



**PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION**

REQUEST FOR PROPOSAL (RFP) FOR

**CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES
FOR
GLENOAKS BOULEVARD STREET RESURFACING AND HIGHWAY SAFETY
IMPROVEMENT PROJECT
Federal Project No. HSIPL-5202(018)
Job No. 7595, Plan No. P-728**

All questions regarding this project are to be directed to:

Patsy Orozco, Civil Engineering Assistant II

Project Manager

Office: (818) 898-1224

Email: PAOrozco2@sfcity.org

APPROVED

Martin Pastucha
Interim Director of Public Works

Dec 19, 2019

Date

December 19, 2019

SUBJECT: REQUEST FOR PROPOSAL FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR THE GLENOAKS BOULEVARD STREET RESURFACING AND HIGHWAY SAFETY IMPROVEMENT PROJECT; Federal Project No. HSIPL-5202(018); Job No. 7595, Plan No. P-728

Dear Prospective Consultant:

The City of San Fernando is soliciting proposals from qualified consultants that can successfully provide Construction Management and Inspection Services for the Glenoaks Boulevard Street Resurfacing and Highway Safety Improvement Project; Federal Project No. HSIPL-5202(018); Job No. 7595, Plan No. P-728.

To be considered responsive, the consultants must submit a proposal that meets all of the requirements of the RFP. The proposal package must include a fee proposal in a separate and sealed envelope titled **“Fee Proposal for Construction Management and Inspection Services for the Glenoaks Boulevard Street Resurfacing and Highway Safety Improvement Project; Federal Project No. HSIPL-5202(018); Job No. 7595, Plan No. P-728.”**

In order for your proposal to be considered, please submit four hard (4) copies, with one electronic copy, marked **“Proposal for Construction Management, Inspection Services, etc. for the Glenoaks Boulevard Street Resurfacing and Highway Safety Improvement Project; Federal Project No. HSIPL-5202(018); Job No. 7595, Plan No. P-728.”** to:

City Clerk's Office
Attn: Martin Pastucha
Interim Director of Public Works
City of San Fernando
117 N. Macneil Street
San Fernando, CA 91340

To view the project plans and specifications, please follow the link below.

<http://ci.san-fernando.ca.us/rfps-rfqs-nibs-nois/>

Proposal Submission Deadline: **January 9, 2020 at 5:00 PM.**

Sincerely,

Martin Pastucha
Interim Director of Public Works

Cc: Elena G. Chávez, City Clerk

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INTRODUCTION

The City of San Fernando is seeking a qualified consultant that can successfully provide Construction Management, Inspection Services, Material Testing, and Labor Compliance Services for the “Glenoaks Boulevard Street Resurfacing and Highway Safety Improvement Project; Federal Project No. HSIPL-5202(018); Job No. 7595, Plan No. P-728” (hereon referred to as the “Project”).

The Project was awarded for construction in November 18, 2019 to All American Asphalt of Corona, CA. The construction of the Project is expected to start in February 2020. The project construction duration is eighty (80) working days.

PROJECT DESCRIPTION

The project consists of the construction of raised median islands, wheelchair ramps, sidewalks, curb and gutter, drive approaches, reconstruction of pavement, pavement resurfacing, traffic signal improvements, striping, etc. The Project limits are: Glenoaks Boulevard from east of Hubbard Street to west of Arroyo Avenue.

PROJECT BUDGET

The Project is funded with an HSIP Grant, Measure R, Prop. C, Water, Sewer and TDA Article 3 Funds. The awarded construction contract for the Project is \$2,399,784. Construction Management, Inspection Services, Material Testing, and Labor Compliance Services requested herein will not be funded from Federal funding sources. Federal funds will be used for construction only.

DESCRIPTION OF WORK

The City of San Fernando is seeking a qualified Consultant that can successfully provide construction management, inspection, and other services for the construction of the Project. Services to be provided include: contract administration, construction management, inspection, utility coordination, labor compliance, geotechnical and material testing services and project close-out services. All services are to be provided in accordance with the Project documents. The Standard Specifications for Public Works Construction, Latest Edition (Greenbook) and Caltrans Standard Specification, 2015 Edition will be utilized for construction of the Project. Services shall be provided as necessary to meet Caltrans requirement in the construction that is proposed within their right-of-way.

All services are to be provided in accordance Standard Specifications for Public Works Construction, Latest Edition (Greenbook) and Caltrans Standard Specification, 2015 Edition. The project limits are as shown on Appendix B.

SCOPE OF SERVICES

The Consultant is to provide Inspector and a registered Civil Engineer as Resident Engineer Representative (RE) to provide construction management for the duration of the Project until the

Project paperwork is finalized, approved by the funding agencies and a State audit is conducted. Preparation of the documents required by the State Auditor to complete the audits shall be included in the proposal.

The selected Consultant will function as an extension of City staff and be expected to manage the project in accordance with the plans and specifications.

The following is the specific service tasks for the Project:

Task 1 Project Coordination

The selected Consultant must provide an experienced RE who has successfully delivered services on similarly funded projects and is a licensed Civil Engineer in the State of California. A minimum of 10 years of experience with similar projects is required. The Construction Manager should have City and/or Caltrans type of experience in roadway, raised median islands, wheelchair ramps and traffic signal construction, Green Book and different types of concrete construction. The Consultant must be able to perform the following:

1. Management

- Deliver Project services in accordance with the plans and specifications.
- Manage and coordinate all aspects of the Project, inclusive of services identified in the RFP.
- Conduct a pre-construction meeting and biweekly construction meetings or as deemed necessary by the project manager with the contractor, City and other involved parties. Prepare and distribute meeting agendas minutes and progress reports.
- Coordinate with City staff, multiple contractors when applicable, agencies, and Project stakeholders.
- Prepare weekly Statements of Working Days and other reports that may be required by the City.
- Review shop drawings and material submittals and determine consistency with the plans and specifications.
- Coordinate design changes.
- Participate in field meetings and document issues, findings, directions, changes, etc., and develop solutions.
- Participate in public outreach activities.
- Other improvements/activities as deemed necessary by the consultant to implement the improvements on the Project.
- Prepare all progress reports required by Metro and Caltrans.

2. Meetings

- Conduct a pre-construction meeting and prepare agenda and minutes. Prior to the meeting, review PS&E and agendaize potential issues.
- Conduct and lead construction progress meetings as scheduled by all parties and prepare minutes for the City's approval.

3. Schedule and Budget

- Review construction schedule submitted by the contractor. Review subsequent revised construction schedules due to delays, time extensions, change orders, additional work, etc., within one week of submittal.
- Prepare change orders within 48 hours in the standard City format as well as in accordance with all applicable Federal and State funding requirements.
- Maintain a current monthly accounting of construction costs to complete the project, including approved change orders for city's review and approval.
- Review payment requests in a timely manner, make payment recommendations, and submit the progress payment request to City for processing.
- Prepare reimbursement requests to Caltrans and Metro.

4. Miscellaneous

- Review and coordinate approval of shop drawings by the design consultant as needed.
- Log, track, and process submittals, Requests for Information (RFIs), Requests for Changes (RFCs), Contract Change Orders (CCOs), field directives, Notices of Potential Claim (NOPCs), Non-Conformance Reports (NCRs), review and approve traffic control plan.
- Provide City with the contractor's Red marked as-built plans at Project completion.
- Monitor materials documentation and testing results, as well as enforce corrections.
- Conduct labor compliance and certified payrolls reviews and approvals with every monthly payment.
- Review and approve contractor's safety program.
- Review all requests for clarification and provide to Engineer of Record for clarification.
- Review required construction survey including lines and grades, construction staking, cut sheets, etc.
- Process all Project documentation per City and Caltrans requirements for standard format.
- Maintain Project files per Caltrans requirements.
- The RE shall service the Project and visit the site as needed for the duration of the project.

Task 2 Construction Inspection

The selected Consultant must provide an experienced Construction Inspector who has successfully provided inspection services on similar projects. At least 10 years of experience in construction inspection is required. The Construction Inspector must be able to perform the following:

- Coordinate with City staff, including the Police Department, Los Angeles County Fire Department, Caltrans, utility companies, LACFCD, and other project stakeholders.
- Participate in public outreach activities.
- Coordinate construction activities, inclusive of temporary parking restrictions, temporary traffic control, etc.
- Complete daily measurements of quantities of work with the contractor and prepare daily inspection reports.
- Provide daily reports on the following Monday to City.

- Attend all Project meetings such as preconstruction, field, and progress meetings.
- Provide complete, documented measurements and calculations to process progress payments, change orders, extra work, etc.
- Prepare in-progress punch lists at the completion of each phase of the project.
- Ensure Project construction in accordance with approved PS&E, City Standards, Greenbook and Caltrans Standards.
- Inspection for nights and weekends work will be performed at the City's approval.
- Ensure compliance with the NPDES program and Cal OSHA.
- Inspect materials and equipment upon delivery for compliance with construction contract documentation.
- Each working day, meet with the contractor to review proposed work plans, including specific details that may affect progress. Inform City of any work which may result in a noteworthy impact to the City.
- Provide and closely monitor compaction, material and other necessary testing.
- Provide and closely monitor any required special inspections.
- Review testing (such as soil testing) results and require the Contractor to provide corrective measures to achieve compliance where required.
- Maintain copies of all permits needed to construct the Project and enforce special requirements of each.
- Conduct contractor employee interviews.
- Provide and submit progressive photos of the project
- Request City approval for any overtime.
- Report to the project manager daily via email or text.

Task 3 Labor Compliance

The Consultant will be expected to perform labor compliance in accordance with the Caltrans Local Assistance Procedure Manual (LAPM). The proposal shall provide a detailed scope of work that clearly demonstrates the Consultant understands the requirements of performing labor compliance in accordance with the LAPM.

Task 4 Material Testing

1. Material testing shall conform to all Caltrans Standards, the LAPM and the Quality Assurance Program Manual (QAP).
2. Review and approve ARHM, AC mix designs.
3. Review and approve PCC mix design. Consult with City for approval of PCC mix for the Project.
4. Provide all material source inspection, sampling and testing by a qualified materials engineer as required by the LAPM and the QAP.
5. Provide requested miscellaneous consultation during the Project, including discussion with the contractor to emphasize proper treatment of concrete. Provide all compaction tests per plan, specifications, and regulations per LAPM and the QAP. Provide nuclear compaction testing on the day of paving.
6. Provide geotechnical soil testing as necessary.
7. Provide coordination for traffic controller testing and other traffic signal equipment as needed.

Task 5 Utility and Outside Agency Coordination

1. Send notification of the pre-construction meeting to all affected utility companies, Police Department, Los Angeles County Fire Department, Republic Services, MTA, SCE etc.
2. Review Project scope of work with each utility company at the pre-construction meeting, review possible conflicts and work with each utility to insure that specific needs of the Project are understood.
3. Coordinate with utility companies to expedite the identification of any unknown utilities found during construction. Coordinate relocation work by utility companies.

Task 6 Project Closeout

1. Coordinate a final walk-through with all affected stakeholders, prepare punch list, certify completion of the Project and recommend acceptance.
2. Transmit Record Drawings (As-Builts) from the engineer of record to the City.
3. Finalize record drawings/As-Builts, contract bid items, claims, change orders and punch list items.
4. Prepare all final reports, including report of completion for acceptance of the Project.
5. Finalize and deliver all construction files to the City for archives.
6. Provide electronic copy of all reports and construction files to City.
7. Provide electronic version of all record drawings and files in PDF file format.
8. Address all unresolved issues including, but not limited to, change orders, claims, etc.
9. Complete documentation required by Caltrans, LA Metro and the City.

PROPOSAL REQUIREMENTS

The proposal must be concise, well organized and demonstrate your firm's team qualifications and experience related to this project. The proposal shall be printed on 8½" x 11" pages and include resumes, past experience, graphs, tables, etc. It must include the following:

- I. Cover Letter (one page): The cover letter shall include the name and address of the firm submitting the proposal and a brief introduction of the company and proposed Construction Manager.
- II. Qualification and Experience (maximum of 10 pages): The proposed Construction Manager shall have experience working with Public Agencies in similar assignments, including experience in dealing with public agency staff, City Councils, and Commissions. It is highly desirable that the key project team members have served public agencies in various capacities, are accustomed to working with governmental agencies, have a good understanding of public agency issues, procedures and policies. The City is looking for a qualified team that can provide turn-key services, be the single point of contact and responsible party representing the City. Qualifications and experience to be shown in the proposal shall include, but not be limited to, the following:
 - Project organization chart
 - Identification of experience of principal staff members, including major sub-consultants. Resumes of principal staff should not exceed 1-page per person.
 - Identify the availability of your team and the percentage of current workload of staff that would be committed to this project, including sub-consultants.
 - Experience of the firm, the team and subconsultants on similar projects.
- III. Scope of Work and Project Approach (maximum 10 pages): The Consultant shall include in its proposal a detailed scope of work and understanding of the process to undertake such a project and complete it in compliance with all applicable rules, regulations, standards, requirements, and the LAPM. Other items to include:
 - Description of your firm's quality/control (Q/C) and quality/assurance (Q/A) procedures that will be used for the Project.
 - Provide project schedule for various activities by the CM involved and identify the milestones of major tasks of the Project.
 - Discussion of document control.
- IV. *Consultant shall submit a fee proposal for the Project in a SEPARATE SEALED ENVELOPE marked "Fee Proposal" along with the Project title.* The City will negotiate with the top-ranked consultant in compliance with all applicable federal, state, and local guidelines. Fee proposal shall include all tasks required to perform the work with a maximum not-to-exceed fee for each task and a grand total not-to-exceed fee. The fee proposal must contain a task and fee breakdown of all components of cost, including labor base rate, overhead and all other direct and indirect costs. The fee proposal shall clearly show hours and cost per task. The task and fee breakdown must match the scope of services in the format, as presented within the RFP. The Consultant and all sub-

consultants shall not be compensated by the City for any time spent on commuting to or from the Project site and other peripheral work not directly performed as a result of this Project. The number of construction days is estimated as listed in these documents. The Consultant shall provide its services for the duration of the Project for the approved scope of work and fee. Below is the fee proposal to be used on this RFP, no other form will be accepted.

- V. The City will short list the list of candidates to three consulting firms, of which it will interview and select the top candidate for the project.

Prevailing wages will apply if the services to be performed will involve materials sampling and testing (such as drilling rig operators, pile driving, and crane operators), inspection work, soils or foundation investigations, environmental hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations web site at:

http://www.dir.ca.gov/dlsr/statistics_research.html

The format of the fee proposal shall match the *Sample Fee Proposal* provided on the following page.

CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES
FOR
GLENOKS BOULEVARD STREET RESURFACING AND HIGHWAY SAFETY IMPROVEMENT PROJECT
Federal Project No. HSIPL-5202(018)
Job No. 7595, Plan No. P-728

This not-to-exceed fee is based on a **duration of a 5 month** working period. Public Works Observer shall be provided as necessary for the entire 80 working day period. Additional services needed beyond the contract specified shall require prior approval from the City. **NO LUMP SUM FEES WILL BE ACCEPTED. THIS INCLUDES MATERIAL TESTING SERVICES.**

SCHEDULE/CONSULTANT SELECTION PROCESS/SELECTION CRITERIA

The proposals submitted will be evaluated and the most qualified consultant for the Project. Consideration will be given to consultants with demonstrated experience on similar projects.

The proposals will be evaluated based on the following:

- Project understanding, scope and approach to deliver the Project on time and within budget (20 Points).
- Construction Manager and Inspector experience (20 Points).
- Knowledge of public agency procedures, requirements and Labor Compliance (20 Points).
- Experience in managing similar projects (20 Points).
- Experience and qualifications of the firm and the project team members (20 Points).

All proposals will be evaluated by a San Fernando Selection Committee (Committee). The Committee may be composed of San Fernando staff and other parties that may have expertise or experience in the services described herein. The Committee will review the submittals and will rank the proposals. The evaluation of the proposals shall be within the sole judgment and discretion of the Committee. All contacts during the evaluation phase shall be through the San Fernando Project Manager only

The selection committee will review the submitted proposals according to the above evaluation criteria and weighting factors. The committee will then establish a shortlist based on the highest ranked proposals. The shortlist will include enough qualified consultants to ensure that at least three consultants are interviewed.

After the interview, the committee will reestablish a final ranking of the highest ranked consultants. The highest ranked consultant will be selected for the project. Cost proposals for all qualified consultants will be opened and used to begin negotiations, however, with the highest ranked consultant. If an agreement on fees cannot be reached, then negotiations will proceed to the second highest qualified consultant, and so on and so forth until a final agreement is reached with a consultant.

Schedule for the Consultant selection process:

Request for Proposals Released	December 19, 2019
Proposals Due Date	January 9, 2020 (5:00 p.m.)
Shortlist Consultants	January 13, 2020
Consultant Interviews	January 15, 2020
Contract Award	January 21, 2020

One Consultant contract will be awarded. Late proposal submittals will be designated nonresponsive and will be returned unopened to the prospective consultants. Substitution of the designated team and key staff after selection of the successful consultant will have to be in writing and approved by the City otherwise it will result in termination of the contract.

Disclosure: Consultants shall disclose in their responses to any Request for Proposals whether they have been the subject of any legal investigation by County, State, and/or

Federal agencies within the past 5 years. If so, each responding consultant shall identify the agency and contact person, the nature of the investigation and any determination over outcome of said investigation. Non-compliance with this section shall result in rejection of the Proposal, but a consultant's disclosure of any such investigation (even one which resulted in a determination that was adverse to the consultant) will not automatically result in rejection of the Proposal. The occurrence, nature, underlying facts and outcome of any such investigation are not by themselves determinative but are simply included among many factors that will be considered by the City in evaluating Proposals.

RIGHT TO REJECT ALL PROPOSALS

The City of San Fernando reserves the right to reject all proposals submitted and no representation is made hereby that any contract will be awarded pursuant to this RFP. All costs incurred in the preparation of the proposal and subsequent material, including a proposal, in the submission of additional information, and/or in any other aspect of a proposal prior to the award of a written contract will be borne by the respondent. The City will provide only the staff assistance and documentation specifically referred to herein and will not be responsible for any cost or obligation of any kind, which may be incurred by a respondent. All proposals and other information submitted to the City of San Fernando in response to this RFP shall become the property of the City.

INSURANCE REQUIREMENTS

Consultant shall provide insurance certificates naming the City of San Fernando as an additional insured for Workers Compensation Insurance, General Liability and Automobile Liability; the Consultant must provide Professional Liability Insurance coverage (Errors and Omissions in the amount of \$1,000,000.00 per occurrence). The insurance certificate shall contain a provision that the City shall be given thirty (30) days prior written notice in the event of cancellation or reduction in coverage. Consultant shall also execute a hold harmless statement on a form provided by the City.

PROPOSAL REQUIREMENTS

In order for your proposals to be considered, submit four (4) copies and one electronic copy, marked. **Construction Management, Inspection Services, Material Testing, and Labor Compliance Services for the "Glenoaks Boulevard Street Resurfacing and Highway Safety Improvement Project; Federal Project No. HSIPL-5202(018); Job No. 7595, Plan No. P-728.**

Please hand deliver to:

City Clerk's Office
Attn: Martin Pastucha, Interim Director of Public Works
117 Macneil Street
San Fernando, CA 91340

CONSULTANT AGREEMENT

A sample of the City standard consultant agreement is attached as Appendix A. Your proposal shall contain a statement of the firm's willingness to execute the contract with an indication of any contractual requirements for which the consultant takes exception.

Appendix A

Sample Agreement for Professional Services



PROFESSIONAL SERVICES AGREEMENT

[INSERT Name of Consultant]

[INSERT Brief Description of Engagement]

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this _____ day of _____ 20____ (hereinafter, the "Effective Date"), by and between the CITY OF SAN FERNANDO, a municipal corporation ("CITY") and [INSERT NAME OF CONSULTANT], a [INSERT TYPE OF ENTITY, E.G., CORPORATION? PARTNERSHIP? SOLE PROPRIETORSHIP? ETC.] (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.

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 **SCOPE OF SERVICES:** *Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONSULTANT agrees to perform the services and tasks set forth in **Exhibit "A"** (hereinafter referred to as the "**Scope of Services**"). 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 Services. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Services shall hereinafter be referred to generally by the capitalized term "Work."*
- 1.2 **TERM:** *This Agreement shall have a term of [INSERT TERM PERIOD: X# of DAYS? MONTHS? YEARS?] commencing from [INSERT START DATE OF TERM: CAN BE EITHER the "EFFECTIVE DATE"? SOME OTHER DATE?]. [OPTIONAL LANGUAGE: Upon the conclusion of the Term, this Agreement shall renew automatically for a maximum of [MAXIMUM NUMBER OF EXTENSION TERMS AND MAXIMUM DURATION OF EACH SUCH EXTENSION TERM. EDITOR'S NOTE: IT IS RECOMMENDED THAT ANY INDIVIDUAL EXTENSION TERM NOT EXCEED ONE YEAR IN DURATION AND THAT THE TOTAL NUMBER OF EXTENSION TERMS NOT EXCEED A MAXIMUM OF TWO YEARS BEYOND THE END OF THE INITIAL TERM], unless CITY issues written notice of its intent not to authorize an additional extension term(s). Nothing in this Section shall operate to prohibit or*

1.3 *otherwise restrict the CITY's ability to terminate this Agreement at any time for convenience or for cause*

1.4 COMPENSATION:

A. CONSULTANT shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule which is [THIS LANGUAGE MAY VARY DEPENDING ON THE LOCATION OF ANY APPLICABLE COMPENSATION SCHEDULE – SOME SCHEDULES ARE EMBEDDED IN THE SCOPE OF SERVICES WHILE OTHERS CAN BE FOUND IN A SEPARATE STAND-ALONE SCHEDULE WHICH SHOULD BE ATTACHED AS AN EXHIBIT TO THE AGREEMENT] (hereinafter, the "Approved Rate Schedule").

B. Section 1.3(A) notwithstanding, CONSULTANT's total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum of [INSERT NOT-TO-EXCEED SUM] (hereinafter, the "Not-to-Exceed Sum"), unless such added expenditure is first approved by the CITY acting in consultation with the City Manager and the Finance Director. In the event CONSULTANT's charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, CITY may suspend 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.

[EDITOR'S NOTE: THIS SECTION MAY VARY DEPENDING ON THE PAYMENT TERMS PROPOSED. IF THE TERM IS MORE THAN A YEAR IN LENGTH, THE CITY MAY CONSIDER ESTABLISHING AN ANNUAL NOT-TO-EXCEED SUM WHICH RESETS WITH THE ANNIVERSARY OF THE CONTRACT OR WITH THE BEGINNING OF EACH CITY FISCAL YEAR]

1.5 PAYMENT OF COMPENSATION: Following the conclusion of each calendar month, CONSULTANT shall submit to CITY an itemized invoice indicating the services and tasks performed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONSULTANT's monthly compensation is a function of hours worked by CONSULTANT's personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each task and service performed and a grand total for all services performed. Within thirty (30) calendar days of receipt of each invoice, CITY shall notify CONSULTANT in writing of any disputed amounts included in the invoice. Within forty-five (45) calendar day of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall not withhold applicable taxes or other authorized deductions from payments made to CONSULTANT.

1.6 ACCOUNTING RECORDS: CONSULTANT shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. CITY shall have the right to access

and examine such records, without charge, during normal business hours. CITY shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

- 1.7 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 Services, CONSULTANT shall 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 shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which CITY may incur as a result of CONSULTANT's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 CITY'S REPRESENTATIVES: *The CITY hereby designates the City Manager and [INSERT TITLE OF CITY REPRESENTATIVE WHO WILL BE ENGAGED IN THE DAY-TO-DAY ADMINISTRATION OF THE CONTRACT] (hereinafter, the "CITY Representatives") to act as its representatives for the performance of this Agreement. The City Manager shall be the chief CITY Representative. The CITY Representatives or their designee shall act on behalf of the CITY for all purposes under this Agreement. CONSULTANT shall not accept directions or orders from any person other than the CITY Representatives or their designee.*
- 2.2 CONSULTANT REPRESENTATIVE: *CONSULTANT hereby designates [INSERT NAME AND TITLE OF PERSON WHO IS CONSULTANT REPRESENTATIVE FOR PURPOSES OF CONTRACT ADMINISTRATION] to act as its representative for the performance of this Agreement (hereinafter, "CONSULTANT Representative"). CONSULTANT Representative shall have full authority to represent and act on behalf of the CONSULTANT for all purposes under this Agreement. CONSULTANT Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONSULTANT Representative shall 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 shall be available to CITY staff and the CITY Representatives at all reasonable times. All work prepared by CONSULTANT shall be subject to inspection and approval by CITY Representatives or their designees.*
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: *CONSULTANT represents, acknowledges and agrees to the following:*

- A. CONSULTANT shall perform all Work skillfully, competently and to the highest standards of CONSULTANT's profession;
- B. CONSULTANT shall perform all Work in a manner reasonably satisfactory to the CITY;
- C. CONSULTANT shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 et seq.);
- D. CONSULTANT understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
- E. All of CONSULTANT's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONSULTANT; and
- F. 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 shall be maintained throughout the term of this Agreement and made available to CITY for copying and inspection.

The Parties acknowledge and agree that CONSULTANT shall 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 shall be commenced immediately upon their discovery by either Party and shall be completed within seven (7) calendar days from the date of discovery or such other extended period of time authorized by the CITY Representatives in writing and in their sole and absolute discretion. The Parties acknowledge and agree that CITY's acceptance of any work performed by CONSULTANT or on CONSULTANT's behalf shall not constitute a release of any deficiency or delay in performance. The Parties further acknowledge, understand and agree that CITY has relied upon the foregoing representations of 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 shall 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 shall be ineffective, null and void and shall constitute a material breach of this Agreement.

- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall 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 shall at all times be under CONSULTANT's exclusive direction and control. CONSULTANT shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONSULTANT shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the CITY Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to 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 shall be promptly removed by CONSULTANT and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONSULTANT shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONSULTANT's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, subcontractor, subconsultant, or applicant for

employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.

- 2.10. INDEPENDENT CONTRACTOR STATUS: *The Parties acknowledge, understand and agree that CONSULTANT and all persons retained or employed by CONSULTANT are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of CITY. CONSULTANT shall 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 shall have no authority, express or implied, to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, CITY, whether by contract or otherwise, unless such authority is expressly conferred to 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 shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONSULTANT shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONSULTANT shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both 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 shall procure and maintain Errors and Omissions Liability Insurance appropriate to CONSULTANT's profession. Such coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall be endorsed to include contractual liability.

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

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

[EDITOR'S NOTE: PLEASE CONFER WITH CITY'S RISK MANAGER ON THE ISSUE OF CARRIER RATINGS]

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

3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall 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.

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 its shall furnish CITY with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms

satisfactory to CITY in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the CITY if requested.** All certificates of insurance and endorsements shall be received and approved by CITY as a condition precedent to CONSULTANT's commencement of any work or any of the Work. Upon CITY's written request, CONSULTANT shall also provide CITY with certified copies of all required insurance policies and endorsements.

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.
- 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 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.
- 4.4 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 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 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.

V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: CITY may terminate this Agreement at any time for convenience and without cause by giving CONSULTANT a minimum of five (5) calendar days prior written notice of CITY's intent to terminate this Agreement. Upon such termination for convenience, CONSULTANT shall 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 shall be required to provide such Documents and Data within fifteen (15) calendar days of CITY's written request. No actual or asserted breach of this Agreement on the part of CITY pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict CITY's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting

Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.

B. CONSULTANT shall cure the following Events of Defaults within the following time periods:

- i. Within three (3) business days of CITY's issuance of a Default Notice for any failure of 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 3-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 3-day cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
- ii. Within fourteen (14) calendar days of CITY's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, 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 shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period.

In addition to any other failure on the part of 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 shall include, but shall 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 Services; (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 shall 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 1.4, above, shall 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 shall 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 shall operate to prohibit or otherwise restrict CITY's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to CITY at law or under this Agreement in the event of any breach of this Agreement, CITY, in its sole and absolute discretion, may also pursue any one or more of the following remedies:

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

G. In the event CITY is in breach of this Agreement, CONSULTANT's sole remedy shall 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 shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

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

VI. MISCELLANEOUS PROVISIONS

6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of CITY without restriction or limitation upon their use or dissemination by CITY. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of 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 shall require all subcontractors and subconsultants working on behalf of CONSULTANT in the performance of this Agreement to agree in writing that CITY shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or 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 shall not be disclosed by CONSULTANT without prior written consent by CITY. CITY shall grant such consent if disclosure is legally required. Upon request, all CITY data shall be returned to CITY upon the termination or expiration of this Agreement. CONSULTANT shall not use CITY's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CITY.
- 6.3 FALSE CLAIMS ACT: 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 shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONSULTANT:

[INSERT Business Name of
Consultant]
[INSERT Business Address]
Attn: [INSERT Name/Title of
Consultant's chief contact]
Phone: [INSERT Phone Number]
Fax: [INSERT Fax Number]
Email: [If available, INSERT e-mail or
delete]

CITY:

City of San Fernando
[INSERT Name of Department/Division]
[INSERT Address]
Attn: [INSERT Title of CITY Contact]
Phone: [INSERT Dept Phone]
Fax: [INSERT Dept Fax]

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

- 6.5 COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.

- 6.6 SUBCONTRACTING: CONSULTANT shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of CITY. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.
- 6.7 CITY'S RIGHT TO EMPLOY OTHER 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 shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 6.9 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 6.10 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Los Angeles County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Central District of California located in the City of Los Angeles, California.
- 6.11 ATTORNEYS' FEES: If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.
- 6.12 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.
- 6.13 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.

- 6.14 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.15 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.16 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to CITY approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.17 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.18 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.19 ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between CITY and CONSULTANT prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.
- 6.20 COUNTERPARTS: .This Agreement shall be executed in three (3) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.16, above. One fully executed original counterpart shall be delivered to CONSULTANT and the remaining two original counterparts shall be retained by CITY.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

CITY OF SAN FERNANDO

[INSERT BUSINESS NAME OF
CONSULTANT]

By: _____
Nick Kimball, City Manager

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

By: _____
Rick R. Olivarez, City Attorney

Exhibit "A"

Proposal dated _____

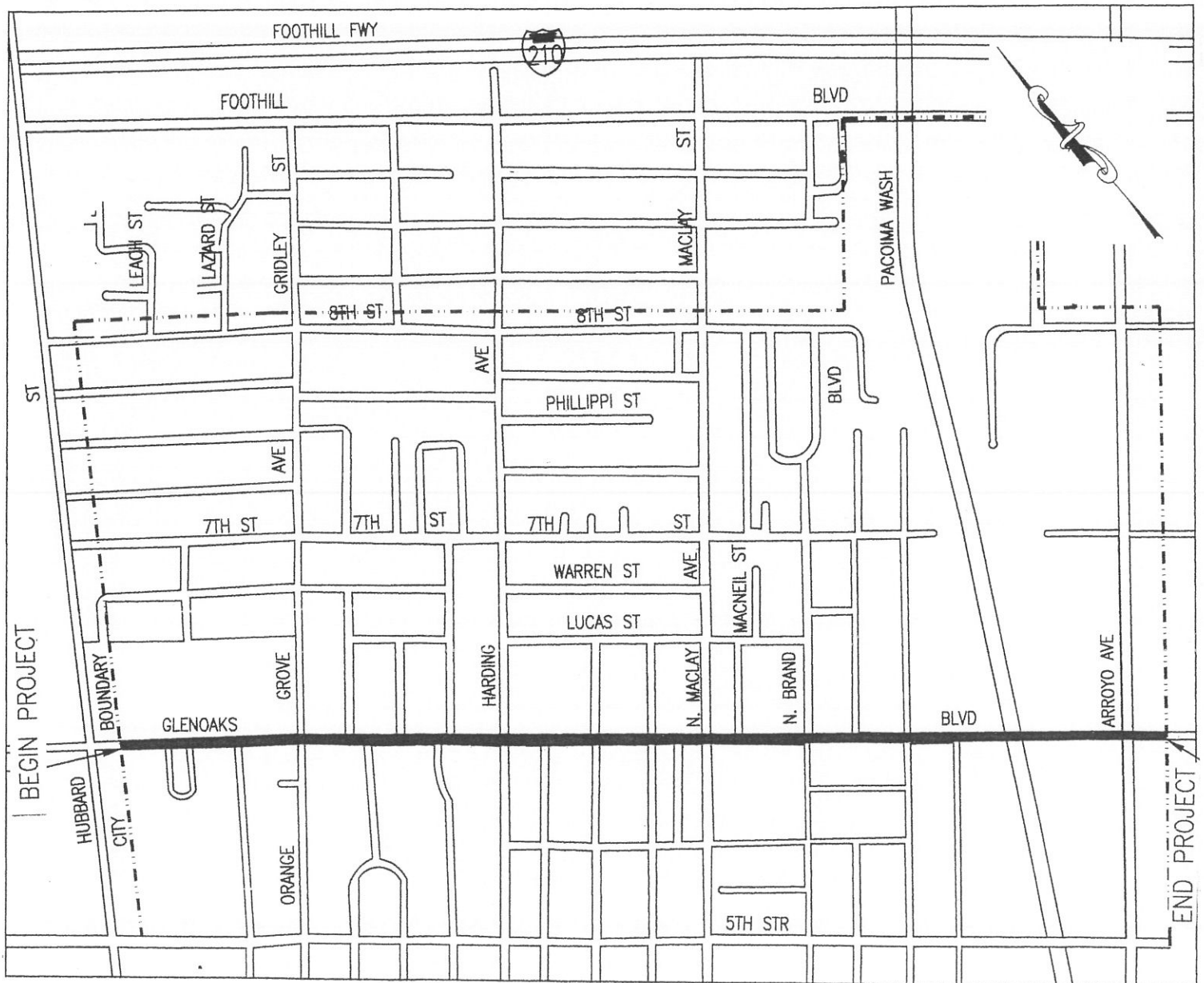
Exhibit "B"

Fee Schedule

Appendix B

Location Map

Location Map



LOCATION MAP

NTS



INDICATES STREET IMPROVEMENT