

# Request for Proposals

Electric Vehicle Supply Equipment (EVSE)  
and Related Services – City Hall

*For*

The City of Grand Terrace



**Issue Date: Monday, November 26, 2018**

**Proposal Due: Tuesday, December 18, 2018 by 11:00 a.m.**

**Submit RFP Response to:**

Debra Thomas  
City Clerk  
City of Grand Terrace  
22795 Barton Road  
Grand Terrace, CA 92313

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# Request for Proposals

## EVSE and Related Services – City Hall

### Introduction

The City of Grand Terrace (“City”) hereby requests proposals from qualified vendor consultants (“Proposers”) to provide electric vehicle supply equipment (EVSE) and related services at the Grand Terrace Civic Center per the specifications in the Scope of Work. All proposals must be received in writing no later than 11:00 a.m. (PST) on December 18, 2018 to the attention of Debra Thomas, City Clerk, located at 22795 Barton Road, Grand Terrace, CA 92313.

**EVSE and Related Services Estimate: \$130,000 - \$170,000**

### Background

Grand Terrace is located approximately 60-miles from Los Angeles in the County of San Bernardino. The City is situated off the I-215 freeway, between the I-10 and the 60 freeways, encompassing an area of approximately 3.6 square miles. The City has a current population of 12,285. The City was incorporated in 1978 as a general law city, operating under a council/city manager form of government. The City’s fiscal year is July 1 to June 30.

### Scope of Work

The City of Grand Terrace seeks to award a contract to a qualifying vendor (Proposer) to supply two (2) network DC Fast charging stations and related maintenance, repair, parts and supplies, leasing and warranties. Electric vehicle supply equipment (EVSE) shall also include: site assessment, site plans, site preparation – including paving for ADA compliance, and installation of electric vehicle charging station hardware with all related electrical infrastructure, signing and striping. Network / cloud service shall include charge monitoring, reporting services, billing services and related software / technology. The Proposer shall have experience with EVSE for commercial and government entities consistent with all relevant environmental and safety standards and all applicable local, state and federal laws. The exact scope of services includes, but is not limited to the following:

### Location

Civic Center – 22795 Barton Road, Grand Terrace, CA 92313

Following the installation, the Proposer shall be responsible to:

- Activate and test the EV charging stations;
- Enable and process point of sale transactions;
- Implement a network service that will capture usage data with a minimum five (5) year network agreement;
- Provide customizable detail reports;
- Provide flexible payment options that allow for universal public access; and
- Provide maintenance services for five (5) years, customer support, and a minimum one (1) year manufacturer’s warranty for all EV charger equipment, hardware, and software.

### DC Fast Charger Performance Specifications

The dual standard DC Fast Charger (Level 3 Charger) shall meet, at a minimum, the following specifications and requirements:

1. Deliver electricity to a plug-in electric vehicle at a minimum 50kW;
2. Compliant with National Electrical Code and FCC regulations for safety and operation requirements;
3. Be approved by a Nationally Recognized Testing Laboratory (NRTL) program that is accredited to certify EVSE standards;
4. Americans with Disabilities Act (ADA) compliant;
5. Charge connector shall be dual standard with both CCS and CHAdeMO connectors with self-retractable cable;
6. Fully networked to allow for the management of charging operations including access, pricing, power distribution, and charging notifications;
7. Accessible to all members of the public, with no membership to a specific network required for access;
8. Capable of accepting and processing point of sale transaction payments of all major credit cards and ATM cards through a secure system;
9. Station location and real-time availability should be available to users on the web through sites such as plugshare.com and the Alternative Fuels Data Center;
10. Screen display shall be user-friendly and easy to operate. Displays shall be LCD, LED or equivalent, and shall be readable in direct sunlight and at night;
11. Ability to charge an EV such as a Nissan Leaf to at least 80% within 30 to 45 minutes;
12. Security design that is both tamper-proof and vandalism-proof, such as tamper-resistant screws, anti-vandalism hardware, locked enclosures, and graffiti-resistant coating;
13. Measurement and data capture of real-time statistics and energy use; and
14. Available 24/7 customer support for drivers.

### Electrical Infrastructure

The Proposer shall furnish and install all materials, equipment, and labor required for the installation of two (2) DC Fast Chargers with electrical infrastructure sufficient to provide 50 kW per station. This includes, but not limited to all work related to the development of site plans, conduit and wiring, and as-built plans and documents for supplying power to the EV charger stations per Southern California Edison standards, California Building Code and Public Utility Commission requirements. The Proposer is also responsible for securing all related permits and coordinating with utility companies and permitting agencies. Following the installation, the Proposer shall activate and test the EV charging stations.

### Pavement Improvements

The pavement of the parking stalls where the DC Fast charging stations will be located needs to be regraded to meet ADA standards. Proposer (or subcontractor) shall furnish and install all plans, materials, equipment and labor required to reconstruct the asphalt concrete of the parking stalls.

### EV Signage and Striping

The Proposer shall design, furnish, and install signage as well as pavement markings / striping for the EV charging stations, as approved by the City and install EV parking stall pavement striping and markings in thermoplastic per California Building Code Standards following repaving of asphalt concrete.

### Examination of Site

The Proposer shall examine carefully the site of the work contemplated and the proposal and contract forms thereof. The submission of a proposal shall be conclusive evidence that the Proposer has investigated and is satisfied as to the conditions to be encountered, as to the

character, quality and scope of work to be performed, the quantity of materials to be furnished and as to the requirements of the proposal. The Proposer represents that he or she is fully qualified to perform this examination and review.

If the Proposer determines that any portion of the site or the specifications present any interpretation problems of any kind, the Proposer shall inform the City in writing by the deadline for questions on Wednesday, December 5, 2018. Failure to note any such determination shall be conclusive evidence of acceptance by the Proposer of the site.

#### Protection and Restoration of Existing Improvements

The Proposer shall repair or replace all existing improvements not designated for removal which are damaged or removed as a result of its operation. Improvements, such as but not limited to: curbs, gutters, sidewalks, driveways, walls, signs, pavements, thermoplastic pavement markings, signs, sprinkler systems, or plantings, shall be repaired and replaced to a condition equal to or better than the original condition. All costs to the Proposer for protecting, removing, and restoring existing improvements shall be included in the various bid items and no additional compensation shall be made by the City.

#### Traffic, Access and Construction Site Safety

The Proposer shall be responsible, during all phases of the work, to provide for public safety and convenience by use of traffic cones, signs, lighted barricades, lights as described and specified in the California Manual on Uniform Traffic Control Devices (MUTCD) Standards.

Construction operations shall be secured by safety fence and conducted in such a manner as to cause as little inconvenience as possible to the City Hall employees, visitors and general motoring public. Convenient access to the City Hall parking lot, City Hall entrance, City Hall Annex Building, Public Works Yard and Library shall be maintained unless otherwise approved by the City in advance. Two days prior to construction, the Proposer shall post "No Parking" signs with the effective time and date at the direction of the City.

#### Maintenance and Communications

The successful Proposer shall provide maintenance services for a period of five (5) years to ensure all equipment is properly checked, tested, and activated for proper operation. The Proposer shall provide a network communications system with a service provider capable of monitoring the EV chargers for any error or malfunction 24 hours a day, seven days a week. Maintenance of the EV charger stations should be performed by local service providers who have the capability and capacity to respond to City calls for maintenance/service in the following manner and time frame:

- The service provider shall be notified of the malfunction and immediately notify the City and/or its staff of such malfunction or operating error within one hour.
- In the event of an equipment or hardware malfunction or failure, a maintenance crew shall respond to the site within four (4) hours from the time the issue is reported.

#### Service Provider(s)/Data Capture

The EV charger stations must have capabilities to handle, transfer, and backup data. The network communications shall, at a minimum, provide the following information for each charging transaction, at each charging location, and must comply with all state and federal regulations:

- Charging data such as date and time of usage (start and stop time) and utilization rates;
- Total kWh and Total kW draw;
- Total dollar amount charged to the user;
- Station status and health in real time;
- Malfunction or operating error.

### Product Safety

The EV charger stations shall have the ability to stop flow of power when not in use. The system shall have over-current protection to prevent vehicles from drawing too much power.

### Warranty

Proposer should provide a manufacturer's warranty on all purchased EV charger equipment, hardware, and software for a minimum of one year from the date of acceptance by the City. The warranty must include all materials, equipment, parts, tools, labor and incidentals, as well as all Proposer- or manufacturer-recommended upgrades. Warranty shall cover complete repairs or replacements, and site visits, as necessary. For activities covered under the warranty, where possible, the City's preference is to use a local service provider (defined as within the San Bernardino County and/or Riverside County). If there is a failure of the EV charger during the warranty period, the hardware provider shall agree to replace such components or parts within 72 hours of notification.

The successful Proposer shall identify any and all local contractor(s) who will be providing all warranty and services to the DC Fast Charging Stations.

### Inspections

The City shall provide an inspector to ensure all work is completed to Greenbook and California Building Code standards for construction and EVSE installation.

### Conformance with MSRC and SCIP Grant Requirements

All software, equipment, parts, maintenance and warranty agreements, and related EVSE services shall be executed / provided in conformance with MSRC AB2766 Discretionary Fund grants and the Southern California Incentive Program grant. Proposer shall show a clear understanding and acceptance of these grant requirements. As a requirement of both grants, Proposer shall pay prevailing wage and ensure all contractors to perform work under this contract are registered with the California Department of Industrial Relations to participate in public works projects.

## **Selection Process**

The purpose of this RFP is to solicit meaningful proposals so that the City may evaluate and solicit, from among a range, of proposals which best meets its needs and requirements. It is further desired that the RFP process will ensure cost competitiveness among Proposers. The City urges all interested Proposers to carefully review the requirements of this RFP. Written proposals containing the requested information will serve as the primary basis for final selection.

Based on staff recommendation, the City Council will consider approval of the EVSE Project. The City Council may choose to reject all proposals. The City will have the discretion to negotiate with a Service Provider on the total cost for the Service Provider services based upon its fixed fee schedule and the scope of work of the project.

## **Estimated Timeline**

- |                                |                                       |
|--------------------------------|---------------------------------------|
| • Request for Proposals Issued | Monday, November 26, 2018             |
| • Deadline for Questions       | Wednesday, December 5, 2018 at 5:00pm |
| • Proposals Due                | Tuesday, December 18, 2018 at 11:00am |
| • City Council Approval        | Tuesday, January 8, 2018              |

## Proposal Format

The detailed proposal must include, at a minimum, the following information:

- A. Company Information: A brief description of the Service Provider's firm, including the year the firm was established, the type of organization (partnership, corporation, etc.) and a statement of the firm's qualifications for addressing all of the requirements outlined in this Request for Proposals (RFP).
- B. Scope of Work: Outline expressing the Proposer's understanding of this Request for Proposals and summarizing the approach to fully address the Scope of Work in this RFP.
- C. Personnel Experience: A summary of the qualifications and experience of each member proposed to provide facility janitorial service.
- D. Comparable Projects: A project summary list with descriptions of the proposed team's experience relative to the provision of EVSE and related services. Emphasis should be given to work done for commercial and government entities.
- E. References: A list of three (3) references of relevant clients, including a contact person with their current telephone number and email address.
- F. Fees: Complete the Fee Schedule provided in RFP as Exhibit A for EVSE and Related Services rates.

## Proposal Submittal Requirements & Inquiries

An original proposal, two (2) paper copies and one original copy of the fee schedule in a separate sealed envelope must be received at City Hall no later than December 18, 2018 at 11:00 a.m. Late submittals will not be accepted.

Submissions are to be mailed or hand delivered to:

Debra Thomas  
City Clerk  
City of Grand Terrace  
22795 Barton Road  
Grand Terrace, CA 92313-5295

For questions regarding this RFP, please contact:

Adreane Freeman  
Management Analyst  
Community Development  
City of Grand Terrace  
(909) 824-6621 x218  
[afreeman@grandterrace-ca.gov](mailto:afreeman@grandterrace-ca.gov)

## **Evaluation Procedure**

The City will award a contract to the Service Provider with the most responsive proposal, which best meets the needs of the City. City staff will review each proposal for completeness and content. Each proposal will be evaluated based upon the relevant qualifications and experience of the Proposer. Staff may conduct interviews if necessary. License status and references will also be verified. The proposal evaluation will focus on the following criteria:

- A. Organization: Does the firm offer the breadth and quality of services required for the types of facility janitorial services listed in the scope of work? Does the firm's organizational structure show sufficient depth, capacity for its present and additional workload?
- B. Staff: Do the qualifications of the key personnel assigned to the anticipated projects align with the tasks listed in the Scope of Work? Do assigned personnel have requisite education, experience and professional qualifications for this RFP?
- C. Experience: Has the firm demonstrated the ability to successfully provide services for projects of a similar complexity and nature described in this RFP?
- D. Specific Requirements: Has the Proposer shown an ability to perform as a responsible service provider, including but not limited to proof that the Proposer is currently licensed/registered to provide this type of service? Does the Proposer have a minimum of \$1,000,000 of Commercial Liability insurance as well as Workers Compensation and Employers Liability Insurance?
- E. Quality References: Are the firm's references from past clients and associates favorable? Are deliverables submitted on time and within budget?
- F. Familiarity with Locality: Is the firm familiar with the City and the Inland Empire?
- G. Fee: Are the Respondent's proposed cost listed in the fee schedule to the City for providing the required services reasonable?

## **Acceptance or Rejection of Proposal**

The City reserves the right to accept or reject any and all proposals. The City also reserves the right to waive any informality or irregularity in any proposals. Additionally, the City may, for any reason decide not to award an Agreement as a result of this RFP or cancel the RFP process. The City shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by the submission of the proposal. The City reserves the right to negotiate the project deliverables and associated costs.

## **Contract Services Agreement**

The award of a Contract Services Agreement resulting from the RFP shall include terms and conditions similar to those referenced in the City's standard agreement, which is attached. Exceptions proposed by the consulting firm, if any, to the terms and conditions included in the City's standard agreement should be included in the response. The City reserves the right to consider any proposed exceptions during its evaluation of the acceptability of a proposal.

**EXHIBIT A**

**FEE SCHEDULE**

## FEE SCHEDULE

### EVSE AND RELATED SERVICES

PROPOSER: \_\_\_\_\_  
 (Company Name)

#### BASE FEES

ITEM NO.	DESCRIPTION OF ITEMS	ESTIMATED QUANTITY	UNIT	UNIT PRICE IN WORDS	UNIT PRICE	Total Annual Cost
1	Mobilization	1	Lump Sum			
2	Site Assessment and Plans	1	Lump Sum			
3	Traffic Control and Construction Site Safety	1	Lump Sum			
4	Furnish and Install DC Fast Charger, Including Activation and Testing	2	Each			
5	Electrical Infrastructure: Transformer to Meter	1	Lump Sum			
6	Electrical Infrastructure: Meter to two (2) 50kW DC Fast Chargers	1	Lump Sum			
7	Pavement Improvements for ADA Compliance	1064	Square Feet			
8	EV Striping and Signage	1	Lump Sum			
9	Five (5) Year Network Agreement	5	Year			
10	Five (5) Year Maintenance Agreement ( <i>Warranty 1<sup>st</sup> Year</i> )	4	Year			
11	Any items not included in line items 1-10 that are essential to complete the project	1	Lump Sum			

#### TOTAL FEE:

\_\_\_\_\_ (WORDS)

\$ \_\_\_\_\_ (FIGURE)

**EXHIBIT B**

**CONTRACT SERVICES AGREEMENT**

**AGREEMENT FOR CONTRACT SERVICES**

**By and Between**

**CITY OF GRAND TERRACE**

**and**

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**AGREEMENT FOR CONTRACT SERVICES  
BY AND BETWEEN THE CITY OF GRAND TERRACE AND**

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This “AGREEMENT FOR CONTRACT SERVICES BY AND BETWEEN THE CITY OF GRAND TERRACE AND \_\_\_\_\_” (herein “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between the City of Grand Terrace, a California municipal corporation (“City”) and \_\_\_\_\_, \_\_\_\_\_ (“Consultant”). City and Consultant are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

**RECITALS**

- A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.
- B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.
- C. Pursuant to the City of Grand Terrace Municipal Code, City has authority to enter into and execute this Agreement.
- D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose

intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

#### 1.2 Consultant’s Proposal.

The Scope of Service shall include the Consultant’s scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

#### 1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

#### 1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

#### 1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant’s risk until written instructions are received from the Contract Officer.

#### 1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be

responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other consultants. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.9 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

**ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

## 2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

## 2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

## 2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

## 2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

## **ARTICLE 3. PERFORMANCE SCHEDULE**

### **3.1 Time of Essence.**

Time is of the essence in the performance of this Agreement.

### **3.2 Schedule of Performance.**

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

### **3.3 Force Majeure.**

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

### **3.4 Term.**

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

## **ARTICLE 4. COORDINATION OF WORK**

### **4.1 Representatives and Personnel of Consultant.**

The following principals of Consultant ("Principals") are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

---

(Name)	(Title)
(Name)	(Title)
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant’s staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant’s staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or 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 under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant’s officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant’s officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City’s employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be [\_\_\_\_\_ or] such person as may be designated by the City Manager. It shall be the Consultant’s responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

### **ARTICLE 5. INSURANCE AND INDEMNIFICATION**

#### 5.1 Insurance Coverages.

The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's 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 the Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by

or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including “any auto” and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant’s profession. This coverage may be written on a “claims made” basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant’s services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) 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 include all of the requirements stated herein.

(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit “B”.

## 5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Consultant’s insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.

All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure

to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following “cancellation” notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

\_\_\_\_\_  
Consultant Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or any automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant’s activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant’s indemnification liabilities as provided in Section 5.3.

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents (“Indemnified Parties”) against, and will hold and save them and each of them harmless from, any and all actions, either judicial,

administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein “claims or liabilities”) that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable (“indemnitors”), or arising from Consultant’s or indemnitors’ reckless or willful misconduct, or arising from Consultant’s or indemnitors’ negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorney’s fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorney’s fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City’s sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City’s negligence, except that design professionals’ indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

#### 5.4 Sufficiency of Insurer.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated “A” or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager

of the City (“Risk Manager”) due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the risk manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.

## **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records.**

Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the “books and records”), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant’s business, custody of the books and records may be given to City, and access shall be provided by Consultant’s successor in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

### **6.2 Reports.**

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### **6.3 Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”), including any electronic documents and materials, prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City in a format of the City’s choice upon request of the Contract Officer or

upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

#### 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Bernardino, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Bernardino, State of California.

### **7.2 Disputes; Default.**

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### **7.3 Retention of Funds.**

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

### **7.4 Waiver.**

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this

Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 et. seq. and 910 et. seq., in order to pursue a legal action under this Agreement.

7.7 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon written notice to Consultant. In addition, the Consultant may terminate this Contract for cause, upon sixty (60) days' advance written notice to City. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.8 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate

such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.9 Attorney's Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

**ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

#### 8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorney's fees, incurred by City.

### **ARTICLE 9. MISCELLANEOUS PROVISIONS**

#### 9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Grand Terrace, 22795 Barton Rd, Grand Terrace, CA 92313, and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

#### 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

#### 9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

#### 9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5.

Nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation, including but not limited to the Political Reform Act (Government Code Sections 81000, *et seq.*)

Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant's Authorized Initials \_\_\_\_\_

9.7 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**  
City of Grand Terrace, a municipal corporation

\_\_\_\_\_  
Darcy McNaboe, Mayor

**ATTEST:**

\_\_\_\_\_  
Debra Thomas, City Clerk

**APPROVED AS TO FORM:**  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Adrian R. Guerra, City Attorney

**CONSULTANT:**  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.**



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that

STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

On \_\_\_\_\_, 2018 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

**CAPACITY CLAIMED BY SIGNER**

- INDIVIDUAL
- CORPORATE OFFICER

\_\_\_\_\_

TITLE(S)

- PARTNER(S)  LIMITED  GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- 

OTHER \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SIGNER IS REPRESENTING:**

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

\_\_\_\_\_ TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_ NUMBER OF PAGES

\_\_\_\_\_ DATE OF DOCUMENT

\_\_\_\_\_ SIGNER(S) OTHER THAN NAMED ABOVE

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- I. **Consultant will perform the following Services:**
  - A.
  - B.
  - C.
  
- II. **As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**
  - A.
  - B.
  - C.
  
- III. **In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports:**
  - A.
  - B.
  - C.
  
- IV. **All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**
  
- V. **Consultant will utilize the following personnel to accomplish the Services:**
  - A.
  - B.
  - C.

**EXHIBIT “B”**  
**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

**I. Section 1.10, “Prevailing Wages is hereby added to the Agreement as follows:**

“Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates, that Consultant and all subcontractors be registered with and pay the registration fee to the Department of Industrial Relations (“DIR”), that Consultant be subject to the monitoring and enforcement by the DIR, and the performance of other requirements on “Public Works” and “Maintenance” projects. Consultant shall pay prevailing wages and register with the DIR pursuant to such Prevailing Wage Laws. For all intents and purposes, Consultant shall comply with such Prevailing Wage Laws as if such laws are applicable to Consultant. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.”

**EXHIBIT "C"**  
**SCHEDULE OF COMPENSATION**

**I. Consultant shall perform the following tasks at the following rates:**

	RATE	TIME	SUB-BUDGET
A.	_____	_____	_____
B.	_____	_____	_____
C.	_____	_____	_____
D.	_____	_____	_____

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.**

**IV. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**

- A.** Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B.** Line items for all materials and equipment properly charged to the Services.
- C.** Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D.** Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

**V. The total compensation for the Services shall not exceed \$\_\_\_\_\_ as provided in Section 2.1 of this Agreement.**

**VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.**

**EXHIBIT "D"**  
**SCHEDULE OF PERFORMANCE**

- I. **Consultant shall perform all Services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer and the City Attorney's office.**
  
- II. **Consultant shall deliver the following tangible work products to the City by the following dates.**
  - A.
  
  - B.
  
  - C.
  
- III. **The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

