



REQUEST FOR PROPOSALS

TO PROVIDE

**City Council Chambers – Procurement and
Installation Services for Audio/Visual Systems**

TO THE

CITY OF CUDAHY

IMPORTANT DATES

RFP ISSUED	November 10, 2022
PRE-BID MEETING	December 1, 2022
DEADLINE TO SUBMIT QUESTIONS	December 5, 2022
PROPOSAL DUE DATE	December 8, 2022 at 3:00 PM
PROPOSALS ARE EVALUATED	December 12-14, 2022
NOTIFICATION TO PREFERRED CONSULTANT	December 19, 2022

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City of Cudahy

5220 Santa Ana, Cudahy, California 90201
(323) 773-5143 Fax (323) 771-2072

November 10, 2022

City Council Chambers - Procurement and Installation for Audio/Visual Systems

I. INTRODUCTION

The City of Cudahy Finance Department is seeking to identify and select a vendor with a proven background record in the design, installation, and support of AV systems. The AV contractor is to design, furnish, install, provide training and technical support for an audio and visual system that is capable of recording and broadcasting live legislative events from the City Council Chambers.

The AV contractor will attend meetings with City employees and City Council members to determine needs, present their design, make modifications as requested and review final designs. Once approved, the AV contractor will acquire all equipment and materials, provide a full mock-up of the systems for demonstration and approval and then install complete working systems.

The AV Contractor shall provide project management to ensure the project is within budget and proposed schedule. The AV Contractor is expected to provide continuous Quality Assurance and Quality Control of design and installation activities.

II. BACKGROUND

Cudahy is located in Southeast Los Angeles County, next to the L.A. River. The City was incorporated on November 10, 1960 and named after its founder, meat-packing baron Michael Cudahy, who purchased the land known as Rancho San Antonio in 1908 for development. Cudahy is 1.1 square miles with a current population of 23,805. The City is a general law city and operates under the council-manager form of government.

The Cudahy City Council meets Tuesday Evenings two (2) times per month (except holidays) to conduct City business. The current Council Chambers was built more than 25 years ago. Much of the existing equipment was installed over 5 years ago with minor updates and maintenance.

The city also holds a variety of other meetings in the Council Chambers including Commission meetings, trainings, and various ceremonies. Therefore, it is important that the room is versatile, and staff can be confident that the equipment can accommodate a multi-use environment.

III. PROJECT DESCRIPTION

The City of Cudahy Finance Department is seeking to identify and select a vendor with a proven background record in the design, installation, and support of AV systems. The AV contractor is to design, furnish, install, provide training and technical support for an audio and visual system that is capable of recording and broadcasting live legislative events from the City Council Chambers.

The AV contractor will attend meetings with City employees and City Council members to determine needs, present their design, make modifications as requested and review final designs. Once approved, the AV contractor will acquire all equipment and materials, provide a full mock-up of the systems for demonstration and approval and then install complete working systems.

The AV Contractor shall provide project management to ensure the project is within budget and proposed schedule. The AV Contractor is expected to provide reasonable continuous Quality Assurance and Quality Control of design and installation activities.

Additionally, the project may not be limited to the following scope of work. Prospective bidders are encouraged to make recommendations based on identified needs to ensure successful completion of this project.

Summary Scope of Work

The proposed scope of work serves as a base to this project and does not limit what the final project may be. Prospective bidders are encouraged to make recommendations based on identified needs to ensure successful completion of this project.

Audio System - To install two surface-mounted speakers strategically placed in a ceiling space and a single speaker positioned for the council members. The contractor should provide speakers specially built for clear dialogue translations.

- Two (2) BOSE - ArenaMatch - Surface Mounted speakers – White
- One (1) BOSE - ArenaMatch - Monitor Surface Mounted Speaker - White
- One (1) BOSE - PowerShare Power Amp
- Nine (14) SHURE - Podium Mic w/Mute switch
- Miscellaneous parts & wires to be included

Video System - To remove the existing wall-mounted projector screen and replaced it with a 75" flat screen provided by the City of Cudahy, to be placed on an articulation mount. Implementation of AV switching for multiple sources via HDMI placement. Strategic placement of Block cameras creates video coverage. Placement of a source Pressure Mat at the podium.

- One (1) STRONG - Wall mount w/articulating arm for 50"-90" displays
- One (1) BIAMP - Bi-directional touchpad controller w/RS-232
- Two (2) AVPRO - HDMI TX/RX kit
- One (1) BIAMP - 5 port expansion w/AVB-Dante
- One (1) ARAKNIS - 210 Series switch w/POE-16
- One (1) DATAVIDEO - 1080P IP Camera w/streaming encoder
- Four (4) DATAVIDEO - Block Camera w/30x zoom
- One (1) DATAVIDEO - HD Video Switcher
- One (1) USP - Pressure Mat - 24"x30"
- Miscellaneous parts & wires to be included

Control System - To remove and replace a Middle Atlantic equipment rack. To install and program an Operator-Less Camera System and implement the DSP and a Video Switcher.

- One (1) MIDDLE ATLANTIC – Rack
- One (1) BIAMP - Digital Sound Processor server w/Acoustic Echo Cancellation for Zoom meetings
- One (1) BIAMP - Tesira USB Hub for presentation space connectivity
- One (1) BIAMP - Tesira Main Connect Point – Dante
- One (1) BIAMP - Tesira 4 channel mic/line expander
- One (1) BIAMP - Apprimo Touch 10 touch panel
- One (1) FURMAN - Power Management
- Miscellaneous parts & wires to be included

Electrical - To provide the necessary power source for the above equipment as needed.

Notes:

1. Brand name only
2. Total price should include shipping, electronic waste recycling fee, and sales tax.

IV. PROPOSAL SCHEDULE

RFP ISSUED	November 10, 2022
PRE-BID MEETING	December 1, 2022
DEADLINE TO SUBMIT QUESTIONS	December 5, 2022
PROPOSAL DUE DATE	December 8, 2022 at 3:00 PM
PROPOSALS ARE EVALUATED	<u>December 12-14, 2022</u>
NOTIFICATION TO PREFERRED CONSULTANT	December 19, 2022

IV. GENERAL INFORMATION

- A. **Proposal Validity** – The Proposer’s pricing shall be valid for a minimum of 90 days.
- B. **Request for Information** – Questions regarding this RFP are for clarification purposes only and are to be directed by e-mail to: Joshua Calhoun, Finance Director, at jcalhoun@cityofcudahyca.gov. The deadline to submit questions will be December 5, 2022.
- C. **Submission Deadline** – Proposals must be received, in a sealed envelope with the words “**Request for Proposal – City Council Chambers – Procurement and Installation Services for Audio/Visual Systems**” clearly labeled along with the name and address of the firm, by the Office of the City Clerk by 3:00 pm on December 8, 2022. The submitted packet shall include three (3) copies of the proposal.
- D. **Late Submittals** – It is strongly recommended that proposals be delivered in-person or via personal courier by or before the submission deadline. Proposals received after the specified submission deadline will be disqualified and not considered. Proposals postmarked prior to the applicable deadline date but received after the deadline will also be disqualified and not considered. Proposers are responsible to ensure the timely submission of their proposal. Proposals may not be submitted by via facsimile or electronic mail.
- E. **Withdrawal or Modifications** – A proposal may be withdrawn or changed by a written and signed request by the firm prior to the final deadline. If firms do not make this request before the final deadline, the firm shall be obligated to

fulfill the terms of their proposal as submitted. In the event a proposer seeks to withdraw and modify a proposal, the modified proposal must be submitted before the applicable submission deadline.

F. **Addenda** – In the event that any portion of this RFP is changed, the City will provide addenda via fax or e-mail to all firms who have received an RFP. The signed addenda must be included with the RFP submittal. Submittals received without the applicable addenda may be rejected as incomplete.

G. **Responsiveness** – All submittals will be reviewed by the City to determine compliance with all requirements and instructions as specified in the RFP. Firms are notified that failure to comply with any part of the RFP may result in the rejection of the submittal as non-responsive.

The City also reserves the right, at its sole and absolute discretion to waive minor administrative irregularities or errors.

H. **Costs** – The City will not be liable for any costs incurred by the Proposer in preparing and responding to this RFP. The Proposer shall not include any pre-contractual expenses as part of the proposed cost.

I. **Legal Authorization** – All forms and documentation included in this RFP must be signed and dated by a person authorized to legally bind the Proposer to a contractual relationship with the City.

J. **Conflict of Interest** – Proposer is required to issue a brief statement disclosing potentially conflicting interests including:

a. Any litigation involving the Proposer or the Proposer's personnel which is adverse to the City; and

b. Consulting services currently being provided or provided within the last four years to any person, corporation, partnership, or other entity that made application to the City for a discretionary land use entitlement or City project.

K. **Rejection of Submittals** – The City reserves the right at its sole discretion to reject any and all submittals received without penalty as result of this RFP.

a. A proposal may be immediately rejected if:

i. It contains misrepresentative or misleading information;

ii. It is received at any time after the exact date and time set for receipt of proposals;

- iii. It does not meet the required specifications or terms and conditions as prescribed;
 - iv. It is not prepared in the format outlined in this RFP;
 - v. It is signed by an individual not authorized to represent the Proposer;
 - vi. Proposer is involved in outstanding litigation that could impinge on its ability to complete the responsibilities and obligations of the proposal;
 - vii. Any other reason in the City's sole and absolute discretion.
- L. **No Guarantee of Contract** – No guarantee is made that any contract will be awarded in response to this RFP.
- M. **Insurance Coverage** – If a Proposer is selected, all insurance documentation will be provided to the City prior to the execution of a contract at the expense of the Proposer. All insurance requirements are included as a provision of the contract.
- N. **Sub-consultants** – Proposer shall identify any sub-consultants and describe the responsibilities that will be assigned to them. The same level of references and background information required for Proposers shall be required of sub-consultants.
- O. **Acceptance of Conditions** – Proposer shall include a statement offering the acceptance of all conditions listed in the RFP document (including, but not limited to, all the conditions reflected in the sample Professional Services Agreement) which shall be submitted with the proposal.
- P. **Public Record** – All proposals submitted in response to this RFP will become the property of the City upon submission and a matter of public record pursuant to applicable law. City reserves the right to make copies of all proposals available for inspection and copying by interested members of the public as records of the City and City shall be under no obligation to the Proposer to withhold such records. In so far as a proposal contains information that the Proposer regards as proprietary and confidential, it shall be the responsibility of the Proposer (and not the City) to specifically identify which items of information are proprietary and clearly identify in writing which specific pieces of information are proprietary. It shall be insufficient for the Proposer to merely identify the entire proposal or an entire page or set of pages of proprietary. With respect to information deemed proprietary, the procedures set forth under subsection (T) below shall be observed. Not-to-exceed sums, hourly rates and the like that may be set forth in a proposal shall not constitute proprietary information nor shall any information readily available to the

general public or any other information not regarded as proprietary and confidential under federal or state law.

- Q. **Right to Request Additional Information** – During the evaluation process the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from Proposers, or to allow corrections of errors or omissions. At the discretion of the City, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.
- R. **Additional Services** – The Scope of Work describes the minimum baseline level of services required for the services contemplated under this RFP, however, cost-effective proposals that exceed the minimum levels of service are welcome. Upon final selection of the firm, the Scope of Work may be modified and refined during negotiations with the City to account for the performance of services that exceed the baseline level called for under this RFP.
- S. **Conflict of Interest** - By signing the Agreement, the successful Proposer declares and warrants that no elected or appointed official, officer or employee of the City has been or shall be compensated, directly or indirectly, in connection with the award of the Agreement or any work for the proposed project. For the term of the Agreement, no elected or appointed official, officer or employee of the City, during the term of his/her service with the City and for two (2) years following his/her termination of office or employment with the City, shall have any direct interest in the Agreement, or obtain any present, anticipated or future material benefit arising therefrom.
- T. **Confidential Information** - City reserves the right to make copies of a Proposer's proposal available for inspection and copying by members of the public, (including proposals which may contain information the Proposer regards as proprietary in nature), unless the City's legal counsel determines that the information which the Proposer regards as proprietary may be withheld pursuant to applicable provisions of the California Public Records Act (Govt. Code Section 6250 et seq.) or other applicable state or federal law. In the event City proposes to disclose records containing information the Proposer has specifically identified as being proprietary and confidential, City shall notify the Proposer in writing of its intent to release such information and the Proposer shall have five (5) working days after City's issuance of its notice to give City written notice of Proposer's objection to the City's release of proprietary information. City will not release the proprietary information after receipt of the objection notice from the Proposer unless: (i) the objection notice is not received by the City until after the close of business on the 5th day following City's issuance of the notice of intent to disclose; (iii) ordered to release the

information by a court of competent jurisdiction; or (iii) the Proposer's objection notice fails to include a fully executed indemnification agreement wherein the Proposer agrees indemnify, defend and hold harmless the City, and its elected and appointed officials, officers, directors, employees and agents from and against all liability, loss, cost or expense (including attorneys' fees) arising out of any legal action brought to compel the release of records containing the proprietary information which the Proposer wishes to withhold. Again, the Proposer must specifically identify the information it deems proprietary.

V. TERMS AND CONDITIONS

A. Certification

By submitting a proposal, Proposer certifies that it has fully read and understands this RFP and has full knowledge of the nature, scope and scale of services and tasks that are to be performed under this RFP. Proposer also certifies that its proposal was prepared without prior understanding, agreement or connection with any other Proposer submitting a proposal from this RFP, and is in all respects fair and without collusion or fraud, so that all proposals will result from free, open and competitive proposing among all Proposers.

B. Reserving Rights

The City reserves the right to reject any and all proposals received as a result of this RFP. City's potential award of a contract will not be based on any single factor nor will it be based solely or exclusively on the lowest cost proposal. If a contract is awarded, it will be awarded to the proposer who in the judgment of the City has presented an optimal balance of relevant experience, technical expertise, technological innovation, price, quality of service, work history and other factors which the City may consider relevant and important in determining which proposal is best for the City.

C. Assignment and Guarantee

No assignment by the Proposer of the contract or any part thereof, or of funds to be received hereunder, is binding unless the City has given written consent before such assignment. There is also no guarantee of a minimal amount of work or compensation for any Proposer selected for contract negotiations.

E. Clarification

Should discrepancies or omissions be found in this RFP or should there be a need to clarify this RFP, questions or comments should be emailed to Richard Iglesias, City Clerk, at riglesias@cityofcudahyca.gov. The City shall not be responsible for, nor be bound by, any oral instructions, interpretations or explanations issued by the City.

F. Discrimination

The Proposer and all subcontractors must not discriminate, nor permit discrimination against any person on the grounds of race, national origin, sex, handicap, sexual orientation, or veteran status in their employment practices, in any of their contractual arrangements, in all services and accommodations they offer the public or in their business operations.

G. Indemnification

Proposer, at its own expense and without exception, shall indemnify, defend and pay all damages, costs, expenses, including attorney fees, and otherwise hold harmless the City, its employees and agents from any liability of any nature or kind in regard to the preparation or presentation of a proposal in response to this RFP.

H. Gratuity Prohibition

Proposer shall not offer any gratuities, favors or anything of monetary value to any official, employee or agent of the City for the purpose of influencing consideration of this proposal.

VI. PROPOSAL CONTENT

- A. **Cover Letter.** The cover letter shall include the name, address, phone number and signature of the person authorized to bind the Proposer to the terms of the proposal.
- B. **Proposer's Background.** A summary of the Proposer's background and their area(s) of professional expertise relevant to this RFP.
- C. **Project Approach/Methodology.** A detailed description of the proposed approach/methodology for completing the required components of the Scope of Work. The Proposer shall demonstrate their understanding of the needs of the City and the objectives of the work proposed, as well as their ability to timely complete all the tasks outlined in the Scope of Work.
- D. **Project Schedule and Schedule Control.** A detailed project schedule for each of the main components outlined in the Scope of Work in this RFP, outlining the tasks, activities, deliverables, milestones, and durations of each, including overlaps among the two components. Proposers shall allot sufficient time for review and feedback periods, as well as identify reasonably foreseeable delays that may occur, and factor in additional time as may be appropriate.
- E. **References.** A minimum of three (3) public agency references highlighting similar work as requested in this RFP was performed by the team/personnel proposed for Cudahy. Such references must be for work completed within the

last five (5) years, and include the name, title, and contact information of the public agency officer or employee responsible for overseeing the Proposer's work.

- F. **Cost Proposal/ Fee Schedule.** A detailed "not-to-exceed" cost proposal for each of the main components outlined on the Scope of Work in this RFP, as well as any specific cost savings. Any proposed payment schedule shall align with the project schedule. In addition, the cost proposal shall include an itemized budget, including all necessary labor costs and expenses (direct or indirect), for each of the components. The cost proposal shall state the current hourly rates of all assigned staff/team members. As well as any known increases to said rate scheduled to occur prior to completion of this project.
- G. **Validity of Proposal.** Responses to this RFP shall be valid for a minimum of ninety (90) days. Proposers shall state the length of time for which the proposal shall remain valid. Submissions not valid for at least ninety (90) days will be considered non-responsive.

CONTRACT IMPLEMENTATION

The contract resulting from this solicitation is tentatively scheduled to be awarded in January 2023. Upon award notification and prior to final contract approval, the successful proposer will be required to submit the following:

- Proof of general liability insurance
- Documentation of all credentials necessary to legally perform the services specified.
- A complete W9 form and, if applicable, non-resident withholding exemption form, if not already on file with the City; and
- Proof of a current City of Cudahy tax certificate if the vendor is in, or performs services within, the city limits agreed to by the parties.

The finalized contract will include the scope of work, the terms and conditions, the fee schedule and any negotiated modifications agreed to by the parties.

VII. EVALUATION PROCEDURES

EVALUATION CRITERIA

The following criteria shall be used by the Committee to evaluate proposals:

- A. Demonstrated and thorough understanding of the project.
- B. Expertise and qualifications of assigned staff, including prior experience in performing similar studies for public sector clients.
- C. Overall project design and methodology/approach.
- D. Proposed schedule/timeline and projected completion date(s).
- E. Total cost and fee schedule.

- F. Responsiveness to the requirements of the RFP.
- G. Recent references from comparable clients.

The City retains full discretion in determining the applicability and weight of the criteria listed above and is not required to select the lowest cost proposal. During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from Proposers, or to allow corrections of error or omissions.

SELECTION OF QUALIFIED PROPOSALS

The City of Cudahy will review the proposals submitted by all proposers. Based on the evaluation criteria, the City of Cudahy will determine which proposal is most advantageous for the award of the contract.

The City of Cudahy may at any time investigate a Proposer's ability to perform work. The City of Cudahy may ask for additional information about a company and its work on previous contracts. Proposers may choose not to submit such information in response to the City's request. However, if failure to submit such information does not clarify the City's questions concerning the ability to perform, the City may discontinue further consideration of a particular proposal. The City of Cudahy would typically be interested in previous experience in performing similar or comparable work, staffing and personnel turnover, financial statement of resources for current and past periods and other relevant information.

Please be aware that the City of Cudahy may use sources of information not supplied by the Proposer concerning the abilities to perform this work. Such sources may include current or past customers of the organization; current or past suppliers; articles from industry newsletters or other publications or from non-published sources made available to the City of Cudahy.

ORAL PRESENTATIONS OF PROPOSAL SUBMISSION

After selection of best qualified proposers, the Evaluation Committee may determine that oral presentations are required before making a final decision. The City will invite the proposers with the highest evaluation scores to make such presentations. Discussions will be on an individual basis and closed to third parties and other Proposers.

During the presentation, the City of Cudahy and the Proposer will review in detail all aspects of the City's requirements and the proposal. During these reviews, the Proposer may offer revisions and the City of Cudahy may accept the revisions in the proposal. Similarly, the City may ask for revisions, and the Proposer may accept.

If it is necessary to conduct interviews, City of Cudahy will choose the number of proposers to be interviewed and schedule them accordingly.

AWARD

The award may be awarded to the most advantageous proposal based on the evaluation criteria. Alternatively, the top scoring proposals may require the candidate to submit final and best offers.

VIII. PROPOSAL SUBMITTAL

Three (3) hard copies of the proposal shall be presented in an envelope or package. Hard copies should be bound and include the name of the Proposer and the title "City Council Chambers – Procurement and Installation Services for Audio/Visual Systems." The envelope of package shall bear the name, address, and telephone number of the individual or entity submitting the proposal and shall be addressed as follows:

Office of the City Clerk
City of Cudahy
5220 Santa Ana Street
Cudahy, CA 90201

Proposals can be hand delivered or mailed to the address listed above. Proposals will not be accepted by fax or e-mail.

The proposal shall be delivered to the above address on or before **3:00 P.M.** on **December 8, 2022.**

X. STAFF CONTACT

For inquiries, please contact Joshua Calhoun at (323) 773-5143 or email at jcalhoun@cityofcudahyca.gov

Issued by:

**CITY OF CUDAHY
Finance Department**

**Joshua Calhoun
Finance Department**

APPENDIX A

SAMPLE CONTRACT



PROFESSIONAL SERVICES AGREEMENT

([Replace w/ Name of Consultant - Replace w/ Brief Description of Engagement])

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this _____ day of _____ 20____ (hereinafter, the "Effective Date"), by and between the CITY OF CUDAHY, a municipal corporation ("CITY") and [____REPLACE WITH NAME OF CONSULTANT____], a [____REPLACE WITH TYPE OF ENTITY, E.G., CORPORATION? PARTNERSHIP? SOLE PROPRIETORSHIP? ETC.____] (hereinafter, "CONSULTANT"). For the purposes of this Agreement CITY and CONSULTANT may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to CITY or CONSULTANT interchangeably.

WHEREAS, CITY wishes to engage CONSULTANT to provide the following specialized services:_____; and

WHEREAS, CITY's in-house personnel is presently unable to perform the specialized services and tasks contemplated under this Agreement; and

WHEREAS, CONSULTANT possesses the specialized training, skill, expertise and experience required to perform the services contemplated under this Agreement; and

WHEREAS, CONSULTANT agrees to perform the various services and tasks set forth under this Agreement subject to the terms and conditions set forth herein; and

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

I. ENGAGEMENT TERMS

- 1.1 SCOPE OF SERVICES: Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONSULTANT agrees to perform the services and tasks set forth in Exhibit "A" (hereinafter referred to as the "Scope of Services"). CONSULTANT further agrees to furnish to CITY all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Services. For the purposes of this Agreement the aforementioned services and tasks set forth in

the Scope of Services shall hereinafter be referred to generally by the capitalized term "Work."

1.2 TERM: This Agreement shall have a term of [___REPLACE TEXT WITH TERM PERIOD: X# of DAYS? MONTHS? YEARS?] commencing from [_REPLACE TEXT WITH START DATE OF TERM: CAN BE EITHER the "EFFECTIVE DATE"? SOME OTHER DATE?]. [OPTIONAL LANGUAGE: Upon the conclusion of the Term, this Agreement shall renew automatically for a maximum of [_MAXIMUM NUMBER OF EXTENSION TERMS AND MAXIMUM DURATION OF EACH SUCH EXTENSION TERM. EDITOR'S NOTE: IT IS RECOMMENDED THAT ANY INDIVIDUAL EXTENSION TERM NOT EXCEED ONE YEAR IN DURATION AND THAT THE TOTAL NUMBER OF EXTENSION TERMS NOT EXCEED A MAXIMUM OF TWO YEARS BEYOND THE END OF THE INITIAL TERM], unless CITY issues written notice of its intent not to authorize an additional extension term(s). Nothing in this Section shall operate to prohibit or otherwise restrict the CITY's ability to terminate this Agreement at any time for convenience or for cause.

1.3 COMPENSATION:

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

B. Section 1.3(A) notwithstanding, CONSULTANT's total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum of [___REPLACE WITH NOT-TO-EXCEED SUM___] (hereinafter, the "Not-to-Exceed Sum"), unless such added expenditure is first approved by the CITY acting in consultation with the Superintendent and the Director of Fiscal Services. In the event CONSULTANT's charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, CITY may suspend CONSULTANT's performance pending CITY approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other CITY-approved amendment to the compensation terms of this Agreement.

1.4 PAYMENT OF COMPENSATION: Reserved; No text.

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

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

- 1.6 ABANDONMENT BY CONSULTANT: In the event CONSULTANT ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Services, CONSULTANT shall deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONSULTANT in the performance of this Agreement. Furthermore, CONSULTANT shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which CITY may incur as a result of CONSULTANT's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 CITY'S REPRESENTATIVES: The CITY hereby designates the Superintendent and [___REPLACE WITH TITLE OF CITY REPRESENTATIVE WHO WILL BE ENGAGED IN THE DAY-TO-DAY ADMINISTRATION OF THE CONTRACT_____] (hereinafter, the "CITY Representatives") to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief CITY Representative. The CITY Representatives or their designee shall act on behalf of the CITY for all purposes under this Agreement. CONSULTANT shall not accept directions or orders from any person other than the CITY Representatives or their designee.
- 2.2 CONSULTANT REPRESENTATIVE: CONSULTANT hereby designates [INSERT NAME AND TITLE OF PERSON WHO IS CONSULTANT REPRESENTATIVE FOR PURPOSES OF CONTRACT ADMINISTRATION_____] to act as its representative for the performance of this Agreement (hereinafter, "CONSULTANT Representative"). CONSULTANT Representative shall have full authority to represent and act on behalf of the CONSULTANT for all purposes under this Agreement. CONSULTANT Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONSULTANT Representative shall constitute notice to CONSULTANT.
- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONSULTANT agrees to work closely with CITY staff in the performance of the Work and this Agreement and shall be available to CITY staff and the CITY

Representatives at all reasonable times. All work prepared by CONSULTANT shall be subject to inspection and approval by CITY Representatives or their designees.

2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONSULTANT represents, acknowledges and agrees to the following:

- A. CONSULTANT shall perform all Work skillfully, competently and to the highest standards of CONSULTANT's profession;
- B. CONSULTANT shall perform all Work in a manner reasonably satisfactory to the CITY;
- C. CONSULTANT shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
- D. CONSULTANT understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
- E. All of CONSULTANT's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONSULTANT; and
- F. All of CONSULTANT's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to CITY for copying and inspection.

The Parties acknowledge and agree that CONSULTANT shall perform, at CONSULTANT's own cost and expense and without any reimbursement from CITY, any services necessary to correct any errors or omissions caused by CONSULTANT's failure to comply with the standard of care set forth under this Section or by any like failure on the part of CONSULTANT's employees, agents, contractors, subcontractors and subconsultants. Such effort by CONSULTANT to correct any errors or omissions shall be commenced immediately upon their discovery by either Party and shall be completed within seven (7) calendar days from the date of discovery or such other extended period of time authorized by the CITY Representatives in writing and in their sole and absolute discretion. The Parties acknowledge and agree that CITY's acceptance of any work

performed by CONSULTANT or on CONSULTANT's behalf shall not constitute a release of any deficiency or delay in performance. The Parties further acknowledge, understand and agree that CITY has relied upon the foregoing representations of CONSULTANT, including but not limited to the representation that CONSULTANT possesses the skills, training, knowledge and experience necessary to perform the Work skillfully, competently and to the highest standards of CONSULTANT's profession.

- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONSULTANT are material to CITY's willingness to enter into this Agreement. Accordingly, CITY has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONSULTANT or on behalf of CONSULTANT in the performance of this Agreement. In recognition of this interest, CONSULTANT agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONSULTANT's duties or obligations under this Agreement without the prior written consent of the CITY. In the absence of CITY's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONSULTANT or under CONSULTANT's strict supervision. CONSULTANT will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. CITY retains CONSULTANT on an independent contractor basis and not as an employee. CONSULTANT reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONSULTANT's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of CITY's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONSULTANT are not employees of CITY and shall at all times be under CONSULTANT's exclusive direction and control. CONSULTANT shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONSULTANT shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the CITY Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONSULTANT, a threat to persons or property, or if any of CONSULTANT's officers, employees, agents,

contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the CITY, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONSULTANT and shall not be re-assigned to perform any of the Work.

- 2.8 COMPLIANCE WITH LAWS: CONSULTANT shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONSULTANT's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10 INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONSULTANT and all persons retained or employed by CONSULTANT are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of CITY. CONSULTANT shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONSULTANT and all persons retained or employed by CONSULTANT shall have no authority, express or implied, to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, CITY, whether by contract or otherwise, unless such authority is expressly conferred to CONSULTANT under this Agreement or is otherwise expressly conferred by CITY in writing.

III. INSURANCE

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

for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.

- B. Automobile Liability Insurance: CONSULTANT shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONSULTANT and CITY against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONSULTANT in the course of carrying out the Work contemplated in this Agreement.
 - D. Errors & Omissions Insurance: For the full term of this Agreement and for a period of three (3) years thereafter, CONSULTANT shall procure and maintain Errors and Omissions Liability Insurance appropriate to CONSULTANT's profession. Such coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall be endorsed to include contractual liability.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers who, according to the latest edition of the Best's Insurance Guide, have an A.M. Best's rating of no less than A:VII. CITY may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the CITY Representatives are authorized to authorize lower ratings than those set forth in this Section.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONSULTANT shall be primary to any coverage available to CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by CITY or CITY's elected or appointed

officials, officers, employees, agents or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.

- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONSULTANT or CONSULTANT's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against CITY.
- 3.6 VERIFICATION OF COVERAGE: CONSULTANT acknowledges, understands and agrees, that CITY's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding CITY's financial well-being and, indirectly, the collective well-being of the residents of the CITY. Accordingly, CONSULTANT warrants, represents and agrees that it shall furnish CITY with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to CITY in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the CITY if requested.** All certificates of insurance and endorsements shall be received and approved by CITY as a condition precedent to CONSULTANT's commencement of any work or any of the Work. Upon CITY's written request, CONSULTANT shall also provide CITY with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The Parties agree that CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "CITY Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the CITY Indemnitees with the fullest protection possible under the law. CONSULTANT acknowledges that CITY would not enter into this Agreement in the absence of CONSULTANT's commitment to indemnify, defend and protect CITY as set forth herein.
- 4.2 To the fullest extent permitted by law, CONSULTANT shall indemnify, hold harmless and defend the CITY Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except

such loss or damage which is caused by the sole negligence or willful misconduct of the CITY.

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

V. TERMINATION

5.1 TERMINATION WITHOUT CAUSE: CITY may terminate this Agreement at any time for convenience and without cause by giving CONSULTANT a minimum of five (5) calendar days prior written notice of CITY's intent to terminate this Agreement. Upon such termination for convenience, CONSULTANT shall be compensated only for those services and tasks which have been performed by CONSULTANT up to the effective date of the termination. CONSULTANT may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, CITY may require CONSULTANT to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONSULTANT in connection with the performance of the Work. CONSULTANT shall be required to provide such Documents and Data within fifteen (15) calendar days of CITY's written request. No actual or asserted breach of this Agreement on the part of CITY pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict CITY's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONSULTANT shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) business days of CITY's issuance of a Default Notice for any failure of CONSULTANT to timely provide CITY or CITY's employees or agents with any information and/or written reports, documentation or work product which CONSULTANT is obligated to provide to CITY or CITY's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has

commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or

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

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

- C. CITY shall cure any Event of Default asserted by CONSULTANT within forty-five (45) calendar days of CONSULTANT's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, CITY may submit a written request for additional time to cure the Event of Default upon a showing that CITY has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of

Default dealing with CITY's failure to timely pay any undisputed sums to CONSULTANT as provided under Section 1.4, above, shall be cured by CITY within five (5) calendar days from the date of CONSULTANT's Default Notice to CITY.

- D. CITY, in its sole and absolute discretion, may also immediately suspend CONSULTANT's performance under this Agreement pending CONSULTANT's cure of any Event of Default by giving CONSULTANT written notice of CITY's intent to suspend CONSULTANT's performance (hereinafter, a "Suspension Notice"). CITY may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONSULTANT shall be compensated only for those services and tasks which have been rendered by CONSULTANT to the reasonable satisfaction of CITY up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of CITY shall operate to prohibit or otherwise restrict CITY's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to CITY at law or under this Agreement in the event of any breach of this Agreement, CITY, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
 - i. Upon written notice to CONSULTANT, the CITY may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONSULTANT, the CITY may extend the time of performance;
 - iii. The CITY may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONSULTANT's breach of the Agreement or to terminate the Agreement; or
 - iv. The CITY may exercise any other available and lawful right or remedy.

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

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

5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

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

VI. MISCELLANEOUS PROVISIONS

6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of CITY without restriction or limitation upon their use or dissemination by CITY. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONSULTANT in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to CITY, a perpetual license for CITY to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONSULTANT shall require all subcontractors and subconsultants working on behalf of CONSULTANT in the performance of this Agreement to agree in writing that CITY shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONSULTANT in the performance of this Agreement.

- 6.2 **CONFIDENTIALITY:** All data, documents, discussion, or other information developed or received by CONSULTANT or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONSULTANT without prior written consent by CITY. CITY shall grant such consent if disclosure is legally required. Upon request, all CITY data shall be returned to CITY upon the termination or expiration of this Agreement. CONSULTANT shall not use CITY's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CITY.
- 6.3 **FALSE CLAIMS ACT:** CONSULTANT warrants and represents that neither CONSULTANT nor any person who is an officer of, in a managing position with, or has an ownership interest in CONSULTANT has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 et seq. and the California False Claims Act, Government Code Section 12650 et seq.
- 6.4 **NOTICES:** All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONSULTANT:

[REPLACE WITH Business Name of Consultant]

[REPLACE WITH Business Address]

Attn: [REPLACE WITH Name/Title of Consultant's chief contact]

Phone: [REPLACE WITH Phone Number]

Fax: [REPLACE WITH Fax Number]

Email: [If available, REPLACE WITH e-mail or simply delete]

CITY:

City of Cudahy

[Insert Name of Department/Division]

5220 Santa Ana Street

Cudahy, CA 90201

Attn: [Title of CITY Contact]

Phone: [REPLACE WITH Dept Phone]

Fax: [REPLACE WITH Dept Fax]

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

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

- 6.6 SUBCONTRACTING: CONSULTANT shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of CITY. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.
- 6.7 CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS: CITY reserves the right to employ other contractors in connection with the various projects worked upon by CONSULTANT.
- 6.8 PROHIBITED INTERESTS: CONSULTANT warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONSULTANT, to solicit or secure this Agreement. Further, CONSULTANT warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 6.9 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 6.10 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Los Angeles County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Central District of California located in the City of Los Angeles, California.
- 6.11 ATTORNEYS' FEES: If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.
- 6.12 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.

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

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

CITY OF CUDAHY:

By: _____
Alfonso Noyola, City Manager

Date: _____

**[REPLACE WITH BUSINESS NAME OF
CONSULTANT, E.G., ACME CORP., A
CALIFORNIA CORPORATION ETC.]:**

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Date: _____