



**REQUEST FOR PROPOSALS (RFP)**

**for**

**DESIGN OF THE  
FAIRMONT PARK PHASE I IMPROVEMENTS PROJECT**

**CITY OF EL CERRITO  
PUBLIC WORKS DEPARTMENT  
10890 San Pablo Avenue  
El Cerrito, California 94530  
(510) 215-4382**

**January 12, 2017**

**Proposals Due: 2:00 pm, Tuesday, January 31, 2017**

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**DESIGN OF THE**  
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**PUBLIC WORKS DEPARTMENT**

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## **GENERAL**

The City of El Cerrito is seeking a qualified and responsible consultant to provide landscape architect and engineering design services for the Fairmont Park Phase I Improvements Project, City Project No. C5037. The project involves public outreach, cost analysis, design, and preparation of plans and specifications for renovation improvements of Fairmont Park.

The objective of the project is to enhance and improve an existing neighborhood park to maximize its use, improve environmental and ecological services while reducing maintenance costs, encouraging volunteer efforts, and meeting multiple Urban Greening Plan goals as listed below.

*Environmental Stewardship* - Support volunteer efforts to restore and enhance the City's natural resources and continue to provide opportunities for community members to engage with and learn from the natural environment.

*Community Identity* - Design projects and events that demonstrate and celebrate the City's commitment to an environmentally sustainable future, catalyzing investment that supports the community's vision.

*Active Living/Transportation* - Enhance pedestrian and bicycle connectivity throughout the City and encourage walking, hiking, biking and active recreation to reduce reliance on fossil fuels and enhance community quality of life.

*Economic Vitality* - Support economic activity through temporary and permanent open spaces and landscaping that create a sense of place and attract residents and visitors.

*Urban Livability* – Create an urban environment that is sustainable, resilient and livable by providing places that not only improve the natural environment, but are designed for interaction, recreation and reprieve.

The project is also intended to meet several Strategic Plan Goals including to deliver exemplary government services, by working with the community through the design process and develop and strengthen relationships with public partners, residents and community groups; to deepen a sense of place and community identity by developing recreational activities for all; and to rehabilitate public facilities by addressing long deferred maintenance. .

The successful consultant will be a landscape architect having experience in the renovation of public parks, a commitment to public process, and sensitivity to accessibility improvements. The successful consultant will also take into consideration park improvements that would enhance and complement the development of a future Fairmont Park Phase II Improvements Project.

The project is largely funded by the East Bay Regional Park District Measure WW grant. All requirements imposed upon the City as a grantee from Measure WW will be imposed upon the chosen consultant to the City, and are not negotiable.

## **PROJECT DESCRIPTION**

Fairmont Park is approximately 78,000 square feet in size, includes areas along the Ohlone Greenway, at Eureka Avenue and Liberty Street and borders the El Cerrito Senior Center, Library, Fairmont Elementary School and predominantly residential neighborhood near San Pablo Avenue and the Stockton Avenue commercial area. The park is located one block east of San Pablo Avenue Specific Plan area, specifically the Midtown district, which is envisioned as a civic and community-oriented zone with two

neighborhood-scale commercial nodes at Stockton Avenue and Moeser Avenue. Characterized by longer blocks next to BART tracks, the district has both recent and planned mixed-use and residential investment. The area has strong potential to attract additional mixed-use residential development with enhanced pedestrian and bicycle connectivity.

The park is home to a “pop-up” community garden project constructed during Earth Day in 2013 and maintained by the El Cerrito Community Garden Network, and which serves as an informal gathering space and dog park for residents of the surrounding medium density neighborhoods and Ohlone Greenway users. A group of Tai Chi practitioners meets in the park daily and local community groups maintain habitat along the recessed areas at the base of the retaining wall on the east side of the Ohlone Greenway.

The park’s existing design and furniture was originated by the landscape architecture firm Royston, Hanamoto, Mayes & Beck in 1965 and include elements that have been identified as important to the community, including a stone statue of a turtle near the playground and steps and field-stone walls classic of the firm’s design. Fairmont Park receives a fair amount of foot and bicycle traffic, despite its aging infrastructure, due to its proximity to various community facilities.

Phase I of the Project will upgrade a portion of Fairmont Park (approximately 16,000 square feet of area at the south portion nearest Eureka Avenue). Improvement elements that have been previously identified to be included in this area are listed below.

- New entry plaza – welcome kiosk, seating, gateway signage, and group exercise area
- New path network - accessible paths with emergency and maintenance vehicle access;
- Enhanced gathering spaces - passive and active recreational areas with the prospective to new site amenities and consideration of art opportunities;
- Improved children’s play area;
- Improved landscaping and lighting.

Fairmont Park was identified as an important community project and was advanced as one of four Pilot Projects in the City’s Urban Greening Plan (Adopted in December 2015). The elements listed above will need to be confirmed and refined as part of the public outreach process and based on the cost analysis. In addition, they must complement the development of a future Fairmont Park Phase II Improvements Project. A Project Site Location Map and a Preliminary Improvement Concept Plan of the project, as included in the Measure WW grant application, is provided in **Appendix A and B**.

## **SCOPE OF SERVICES**

The capital construction cost of the project is anticipated to be approximately \$269,000 (Including contingency). A Preliminary Cost Estimate of Construction Costs is provided on **Appendix C**. The consultant will work closely with the City to perform the work necessary to produce the final design and contract documents for the project. **Final design for the project must be completed by July 31, 2017.** The scope of services may include, but may not be limited to the items described in this chapter.

### **1. Data Collection and Field Surveys**

- Obtain available existing data that will aid in design, including Adopted City’s Urban Greening Plan and Mitigated Negative Declaration, and BART Earthquake Safety Retrofit construction documents for the adjacent Ohlone Greenway trail.
- Review other existing City’s documents including Ohlone Greenway Master Plan, San Pablo Avenue Specific Plan and Active Transportation Plan

- Prepare and transmit project notification to utilities with a request to identify existing facilities.
  - Review existing utility maps and perform utility coordination, identify and submit applications for points of connections and service upgrades, and obtain clearances.
  - Perform site reconnaissance to gain an understanding of the existing site conditions, relationships to surrounding sites, circulation, and other relevant factors. Conduct a topographic survey within the project limits as necessary to support design.
2. Public Outreach/Stakeholder Engagement and Design Development
- Meet with internal stakeholders to gain an understanding of issues /concerns and aspiration for the project.
  - Develop conceptual design for major elements and potential options considering preliminary cost estimates.
  - Conduct one public meeting/charrette with 20% developed plan to present conceptual design (April 27, 2017).
  - Conduct presentation at 65% Design to Parks & Recreation Commission Meeting (May 24, 2017) to review conceptual design and comments from first public meeting, and receive comments from Commission.
  - Conduct a second public meeting at 95% Design to Parks & Recreation Commission Meeting (June 28, 2017) to respond to all comments and present final design.
  - Prepare all meeting agendas, notices, presentation materials and minutes.
3. Obtain All Necessary Permits
- The consultant will support and provide all necessary services to obtain required permits. The City will prepare for a Mitigated Negative Declaration pursuant to CEQA and consultant will provide for some mitigation measures, and environmental analysis that will be necessary.
4. Plans, Specifications and Engineering Estimates
- Prepare plans, which will include at a minimum Title Sheet, General Notes, and Right-of-Way, Existing Conditions and Demolition Plans, Civil/Architectural Layout Plans, Grading and Utilities Plans, Landscaping and Irrigation Plans, Electrical and Lighting Plan, and all necessary Details to construct the project.
  - Prepare specifications and bid documents, which will include at a minimum, detailed projects description, working days for construction, bid schedule, bid item descriptions, payment methods, special provisions, technical specifications, and any specification detail sheets or standard plans, necessary to construct the project.
  - Prepare engineering estimates consistent with the specifications and bid documents.
  - The following plan check submittals shall be provided, at a minimum:
    - i. 1st Review – Conceptual Design to be presented to the first public meeting/charrette.
    - ii. 2nd Review - 65% design based on a set of consolidated comments received from the first meeting and to be presented to the Park & Recreation Meeting.
    - iii. 3rd Review – 95% Plans, Specifications and Cost Estimate that will be presented to the second meeting to the Park & Recreation.

Each submittal must be provided with comment resolution matrix and checked redlines.

5. Final Submittals
- Submit two full-size and two half-size (bond paper) final plan set master with the design engineer's seal and signature on each plan sheet and title sheet of specifications.
  - Submit an electronic copy of all plans in AutoCAD and Adobe Acrobat format on a CD.
  - Submit specification document in Microsoft Word format on a CD

- Submit one set of quantity calculations and final engineering estimate in Microsoft Excel format on a CD.
  - Submit all electronic files, including correspondence, photo log and analyses, used in the project design on a CD. Files that are not in electronic format shall be scanned into a commonly used digital format and saved to the CD.
6. Bidding Phase
- Attend the pre-bid meeting and respond to contractor requests for clarification during the bid process.
  - Record and distribute among potential bidders answers and clarifications given to individual contractors, and prepare formal construction documentation addenda, if necessary
  - Prepare any required addenda pre-bid and pre-construction meeting agenda, if requested at no additional charge.
  - Attend pre-construction meeting.
7. Project Coordination during Design Process
- Hold appropriate number of meetings with City staff
  - Provide monthly status reports.
  - Provide design schedule with updates as required.
  - Provide meeting minutes and action items.
8. Design Support during Construction Process
- If requested, consultant will participate in the pre-construction kick-off meeting and clarify questions related to project specifications.
  - Upon requests, consultant needs to be prepared to answer questions posted during construction by the contractor or by the City, not addressed during pre-construction meeting
  - Based on the consultant experience with the similar projects, estimate and state in your proposal time necessary for the consultant to spend on design support during construction

## **PROPOSAL REQUIREMENTS**

This document, together with its Appendices, comprises the Request for Proposal (RFP) for the project. Responses to the RFP should be submitted according to the instructions outlined herein. Proposal content and completeness are most important. Although no page limitation will be imposed, clarity and conciseness is essential. Proposers are encouraged to print double-sided to conserve paper. Each proposal should include, at a minimum, the following items:

1. Transmittal letter – Include contact information (physical address, telephone, fax and email address) for the primary person responsible for your proposal who will be the point of contact for the City on all correspondence and communications pertaining to this RFP. State whether any addendums to this RFP have been received by your firm and whether consideration of their content has been included in your proposal.
2. Statement of Project Understanding – Provide a detailed discussion (in narrative and illustrated format, as necessary) of your understanding of the nature of the work, approach to be taken, and your vision for the project.
3. Statement of Experience and Qualifications – Present the qualifications and experience of the proposed key staff and any support staff proposed for the projects. Include descriptions of the projects undertaken by your proposed Project Manager(s) and members of the proposed professional staff within the last five years for your firm that are similar in nature to this project. Demonstrate their availability to pursue completion of this project in terms of the involvement in other projects that are presently in your firm's backlog.

4. Consultant's Work Plan – Explain in detail your proposed work plan, including all anticipated tasks, along with any supplemental tasks (those not specifically identified in this RFP) you deem necessary for successful completion of this project. Include a spreadsheet showing all project tasks, along with the proposed project team member assigned to each task and their estimated hours. Also, include a schedule for the work plan. Include a Cost Proposal with proposed work plan.
5. References – Provide three recent public agency references for your proposed Project Manager(s) and Project Landscape Architects(s); include names, addresses and telephone numbers.
6. Other Information (Optional) – Provide additional relevant information that may be helpful in the selection process (not to exceed two pages).

Consultant questions pertaining to this RFP shall be submitted no later than **2:00 P.M., Tuesday, January 24, 2017**, by email to the address below. Responses to questions timely submitted will be answered within four (2) business days and distributed to all consultants that have requested the RFP from the City.

City of El Cerrito  
 Public Works Department  
 Attention: Ana Bernardes, Associate Engineer  
 10890 San Pablo Avenue  
 El Cerrito, CA 94530  
 Email: [abernardes@ci.el-cerrito.ca.us](mailto:abernardes@ci.el-cerrito.ca.us)

Written addenda will be e-mailed to consultants. Neither the City nor the consultant will be bound by any oral representations, clarifications, or changes made to this RFP unless provided in written addenda form. Consultant shall identify receipt of all responses and addenda in their Transmittal Letter.

Three (3) paper copies and an electronic copy of consultant's proposal shall be submitted by **2 P.M., Tuesday, January 31, 2017** to the address indicated above. Proposals will not be accepted after the deadline regardless of whether they are postmarked with the date of the deadline. Consultants submitting proposals assume the risk of their selected method of delivery.

Proposals shall be sealed and clearly marked on the outside of the envelope with the consultant's name and the description "Proposal for Engineering and Design Services for the Fairmont Park Phase I Improvements Project C5037". The proposal shall be signed by an officer of the firm who is authorized to bind the firm to contract and shall contain a statement to this effect.

Costs incurred by consultants in preparing and submitting their proposals for consideration by the City shall not be reimbursed.

**SELECTION PROCESS**

The selection will be made using the Caltrans One-Step RFP process. The selection committee will be made up of City and other agency staff. Proposals will be evaluated based upon the following criteria:

Understanding of project and community context	20%
Experience and past performance on similar kinds of work	20%

Quality of staff for work to be done	20%
Approach to delivering project including work plan and schedule	20%
Capability of developing cost-effective and innovative design	20%

Contract award will be made to a team that presents the proposal that, in opinion of the City of El Cerrito, is the most advantageous to the City, based on evaluation criteria outlined above. Having worked with the City is not a prerequisite for selection. All proposals must be fully responsive to this RFP in order to be considered. The City reserves the right to reject any and all proposals for any reason whatsoever. The City may waive informalities or irregularities in the proposal received where such is merely a matter of form and not substance, and the correction or waiver thereof is deemed by the City not prejudicial to other proposals.

The selection committee will rank the proposals and may shortlist two or more firms. Those firms on the shortlist will be notified, no later than **February 7, 2017** and interviews of the short-listed firms will be scheduled shortly after.

A Cost Proposal is required to be submitted by all firms. Provide a breakdown of your fee by task, identifying employees, classification, billing rate and estimated hours per task. Include information of any other incidental cost, such as: overhead, mileage, etc.

Following the selection process and after review of the cost proposal, the City will begin fee negotiations with the top-ranked firm. If the City fails to reach an agreement with that firm, a new negotiation will be instigated with the next highest ranked firm. If the new negotiation fails to reach an agreement, then the process will be repeated until either a contract is successfully negotiated or the process is terminated by the City.

The City currently anticipates conducting the project and selection process proceeding in accordance with the following list of milestones. This selection process schedule is subject to revision and the City reserves the right to modify this schedule as necessary, in its sole discretion.

- RFP/ notice of availability posted on City website ([www.el-cerrito.org](http://www.el-cerrito.org)) and e-mailed: Tuesday, January 12, 2017**
- Consultant questions pertaining to this RFP shall be submitted no later than 2:00 P.M., Tuesday, January 24, 2017**
- Proposals due: 2:00 pm, Thursday, January 31, 2017 (late submittals will not be accepted)**
- Short-list notification February 7, 2017**
- Conduct interview: On or shortly after February 13, 2017**
- Contract negotiations with selected consultants: February 20–23, 2017**

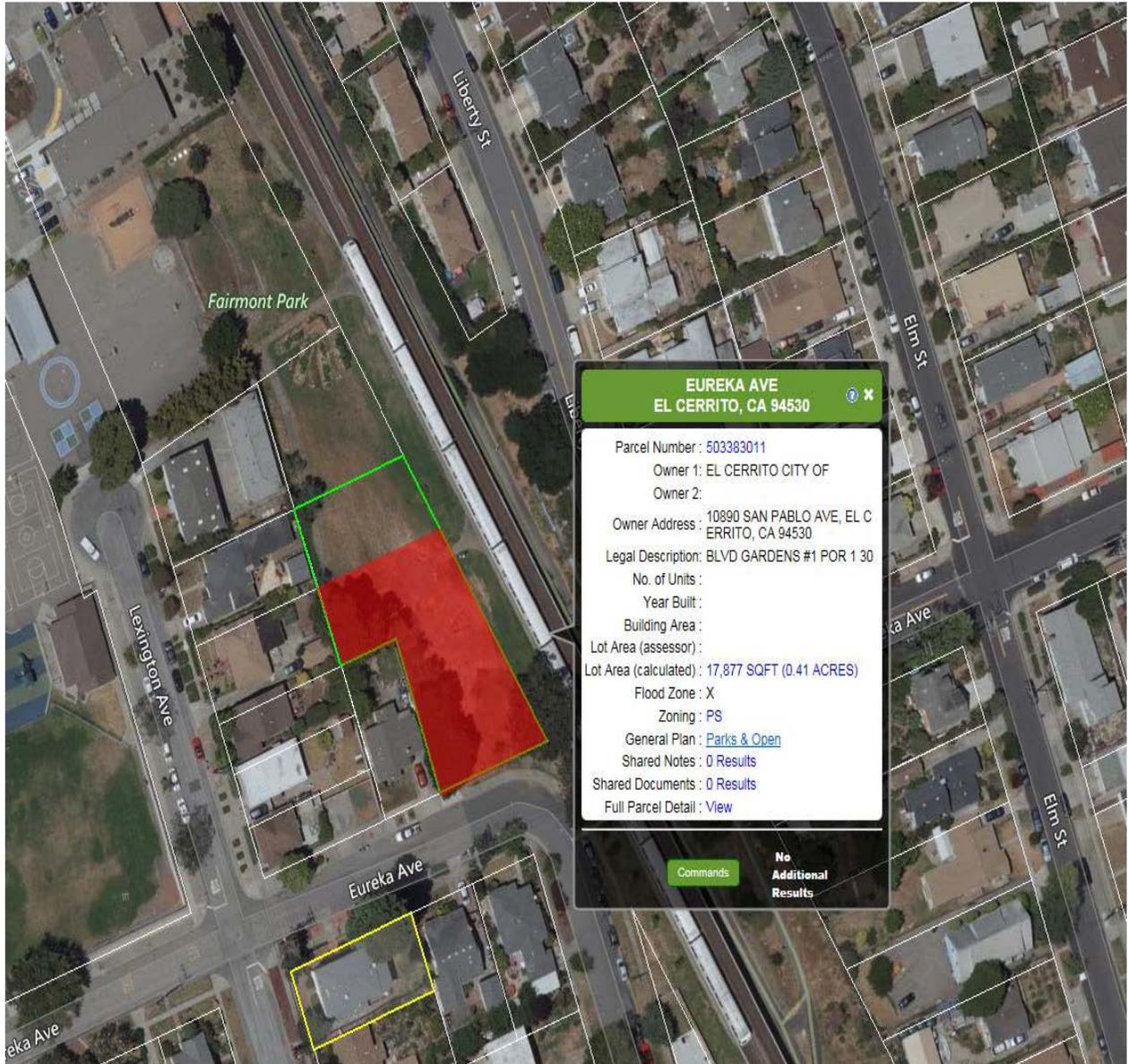
<b>City Council Contract approval:</b>	<b>March 7 , 2017</b>
<b>Notice to Proceed</b>	<b>March 14, 2017</b>
<b>Kick off Meeting</b>	<b>March 22, 2017</b>
<b>First Public meeting/Charrette</b>	<b>April 27, 2017</b>
<b>65% Submittal and Park &amp; Recreation Commission Meeting</b>	<b>May 24, 2017</b>
<b>95% Submittal and Park &amp; Recreation/2<sup>nd</sup> public Meeting</b>	<b>June 28, 2017</b>
<b>Final Design Complete</b>	<b>July 31 , 2017</b>
<b>Advertise for Bid</b>	<b>August 14 and 21, 2017.</b>
<b>Open Bids</b>	<b>September 5, 2017</b>

#### **CONTRACTUAL ISSUES**

A sample of the City Consultant Services Agreement is provided in Appendix D for the review of all proposing consultants. The successful consultant will be required to execute a Consultant Services Agreement with the City and meet the insurance requirements therein. Please review carefully all sections and pay special attention to the indemnity portions of the contract. The City does not ordinarily allow modifications to the standard agreement when contracting for services from outside firms.

# APPENDIX A: Project Site Location Map

Fairmont Park Improvements, Phase 1  
Land Tenure Documents



# APPENDIX B: Preliminary Improvements Concept



## APPENDIX C: Preliminary Cost Estimate of Probable Construction Costs

Fairmount Park Improvements, Phase 1			
Preliminary Cost Estimate of Construction Cost			
March 2016			
	<u>Bid Item Category</u>	<u>Item Price</u>	
	General	\$ 8,960.00	
	Site Prep	\$ 11,200.00	
	Earthwork	\$ 16,800.00	
	Utilities	\$ 28,000.00	
	Lighting	\$ 16,800.00	
	Walls/Fences/Signs	\$ 13,440.00	
	Concrete	\$ 33,600.00	
	Misc Paving & Landscape	\$ 22,400.00	
	Irrigation	\$ 24,640.00	
	Planting	\$ 22,400.00	
	Site Furnishings	\$ 16,800.00	
	<u>Play Area/Artistic Elements</u>	<u>\$ 22,400.00</u>	
	<i>Subtotal</i>	<i>\$ 237,440.00</i>	
	Contingency	\$ 31,800.00	
	<b>Construction Bid Item Total</b>	<b>\$ 269,240.00</b>	

# APPENDIX D: SAMPLE Agreement for Consultant Services

## CONSULTING SERVICES AGREEMENT BETWEEN

THE CITY OF \_\_\_\_\_ AND

[NAME OF DESIGN PROFESSIONAL CONSULTANT]

[USE THIS AGREEMENT FOR CONSULTING AGREEMENTS WITH LICENSED ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, PROFESSIONAL LAND SURVEYORS, AND DESIGN FIRMS CONTAINING THESE DESIGN PROFESSIONALS]

THIS AGREEMENT for consulting services is made by and between the City Of \_\_\_\_\_ ("City") and \_\_\_\_\_ ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 20\_\_ (the "Effective Date").

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on \_\_\_\_\_, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.
- 1.5 **Public Works Requirements.** Because the services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result,

Consultant is required to comply with the provisions of the Labor Code applicable to public works, to the extent set forth in Exhibit C.

**[NOTE TO STAFF: IF THE SERVICES ARE NOT WITHIN THE STATUTORY DEFINITION OF A PUBLIC WORKS PROJECT, THEN SECTION 1.5 AND EXHIBIT C MAY BE DELETED. CHECK WITH THE CITY ATTORNEY IF THERE IS A QUESTION ABOUT WHETHER THE SERVICES CONSTITUTE A PUBLIC WORKS PROJECT.]**

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a sum not to exceed \_\_\_\_\_, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

**[NOTE TO STAFF: THE FOLLOWING PROVISIONS OF THIS SECTION MAY BE ALTERED AS NECESSARY TO FIT THE CIRCUMSTANCES OF A PARTICULAR AGREEMENT.]**

2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;

- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

**[NOTE TO STAFF: THE 800-HOUR LIMIT HAS BEEN ADDED BECAUSE OF RECENT COURT DECISIONS THAT INDICATE THAT INDEPENDENT CONTRACTORS MAY BECOME ELIGIBLE FOR PERS AFTER 1000 HOURS OF WORK FOR A CITY WITHIN A 12-MONTH PERIOD, ENTITLING THE CONTRACTOR TO AN EMPLOYER CONTRIBUTION FROM THE CITY.]**

- 2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 **Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.
- 2.4 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 **Reimbursable Expenses.** Reimbursable expenses are specified below, and shall not exceed \$ . Expenses not listed below are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

**[NOTE TO STAFF: IF NECESSARY, THE EXPENSES MAY BE INCLUDED IN OR ATTACHED AS EXHIBIT [C or D], AND THE PRECEDING LANGUAGE MODIFIED APPROPRIATELY.]**

- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**[NOTE TO STAFF: SECTION 3 MAY BE MODIFIED AS NECESSARY FOR THE TYPE OF WORK.]**

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of

not less than \$ \_\_\_\_\_ [dollar amount to be determined based on nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required] per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

#### 4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$ \_\_\_\_\_ [dollar amount to be determined based on nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required] per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant

- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

#### 4.3 Professional Liability Insurance.

4.3.1 **General requirements.** Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$\_\_\_\_\_ [dollar amount to be determined based on the nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required] covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3.3 **Additional Requirements.** A certified endorsement to include contractual liability shall be included in the policy

#### 4.4 All Policies Requirements.

- 4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.
- 4.4.3 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 4.4.4 **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- 4.4.5 **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents, and subcontractors.
- 4.4.6 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

**Section 5. INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES.** Consultant shall, to the fullest extent allowed by law, with respect to all Services performed in connection with this Agreement, defend with counsel acceptable to City, indemnify, and hold City, its officers, employees, agents, and volunteers, harmless from and against any and all claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, (“Claims”). Consultant will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly (“Liability”). Such obligations to defend, hold harmless and indemnify the City shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the City.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type of express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a “construction contract” as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

**Section 6. STATUS OF CONSULTANT.**

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant’s services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 **Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an

agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

**Section 7. LEGAL REQUIREMENTS.**

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's Failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

**Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon \_\_\_\_\_ days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

- 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- 8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
- 8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

**Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

**Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which

that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County \_\_\_\_\_ or in the United States District Court for the \_\_\_\_\_ District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by \_\_\_\_\_ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

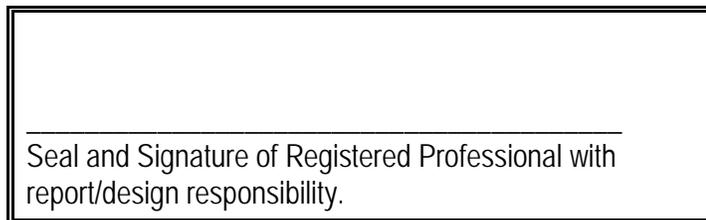
10.10 **Notices.** Any written notice to Consultant shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any written notice to City shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10.11 **Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



10.12 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, [[and]C], and D]] **[ENSURE THAT THE CORRECT EXHIBITS ARE LISTED]** represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

- Exhibit A      Scope of Services
- Exhibit B      Payment Schedule
- Exhibit C      Public Works Requirements **[DELETE IF NOT APPLICABLE]**
- Exhibit [C or D] Expenses **[DELETE IF NOT APPLICABLE]**

10.13 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

CITY OF \_\_\_\_\_

CONSULTANT

\_\_\_\_\_  
[NAME, TITLE]

\_\_\_\_\_  
[NAME, TITLE]

Attest:

\_\_\_\_\_  
[NAME], City Clerk

Approved as to Form:

\_\_\_\_\_  
[NAME], City Attorney

1011035\_1.DOC

EXHIBIT A  
SCOPE OF SERVICES

EXHIBIT B  
COMPENSATION SCHEDULE

## EXHIBIT C

### PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

#### HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subcontractors shall forfeit as a penalty to the City \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

#### WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply Labor Code Section 1775, which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct

rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.

3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.

4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.

2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

EXHIBIT [C OR D]

REIMBURSABLE EXPENSES

1081612.1