of building permit.

- f. Establish, maintain, and update all forms in compliance with City requirements, regulations, adopted standards, State and other laws and ordinances necessary for the operation of the Building Division, including “hand-out” sheets, which explain building permit application processing procedures identified as being provided by the City.
- g. All approved stamps, applications, forms and other documents used in providing Building and Safety Services to the City shall be identified with the City seal and other identification indicating that the approved stamps, applications, forms and other documents or supplies shall be the property of the City (costs for the provisions of these processing tools and supplies shall be the responsibility of the City).

Fees

The City’s fees for Building Services are based on the City’s Master Fee Schedule (link provided below). The schedule was last amended in 2022 and remains in effect until new fees are adopted by the City Council. The City is in the process of initiating a user fee study with the goal of presenting to City Council as part of the budget process for FY 2024-2025.

- a) Building permit plan check services. The City will estimate permit and plan check fees at intake and collect preliminary payment from the applicant. Consultants fee structure for traditional building permit plan check services must be based on a percent of the amount paid to the Building and Safety Division for het plans submitted as regular plans. The Consultant may provide an optional add-on service for additional plan review cycles. It is anticipated that Consultant will invoice the city monthly pursuant to the agreed upon, percentage-based rate in this Agreement. Proposals must provide a percentage of the amount paid to the City for the plans submitted as regular plans no less than 25 percent.
- b) Building permit inspection services. The City’s permit fee includes a basis for recovering the building permit inspection services. The Consultant fee structure for traditional building permit inspection services must be based on specified time and material basis. The Consultant may provide an optional add on services for specially inspections and Saturday or after-hour inspection services. It is anticipated that Consultant will invoice the City monthly on a time and material basis for on-call inspections.

City staff will also continue to facilitate the collection of fees from other departments and/or agencies that are due (as applicable) and payable prior to or concurrent with the issuance of a building permit.

<https://ci.san-fernando.ca.us/wp-content/uploads/2023/06/2024-User-Fee-Schedule.pdf>

Please note that the Consultant will not be allowed to perform work in excess of the described services in the Professional Services Agreement without the prior, written approval of the City. Before any Extra Work it is initiated, the Consultant must identify the kind and estimated quantities of the Extra Work to be done. Approval of additional funding may also be required. Any increase in

compensation or contract amendment must be authorized and funded in advance. No compensation for Extra Work or any other change in the contract will be allowed unless the Extra Work or change has been authorized in writing by the City, and the compensation or method of determining such compensation is set in such written authority. All requests for Extra Work must be in a written Change Order submitted to the City prior to the commencement of such work. The foregoing terms should be included (i.e. abridged) in the Consultant's response to the RFP. Omission does not immediately result in disqualification, but will be contractually exercised one way or other, unless alternative compliance is proposed that is mutually agreed to by both parties prior to contract execution and notice to proceed.

PROPOSED TERM OF CONTRACT

The proposed term of the contract is **three years, with options for extensions at the City's discretion.**

SCHEDULE FOR SELECTION

RFP Available:	December 7, 2023
Deadline for submittal of Questions:	December 11, 2023
Response to Questions:	December 14, 2023
Deadline for submittal of Proposal:	January 11, 2024
Interviews (if necessary)	Late February 2024
Agreement Presented to Council for Review & Approval:	March 04, 2024*
*tentative	

METHOD OF SELECTION AND NOTICES

The Director of Community Development will evaluate the information provided in the submitted proposals using the following criteria as a guideline:

- Completeness and Comprehensiveness.
- Responsiveness to City's issues.
- Potential to benefit the City.
- Experience of the firm providing similar services to other municipalities.
- Cost effectiveness.
- Quality of proposed staff.

INFORMATION TO BE SUBMITTED

1. Cover sheet

The proposal shall include a cover sheet that identifies who will be the contact with their contact information for this proposal.

2. Include a *Proposal Summary* Section

This section shall discuss the highlights, key features, and distinguishing points of the Proposal. Describe the methods by which your firm will fulfill the services requested in the Scope of Services and subsequent sections. Include detailed workflow, timelines and documentation if relevant. Since the staffing requirements may vary from task to task over the duration of the contract, describe the firm's approach, capability and flexibility to adjust to varying staff requirements as the City's needs and policies vary from one project to the next.

Consultant shall have the ability to electronically receive, review and transmit reports, forms, and plans. Explain capability to review plans and documents electronically.

Consultant shall have the ability to attend in person meetings and pick up/drop off documents, reports, plans from City Hall if necessary.

Consultant is expected at a minimum to be available during City Hall hours of Monday to Thursday from 7:30am to 5:30pm and Fridays 8:00am to 5:00pm for staff or applicants to communicate electronically, by phone and if necessary, in person. Consultant is also expected to attend evening or weekend meetings, or hearings as required by task. Verify ability to fulfill availability and identify any restrictions or considerations to having consulting staff available.

Provide a statement of the service(s) that differentiate your firm from other respondents.

3. Include a *Profile of the Proposing Firm(s)* Section

This section shall include a brief description of the Firm, including size, location of office(s), number of years providing service, organizational structure of the responsible division, etc.

Firm must demonstrate qualifications and provide previous experience providing the same services in similar size cities to San Fernando. Provide a description of said experience with other public municipalities (maximum of four) that includes a summary of the work performed, pricing structure, the period over which services were provided, and the name, title, and phone number of clients to be contacted for references. References should be located within California. Give a brief statement of the Firm's adherence to the scope and budget for services. Additionally, this section shall include a listing of any lawsuit and the result of that action resulting from (a) any public project

undertaken by the Firm where litigation is still pending or has occurred within the last five years or (b) any type of project where claims or settlements were paid by the Firm or its insurers within the last five years.

4. Include a *Work Plan Section*

In this section, present a well-conceived service plan. This section of the proposal shall establish the Firm's understanding of the City's objectives and work requirements and the Firm's ability to satisfy those objectives and requirements. Describe the proposed approach for addressing the scope of service, outlining the approach that would be undertaken in providing the requested services. This should include quality assurance and schedule control measures to be utilized. The Consultant will have multiple plan checks at the same time. Describe how you will manage the efficient completion of concurrent tasks/projects. Include a timetable for providing the service. Describe related service experience by the Firm in similar work. Please describe the role, extent of services (number of people used, engagement duration, and contract value).

5. Include a *Project Staffing Section*

In this section, discuss how the Firm would propose to staff this project. Firm's key project team members shall be identified by name, specific responsibilities on the project and their qualifications. Any certifications held and number of years certified should be included for staff proposed to perform tasks. In addition, any municipal agencies they have worked within the past three years and their level of involvement should be noted. An organizational chart for the project team and resumes for key Firm personnel shall be included with a description of how overall supervision and quality assurance will be provided. Key Firm personnel will be an important factor considered by the Finance Director. **There can be no change of key personnel once the proposal is submitted, without prior approval of City.**

6. Include a *Proposal Costs Sheet and Rates Section*

In this section, include the proposed costs to provide the services desired. Include any other cost and price information that would be contained in a potential agreement with the City.

In addition, include the costs for any other services that are considered optional additions.

****The City may elect to interview a short list of qualified firms or interview only the top 5 rated firms based upon this RFP.***



2023

PROFESSIONAL SERVICES AGREEMENT

(Engagement: INSERT ENGAGEMENT)

(Parties: INSERT CONSULTANT NAME and City of San Fernando)

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter, "Agreement") is made and entered into this ____ day of _____, 2023 (hereinafter, the "Effective Date") by and between the CITY OF SAN FERNANDO, a municipal corporation (hereinafter, "CITY") and INSERT CONSULTANT NAME, A Professional Corporation, (hereinafter, "CONSULTANT"). For the purposes of this Agreement, CITY and CONSULTANT may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to CITY or CONSULTANT interchangeably, as appropriate.

RECITALS

WHEREAS, CITY requires professional consulting services INSERT THE KIND OF SERVICES REQUIRED; and

WHEREAS, CITY staff has determined that CONSULTANT possesses the experience, skills and training necessary to competently provide such services to CITY; and

WHEREAS, the execution of this Agreement was approved by the San Fernando City Council at its Regular Meeting of _____ 2023, under Agenda Item No. ____.

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

I.

ENGAGEMENT TERMS

1.1 **TERM:** This Agreement shall have a term commencing from the Effective Date through _____, 2023, (hereinafter, the "Term"). 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 as provided under Article V (Termination), below.

1.2 **SCOPE OF WORK:**

A. Subject to the terms and conditions of this Agreement, CONSULTANT agrees to provide the services and tasks described in that certain Request for Proposals of CITY entitled "INSERT TITLE OF REQUEST FOR PROPOSALS", (hereinafter, "CITY RFP") and the written proposal of CONSULTANT entitled "INSERT TITLE OF PROPOSAL" (hereinafter, the "CONSULTANT Proposal") dated INSERT DATE OF PROPOSAL. The CITY RFP and the CONSULTANT Proposal are attached and incorporated hereto as **Exhibit "A"** and **"B"** respectively. The term "Scope of

Work” shall be a collective reference to the CITY RFP and the CONSULTANT 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 RFP and the provisions of the document entitled CONSULTANT Proposal, the requirements of the document entitled CITY RFP 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 RFP ISSUED:** Subject to the terms and conditions of this Agreement, CONSULTANT agrees to provide the services and tasks described in that certain proposal of CONSULTANT entitled “INSERT TITLE OF PROPOSAL” dated INSERT DATE OF PROPOSAL (hereinafter, the “Scope of Work”) which is attached and incorporated hereto as **Exhibit “A”**. CONSULTANT further agrees to furnish to CITY all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term “Work.”

1.3 **PROSECUTION OF WORK:**

- A. CONSULTANT shall perform the Work continuously and with due diligence so as to complete the Work by the completion date indicated in each Work Order. CONSULTANT shall cooperate with CITY and in no manner interfere with the work of CITY, its employees or other consultants, contractors or agents;
- B. CONSULTANT shall not claim or be entitled to receive any compensation or damage because of the failure of CONSULTANT, or its subconsultants, to have related services or tasks completed in a timely manner;
- C. CONSULTANT shall at all times enforce strict discipline and good order among CONSULTANT’s employees; and
- D. CONSULTANT, at its sole expense, shall pay all sales, consumer, use or other similar taxes required by law.

- 1.4 **COMPENSATION:** CONSULTANT shall perform the Work in accordance with “INSERT TITLE OF COMPENSATION DOCUMENT” (hereinafter, the “COMPENSATION RATE”). The foregoing notwithstanding, CONSULTANT’s total compensation for the performance of all Work contemplated under this Agreement, will not exceed the annual budgeted sum of

INSERT WRITTEN AMOUNT (\$ INSERT NUMBER) (hereinafter, the “Annual Not-to-Exceed Sum”) during the Term of this Agreement, unless such added expenditure is first approved by the City Council. In the event CONSULTANT’s charges are projected to exceed the Annual Not-to-Exceed Sum prior to the expiration of this Agreement, CITY may suspend CONSULTANT’s performance pending CITY approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other CITY approved amendment to the compensation terms of this Agreement.

- 1.5 PAYMENT OF COMPENSATION:** 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.
- 1.6 ACCOUNTING RECORDS:** CONSULTANT will maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. CITY will have the right to access and examine such records, without charge, during normal business hours. CITY will further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.7 ABANDONMENT BY CONSULTANT:** In the event CONSULTANT ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONSULTANT will deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONSULTANT in the performance of this Agreement. Furthermore, CONSULTANT will only be compensated for the reasonable value of the services, tasks and other Work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which CITY may incur as a result of CONSULTANT’s cessation or abandonment.

II.

PERFORMANCE OF AGREEMENT

2.1 CITY'S REPRESENTATIVE: The CITY hereby designates INSERT CITY REPRESENTATIVE (hereinafter, the "CITY Representative") to act as its representative for the performance of this Agreement. The CITY Representative or their designee will act on behalf of the CITY for all purposes under this Agreement. CONSULTANT will not accept directions or orders from any person other than the CITY Representative or their designee.

2.2 CONSULTANT REPRESENTATIVE: CONSULTANT hereby designates INSERT CONSULTANT REPRESENTATIVE, to act as its representative for the performance of this Agreement (hereinafter, "Consultant Representative"). Consultant Representative will have full authority to represent and act on behalf of the CONSULTANT for all purposes under this Agreement. Consultant Representative or their designee will supervise and direct the performance of the Work, using their best skill and attention, and will be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the Consultant Representative will constitute notice to CONSULTANT.

2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONSULTANT agrees to work closely with CITY staff in the performance of the Work and this Agreement and will be available to CITY staff and the CITY Representative at all reasonable times. All work prepared by CONSULTANT will be subject to inspection and approval by CITY Representative or their designees.

2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES:

CONSULTANT represents, acknowledges and agrees to the following:

- A. CONSULTANT will perform all Work skillfully, competently and to the highest standards of CONSULTANT's profession.
- B. CONSULTANT 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.
- C. CONSULTANT will perform all Work in a manner reasonably satisfactory to the CITY;
- D. CONSULTANT will 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.) CONSULTANT shall be liable for all violations of such laws and regulations in

connection with Services. If CONSULTANT performs any work knowing it to be contrary to such laws, rules and regulations, CONSULTANT shall be solely responsible for all costs arising therefrom;

- E. CONSULTANT 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 CONSULTANT's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONSULTANT; and
- G. All of CONSULTANT's employees and agents (including, but not limited to, subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals will be maintained throughout the term of this Agreement and made available to CITY for copying and inspection.

The Parties acknowledge and agree that CONSULTANT will perform, at CONSULTANT's own cost and expense and without any reimbursement from CITY, any services necessary to correct any errors or omissions caused by CONSULTANT's failure to comply with the standard of care set forth under this Section or by any like failure on the part of CONSULTANT's employees, agents, contractors, subcontractors and subconsultants. Such effort by CONSULTANT to correct any errors or omissions will be commenced immediately upon their discovery by either Party and will 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 in her sole and absolute discretion. The Parties acknowledge and agree that CITY's acceptance of any work performed by CONSULTANT or on CONSULTANT's behalf will not constitute a release of any deficiency or delay in performance. The Parties further acknowledge, understand and agree that CITY has relied upon the foregoing representations of CONSULTANT, including but not limited to the representation that CONSULTANT possesses the skills, training, knowledge and experience necessary to perform the Work skillfully, competently and to the highest standards of CONSULTANT's profession.

- 2.5 ASSIGNMENT:** The skills, training, knowledge and experience of CONSULTANT are material to CITY's willingness to enter into this Agreement. Accordingly, CITY has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONSULTANT or on behalf of CONSULTANT in the performance of this Agreement. In recognition of this interest, CONSULTANT agrees that it will not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONSULTANT's duties or obligations under this Agreement without the prior written consent of the CITY. In the absence of CITY's prior

written consent, any attempted assignment or transfer will be ineffective, null and void and will constitute a material breach of this Agreement.

- 2.6 SUBSTITUTION OF KEY PERSONNEL:** CONSULTANT 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, CONSULTANT may substitute other personnel of at least equal competence upon written approval of CITY. In the event that CITY and CONSULTANT 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 CONSULTANT at the request of the CITY. The key personnel for performance of this Agreement are as follows: [INSERT NAME AND TITLE].
- 2.7 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR:** The Work will be performed by CONSULTANT or under CONSULTANT's strict supervision. CONSULTANT will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. CITY retains CONSULTANT on an independent contractor basis and not as an employee. CONSULTANT reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONSULTANT's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of CITY's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONSULTANT are not employees of CITY and will at all times be under CONSULTANT's exclusive direction and control. CONSULTANT will pay all wages, salaries and other amounts due to such personnel and will assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONSULTANT will be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.8 REMOVAL OF EMPLOYEES OR AGENTS:** If any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the CITY Representative to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONSULTANT, a threat to persons or property, or if any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the CITY, such officer, employee, agent, contractor, subcontractor or subconsultant will be promptly removed by CONSULTANT and will not be reassigned to perform any of the Work.

- 2.9 COMPLIANCE WITH LAWS:** CONSULTANT will keep itself informed of and in compliance with all applicable federal, state or local laws to the extent such laws control or otherwise govern the performance of the Work. CONSULTANT's compliance with applicable laws will include, without limitation, compliance with all applicable Cal/OSHA requirements and applicable regulations of the Federal Department of Housing and Urbanization.
- 2.10 NON-DISCRIMINATION:** CONSULTANT represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.
- 2.11 INDEPENDENT CONTRACTOR STATUS:** The Parties acknowledge, understand and agree that CONSULTANT and all persons retained or employed by CONSULTANT are, and will at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of CITY. CONSULTANT will be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONSULTANT and all persons retained or employed by CONSULTANT will have no authority, express or implied, to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, CITY, whether by contract or otherwise, unless such authority is expressly conferred to CONSULTANT under this Agreement or is otherwise expressly conferred by CITY in writing.

III.

INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE:** Prior to the beginning of and throughout the duration of the Work, CONSULTANT will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONSULTANT will procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONSULTANT will procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONSULTANT will procure and maintain

Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance will have minimum limits of no less than Two Million Dollars (\$2,000,000.00) per accident for bodily injury and property damage.

- C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which will indemnify, insure and provide legal defense for both CONSULTANT and CITY against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONSULTANT in the course of carrying out the Work contemplated in this Agreement.
- D. Errors & Omissions Insurance: For the full term of this Agreement and for a period of three (3) years thereafter, CONSULTANT will procure and maintain Errors and Omissions Liability Insurance appropriate to CONSULTANT's profession. Such coverage will have minimum limits of no less than Two Million Dollars (\$2,000,000.00) per claim.

3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance will contain an endorsement naming the CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.

3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement will be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance will be procured from insurers who, according to the latest edition of the Best's Insurance Guide, have an A.M. Best's rating of no less than A:VII. CITY may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the CITY Representative is authorized to authorize lower ratings than those set forth in this Section.

3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONSULTANT will be primary to any coverage available to CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers will be in excess of CONSULTANT's insurance and will not contribute with it.

3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement will not prohibit CONSULTANT or CONSULTANT's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss.

CONSULTANT hereby waives all rights of subrogation against CITY, its officials, officers, employees, agents and volunteers.

- 3.6 VERIFICATION OF COVERAGE:** CONSULTANT acknowledges, understands and agrees, that CITY's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding CITY's financial well-being and, indirectly, the collective well-being of the residents of the CITY. Accordingly, CONSULTANT warrants, represents and agrees that it will furnish CITY with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to CITY in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy will be signed by a person authorized by that insurer to bind coverage on its behalf, and will be on forms provided by the CITY if requested.** All certificates of insurance and endorsements will be received and approved by CITY as a condition precedent to CONSULTANT's commencement of any Work. Upon CITY's written request, CONSULTANT will also provide CITY with certified copies of all required insurance policies and endorsements.
- 3.7 FAILURE TO MAINTAIN COVERAGE:** 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 CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, CITY may cancel this Agreement effective upon notice.
- 3.8 SPECIAL RISKS OR CIRCUMSTANCES:** 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.

IV.

INDEMNIFICATION

- 4.1** The Parties agree that CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "CITY Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the CITY Indemnitees with the fullest protection possible under the law. CONSULTANT acknowledges that CITY would not enter into this Agreement in the absence of CONSULTANT's commitment to indemnify, defend and protect CITY as set forth herein. Notwithstanding the foregoing, to the extent CONSULTANT's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence,

recklessness, or willful misconduct of the CONSULTANT. CONSULTANT's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the CITY, its officials, officers, employees, agents or volunteers.

- 4.2** To the fullest extent permitted by law, CONSULTANT shall indemnify, hold harmless and defend the CITY Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs, and fees of litigation) of every nature arising out of or in connection with CONSULTANT's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the CITY.
- 4.3** CITY shall have the right to offset against the amount of any compensation due to CONSULTANT under this Agreement, any amount due to CITY from CONSULTANT as a result of CONSULTANT's failure to either pay CITY promptly for any costs associated with CONSULTANT's obligations to indemnify the CITY Indemnitees under this Article or related to CONSULTANT's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4** The obligations of CONSULTANT under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONSULTANT expressly waives its statutory immunity under such statutes or laws as to CITY and CITY's elected and appointed officials, officers, employees, agents, and volunteers.
- 4.5** CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth herein this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations from others as required herein, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend CITY and CITY's elected and appointed officials, officers, employees, agents, and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT's subcontractors or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of CITY's choice.
- 4.6** CITY does not, and shall not waive any rights that it may possess against CONSULTANT because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense.

- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend, and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the CITY may have at law or in equity.
- 4.8 [ONLY USE IF FOR DESIGN PROFESSIONALS] **WORK OF CONSULTANT'S DESIGN PROFESSIONALS SERVICES:** The duty to indemnify, defend and hold harmless as set forth under this subsection shall apply to the negligence, recklessness or willful misconduct of any individual who qualifies as a "design professional" within the meaning of subsection (c)(2) of Section 2782.8 of the California Civil Code in so far as such negligence, recklessness or willful misconduct occurs in the performance, work or activities that must be performed by a "design professional." Subject to the limitation of the preceding sentence, to the fullest extent permitted by law, CONSULTANT shall immediately defend and indemnify and hold harmless the CITY Indemnities, defined above, from and against any and all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation) of every nature arising out of the negligence, recklessness, or willful misconduct of CONSULTANT or any of CONSULTANT's officers, employees, servants, agents, contractors, subcontractors or authorized volunteers or any other person or entity involved by, for, or with or on behalf of CONSULTANT in the performance of design professional services under this Agreement. The Parties understand and agree that the duty of CONSULTANT to indemnify, defend and hold harmless pursuant to this subsection includes the duty to defend as set forth in Section 2778 of the California Civil Code. CONTRACTOR's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, then CONSULTANT's indemnification obligation shall be reduced in proportion to the established comparative liability.
- 4.9 **WORK OF ALL OTHER PERSONS/NON-DESIGN PROFESSIONALS:** Except as otherwise provided under Section 4.2 of this Article, above, to the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless the CITY Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation) of every nature to the extent caused by CONSULTANT's negligent performance under this Agreement, including but not limited to the negligent acts, errors or omissions of CONSULTANT or CONSULTANT's officers, employees, agents, servants, contractors, subcontractors or subconsultants or the failure of the same to comply with any of the duties, obligations or standards of care set forth herein. The duty to indemnify, defend and hold harmless under this subsection shall not encompass a duty to indemnify, defend or hold harmless for liability, loss, suit, damage, expense, or cost caused by the negligence or willful misconduct of any or all of the CITY Indemnitees. The duty to indemnify, defend and hold harmless as set forth under this subsection is intended to encompass liabilities, losses, damages, expense and costs not otherwise subject to subsection 4.2, above.

- 4.10** As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, CITY shall have the right to offset against the amount of any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Article and related to CONSULTANT's failure to either (i) pay taxes on amounts received pursuant to this Agreement, or (ii) comply with applicable workers' compensation laws.
- 4.11** As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, the obligations of CONSULTANT under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONSULTANT expressly waives its statutory immunity under such statutes or laws as to CITY and CITY's elected and appointed officials, officers, employees, agents and authorized volunteers.
- 4.12** As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations from others as required herein, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend CITY and CITY's elected and appointed officials, officers, employees, agents and authorized volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT's subcontractors or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of CITY's choice.
- 4.13** As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, CITY does not, and shall not, waive any rights that it may possess against CONSULTANT because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 4.14** As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, the duties to indemnify, defend and hold harmless as set forth under this Section, shall survive the early termination or normal expiration of this Agreement and shall be in addition to any other rights or remedies which the CITY may have at law or in equity.

V.

TERMINATION

5.1 TERMINATION WITHOUT CAUSE: CITY may immediately terminate this Agreement at any time for convenience and without cause by giving prior written notice of CITY's intent to terminate this Agreement which notice shall specify the effective date of such termination. Upon such termination for convenience, CONSULTANT will be compensated only for those services and tasks which have been performed by CONSULTANT up to the effective date of the termination. CONSULTANT may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, CITY may require CONSULTANT to provide all finished or unfinished Documents and Data, as defined in Section 6.1 below, and other information of any kind prepared by CONSULTANT in connection with the performance of the Work. CONSULTANT will be required to provide such Documents and Data within fifteen (15) calendar days of CITY's written request. No actual or asserted breach of this Agreement on the part of CITY pursuant to Section 5.2, below, will operate to prohibit or otherwise restrict CITY's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") will occur. For all Events of Default, the Party alleging an Event of Default will give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which will 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 will be cured, which will not be less than the applicable cure period set forth under Sections 5.2B and 5.2C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute such cure to completion. The Event of Default will constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONSULTANT will cure the Event of Default within the following time periods:
- i. Within ten (10) business days of CITY's issuance of a Default Notice for any failure of CONSULTANT to timely provide CITY or CITY's employees or agents with any information and/or written reports, documentation or work product which CONSULTANT is obligated to provide to CITY or CITY's employees or agents under this Agreement. Prior to the expiration of the 10-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 10-day cure period. The foregoing

notwithstanding, CITY will be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.i. that exceeds seven (7) calendar days from the end of the initial 10-day cure period; or

- ii. Within fourteen (14) calendar days of CITY's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, CITY will be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period.

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

- C. CITY will cure any Event of Default asserted by CONSULTANT within forty-five (45) calendar days of CONSULTANT's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, CITY may submit a written request for additional time to cure the Event of Default upon a showing that CITY has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with CITY's failure to timely pay any undisputed sums to CONSULTANT as provided under Section 1.5, above, will be cured by CITY within five (5) calendar days from the date of CONSULTANT's Default Notice to CITY.
- D. CITY, in its sole and absolute discretion, may also immediately suspend CONSULTANT's performance under this Agreement pending CONSULTANT's cure of any Event of Default by giving CONSULTANT written notice of CITY's intent to

suspend CONSULTANT's performance (hereinafter, a "Suspension Notice"). CITY may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONSULTANT will be compensated only for those services and tasks which have been rendered by CONSULTANT to the reasonable satisfaction of CITY up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of CITY will operate to prohibit or otherwise restrict CITY's ability to suspend this Agreement as provided herein.

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

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

- G. In the event CITY is in breach of this Agreement, CONSULTANT's sole remedy will be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONSULTANT under this Agreement for completed services and tasks.

5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement will 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 will give the other Party any contractual rights by custom, estoppel, or otherwise.

- 5.4 **SURVIVING ARTICLES, SECTIONS AND PROVISIONS:** The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto will not operate to terminate any Article, Section or provision contained herein which provides that it will survive the termination or normal expiration of this Agreement.

VI.

MISCELLANEOUS PROVISIONS

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

- 6.4 NOTICES:** All notices permitted or required under this Agreement will be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONSULTANT:

INSERT CONSULTANT NAME

INSERT ADDRESS

Attn: INSERT CONTACT NAME

Phone: INSERT PHONE NUMBER

CITY:

City of San Fernando

Attn: INSERT DEPARTMENT

117 Macneil Street

San Fernando, CA 91340

Phone: (818) 898-1212

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

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

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

or written, which may have been entered into between CITY and CONSULTANT prior to the execution of this Agreement. Any statements, representations, or other agreements, whether oral or written, made by either Party that is not embodied herein will not be valid or binding on the Parties. No amendment, modification or supplement to this Agreement will be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.16, above.

- 6.20 FORCE MAJEURE:** The Completion Date shall be extended in the event of any delays due to unforeseeable causes beyond the control of CONSULTANT and without the fault or negligence of CONSULTANT, 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 CONSULTANT 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 CONSULTANT be entitled to recover damages against the CITY for any delay in the performance of this Agreement, however caused, CONSULTANT's sole remedy being extension of the Agreement pursuant to this Section.
- 6.21 COUNTERPARTS:** This Agreement will be executed in three (3) original counterparts each of which will be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterpart will be valid or binding unless made to all three counterparts in conformity with Section 6.16, above. One fully executed original counterpart will be delivered to CONSULTANT and the remaining two original counterparts will be retained by CITY.

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

CONSULTANT NAME:

By: _____
Nick Kimball, City Manager

By: _____

Date: _____

Name: _____

Title: _____

APPROVED AS TO FORM

Date: _____

By: _____
Richard Padilla, Assistant City Attorney

Date: _____

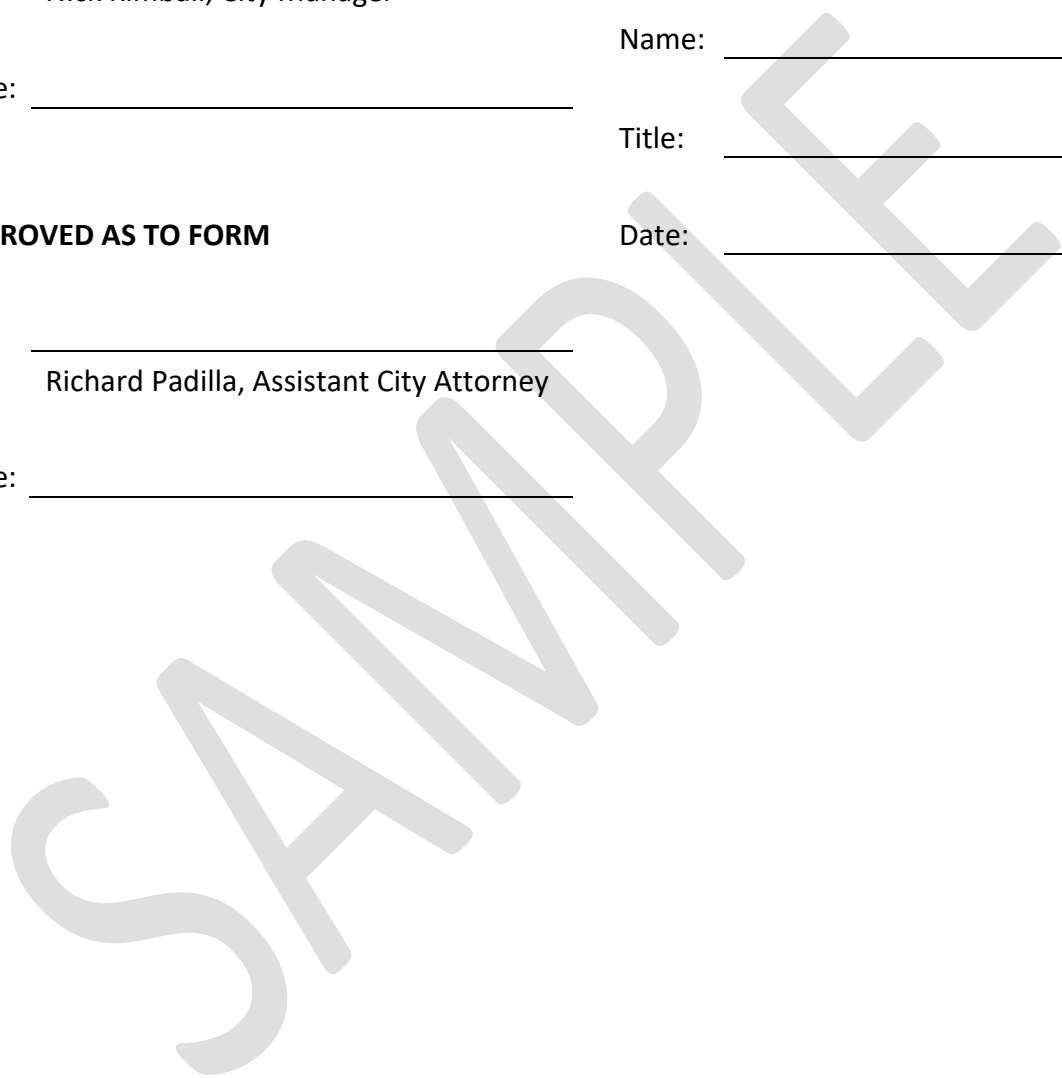


EXHIBIT "A"
CITY REQUEST FOR PROPOSAL

SAMPLE

EXHIBIT "B"
CONSULTANT PROPOSAL

SAMPLE