



REQUEST FOR PROPOSALS

As-Needed Building Inspection and Plan Check Services

RFP Release Date

Tuesday, September 19, 2023

Proposal Submittal Deadline

5:00 p.m., Monday, October 16, 2023

Contact Person:

Gustavo Romo, Community Development Director

City of Bell Gardens

7100 Garfield Avenue

Bell Gardens, CA 90201

(562) 806-7700

gromo@bellgardens.org

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INTRODUCTION

The City of Bell Gardens (“City”) is seeking proposals from qualified firms with proven expertise to provide as-needed contract building inspection and building plan check services for the Community Development Department. The City currently contracts out these services and is seeking to re-evaluate costs and qualifications. Please review the enclosed Request for Proposals (“RFP”) outlining the range of services being sought to determine if you would like to submit a proposal for services.

It is the intent of the City to select a single consultant (“Consultant”) to accomplish and/or supply all services outlined in this RFP.

The City reserves the right to accept or reject any or all responses received in response to this request. The City also reserves the right to waive any informality, technical defect or clerical error, or irregularity in any response. The City’s potential award of an agreement will not be based on any single factor, nor will it be based solely or exclusively on the lowest cost proposal. If an agreement is awarded, it will be awarded to the Consultant who in the judgment of the City has presented an optimal balance of relevant experience, price, quality of service, work history and other factors which the City may consider relevant and important in determining which proposal is best for the City. Additionally, the City may, for any reason, decide not to award an agreement based on this RFP. The City reserves the right to cancel this RFP. The City shall not be obligated to respond to any responses submitted, nor be legally bound in any manner by the submission of the response. The City reserves the right to negotiate deliverables and associated costs.

SUBMITTAL PROCEDURES/DEADLINE

An electronic version shall be emailed to cityclerkdesk@bellgardens.org and gromo@bellgardens.org no later than **5:00 p.m. on Monday, October 16, 2023**. Additionally, three hard copy sets of the proposal (*two (2) bound, one (1) unbound*) **shall be postmarked no later than 5:00 p.m. on Monday, October 16, 2023, to the City Clerk’s Office**. The electronic version of the proposal must be an exact duplicate of the hard copies and the subject line must read “City of Bell Gardens As-Needed Building Inspection and Plan Check Services.” If the proposal includes any comments over and above the specific information requested in this RFP, such information should be included as a separate appendix and placed at the end of the proposal.

Postmarks by this date are unacceptable and no facsimiles will be accepted. Please mail or deliver your response in a sealed envelope with “City of Bell Gardens As-Needed Building Inspection and Plan Check Services” written below the address label and addressed as follows:

City Clerk’s Office
Attention: Daisy Gomez, City Clerk
As-Needed Building Inspection and Plan Check Services RFP Response
City of Bell Gardens
7100 Garfield Avenue
Bell Gardens, CA 90201

Questions and Inquiries

To ensure a fair and objective RFP process and evaluation, all questions and inquiries related to this RFP shall be addressed in writing to Gustavo Romo, Community Development Director, at gromo@bellgardens.org. The deadline for written questions and inquiries is Monday, October 2, 2023. City Hall is open Monday through Thursday from 7:30 AM to 6:00 PM.

The tentative schedule for this RFP is as follows:

Release of RFP	Date
Deadline for Q&A Written Submittals	Monday, October 2, 2023
Virtual Meeting Question and Answer Session	Thursday, October 5, 2023
Proposal Submission Deadline	Monday, October 16, 2023
Interviews for Qualified Consultants	Monday, October 30, 2023
Tentative City Council Consultant selected/Agreement Approval	Monday, December 11, 2023

DEFINITIONS, TERMS, AND CONDITIONS

Definitions: To simplify and clarify the language throughout this RFP, the following definitions shall apply:

CITY COUNCIL: The elected officials of the City of Bell Gardens, who have been given the authority to exercise such powers and jurisdiction on all City business as conferred by the State Constitution and the City of Bell Gardens Municipal Code.

AGREEMENT: An agreement between the City and the selected Consultant to furnish professional services over a designated period (such as the sample form attached as Exhibit A).

CONSULTANT: Organization, firm or individual offering a proposal in response to this RFP.

Proposal General Terms and Conditions:

Electronic Documents

Consultants may be supplied with the original RFP documents in electronic form to aid in the preparation of proposal(s). By accepting these electronic documents, each Consultant agrees not to edit or change the language or format of these documents. Submission of a proposal by Consultants signifies full agreement with this requirement.

Receipt of Proposals

Submitted proposal(s) must be properly addressed and received by the City prior to the date and time specified. The mere fact that the proposal was dispatched will not be considered; the Consultant must ensure that the proposal is delivered.

Proposals received after the date and time specified shall be returned and will be considered

void and unacceptable. The City is not responsible for the lateness of the mail carrier, etc.; and the time/date stamp of receipt by the City Clerk's Office shall be the official time of receipt.

Alterations

Proposal documents cannot be physically altered or amended after the closing date. Alterations made before closing must be initialed by the Consultant to guarantee authenticity. Proposals may not be withdrawn after the proposal closing date, and each Consultant agrees to this stipulation upon submittal of its proposal. However, all proposals are subject to negotiation before an agreement is awarded as further described below.

Communication

The City shall not be responsible for any verbal communication between any employee of the City and any proposed Consultant. Only written requirements and qualifications will be considered.

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions, or specifications stated in the resulting contract.

Reservations

The City reserves the right to reject any and all proposals received as a result of this RFP. The City's potential award of an Agreement will not be based on any single factor, nor will it be based solely or exclusively on the lowest cost proposal. If an Agreement is awarded, it will be awarded to the Consultant who in the judgment of the City has presented an optimal balance of relevant experience, price, quality of service, work history and other factors which the City may consider relevant and important in determining which proposal(s) is best for the City. The City reserves the right to cancel or modify this RFP. There is no guarantee that the City will award an Agreement.

Reimbursements

The Consultant shall be solely and exclusively responsible for all costs incurred in connection with the preparation and submission of the proposals; demonstrations; interviews; preparation of responses to questions and requests for additional information; for contract discussions; or for anything in any way related to this RFP. The City is not liable for any costs incurred by a proposer in response to this RFP. Whether or not a Consultant is awarded an Agreement pursuant to this RFP, no proposer shall be entitled to reimbursement for any costs or expenses associated with the Consultant's participation in this RFP process.

Certification

Any proposal that does not contain all the information requested in this RFP will be considered incomplete and may be rejected by the City.

Funding

The City operates and is funded on a fiscal yearly basis. Accordingly, the City reserves the right to terminate, without any liability, any Agreement for which funding is not available.

Negotiations

Negotiations may be conducted with responsible Consultants who submit proposals that are reasonably susceptible of being selected. All Consultants reasonably susceptible of being

selected based on criteria set forth in this RFP may be given an opportunity to make a presentation and/or interview. Although this process will ultimately result in the award of a single Agreement, the City reserves the right to negotiate an Agreement with more than one firm.

Additional Information

During the proposal evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from Consultants. The City also reserves the right to investigate the qualifications of the proposed Consultant(s) as it deems appropriate.

RFP

Consultants should be aware that the RFP and the contents of the successful proposal will become a part of any subsequent contractual documents that may arise from this RFP.

Following the Proposal Submission Deadline, the City, pursuant to the California Public Records Act (Govt. Code Section 6250 et seq.) reserves the right to make copies of all submitted proposals available for inspection and copying by any interested member of the public, except to the limited extent the City determines that any information contained in a proposal is legally privileged under the California Public Records Act. By submission of a proposal, Consultants acknowledge and agree that their proposal and any information contained therein may be disclosed by the City to interested members of the public, including other proposers. All responses to the RFP received become a matter of public record and shall be regarded as public records, except for those elements in each proposal which are defined by the proposer as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary." The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary" or if disclosure is required under the Public Records Act. Any proposal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary" shall be regarded as non-responsive.

Award of the Agreement

Award of the Agreement will be by the City Council at a public meeting.

BACKGROUND

The City of Bell Gardens is a General Law City governed by an elected five-member City Council that appoints the City Manager. The City has a population of approximately 39,000 in an area of 2.4 square miles located in the southeastern part of Los Angeles County. The City shares a common boundary with the Cities of South Gate, Bell, Downey, and Commerce. Bell Gardens is considered an integral part of the Los Angeles-Long Beach metropolitan area.

Bell Gardens has its own Police Department but contracts out Fire services to Los Angeles County. Private firms provide contract Building & Safety, CDBG Program Administration, and Engineering services.

The City of Bell Gardens was incorporated on August 1, 1961, as a general law city, thus, operating under the Council/Manager form of government. The five (5) City Council members are elected at-large by the residents for staggered four-year terms and serve as the City's legislative, policy-making body. The Mayor position is shared among the Council members who select one another as Mayor annually. The City Council holds bi-monthly public meetings. The City Manager is responsible for directing City affairs as prescribed by the City Council.

SCOPE OF SERVICES

The primary goal of this RFP is to solicit proposals from qualified Consultants who can assist the City with “as-needed” building inspection and plan check services. The Building and Safety Division is part of the Community Development Department, which also consists of City Planning, Economic Development, Housing, Code Enforcement, Business License, and Community Development Block Grant (“CDBG”) Management.

The City presently contracts building plan check, building inspection, and building rehabilitation inspection completely to a private firm. The firm provides an off-site Building Official who gives direction to the City’s Building Division, which consists of one full-time Building Services Supervisor, who also serves as the Senior Building Inspector, one full-time Building Inspector, and off-site plan check services. The City would like to continue with this staffing arrangement with the duties listed below unless a better solution is proposed.

1. Plan Checking

- a. The Consultant shall review the plans prepared by or on behalf of the various private developers for compliance with the ordinances of the City.
- b. The Consultant shall maintain close liaison with other City departments in order that the appropriate requirements of those departments are incorporated within such building plans.
- c. The Consultant shall arrange reviews by other appropriate agencies having jurisdiction in such matters relative to the enforcement of the Fire Codes, Sanitation Codes and Health Codes. When satisfied that the appropriate requirements of the City's codes have been met, the Consultant shall issue permits as appropriately set forth in such codes.

2. Building Inspection

- a. The building inspector(s) shall provide building inspection services as needed and as requested during staff time-off and/or the course of construction of such private facilities to enforce compliance with the provisions of the City’s ordinances and the code requirements set forth on the plans for which the permit was issued.
- b. In the performance of such duties the building inspector(s) shall provide prompt inspection for each project at the completion of the various stages of construction to determine compliance with the appropriate City code.

The City currently processes, on average, 1000 building permits (including electrical, mechanical, plumbing, and miscellaneous permits) per year and 50 plan checks. The current contract services agreement compensates the contractor with an hourly rate for plan check services and a percentage of all building permits. Building inspection services are required only when staff is on leave.

The Scope of Services may be modified through negotiation and/or by written addendum after the Agreement is approved.

METHOD OF COMPENSATION

Work Item	Compensation Method
Plan Checking	Percentage of fees collected
Building Inspection	Hourly rates
Building Official	Hourly rates

PROPOSAL FORMAT AND CONTENT REQUIREMENTS

The following instructions describe the form in which proposals must be submitted.

Responses to the following items will be used for proposal evaluation. Proposals that do not contain responses to each of the requirement items will be considered incomplete and may be rejected.

Proposal documents should provide a straightforward, concise description of the Consultant’s capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness, clarity of content, and conveyance of the information requested by the City. The requirements stated do not preclude a Consultant from furnishing additional reports, functions, and costs as deemed appropriate.

The proposal must contain the following eight (8) elements describing how the Consultant will perform the assignment:

1. Transmittal Letter:
 - a. A letter of transmittal signed by an individual authorized to bind the proposer stating the proposer has read and will comply with all terms and conditions of the RFP. The transmittal letter will contain, at a minimum: a) company name and address; and b) an executive summary briefly describing the proposer’s ability to perform the work requested, a history of the Consultant’s background and experience providing

services.

- b. Conflict of Interest Statement: The Consultant shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this Agreement. Particular attention should be paid to compliance with Government Code section 1090.

2. Methodology and Timeliness

- a. Include description of a) the approach and methodology to be taken in addressing the scope of work, b) a listing of the specific tasks, milestones and deliverables required to properly perform the services, and c) an estimated timeline from inception to completion for plan check services based on complexity of request.
- b. The City expects the selected Consultant to adhere to the established timeline and provide an expedited timeline with associated fees.

3. Management and Staffing:

Describe the management and staffing configuration to be utilized to complete the scope of work. Describe the qualifications of staff to be assigned to the project, their title, and types and amount of equivalent experience. Resumes of all proposed personnel must be included. The proposal must indicate who will have primary responsibility for this project.

4. Minimum Qualifications, Prior Related Experience, and References

- a. Firms or individuals must demonstrate competence and capability to satisfactorily perform the scope of work. Proposals that do not meet the minimum qualifications will be determined nonresponsive and ineligible for award. The proposer must provide evidence to show that members of the proposer's project team possess the specific qualifications, competence, experience, resources, and business integrity necessary to carry out the work under the contract as expected. Examples of evidence include, but are not limited to resumes, letters of reference, and project summaries that highlight the team's specific experience.
- b. A list of at least three (3) recent references, including local government agencies where a similar service is or has been provided and any private clients. Include a) the names and telephone numbers of the firm and the key managers and professionals assigned to the project, b) brief description of the project, and c) time period for the project.

5. Cost and Pricing:

- a. Compensation shall be based on the percentage of fees collected for plan check services. As-needed building inspection and building official consultation services

shall be based on hourly rates.

- b. Percentage of fees collected shall include up to three (3) plan checks. A fourth plan check will be charged hourly to the applicant/developer.
- c. Any meetings/consultations directly with the plan checker shall be charged at an hourly rate.
- d. Proposals must include staff hourly rates, plus overhead, travel and any additional project costs proposed. All items must be itemized in detail.
- e. In addition, an hourly fee schedule must be submitted with the proposal. If the scope of work is substantially modified, the extra cost or credit must be negotiated based on the submitted hourly rates.
- f. No retainers will be allowed.

6. Additions or Exceptions:

- a. A single and separate section with the heading “ADDITIONS OR EXCEPTIONS TO THE CITY’S REQUEST FOR PROPOSAL” containing a complete and detailed description of all the Consultant’s exceptions to the provisions and conditions of the attached City standard professional services contract.

7. Pending Litigation:

Include an explanation and status, if in the last five years, the firm or an office or principal of the firm has been involved in any substantiated complaints, litigation, legal proceedings, or investigations by a regulatory authority.

8. Insurance:

Evidence of commercial liability, professional liability, and workers compensation insurance coverages must be included. Insurance requirements are listed on the sample agreement attached as **Exhibit “A.”**

EVALUATION CRITERIA

The award of this agreement will be made to the most qualified Consultant whose proposal complies with the prescribed requirements. The City reserves the right to reject any or all proposals and to waive any technical errors, irregularities, or discrepancies, if to do so is deemed to serve the best interests of the City. In no event will an award be made until all necessary investigations are made as to the responsibility and qualifications of the Consultant to whom it is proposed to make such an award.

Proposals will be reviewed and evaluated by the Community Development Director and City staff and ranked based on the following considerations:

- Demonstrated experience in building inspection and plan check services;
- Qualifications and expertise of the proposed project team; and
- Cost-effectiveness and reasonableness of the proposed budget.

If further clarifications or negotiations are required, on-site or virtual interviews may be conducted. Participation in these interviews will be at the expense of the Consultant(s). The interview panel will be made up of staff members or representatives from the city. Recommendations will be forwarded to the City Council for final selection and award.

Proposals failing to provide sufficient information and assurances of performance to adequately assess each category of the required services and/or failing to comply with the requirements and conditions of this RFP may not be given further consideration.

Factors such as, but not limited to, any of the following may be considered just cause to disqualify a response to the RFP without further consideration:

- Evidence of collusion, directly or indirectly, among Consultants with regard to the amount, terms, or conditions of this proposal;
- Any attempt to improperly influence any member of the selection staff or City Council members;
- Existence of any lawsuit, unresolved contractual claim, or dispute between Consultant and the City;
- Evidence of incorrect information submitted as part of the RFP;
- Evidence of Consultant's inability to successfully complete the responsibilities and obligations of the proposed scope of work; and
- Consultant's default under any agreement, which results in termination of the

Agreement.

Each proposal will be considered along with those of other responding Consultants, with respect to ability to perform effectively and efficiently those Scope of Services outlined above.

The successful Consultant shall not discriminate, in any way, against any person based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, or any other protected classification in connection with or related to the performance of the Agreement.

Close coordination with the City is required to assure that all requirements will be met. The City reserves the right to withdraw this RFP at any time without any prior notice. Further, the City makes no representations that any Agreement will be awarded to any Consultant responding to this RFP. The City expressly reserves the right to postpone reviewing the proposals for its own convenience and to reject any or all proposals responding to this RFP without indicating any reasons for such rejection(s).

EXHIBIT "A"
SAMPLE PROFESSIONAL SERVICES AGREEMENT

DRAFT

2023
PROFESSIONAL SERVICES AGREEMENT
(Engagement: **INSERT ENGAGEMENT**)
(Parties: **INSERT CONSULTANT NAME** and City of Bell Gardens)

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 BELL GARDENS, a municipal corporation (hereinafter, "CITY") and **INSERT CONSULTANT NAME** (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 Bell Gardens City Council at its Regular Meeting.

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 **INSERT DATE** (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 “CONSULTANT Proposal”) 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 Work continuously and with due diligence so as to complete the Work within the Term of this Agreement;
- B. CONSULTANT shall cooperate with CITY and in no manner interfere with the work of CITY, its employees or other consultants, contractors or agents;
- C. CONSULTANT shall not claim or be entitled to receive any compensation or damage because of the failure of CONSULTANT, or its subconsultants, to have related services or tasks completed in a timely manner;
- D. CONSULTANT shall at all times enforce strict discipline and good order among CONSULTANT’s employees; and
- E. CONSULTANT, at its sole expense, shall pay all sales, consumer, use or other similar taxes required by law.

- 1.4 **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 total budgeted aggregate sum of **INSERT WRITTEN AMOUNT (\$INSERT NUMBER)** (hereinafter, the “Not-to-Exceed Sum”) during the prosecution 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 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: Following the conclusion of the work requested in Section 1.1, CONSULTANT shall submit to CITY an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONSULTANT's compensation is a function of hours worked by CONSULTANT's personnel, the invoice should indicate the number of hours worked, 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 their sole and absolute discretion. The Parties acknowledge and agree that CITY's acceptance of any work performed by CONSULTANT or on CONSULTANT's behalf 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.

- 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 will 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 shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers’ Compensation Insurance/ Employer’s Liability Insurance: A policy of workers’ compensation insurance in such amount as will fully comply with the laws of the State of California and which 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 One Million Dollars (\$1,000,000.00) 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 Indemnitees, 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. CONSULTANT'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 PERSON OF
CONTACT NAME
Phone: INSERT PHONE NUMBER

CITY:

City of Bell Gardens
7100 S. Garfield Avenue
Attn: INSERT DEPARTMENT
Phone: 562-806-7700

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 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 Term 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)

DRAFT

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 BELL GARDENS:

CONSULTANT NAME:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Rick Olivarez, City Attorney

DRAFT

EXHIBIT "A"
CITY RFP

DRAFT

EXHIBIT "B"
CONSULTANT PROPOSAL

DRAFT