



CITY OF ONTARIO

Regular City Council/Housing Authority Meeting FEBRUARY 20, 2024

City Hall

303 East B Street, Ontario, CA 91764

MAYOR PAUL S. LEON • MAYOR PRO TEM DEBRA DORST-PORADA
COUNCIL MEMBERS ALAN D. WAPNER, JIM W. BOWMAN AND RUBEN VALENCIA

CITY CLERK SHEILA MAUTZ • TREASURER JAMES R. MILHISER
CITY MANAGER SCOTT OCHOA • CITY ATTORNEY RUBEN DURAN

WELCOME TO A MEETING OF THE ONTARIO CITY COUNCIL

All documents for public review are on file with the Records Management/City Clerk's Department located at 303 East B Street, Ontario, CA 91764.

Anyone wishing to speak in person during public comment or on a particular item will be required to fill out a blue slip. Blue slips must be turned in prior to public comment beginning or before an agenda item is taken up. The Clerk will not accept blue slips after that time. To comment by email, submit your comments no later than 4:00 p.m. on the day of the meeting by emailing your name, agenda item you are commenting on and your comments to publiccomments@ontarioca.gov. All comments received by the deadline will be forwarded to the City Council for consideration before action is taken on the matter and will be entered into the record.

Comments will be limited to 3 minutes. Speakers will be alerted when they have 1 minute remaining and when their time is up. Speakers are then to return to their seats and no further comments will be permitted.

In accordance with State Law, remarks during public comment are to be limited to subjects within Council's jurisdiction. Remarks on other agenda items will be limited to those items.

Remarks from those seated or standing in the back of the chamber will not be permitted. All those wishing to speak including Council and Staff need to be recognized by the Chair before speaking.

ACCOMODATIONS

If you need special assistance or accommodations to participate in this meeting, please contact the City Clerk's office at 909-395-2009. Notification of 48 hours prior to the meeting will help the City make reasonable arrangements. Equipment for the hearing impaired is available in the Records Management Office.

ORDER OF BUSINESS

The regular City Council and Housing Authority meeting begins with Closed Session and Closed Session Comment at 5:30 p.m., Public Comment at 6:30 p.m. immediately followed by the Regular Meeting and Public Hearings. No agenda item will be introduced for consideration after 10:00 p.m. except by majority vote of the City Council.

CALL TO ORDER (OPEN SESSION)

ROLL CALL

Dorst-Porada, Wapner, Bowman, Valencia, Mayor/Chairman Leon

INFORMATION RELATIVE TO POSSIBLE CONFLICT OF INTEREST

Agenda item contractors, subcontractors and agents may require member abstentions due to conflict of interests and financial interests. Council Member abstentions shall be stated under this item for recordation on the appropriate item.

CLOSED SESSION PUBLIC COMMENT

The Closed Session Public Comment portion of the Council/Housing Authority meeting is limited to a maximum of 3 minutes for each speaker and comments will be limited to matters appearing on the Closed Session. Additional opportunities for further Public Comment will be given during and at the end of the meeting.

CLOSED SESSION

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: APN: 0218-063-07; West of Archibald Avenue between Eucalyptus Avenue and Ontario Ranch Road; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: SC Ontario Development Company LLC; Under negotiation: Price and terms of payment

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: APNs: 0218-101-03, 0218-101-04, 0218-101-05, 0218-101-06; Southeast Corner Riverside Drive and Vineyard Avenue; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: JCLIN INVESTMENT LP; Under negotiation: Price and terms of payment

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: APN: 1048-564-03, 1048-564-04, 1048-564-05, 1048-564-06; 121-143 North Euclid Avenue; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: LAB-CO LLC; Under negotiation: Price and terms of payment

ATTACHMENT: [20240220 Closed Session](#)

PLEDGE OF ALLEGIANCE

Council Member Bowman

INVOCATION

Rabbi Stephen Epstein, Temple Sholom of Ontario

REPORT ON CLOSED SESSION

City Attorney

PUBLIC COMMENTS

6:30 P.M.

The Public Comment portion of the Council/Housing Authority meeting is limited to 30 minutes with each speaker given a maximum of 3 minutes. An opportunity for further Public Comment may be given at the end of the meeting. Under provisions of the Brown Act, Council is prohibited from taking action on oral requests.

To comment by email, submit your comments by email no later than 4:00 p.m. on the day of the meeting by emailing your name, agenda item you are commenting on and your comment to publiccomments@ontarioca.gov. All Comments received by the deadline will be forwarded to the City Council for consideration before action is taken on the matter and entered into the record. As previously noted -- if you wish to address the Council, fill out one of the blue slips at the rear of the chambers and give it to the City Clerk.

AGENDA REVIEW/ANNOUNCEMENTS

The City Manager will go over all updated materials and correspondence received after the Agenda was distributed to ensure Council Members have received them. He will also make any necessary recommendations regarding Agenda modifications or announcements regarding Agenda items to be considered.

CONSENT CALENDAR

All matters listed under CONSENT CALENDAR will be enacted by one motion in the form listed below – there will be no separate discussion on these items prior to the time Council votes on them, unless a member of the Council requests a specific item be removed from the Consent Calendar for a separate vote.

Each member of the public wishing to address the City Council on items listed on the Consent Calendar will be given a total of 2 minutes.

1. **APPROVAL OF MINUTES**

Minutes for the regular meetings of the City Council and Housing Authority of January 16, 2024, and approving same as on file in the Records Management Department.

ATTACHMENT: [20240116 Minutes \(Not Official Until Approved\)](#)

2. **BILLS & PAYROLL**

Bills January 19, 2024 through February 1, 2024, and Payroll January 14, 2024 through January 27, 2024.

3. **A CONSTRUCTION CONTRACT WITH HARDY & HARPER, INC. FOR THE 2024 SPRING PAVEMENT REHABILITATION PROJECT**

That the City Council award a Construction Contract with Hardy & Harper, Inc. of Lake Forest, California, for the 2024 Spring Pavement Rehabilitation Project (Project) in the amount of \$2,245,100; and authorize the City Manager, or his designee, to execute said contract and all related documents, and file a notice of completion at the conclusion of all construction activities.

ATTACHMENT: [Exhibit A.pdf](#)

ATTACHMENT: [01-Contract_2024 Spring Pavement Rehab.pdf](#)

4. **AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH PARSONS CORPORATION FOR ENGINEERING AND DESIGN SERVICES FOR THE I-10 FREEWAY AT GROVE AVENUE AND FOURTH STREET INTERCHANGE AND GROVE AVENUE CORRIDOR PROJECT**

That the City Council approve Amendment No. 10 to the Professional Services Agreement with Parsons Corporation (Parsons) of Illinois, for additional engineering and environmental services for the Project Approval and Environmental Documentation (PA&ED), for the I-10 Freeway at Grove Avenue and Fourth Street Interchange and Grove Avenue Corridor Project, for a revised cumulative contract amount of \$7,632,379, with a new contingency of \$333,005 for a revised not-to-exceed authorization amount of \$7,965,384; and authorize the City Manager, or his designee, to execute said Agreement and future amendments within the authorization limits.

ATTACHMENT: [Amendment No. 10 Unsigned 1-22-24.pdf](#)

5. **AUTHORIZE THE PURCHASE OF A FIRE SAFETY TRAILER WITH JHB GROUP, INC.**

That the City Council authorize the City Manager or designee to execute the purchase of a Fire Safety Trailer from JHB Group, Inc. of Lake in the Hills, Illinois, in the amount of \$212,463 plus a 3% contingency of \$6,374 to mitigate any unforeseen issues with supply chain surcharges and manufactures price increases, for a total not-to-exceed amount of \$218,837.

6. **A PROFESSIONAL SERVICE AGREEMENT WITH SWA GROUP FOR THE DESIGN AND PREPARATION OF CONSTRUCTION DOCUMENTS FOR THE ONTARIO ARENA PLAZA**

Authorize the City Manager, or designee, to execute a Professional Service Agreement with SWA Group, of Laguna Beach, California, for the preparation of the design and construction documents for the Ontario Arena Plaza for a not-to-exceed amount of \$970,147.

ATTACHMENT: [SWA Professional Services Agreement^02 PSA Ontario Arena Plaza](#)

ATTACHMENT: [SWA Professional Services Agreement^02 Exhibit A Scope of Services](#)

ATTACHMENT: [SWA Exhibit A - Ontario Arena Conceptual Design.pdf](#)

7. **A PROFESSIONAL SERVICES AGREEMENT WITH WITT O'BRIEN'S, LLC FOR A CONTINUITY OF OPERATIONS PLAN**

That the City Council authorize the City Manager, or designee, to execute a Professional Services Agreement with Witt O'Brien's, LLC, for consulting services in the creation of a citywide Continuity of Operations Plan, inclusive of the Continuity of Government and Disaster Recovery plans for a not-to-exceed contract amount of \$211,900.

ATTACHMENT: [Witt O'Brien Professional Services agreement.pdf](#)

8. **A PROFESSIONAL SERVICES AGREEMENT WITH GANS AND PUGH ASSOCIATES, INC. FOR EQUIPMENT AND SOFTWARE SERVICES**

That the City Council approve and authorize the City Manager or his designee to execute a Professional Services Agreement with Gans and Pugh, of Herndon, Virginia, for equipment and software services in the amount of \$1,123,388.

ATTACHMENT: [Gans and Pugh Contract Updated.pdf](#)

9. **AN AMENDMENT TO THE DESIGN SERVICES AGREEMENT WITH COMMUNITY WORKS DESIGN GROUP FOR ON-CALL ARCHITECTURAL DESIGN SERVICES FOR THE SOUTH BON VIEW PARK FIELD LIGHTING DESIGN PROJECT**

That the City Council authorize the City Manager or his designee to execute Amendment No. 5 to the Design Services Agreement with Community Works Design Group, of Riverside, California, to provide on-call architectural design services for the South Bon View Park Field Lighting Design Project in the amount of \$49,745 for a total not-to-exceed contract amount of \$474,450.

ATTACHMENT: [Amendment No. 5 - Community Works Design Group.pdf](#)

10. **AN AMENDMENT TO THE DESIGN SERVICES AGREEMENT WITH ROBERT BORDERS AND**

ASSOCIATES FOR ON-CALL ARCHITECTURAL DESIGN SERVICES FOR HOMER BRIGGS PARK AND ANTHONY MUNOZ PARK CONCESSION AREA UPGRADES AND ROOF DESIGN PROJECT

That the City Council authorize the City Manager or his designee to execute Amendment No. 20 to the on-call Design Services Agreement with Robert Borders and Associates, of Costa Mesa, California, for the Anthony Munoz Park Concession Area Upgrades in the amount of \$185,669 for a total not-to-exceed contract amount of \$838,131.

ATTACHMENT: [Robert Borders and Associates Amendment No. 20 w-attachments.pdf](#)

11. A PROFESSIONAL DESIGN SERVICES AGREEMENT WITH STANTEC CONSULTING SERVICES INC. FOR THE EDISON AVENUE AND BON VIEW AVENUE WATER IMPROVEMENTS AND BON VIEW AVENUE SEWER IMPROVEMENT PROJECT, OMUC CONTRACT NO. UT1079

That the City Council approve and authorize the City Manager, or designee to execute a Professional Design Services Agreement with Stantec Consulting Services Inc., of Irvine, California, for design and bid support services for Edison Avenue and Bon View Avenue Water Improvements and Bon View Avenue Sewer Improvement Project, OMUC Contract No. UT1079, for a total amount of \$479,171 plus a 15% contingency of \$71,876 for a total not-to-exceed amount of \$551,047, and a term from February 20, 2024 to February 20, 2027.

ATTACHMENT: [DSA with Stantec - Report Rev 2 - UT1079 - Water and Sewer Infrastructure for FS No. 11](#)

12. A CONSTRUCTION CONTRACT WITH RESOURCE ENVIRONMENTAL FOR THE EMERGENCY DEMOLITION AND SITE CLEARANCE OF THE ONTARIO BEST INN AT 1045 W MISSION AVE

That the City Council take the following actions:

- A. Authorize the City Manager or his designee to execute Construction Contract No. D&C23-028 Ontario Best Inn Demolition & Site Clearance with Resource Environmental, Inc., of Cerritos, California, for emergency demolition and site clearance activities on City owned property located at 1045 W Mission Avenue in the amount of \$346,500;
- B. Authorize a 15% contingency of \$51,975 to address any unforeseen issues that may arise during the demolition for a total not-to-exceed contract amount of \$398,475; and
- C. Authorize the City Manager or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts and filing a notice of completion at the conclusion of all demolition related activities.

ATTACHMENT: [Revised 2023 Ontario Model Long Form Bid and Contract Documents \(2020\)-c1 .pdf](#)

13. A GOODS AND SERVICES AGREEMENT WITH AMERICAN RECLAMATION, INC. FOR SCRAP TIRE RECYCLING SERVICES

That the City Council take the following actions:

- A. Authorize the City Manager or his designee to execute a Goods and Services Agreement with American Reclamation, Inc., of Los Angeles, California, for Scrap Tire Recycling

Services in an amount of \$215,000 per year for one (1) year, for a total contract amount of \$215,000;

- B. Authorize a 5% contingency of \$10,750 per year for one (1) year to address any unforeseen issues that may arise for a total not-to-exceed contract amount of \$225,750; and
- C. Authorize the City Manager or his designee to execute the optional three (3) one-year extensions to the Goods and Services Agreement in a total not-to-exceed amount of \$903,000 consistent with future budgets adopted by the City Council.

ATTACHMENT: [American Reclamation Inc. Goods and Services Agreement 2.14 - JOE.pdf](#)

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

14. [AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CERTAIN SECTIONS OF CHAPTER 13 OF THE ONTARIO MUNICIPAL CODE RELATING TO THE FLOOD DAMAGE PREVENTION PROGRAM](#)

That the City Council introduce and waive further reading of an Ordinance amending certain sections of Chapter 13 of the Ontario Municipal Code relating to the City's flood damage prevention program.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CERTAIN SECTIONS OF CHAPTER 13 OF THE ONTARIO MUNICIPAL CODE RELATING TO THE FLOOD DAMAGE PREVENTION PROGRAM.

ATTACHMENT: [Amendments to Floodplain Ordinance Chapter 8-13^RM](#)

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

Mayor Leon
Mayor pro Tem Dorst-Porada
Council Member Wapner
Council Member Bowman
Council Member Valencia

ADJOURNMENT

CITY OF ONTARIO
CLOSED SESSION REPORT
City Council // Housing Authority // Other // (GC 54957.1)
February 20, 2024

ROLL CALL: Dorst-Porada __, Wapner __, Bowman __, Valencia __, Mayor / Chairman Leon __.

STAFF: City Manager / Executive Director __, City Attorney __

In attendance: Dorst-Porada __, Wapner __, Bowman __, Valencia __, Mayor / Chairman Leon __.

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 0218-063-07; West of Archibald Avenue between Eucalyptus Avenue and Ontario Ranch Road; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: SC Ontario Development Company LLC; Under negotiation: Price and terms of payment

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

In attendance: Dorst-Porada __, Wapner __, Bowman __, Valencia __, Mayor / Chairman Leon __.

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APNs: 0218-101-03, 0218-101-04, 0218-101-05, 0218-101-06; Southeast Corner Riverside Drive and Vineyard Avenue; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: JCLIN INVESTMENT LP; Under negotiation: Price and terms of payment

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

CITY OF ONTARIO
CLOSED SESSION REPORT
City Council // Housing Authority // Other // (GC 54957.1)
February 20, 2024
(Continued)

In attendance: Dorst-Porada __, Wapner __, Bowman __, Valencia __, Mayor / Chairman Leon __.

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APNs: 1048-564-03, 1048-564-04, 1048-564-05, 1048-564-06; 121-143 North Euclid Avenue; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: LAB-CO LLC; Under negotiation: Price and terms of payment

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

Reported by:

City Attorney / City Manager / Executive Director

**ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
January 16, 2024
(Not Official Until Approved)**

JOINT MEETINGS

The regular meetings of the Ontario City Council and the Housing Authority were held on Tuesday, January 16, 2024 at Ontario City Hall, 303 E. B Street Ontario, California.

CALL TO ORDER

Mayor Leon called the joint meetings to order at 6:02 p.m.

ROLL CALL

PRESENT:	Mayor/Chairman:	Paul S. Leon
	Mayor pro Tem/Vice Chair:	Debra Dorst-Porada
	Council/Authority Members:	Alan D. Wapner, Jim W. Bowman, and Ruben Valencia.

ABSENT: Council/Authority Members: None.

Also present were City Manager / Executive Director Scott Ochoa, City Attorney/Legal Counsel Ruben Duran, and City Clerk / Secretary Sheila Mautz.

INFORMATION RELATIVE TO POSSIBLE CONFLICTS OF INTEREST

There were no conflicts of interest announced by the City Council.

CLOSED SESSION

Mayor Leon inquired whether persons were present who wished to speak to the Closed Session items. Hearing no one, City Attorney Duran announced the matter for discussion as listed on the agenda and recessed to Closed Session at 6:03 p.m. for discussion of the following:

G.C. 54957 PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: City Attorney

GC 54956.9(d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION
Robles, et al. v. City of Ontario et al., Case No. CIVDS2007038

CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION
Initiation of litigation pursuant to GC 54956.9(d)(4), One (1) potential case

OPEN MEETING CALLED TO ORDER

Mayor Leon reconvened the meetings at 6:31 p.m. for the regular session.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Ruben Valencia.

INVOCATION

Pastor Richard Hernandez of the Church of God Ontario provided the Invocation.

REPORT ON CLOSED SESSION

City Attorney Duran stated there was no reportable action.

PUBLIC HEARINGS

25. A RESOLUTION TO RENEW THE DOWNTOWN ONTARIO COMMUNITY BENEFIT DISTRICT

It was recommended that the City Council take the following actions pertaining to the renewal of the Downtown Ontario Community Benefit District ("CBD"):

- A. Conduct the public hearing;
- B. Consider oral and written testimony regarding the proposed renewal of the CBD;
- C. Tabulate Assessment ballots returned to the City pursuant to the procedures set forth in Government Code Section 53753; and
- D. If ballot tabulation results in a weighted majority in support of renewing the CBD, adopt a Resolution of Formation to renew the CBD and to levy and collect assessments within such CBD pursuant to California Streets and Highways Code 36600

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO RENEW THE DOWNTOWN ONTARIO COMMUNITY BENEFIT DISTRICT AND TO LEVY AND COLLECT ASSESSMENTS WITHIN SUCH DISTRICT PURSUANT TO THE ESTABLISHMENT OF PROPERTY BUSINESS IMPROVEMENT DISTRICTS - SECTION 36600 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE AND TAKING OTHER ACTIONS THERETO.

Notice of public hearing was duly given and a ballot notice was mailed to all affected property owners within the proposed district boundaries at least forty-five days prior to the hearing as required by law. There was one written communication from Loree Masonis in opposition to the renewal of the benefit district.

Mayor Leon inquired if there were any persons interested in submitting a written protest. Upon hearing no one, Mayor Leon opened the public hearing and inquired if anyone was interested in speaking to the item.

Maria Martinez, spoke in support of the renewal of the benefit district.

Damien Melle, spoke in support of the renewal of the benefit district.

Ish Arias, offered to answer any questions regarding the renewal of the benefit district.

Alex Baroian, offered to answer any questions regarding the renewal of the benefit district.

Hearing no one else, Mayor Leon closed the public hearing and directed the City Clerk Staff to begin tabulating ballots in a separate community conference room. Tabulations of the ballots initiated, and the counting procedure ran concurrently with the council meeting.

PUBLIC COMMENTS

Assistant City Clerk Isbell announced there were four written public comments:

David Vargas, regarding community safety nearby Nocta Street.

Debbie Trott, regarding parking congestion nearby the La Verne College of Law

Michael Peterson, regarding publication services from The Hemet and San Jacinto Chronicle.

James Lester Davidson, regarding a personal conflict involving a dumpster.

Mayor Leon called upon the first speaker:

Ron Price, regarding traffic safety nearby Euclid Avenue and Sunkist Street.

Phil Schmall, regarding a personal conflict with his property manager.

Esther Schmall, regarding a personal conflict with her property manager.

Maria Galvan, regarding housing insecurity and homelessness resources.

Karen Haughey, regarding upcoming events hosted by Supervisor Curt Hagman.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Ochoa provided an update to an exhibit regarding Consent Calendar Item No. 5. The update reflects a revised amount of \$95,558.46. The update to the agenda was revised to be included in the public record upon the adoption of the consent calendar.

City Manager Ochoa provided an update to Consent Calendar Item No. 21 regarding a Professional Services Agreement with Cardo Consulting, Inc. The original not-to-exceed contract amount of \$390,000 was amended to a not-exceed contract amount of \$210,000.

CONSENT CALENDAR

MOTION: Moved by Mayor pro Tem Dorst-Porada seconded by Council Member Bowman and carried by a unanimous vote 5-0, to approve the Consent Calendar.

1. APPROVAL OF MINUTES

Approved minutes for the regular meetings of the City Council and Housing Authority of December 5, 2023 and December 19, 2023, approving same as on file in the Records Management Department.

2. BILLS & PAYROLL

Approved bills December 1, 2023 through December 21, 2023 in the amount of \$44,270,365.90, and Payroll November 19, 2023 through December 16, 2023 in the amount of \$11,893,648.89.

3. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH LAW ENFORCEMENT MEDICAL SERVICES, INC.

The City Council authorized the City Manager or his designee to execute Amendment No. 1 to Professional Services Agreement with Law Enforcement Medical Services, Inc., of Fontana, California, to extend the Agreement for an additional two successive one-year terms, increase the current funding threshold for a total not-to-exceed contract amount of \$357,000 and update the fee schedule.

4. DESIGNATION OF VOTING DELEGATES FOR THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS (SCAG) ANNUAL GENERAL ASSEMBLY MEETING

The City Council appointed Mayor pro Tem Debra Dorst-Porada as the City Delegate Representative and Mayor Paul Leon as the alternate.

5. A RESOLUTION FOR PLACEMENT OF SPECIAL ASSESSMENTS ON THE SAN BERNARDINO COUNTY TAX ROLLS

The City Council adopted a Resolution for recovery of fees and costs incurred in abating property and dangerous building violations, as well as administrative citations and civil penalties associated with property maintenance violations and placing assessments on the San Bernardino County Tax Rolls.

RESOLUTION NO. 2024-001 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING A REPORT REQUESTING THE PLACEMENT OF SPECIAL ASSESSMENTS ON PROPERTY TAX BILLS FOR CIVIL PENALTIES OR RECOVERY OF COSTS INCURRED FOR ABATEMENT OF VIOLATIONS OF CITY CODES AND ORDINANCES.

6. AN ORDINANCE APPROVING A FIFTH AMENDMENT TO THE DEVELOPMENT AGREEMENT (FILE NO. PDA05-002) BETWEEN THE CITY OF ONTARIO AND SC ONTARIO DEVELOPMENT COMPANY, LLC.

The City Council considered and adopted an Ordinance approving a Fifth Amendment to the Development Agreement (File No. PDA05-002) between the City of Ontario and SC Ontario Development Company, LLC. First reading and introduction took place at a regular City Council meeting on December 19, 2023.

ORDINANCE NO. 3265 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA05-002, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND SC ONTARIO DEVELOPMENT COMPANY, LLC TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE TRACT MAP NO. 20487 (FILE NO. PMTT22-024) TO SUBDIVIDE 31.70 ACRES OF LAND INTO 5 NUMBERED LOTS FOR CONDOMINIUM PURPOSES, LOCATED EAST OF THE CUCAMONGA CREEK CHANNEL, WEST OF ARCHIBALD AVENUE, SOUTH OF ONTARIO RANCH ROAD AND APPROXIMATELY 1,104 FEET NORTH OF EUCALYPTUS AVENUE WITHIN PLANNING AREAS 17, 18, AND 19 OF THE PARKSIDE SPECIFIC PLAN (FILE NO. PSP03- 002), AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 0218-221-10, 0218-221-11, 0218-231-45, 0218-231-04, 0218-231-08, 0218-231-10, 0218-231-11, 0218-231-13, 0218-231-15, 0218-231-16, 0218-231-23, 0218-231-24, 0218-231-31, 0218-231-32, 0218-231-34, 0218-231-36, 0218-231-39, 0218-063-06, 0218-063-07, 0218-073-04, 0218-073-06, 0218-073-07, 0218-063-04 AND 0218-231-47, AND 0218-231-48.

7. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA23-002) BETWEEN THE CITY OF ONTARIO AND IV3 LOMA CREEK LOGISTICS CENTER, LLC

The City Council considered and adopted an Ordinance approving a Development Agreement (File No. PDA23-002) between the City of Ontario and IV3 Loma Creek Logistics Center LLC. First reading and introduction took place at a regular City Council meeting on December 19, 2023.

ORDINANCE NO. 3266 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA23-002, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND IV3 LOMA CREEK LOGISTICS CENTER LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH A DEVELOPMENT PLAN (FILE NO. PDEV23-013) TO CONSTRUCT ONE (1) INDUSTRIAL BUILDING TOTALING 534,373 SQUARE FEET ON 23.88 ACRES OF LAND, LOCATED ON THE WEST SIDE OF MILL CREEK AVENUE, APPROXIMATELY 300 FEET SOUTH OF CHINO AVENUE, WITHIN PLANNING AREA 2C (LIGHT INDUSTRIAL DISTRICT) OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 218-161-18.

8. A DEVELOPMENT CODE AMENDMENT (FILE NO. PDCA23-003) REVISING AND CLARIFYING CERTAIN PROVISIONS OF THE CITY OF ONTARIO DEVELOPMENT CODE AND A ZONE CHANGE (FILE NO. PZC23-002) TO MODIFY THE ZONING MAP

The City Council considered and adopted the following:

- A. An Ordinance approving File No. PDCA23-003, a Development Code Amendment revising and clarifying certain provisions of Chapters 2.0 (Administration and Procedures), 3.0 (Nonconforming Lots, Land Uses, Structures, and Signs), 4.0 (Permits, Actions, and Decisions), 5.0 (Zoning and Land Use), 6.0 (Development and Subdivision Regulations), and 8.0 (Sign Regulations) of the City of Ontario Development Code; and
- B. An Ordinance approving File No. PZC23-002, a Zone Change to modify the Zoning Map to remove the EA (Euclid Avenue) Overlay south of Philadelphia Avenue. First reading and introduction took place at a regular City Council meeting on December 19, 2023.

ORDINANCE NO. 3267 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA23-003, A DEVELOPMENT CODE AMENDMENT REVISING AND CLARIFYING CERTAIN PROVISIONS OF CHAPTERS 2.0 (ADMINISTRATION AND PROCEDURES), 3.0 (NONCONFORMING LOTS, LAND USES, STRUCTURES, AND SIGNS), 4.0 (PERMITS, ACTIONS, AND DECISIONS), 5.0 (ZONING AND LAND USE), 6.0 (DEVELOPMENT AND SUBDIVISION REGULATIONS), AND 8.0 (SIGN REGULATIONS) OF THE CITY OF ONTARIO DEVELOPMENT CODE, AND MAKING FINDINGS IN SUPPORT THEREOF.

ORDINANCE NO. 3268 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PZC23-002, A ZONE CHANGE TO MODIFY THE ZONING MAP TO REMOVE THE EA (EUCLID AVENUE) OVERLAY DISTRICT SOUTH OF PHILADELPHIA AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 1051-051-11, 1051-051-12, 1051-051-17, 1051-051-71, 1051-051-72, 1051-051-22, 1051-051-23, 1051-051-24, 1051-051-25, 1051-051-26, 1051-051-27, 1051-051-28, 1051-051-29, 1051-051-30, 1051-051-31, 1051-051-32, 1051-051-33, 1051-051-34, 1051-051-35, 1051-051-36, 1051-051-37, 1051-051-38, 1051-051-39, 1051-051-40, 1051-051-41, 1051-051-42, 1051-051-43, 1051-051-44, 1051-051-45, 1051-051-46, 1051-051-47, 1051-051-48, 1051-051-49, 1051-051-50, 1051-051-51, 1051-051-52, 1051-051-53, 1051-051-54, 1051-051-55, 1051-051-56, 1051-051-57, 1051-051-58, 1051-051-59, 1051-051-60, 1051-051-61, 1051-051-62, 1051-051-63, 1051-051-64, 1051-051-65, 1051-051-66, 1051-051-67, 1051-051-68, 1051-051-73, 1051-062-25, 1051-062-26, 1051-062-27, 1051-062-28, 1051-062-29, 1051-062-30, 1051-062-31, 1051-062-32, 1051-062-33, 1051-062-34, 1051-062-35, 1051-062-36, 1051-062-37, 1051-062-38, 1051-062-39, 1051-081-01, 1051-062-40, 1051-062-41, 1051-062-42, 1051-062-48, 1051-062-49, 1051-071-02, 1051-071-04, 1051-081-01, 1051-081-02, 1051-211-02, 1051-211-03, 1051-211-10, 1051-222-01, 1051-222-13, 1051-222-20, 1051-271-06, 1051-271-66, 1051-271-67, 1051-281-04, 1051-281-09, 1051-281-77, 1051-281-79, 1051-

281-80, 1051-411-12, 1051-411-13, 1051-411-14, 1051-411-15, 1051-411-16, 1051-411-17, 1051-411-18, 1051-411-35, 1051-411-36, 1051-411-37, 1051-411-38, 1051-412-21, 1051-412-22, 1051-412-23, 1051-412-24, 1051-412-25, 1051-412-26, 1051-412-27, 1051-412-28, 1051-421-08, 1051-421-09, 1051-421-10, 1051-421-11, 1051-421-12, 1051-421-13, 1051-421-14, 1051-421-15, 1051-431-55, 1051-431-56, 1051-431-57, 1051-431-58, 1051-431-59, 1051-431-60, 1051-431-61, 1051-441-08, 1051-441-51, 1051-522-10, 1051-522-02, 1051-522-03, 1051-522-04, 1051-522-05, 1051-522-61, 1051-522-62, 1051-522-63, 1051-522-64, 1051-522-65, 1051-522-66, 1051-522-67, 1051-522-68, 1051-522-69, 1051-522-74, 1051-522-75, 1051-522-76, 1051-522-77, 1051-522-78, 1051-614-01, 1051-614-02, 1051-614-03, 1051-614-07, 1051-614-08, AND 1051-614-09.

9. AN AMENDMENT TO THE ON-CALL PROFESSIONAL SERVICES AGREEMENT WITH TRANSTECH ENGINEERS, INC. FOR THE PROPOSED MINOR LEAGUE BASEBALL STADIUM AND PARKING STRUCTURE EXPEDITED PLAN CHECK, BUILDING OFFICIAL, AND BUILDING INSPECTION SERVICES

The City Council took the following actions:

- A. Authorized the City Manager or his designee to execute Amendment No. 1 to the On-Call Professional Services Agreement with Transtech Engineers, Inc., of Chino, California, for Proposed Minor League Baseball Stadium and Parking Structure Expedited Plan Check, Building Official, and Building Inspection services in the amount of \$788,960 for a total not-to-exceed contract amount of \$1,138,960; and
- B. Authorized the City Manager or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

10. AN AMENDMENT TO THE ON-CALL DESIGN SERVICES AGREEMENT WITH ARDURRA GROUP FOR OFF-SITE DESIGN AND STREET NETWORK WITHIN THE SPORTS COMPLEX DESIGN

The City Council took the following actions:

- A. Authorized the City Manager or his designee to execute Amendment No. 17 to the On-Call Design Services Agreement with Ardurra Group of Newport Beach, California, for the Off-site Design and Street Network within the Sports Complex Design in the amount of \$6,117,228 for a total not-to-exceed contract amount of \$9,157,468; and

- B. Authorized the City Manager or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

11. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH CONVERGINT TECHNOLOGIES, LLC FOR THE ONTARIO MUSEUM OF HISTORY AND ARTS EXTERIOR DOOR ACCESS CONTROL UPGRADE

The City Council took the following actions:

- A. Authorized the City Manager or his designee to execute Amendment No. 2 to the Maintenance Services Agreement with Convergent Technologies, LLC, of La Palma, California, for the Ontario Museum of History and Arts Exterior Door Access Control Upgrade in the amount of \$40,598 for a total not-to-exceed contract amount of \$3,842,480; and
- B. Authorized the City Manager or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

12. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH RYMAX ELECTRICAL, INC. FOR ON-CALL ELECTRICAL SERVICES

The City Council approved and authorized the City Manager or his designee to execute Amendment No. 3 to the Maintenance Services Agreement with Rymax Electrical, Inc. of Upland, California, for On-Call electrical services in the amount of \$200,000, for a total not-to-exceed contract amount of \$570,952.

13. A CONSTRUCTION CONTRACT WITH MAMCO INC., A PROFESSIONAL SERVICE AGREEMENT WITH STANTEC CONSULTING SERVICE INC., AND TWO AMENDMENTS FOR PROFESSIONAL SERVICES WITH AKM CONSULTING ENGINEERS INC. AND TWINING INC. FOR THE MERCEDES LANE AND FERRARI LANE SEWER IMPROVEMENT PROJECT

The City Council took the following actions:

- A. Approved the plans and specifications and awarded Contract No. UT 1062 to Mamco Inc. of Perris, California, for the Mercedes Lane and Ferrari Lane Sewer Improvement Project, in the amount of \$2,055,555 plus a 15% contingency of \$308,334 for a total not-to-exceed amount of \$2,363,889, a term of 180 calendar days after issuance of notice to proceed, and authorized the City Manager, or his designee, to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.

- B. Approved and authorized the City Manager, or designee, to execute a Professional Services Agreement with Stantec Consulting Services Inc. of Irvine, California, for a total not-to-exceed amount of \$125,500 for construction engineering services and a term from January 16, 2024 to October 31, 2024.
- C. Approved and authorized the City Manager, or designee, to execute Amendment No. 6 to the Professional Services Agreement with AKM Consulting Engineers of Irvine, California, to amend Agreement amount by \$166,289 for a new total not-to-exceed amount of \$672,700 for construction management and inspection services and a term from January 16, 2024 to October 31, 2024.
- D. Approved and authorized the City Manager, or designee, to execute Amendment No. 1 to the Professional Services Agreement with Twining Inc. of Riverside, California, to amend Agreement amount by \$38,836 for a new total not-to-exceed amount of \$188,836 for geotechnical and material testing services and a term from January 16, 2024 to October 31, 2024.

14. AMENDMENTS TO THE PROFESSIONAL SERVICES AGREEMENT WITH CALTEK TECHNOLOGIES, INC. FOR THE 208 EMPORIA 1ST FLOOR OFFICE RENOVATION PROJECT AND LIBRARY WORKSTATION PROJECT

The City Council took the following actions:

- A. Authorized the City Manager, or his designee to execute Amendment No. 4 to the Professional Services Agreement with CalTek Technologies, Inc., of Ontario, California, for the 208 Emporia 1st Floor Office Renovation Project in the amount of \$3,534;
- B. Authorized the City Manager, or his designee to execute Amendment No. 5 to the Professional Services Agreement with CalTek Technologies, Inc., of Ontario, California, for the Library Workstation Project in the amount of \$4,663 for a total not-to-exceed contract amount of \$172,169; and
- C. Authorized the City Manager, or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

15. A CHANGE ORDER TO THE CONSTRUCTION CONTRACT WITH JCOS DEVELOPMENT, INC. FOR THE JOHN GALVIN PARK RESTROOM RENOVATION PROJECT

The City Council took the following actions:

- A. Authorized Change Order No. 2 to the Construction Contract with JCOS Development, Inc. (JCOS), of Buena Park, California, in the amount of \$41,937 for a total not-to-exceed contract amount of \$1,196,796, for the John Galvin Park Restroom Renovation Project; and

- B. Authorized the City Manager, or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

16. AN AMENDMENT TO THE GOODS AND SERVICES AGREEMENT WITH MARK CHRISTOPHER CHEVROLET, INC. FOR THE PROCUREMENT OF GMC AND CHEVROLET ORIGINAL EQUIPMENT MANUFACTURER PARTS AND SERVICES

The City Council authorized the City Manager or his designee to execute Amendment No. 3 to the Goods and Services Agreement with Mark Christopher Chevrolet, Inc., of Ontario, California, for the procurement of GMC and Chevrolet Original Equipment Manufacturer (OEM) parts and services in the amount of \$60,000, for a total not-to-exceed contract amount of \$360,000.

17. AN AMENDMENT TO THE GOODS AND SERVICES AGREEMENT WITH AMREP MANUFACTURING COMPANY FOR PARTS AND REPAIRS OF REFUSE TRUCK BODIES

The City Council authorized the City Manager or his designee to execute Amendment No. 3 to the Goods and Services Agreement with AMREP Manufacturing Company, of Ontario, California, for parts and repairs of refuse truck bodies in the amount of \$360,000, for a total not-to-exceed contract amount of \$2,010,000.

18. AN AMENDMENT TO THE GOODS AND SERVICES AGREEMENT WITH CITRUS MOTORS ONTARIO, INC. FOR THE PROCUREMENT OF FORD ORIGINAL EQUIPMENT MANUFACTURER PARTS AND REPAIR SERVICES

The City Council authorized the City Manager or his designee to execute Amendment No. 5 to the Goods and Services Agreement with Citrus Motors Ontario, Inc., of Ontario, California, in the amount of \$160,000, for a total not-to-exceed contract amount of \$690,000 for the procurement of Ford Original Equipment Manufacturer (OEM) parts and repair services.

19. A MAINTENANCE SERVICES AGREEMENT WITH PRO-CRAFT CONSTRUCTION, INC. AND 24- HOUR EXPRESS SERVICES, INC. FOR ON-CALL PLUMBING SERVICES

The City Council took the following actions:

- A. Authorized the City Manager or his designee to execute a three-year Maintenance Services Agreement with Pro-Craft Construction, Inc., of Redlands, California, for on-call plumbing services in the amount of \$450,000; and authorized the option to extend the agreements for up to two additional one-year terms; and

- B. Authorized the City Manager, or his designee to execute a three-year Maintenance Services Agreement with 24-Hour Express Services, Inc., of Murrieta, California, for on-call plumbing services in the amount of \$450,000; and authorized the option to extend the agreements for up to two additional one-year terms.

20. PURCHASE AND IMPLEMENTATION OF AUTOMATED LICENSE PLATE RECOGNITION SYSTEM

The City Council authorized the City Manager or his designee to execute all documents necessary for the purchase and implementation of twenty Automated License Plate Recognition (ALPR) cameras from Flock Systems of Atlanta, GA in the amount of \$1,487,500.

21. A PROFESSIONAL SERVICES AGREEMENT WITH CARDO CONSULTING, INC. TO ASSIST IN THE IMPLEMENTATION AND COORDINATION OF THE NEW FIRE AMBULANCE PROGRAM

The City Council authorized the City Manager or designee, to approve a Professional Services Agreement with Cardo Consulting, Inc., of Temecula, California, for the implementation and coordination of the new Fire Ambulance Program for a not-to-exceed contract amount of \$210,000 as amended.

22. AN AMENDMENT TO THE AGREEMENT FOR THE JOINT EXERCISE OF POWERS RELATIVE TO THE SAN BERNARDINO ASSOCIATED GOVERNMENTS

The City Council approved Amendment No. 4 to the Joint Exercise of Powers Agreement Relative to the San Bernardino Associated Governments to for San Bernardino Associated Governments (SANBAG), now referred to as the San Bernardino Council of Governments (SBCOG), to increase membership dues by \$27,553, for a total of \$123,395.

PUBLIC HEARING

23. A PUBLIC HEARING TO CONSIDER FILE NO. PUD21-002, A PLANNED UNIT DEVELOPMENT FOR A 0.48-ACRE PARCEL OF LAND LOCATED AT 413 WEST EMPORIA STREET SUBMITTED BY JWDA-MS ARCHITECTS

The City Council introduced and waived further reading of an Ordinance to approve File No. PUD21-002, the Emporia Work/Live Lofts Planned Unit Development, establishing development standards and design guidelines to facilitate joint work/live quarters at 413 West Emporia Street.

ORDINANCE NO. 3269 (FIRST READING) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PUD21-002, A PLANNED UNIT DEVELOPMENT TO ESTABLISH DEVELOPMENT AND PERFORMANCE STANDARDS AND DESIGN GUIDELINES FOR 0.48-

ACRES OF LAND LOCATED AT 413 WEST EMPORIA STREET WITHIN THE LUA-2N (ARTS DISTRICT- NORTH) OF THE MU-1 (DOWNTOWN MIXED USE) ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 1049-059-03.

Notice of public hearing was duly given and affidavits of compliance are on file in the Records Management Department. There were no written communications.

Mayor Leon opened the public hearing and inquired if anyone was interested in speaking to the item. Hearing no one, Mayor Leon closed the public hearing and opened the item for Council discussion.

MOTION: Moved by Mayor pro Tem Dorst-Porada seconded by Council Member Bowman and carried by a unanimous vote 5-0, to introduce Ordinance No. 3269.

24. A PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA21-012) BETWEEN THE CITY OF ONTARIO AND RICHLAND MEADOWLAND, LTD, STRACK FARMS LAND, LLC, AND RMD INLAND INVESTORS, LLC

The City Council introduced and waived further reading of an Ordinance to approve a Development Agreement (File No. PDA21-012) between the City of Ontario and Richland Meadowland, LTD, Strack Farms Land, LLC, and RMD Inland Investors, LLC.

ORDINANCE NO. 3270 (FIRST READING) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA21-012, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND RICHLAND MEADOWLAND, LTD A TEXAS LIMITED PARTNERSHIP, STRACK FARMS LAND, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND RMD INLAND INVESTORS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE TRACT MAP 20472 (FILE NO. PMTT21-018), A 47.16 ACRE PROPERTY LOCATED AT THE SOUTHWEST CORNER OF EUCALYPTUS AVENUE AND HAVEN AVENUE, WITHIN PLANNING AREA 30 MIXED RESIDENTIAL AND PLANNING AREA 31 MIXED RESIDENTIAL OF THE SUBAREA 29 SPECIFIC PLAN (FILE NO. PSPA21-005), AND MAKING FINDINGS IN SUPPORT THEREOF - APN(S): 0218-331-31 AND 0218-331-52.

Notice of public hearing was duly given and affidavits of compliance are on file in the Records Management Department. There were no written communications.

Mayor Leon opened the public hearing and inquired if anyone was interested in speaking to the item. Hearing no one, Mayor Leon closed the public hearing and opened the item for Council discussion.

MOTION: Moved by Council Member Bowman seconded by Mayor pro Tem Dorst-Porada and carried by a unanimous vote 5-0, to introduce Ordinance No. 3270.

STAFF MATTERS:

City Manager Ochoa made no announcements.

ITEM 25 – CONTINUED. A RESOLUTION TO RENEW THE DOWNTOWN ONTARIO COMMUNITY BENEFIT DISTRICT

The City Council took the following actions pertaining to the renewal of the Downtown Ontario Community Benefit District (“CBD”):

- A. Conducted the public hearing;
- B. Considered oral and written testimony regarding the proposed renewal of the CBD;
- C. Tabulated Assessment ballots returned to the City pursuant to the procedures set forth in Government Code Section 53753; and
- D. Adopted a Resolution of Formation to renew the CBD and to levy and collect assessments within such CBD pursuant to California Streets and Highways Code 36600

RESOLUTION 2024-002 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO RENEW THE DOWNTOWN ONTARIO COMMUNITY BENEFIT DISTRICT AND TO LEVY AND COLLECT ASSESSMENTS WITHIN SUCH DISTRICT PURSUANT TO THE ESTABLISHMENT OF PROPERTY BUSINESS IMPROVEMENT DISTRICTS - SECTION 36600 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE AND TAKING OTHER ACTIONS THERETO.

City Clerk Mautz announced the results indicating that 88% were in support of the renewal of the benefit district and 12% were in opposition.

MOTION: Moved by Council Member Bowman seconded by Mayor pro Tem Dorst-Porada and carried by a unanimous vote 5-0, to adopt Resolution 2024-002.

COUNCIL MATTERS:

Council Member Valencia made no comments.

Council Member Bowman made no comments.

Council Member Wapner made no comments.

Mayor pro Tem Dorst-Porada spoke on the importance of vehicles having both front and rear license plates.

Mayor Leon made no comments.

ADJOURNMENT:

Mayor Leon adjourned the meetings of the Joint Agencies at 7:22 p.m. and announced the next regular meeting was scheduled for February 6, 2024.

Respectfully submitted,

SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

PAUL S. LEON, MAYOR/CHAIRMAN

CITY OF ONTARIO

Agenda Report
February 20, 2024

SECTION:
CONSENT CALENDAR

Department: Engineering
Prepared By: Yesenia Lopez
Staff Member Presenting:
Scott Murphy, Executive Director Community
Development
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 3

SUBJECT: A CONSTRUCTION CONTRACT WITH HARDY & HARPER, INC. FOR THE 2024 SPRING PAVEMENT REHABILITATION PROJECT

RECOMMENDATION: That the City Council award a Construction Contract with Hardy & Harper, Inc. of Lake Forest, California, for the 2024 Spring Pavement Rehabilitation Project (Project) in the amount of \$2,245,100; and authorize the City Manager, or his designee, to execute said contract and all related documents, and file a notice of completion at the conclusion of all construction activities.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Operate in a Businesslike Manner

Focus Resources in Ontario's Commercial and Residential Neighborhoods

Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The Fiscal Year 2023-24 Adopted Budget includes appropriations for the construction of the Project in the amount of \$2,050,000 from Measure I, Road Maintenance and Rehabilitation Account (RMRA-SB1) and Community Development Block Grant (CDBG). The total recommended expenditure authorized for Hardy & Harper, Inc. consists of \$2,041,000 plus a ten percent contingency of \$204,100 for a total of \$2,245,100. Based on the Project bid results, an additional \$299,141 will be needed for Project ST2413 Fourth Street from Sultana Avenue to Cucamonga Avenue and Project ST2403 Chino Avenue from Ontario Avenue to Cucamonga Creek Channel and will be funded from the RMRA-SB1 fund balance. If approved, the additional appropriations from RMRA-SB1 will be included in the next Quarter Budget Update Report to the City Council as needed.

BACKGROUND & ANALYSIS: The general scope of work to be performed under this construction contract consists of grinding and removal of damaged pavement, placement of new asphalt rubber hot mix pavement, replacement of concrete curb and gutter, curb ramps, and any appurtenances necessary to complete the improvements as described in the Plans and Specifications. The Project locations include rehabilitation of three streets and three alleys and is anticipated to extend the lifespan of the streets and alleys by fifteen to twenty years. Project location maps are provided for

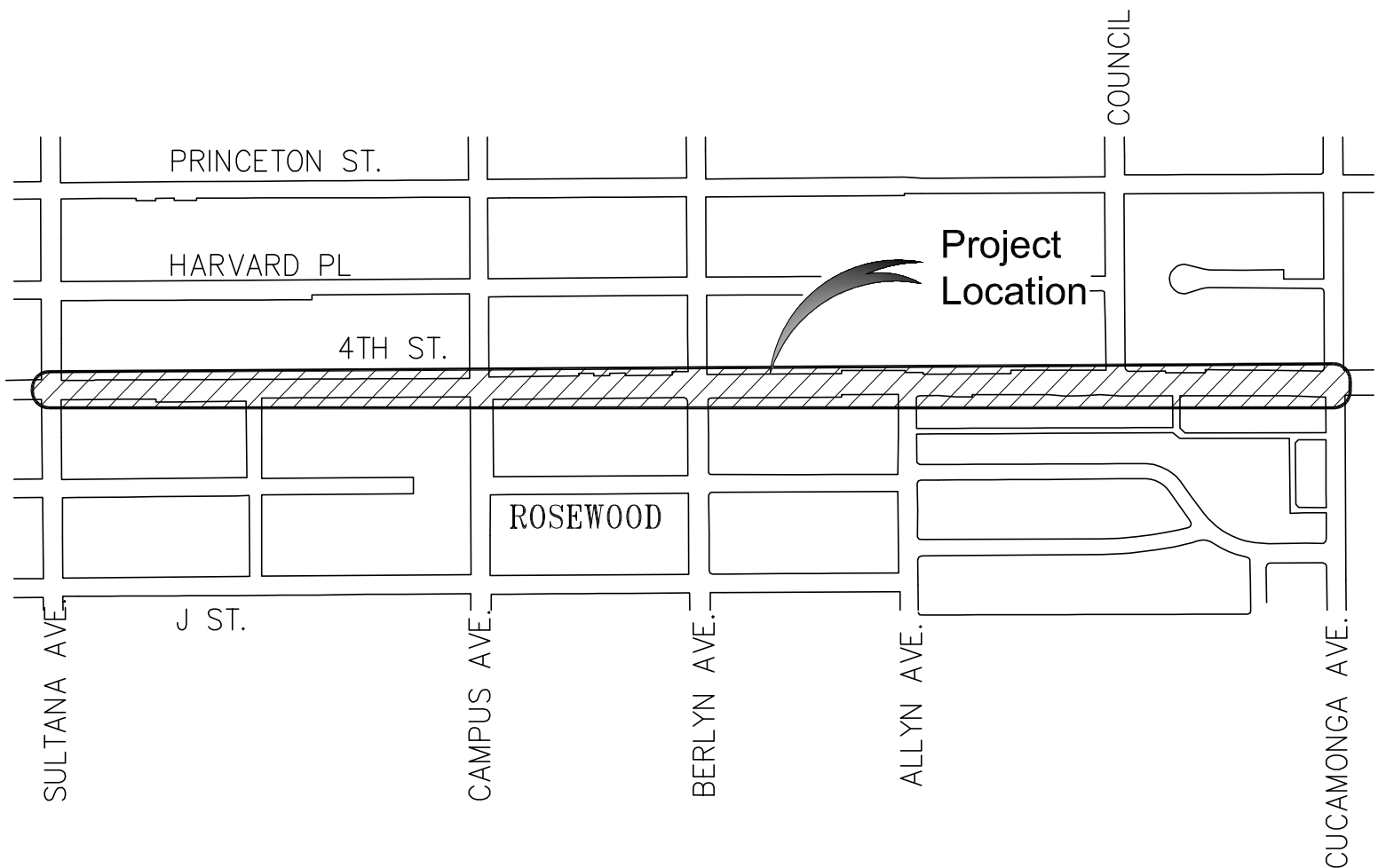
reference as Exhibit "A." In November 2023, the City solicited bids for the Project and four bids were received. The following is a summary of the bid results:

COMPANY	LOCATION	AMOUNT
Hardy & Harper, Inc.	Lake Forest, CA	\$2,041,000
All American Asphalt	Corona, CA	\$2,164,164
Onyx Paving Company, Inc.	Anaheim, CA	\$2,345,000
CWS Systems, Inc.	Pasadena, CA	\$3,733,450

Hardy & Harper, Inc. submitted the lowest responsive bid.

ENVIRONMENTAL REVIEW: The environmental impacts of this Project were reviewed and Staff determined that the Project is categorically exempt from the requirements of the California Environmental Quality Act pursuant to Section 15301 (Class 1, Existing Facilities) of the California Environmental Quality Act, whereas the Project consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of lead agency's determination.

FOURTH STREET PAVEMENT REHABILITATION PROJECT NO. ST2413 SULTANA AVENUE TO CUCAMONGA AVENUE

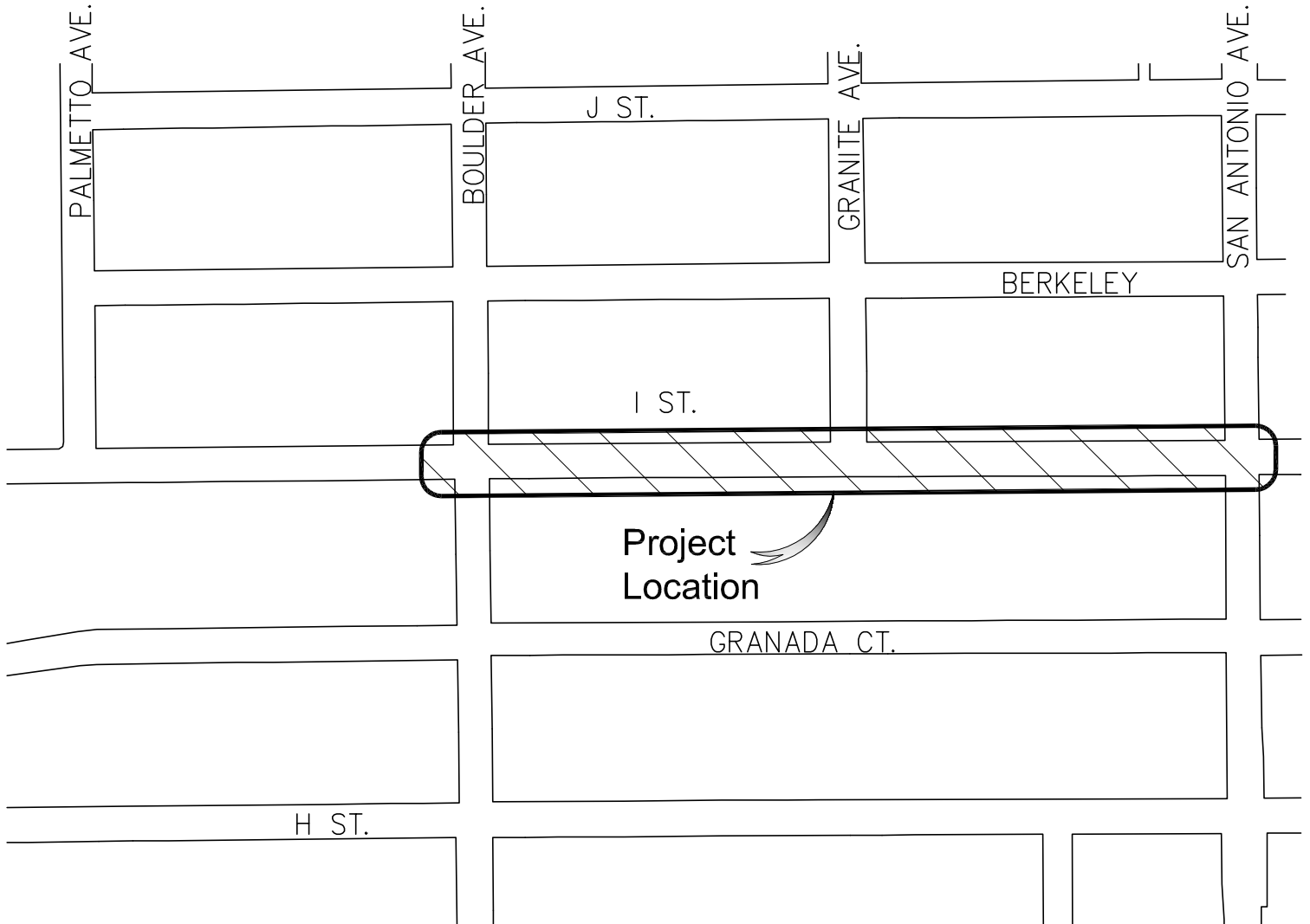


I STREET

PAVEMENT REHABILITATION

PROJECT NO. ST2407

BOULDER AVENUE TO SAN ANTONIO AVENUE



CHINO AVENUE PAVEMENT REHABILITATION PROJECT NO. ST2403

ONTARIO AVE. TO CUCAMONGA CREEK CHANNEL

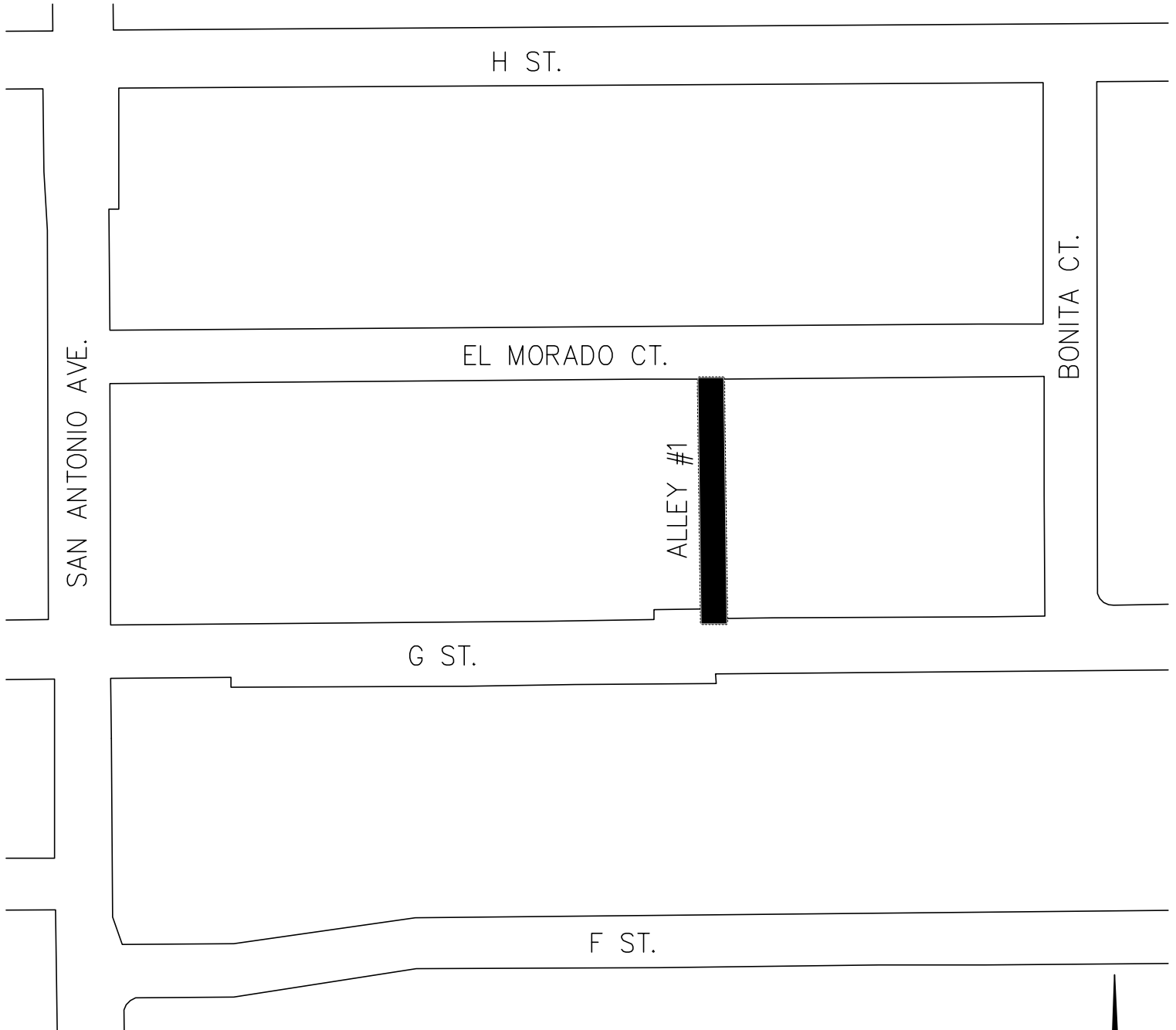


CDBG ALLEY

PAVEMENT REHABILITATION

S/O EL MORADO CT. & N/O G ST.

BETWEEN SAN ANTONIO AVE. AND BONITA CT.



LEGEND:

 CDBG ALLEY PROJECT LOCATION

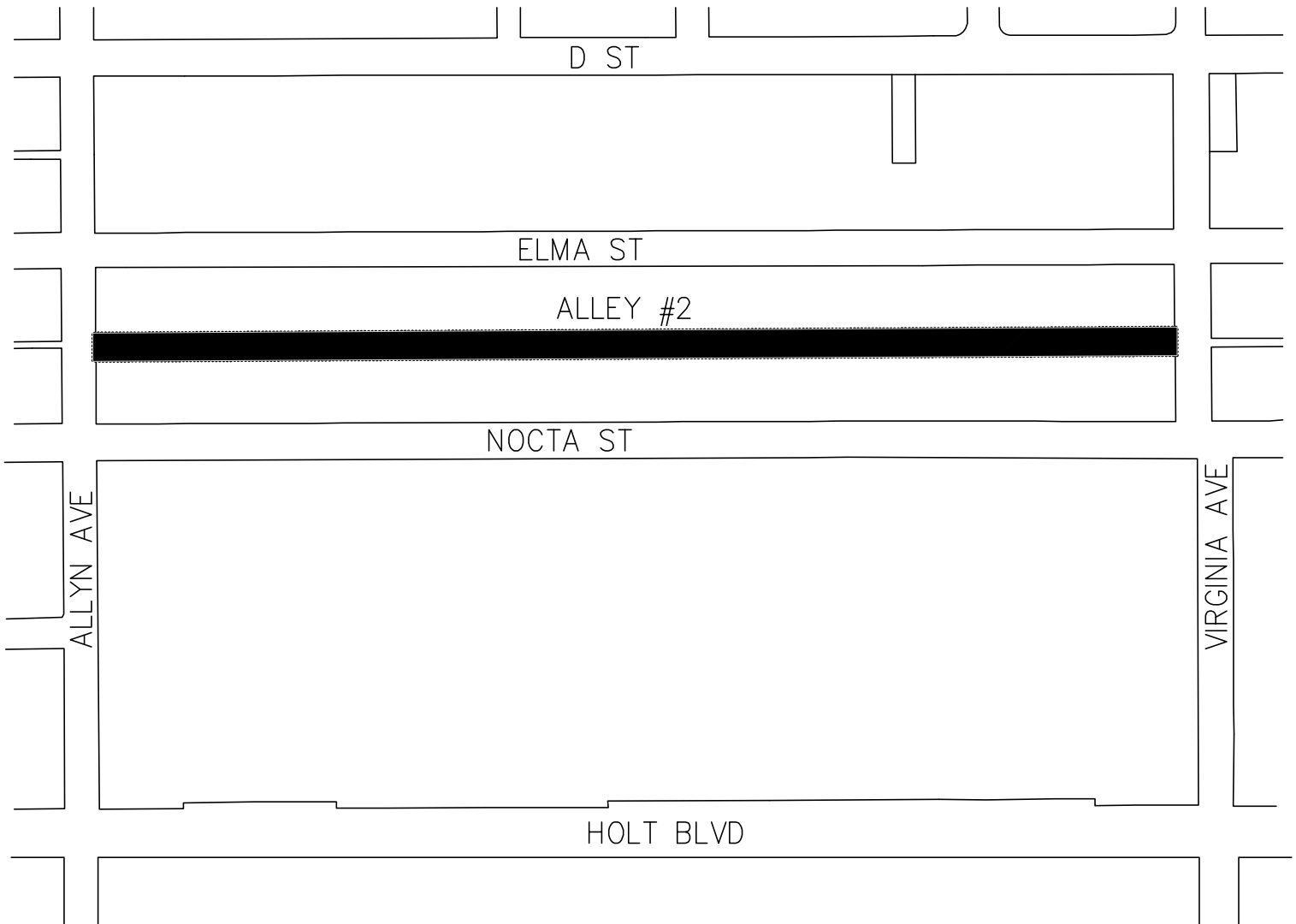


N.T.S.

CDBG ALLEY

PAVEMENT REHABILITATION

S/O ELMA STREET & N/O NOCTA STREET
BETWEEN ALLYN AVENUE AND VIRGINIA AVENUE



LEGEND:

 CDBG ALLEY PROJECT LOCATION



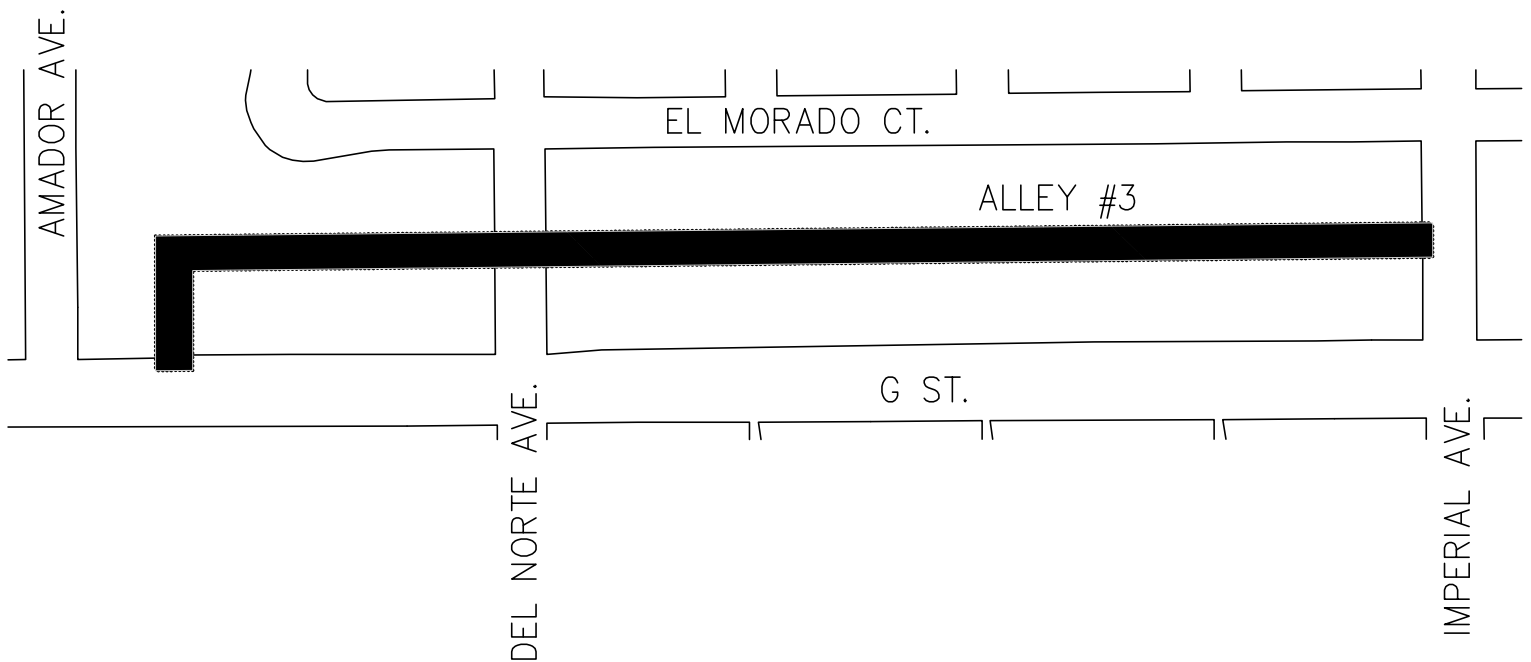
N.T.S.

CDBG ALLEY

PAVEMENT REHABILITATION

S/O EL MORADO CT. & N/O G ST.

BETWEEN ADADOR AVE. AND IMPERIAL AVE.



LEGEND:

 CDBG ALLEY PROJECT LOCATION



N.T.S.



PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 CONTRACT

THIS CONTRACT is entered as of _____, in the County of San Bernardino, State of California, by and between the City of Ontario, hereinafter called City, and **Hardy & Harper, Inc.**, hereinafter called Contractor. The City and the Contractor for the considerations stated herein agree as follows:

ARTICLE 1. SCOPE OF WORK. The Contractor shall perform all Work within the time stipulated the Contract and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5 below for the following Project:

2024 SPRING PAVEMENT REHABILITATION PROJECT

The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION. Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **75 working days** calendar days from the commencement date stated in the Notice to Proceed, herein after the Contract Time. By its signature hereunder, Contractor agrees the Contract Time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE. The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Two Million Forty-One Thousand Dollars (\$2,041,000.00)**, hereinafter the Contract Price. Payment shall be made as set forth in the General Conditions.

ARTICLE 4. LIQUIDATED DAMAGES. The Contractor acknowledges that the City will sustain actual damages for each and every day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, as provided in Government Code section 53069.85, it is agreed that

the Contractor will pay the City the sum of **Five Thousand Two Hundred Dollars (\$5,200)** for each and every calendar day of delay in completing the Work beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event the Liquidated Damages are not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not affect the City's rights to other damages or remedies specified in the Contract Documents or allowed by law.

Should Contractor be inexcusably delayed in the performance of the Work, City may deduct Liquidated Damages based on its estimate of when Contractor will achieve Final Completion or other milestones. City need not wait until Final Completion to withhold Liquidated Damages from Contractor.

Liquidated Damages are not a penalty but an agreed upon estimate of the actual damages that would be sustained by the City for delay, including but not limited to loss of revenue, inconvenience to the City and the public, and increased Project administration expenses, such as extra inspection, construction management, staff time and architectural and engineering expenses. Liquidated Damages do not include actual damages the City incurs on account of claims by third parties against the City on account of any delay.

Should money due or to become due to the Contractor be insufficient to cover Liquidated Damages or other offsets due, then Contractor forthwith shall pay the remainder of the assessed liquidated damages to City.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT. The "Contract Documents" include the following documents, each of which is incorporated into this Contract by reference

- Notice Inviting Bids
- Instructions to Bidders
- Bid Form
- Contractor's Certificate Regarding Workers' Compensation form
- Bid Bond
- List of Subcontractors form
- Contractor Information and Experience Form
- Non-Collusion Declaration form
- Public Works Contractor Registration Certification form
- Iran Contracting Act Certification form
- Contract
- Performance Bond
- Payment Bond
- Environmental documents and approvals (If Applicable)
- General Conditions
- Special Conditions
- Standard Specifications for Public Works Construction (Greenbook), 2021 Edition, except Sections 1-9
- Technical Specifications
- Addenda (If Applicable)

- Plans and Drawings (Dated 11/15/2023)
- Approved and fully executed Change Orders
- Applicable Local Agency Standards and Specifications, as last revised
- Federal Requirements (If Applicable)
- Any other documents contained in or incorporated into the Contract

The Contactor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW. Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including but not limited to, the provisions of the California Labor Code and Public Contract Code applicable to this Project. If the work involves federal funds, the Contractor and all its subcontractors shall comply with all requirements set forth in the attached Federal Requirements.

ARTICLE 7. INDEMNIFICATION. Contractor shall provide indemnification as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES. Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be obtained online at <http://www.dir.ca.gov/dlsr> and which must be posted at the job site.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

By: _____

Its: _____

Printed Name: _____

ATTEST:

By: _____
Sheila Mautz, City Clerk

By: _____

Its: _____

Printed Name: _____

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Contractor's License Number and
Classification

DIR Registration Number

END OF CONTRACT

CITY OF ONTARIO

Agenda Report
February 20, 2024

SECTION:
CONSENT CALENDAR

Department: Engineering
Prepared By: Jaime Maciel-Carrera
Staff Member Presenting:
Scott Murphy, Executive Director Community
Development
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 4

SUBJECT: AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH PARSONS CORPORATION FOR ENGINEERING AND DESIGN SERVICES FOR THE I-10 FREEWAY AT GROVE AVENUE AND FOURTH STREET INTERCHANGE AND GROVE AVENUE CORRIDOR PROJECT

RECOMMENDATION: That the City Council approve Amendment No. 10 to the Professional Services Agreement with Parsons Corporation (Parsons) of Illinois, for additional engineering and environmental services for the Project Approval and Environmental Documentation (PA&ED), for the I-10 Freeway at Grove Avenue and Fourth Street Interchange and Grove Avenue Corridor Project, for a revised cumulative contract amount of \$7,632,379, with a new contingency of \$333,005 for a revised not-to-exceed authorization amount of \$7,965,384; and authorize the City Manager, or his designee, to execute said Agreement and future amendments within the authorization limits.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Operate in a Businesslike Manner

Pursue City's Goals and Objectives by Working with Other Governmental Agencies

Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The proposed Amendment No. 10 increases the Agreement amount by \$2,650,623, plus an additional 10% contingency of \$265,063. The revised total contract amount is \$7,632,379, with a revised total contingency of \$333,005 for a revised total not-to-exceed authorization amount of \$7,965,384.

The Federal Highway Administration (FHWA) has allocated an additional \$3,334,729 in SAFETEA-LU funds on an 80% cost reimbursement basis for the I-10 Freeway at Grove Avenue and Fourth Street Interchange and Grove Avenue Corridor Project. City Council previously accepted the additional \$3,334,729 in SAFETEA-LU funds in 2019. The City will be reimbursed 80% of the engineering and environmental services costs associated with Amendment No. 10 from the State of California; a total reimbursement amount of \$2,332,548. The required 20% match of \$583,137 will be funded by Old Model Colony Regional Streets Development Impact Fee.

Associated revenues and expenditures will be included in Mid-Year Budget Update in the Ground Access Fund for \$2,332,548 and \$583,137 to OMC Regional Streets Fund.

BACKGROUND & ANALYSIS: In December 2012, the City Council approved a Professional Services Agreement with Parsons in the amount of \$3,000,000 for PA&ED of the I-10 Freeway at Grove Avenue and Fourth Street Interchange and Grove Avenue Corridor Project.

The existing agreement with Parsons is for the preparation of a study evaluating environmental impacts and recommending the configuration of a new interchange at I-10 Freeway at Grove Avenue, including the widening of Grove Avenue from four to six lanes between I-10 and Airport Drive and reconfiguring the existing interchange at I-10 and Fourth Street. The environmental document for the Interchange and Corridor were separated with the Corridor PA&ED document completed in July 2021.

The City has experienced delays in completing the PA&ED phase of the Interchange due to Caltrans elevating the environmental document type to an Environmental Impact Report (EIR) after years of reviewing it as an Initial Study/Environmental Assessment (IS/EA). The EIR is being required due to changes in the California Environmental Quality Act (CEQA) Green House Gas (GHG) emissions analysis requirements. The CEQA changes have resulted in the need to update technical studies.

Amendment No. 10 will provide funding for the completion of the PA&ED phase of the Interchange Project. Once completed, the project can move into the design, right of way, and ultimately construction phase.



PAUL S. LEON
MAYOR

SHEILA MAUTZ
CITY CLERK

DEBRA PORADA
MAYOR PRO TEM

JAMES R. MILHISER
TREASURER

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SCOTT OCHOA
CITY MANAGER

**AMENDMENT NO. 10 TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO AND
PARSONS TRANSPORTATION GROUP, INC.**

1. Parties and Date.

This Amendment No. 10 to the Agreement (as defined herein) is made and entered into as of this ____ day of _____, 2024, by and between the City of Ontario ("City") and Parsons Transportation Group Inc., an Illinois Corporation "Consultant". City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Consultant have entered into an agreement entitled "Professional Services Agreement" dated December 18, 2012. ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to provide additional compensation and add to the scope of services. The Parties have previously entered into Amendment No. 1 dated June 6, 2015, Amendment No. 2 dated November 17, 2015, Amendment No. 3 dated January 29, 2016, Amendment No. 4 dated November 15, 2016, Amendment No. 5 dated November 10, 2017, Amendment No. 6 dated July 27, 2020, Amendment No. 7 dated August 18, 2022, Amendment No. 8 dated March 7, 2023, and Amendment No. 9 dated October 17, 2023.

2.3 Amendment Authority. This Amendment No. 10 is authorized pursuant to Section 3.3.4 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.1 Scope of Services and Term of the Agreement is hereby amended in its entirety to read as follows:

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibits "A", "A-1", "A-2", "A-3", "A-4", "A-5", "A-6", "A-7", "A-8" and "A-9" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

Section 3.3.1 Compensation of the Agreement is hereby amended in its entirety to read as follows:

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibits "C", "C-1", "C-2", "C-3", "C-4", "C-5", "C-6", "C-7" and "C-8" attached hereto and incorporated herein by reference. The total compensation shall not exceed **TWO MILLION SIX HUNDRED FIFTY THOUSAND AND SIX HUNDRED TWENTY THREE and NO/100 (\$2,650,623)** for Amendment No. 10, resulting in a not-to-exceed amount of **SEVEN MILLION SIX HUNDRED THIRTY TWO THOUSAND AND THREE HUNDRED SEVENTY NINE AND NO/100 (\$7,632,379)** for the Agreement without written approval of the City Engineer. Extra Work may be authorized, as described below, and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

2 Continuing Effect of Agreement. Except as amended by this Amendment No. 10, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 10. From and after the date of this Amendment No. 10, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 10.

3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 10.

4 Severability. If any portion of this Amendment No. 10 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5 Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR AMENDMENT NO. 10 TO PROFESSIONAL SERVICES
AGREEMENT BETWEEN THE CITY OF ONTARIO
AND PARSONS TRANSPORTATION GROUP, INC.**

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 10 as of the
day and year first above written.

CITY OF ONTARIO

**PARSONS TRANSPORTATION
GROUP, INC.**

Approved By:

Scott Ochoa
City Manager

By: _____

Its: _____

Approved as to Form:

Printed Name: _____

Best Best & Krieger LLP
City Attorney

By: _____

Its: _____

Printed Name: _____

Attested By:

City Clerk



April 28, 2023

Mr. Jay Bautista
City of Ontario
303 East B Street,
Ontario, CA 91764

**Subject: I-10/Grove Avenue Interchange Project / Grove Corridor Project
Request for Amendment for Additional Funding and Time Extension**

Dear Jay,

Parsons appreciates the opportunity to continue supporting the City of Ontario with the I-10/Grove Avenue Interchange Project and Grove Corridor Project. We would like to request an amendment for additional funding and time extension.

The Grove Corridor Project Approval and Environmental Document (PA/ED) Phase is completed. Throughout the delivery of this project, there were tasks that required more effort than originally anticipated in the original contract; there is an outstanding balance of \$50,892.

The I-10/Grove Interchange Project was initially prepared as an Initial Study/Environmental Assessment (IS/EA) to satisfy the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). Due to a change in the greenhouse gas (GHG) emissions impact analysis requirements in February 2020, Caltrans indicated that the required environmental document for the Project has been elevated to a CEQA Environmental Impact Report (EIR) and NEPA Environmental Assessment (EA). Thus, the IS/EA will be revised into an EIR/EA. Environmental analyses in the EIR/EA will be performed to meet CEQA and NEPA requirements, Federal Highway Administration (FHWA) guidelines, Caltrans Standard Environmental Reference (SER), and City of Ontario's CEQA implementation guidelines. Parsons will work in close coordination with the City and Caltrans to ensure that the technical studies and the environmental document are prepared to meet the content and format requirements of Caltrans and FHWA. In addition, the Preliminary Engineering Studies and Draft Project Report will also have to be updated. The additional scope of services is included in Exhibit "A-8".

As a result of these additional efforts, our contract completion date will extend beyond the current expiration date, December 31, 2024. Once we receive a signed agreement, it will take 24 months to get the EIR/EA finalized and another 6 months to get the permits for a total of 30 months. Assuming the amendment is approved by July 1, 2023; the contract should be extended to December 31, 2025. The remaining Schedule of Services is included in Exhibit "B-9".

Parsons is requesting additional Compensation in the amount of \$2,650,623, Exhibit "C-9", to cover the Grove Corridor Project's outstanding balance and I-10/Grove Avenue Interchange Project's additional scope of service as follows:

Project	Estimate of Overages to Date
Grove Corridor Project	\$50,892
I-10/Grove Avenue Interchange Project	\$2,599,731
TOTAL	\$2,650,623

Please feel free to call me anytime at (858) 568-8568 and/or Andrea Nieto at (310) 339-9813.

Sincerely,

Chris Johnson

Vice President

Cc: File

Attachments

- EXHIBIT "A-9" SCOPE OF SERVICES
- EXHIBIT "C-8" SCHEDULE OF SERVICES AND COMPENSATION

EXHIBIT "A-9"
ADDITIONAL SCOPE OF SERVICES FOR I-10 GROVE AVENUE INTERCHANGE

Task 1.0 Project Management {WBS 100}

Task 1.1 Project Management - PA/ED Component (WBS 100.10) Additional Work

CONSULTANT will continue providing overall day-to-day management of the project in accordance with Task 1 of the original contract for the scope of work indicated in Amendment No. 9.

Task 2.0 Preliminary Engineering Studies and Draft Project Report (WBS 160) Additional Work

Task 2.1 Update Project Information (WBS 160.05) Additional Work

CONSULTANT will conduct research and gather related information from recent and ongoing developments within the project area. It should be noted that during the PSR phase, the stakeholders conceptually agreed to a reduction of freeway lanes during construction, this issue will require further analysis as it is now the position of Caltrans District 8 to not allow any lane reductions.

Task 2.2 Engineering Studies (WBS 160.10) Additional Work

CONSULTANT will update the following preliminary engineering documents:

Task 2.2.1 Traffic Forecasts/Modeling (WBS 160.10.10) Additional Work

Traffic Methodology Memo Additional Work Additional Work

A Traffic Methodology Memo summarizing the procedures and assumptions to be used in the traffic operations analysis and documenting the key input assumptions and methodology to be used to produce existing and future traffic volumes will be prepared.

Deliverables: Traffic Methodology Memo

Data Collection Additional Work Additional Work

Available sources of historical traffic data such as PeMS and related TIAs in the area will be reviewed with appropriate data applied to the traffic study. A data collection program and procure data collection services including turning movement counts and mainline/ramp counts as needed to supplement existing traffic count data will be developed.

Travel Demand Forecasting and Traffic Volume Report Additional Work

The most recent version of the Southern California Association of Governments (SCAG) travel demand model for all analysis years will be obtained. The network configurations will be updated and the traffic assignment to develop traffic forecast assuming the models are updated and validated will be run. Changes to the land use and SED data provided in the base model or the existing or no build networks will not be made. Traffic forecasts will be developed for the opening and horizon years with and without the project improvements in place. Traffic volumes for the project scenarios will be presented in a Traffic Volumes Report.

**I-10 / Grove Avenue IC and Corridor
Project Approval and Environmental Document (PA/ED) Phase**

Deliverables: Draft and Final Traffic Volumes Report

Task 2.2.6 Traffic Operational Analysis (WBS 160.10.35) Additional Work

Traffic Operations Analysis Report (TOAR) Additional Work

A TOAR containing traffic operations analysis will be prepared. Project-related impacts and mitigation measures shall be identified. Signalized and unsignalized intersections will be modeled using Synchro. Freeway segments will be modeled in HCS.

Deliverables: Draft and Final Traffic Operations Analysis Report

Induced Demand Analysis Additional Work

The increase in vehicle miles traveled (VMT) induced by added roadway capacity will be quantified. VMT, including induced VMT, will be analyzed and included in the environmental document.

Task 2.2.7 Updated Right of Way Data Sheet (WBS 160.10.40) Additional Work

CONSULTANT will use the work already prepared and update the Right of Way Data Sheet and right of way requirements associated with the two build alternatives.

Task 2.2.9 Multi-Modal Study (WBS 160.10.55) Additional Work

CONSULTANT will complete a study that addresses permanent and temporary construction impacts related to:

- Pedestrian facilities
- Bicycle facilities

Deliverable: Section of the Project Report

Task 2.2.10 Park & Ride Study (WBS 160.10.60) Additional Work

CONSULTANT will complete a study that addresses any proposed park & ride facilities.

Deliverable: Section of the Project Report

Task 2.2.11 Traffic Studies (WBS 160.10.70) Additional Work

CONSULTANT will update the Traffic Study that combines the Traffic Forecast Volumes Report and the Traffic Operational Analysis into a single comprehensive Traffic Study.

Deliverable: Draft/Final Traffic Study

Task 2.2.15 Preliminary Transportation Management Plan (TMP) (WBS 160.10.95) Additional Work

A Preliminary TMP will be updated. It is assumed that there will be three stages of construction and the Preliminary TMP will explore mitigation measures to minimize traffic impacts. Additionally, the plan will analyze impacts to San Bernardino County Transportation Authority's express lanes (currently under construction) to determine what coordination efforts would be necessary during construction of the I-10 Grove Interchange.

Deliverables: Preliminary Traffic Management Plan

Previously Approved Engineering Studies

I-10 / Grove Avenue IC and Corridor Project Approval and Environmental Document (PA/ED) Phase

It is assumed that no updates are required for the following previously approved engineering studies:

- Draft/Final Geometric Approval Drawing (GAD) (September 2018)
- Draft/Final Structures Advance Planning Study (APS) (May 2017)
- Pavement LCCA Report (April 2016)
- Draft/Final Preliminary Materials Report (April 2016)
- Value Analysis (March 2020)
- Draft/Final District Preliminary Geotechnical Design Report (December 2016)
- Highway planting design concept plans (March 2020)
- Preliminary landscaping cost estimate (March 2020)

It is also assumed that no other new engineering studies would be required for the project.

Task 2.3 Draft Project Report (WBS 160.15) Additional Work

CONSULTANT will update the draft project report (DPR). The DPR will be updated in accordance with Caltrans Project Development Procedures Manual. Comments received will be addressed and a final DPR will be resubmitted and circulated for signatures.

Task 2.3.1 Cost Estimates for Alternatives (WBS 160.15.05) Additional Work

CONSULTANT will update the cost estimates for the two build alternatives for comparison and assisting in the selection of a Preferred Alternative. Cost estimates will be updated in accordance with the Caltrans Project Development Procedures Manual for projects at the PA&ED phase.

Deliverable: *Draft/Final Cost Estimates*

Task 2.3.2 Fact Sheets for Exceptions to Design Standards (WBS 160.15.10) Additional Work

CONSULTANT will update non-standard design features (Advisory & Mandatory) associated with the two build alternatives, update the list of anticipated design exceptions for the two alternatives, and prepare draft and final Fact Sheets for the proposed design exceptions. Draft Fact Sheets will first be discussed with Caltrans staff and will be submitted for review. Comments received will be addressed and final Fact Sheets will be resubmitted and circulated for signatures.

Deliverables: *Draft/Final Advisory Design Exception Fact Sheets*

Draft/Final Mandatory Design Exceptions Fact Sheets

Task 2.3.3 Draft Project Report (WBS 160.15.20) Additional Work

CONSULTANT will update the Draft Project Report.

Deliverables: *Final Draft Project Report*

2.3.4 Draft Project Report Circulation, Review & Approval (WBS 160.15.25) Additional Work

CONSULTANT will circulate the Final Draft Project Report, respond to review comments, and obtain approval signatures.

Deliverable: *Approved Draft Project Report*

**I-10 / Grove Avenue IC and Corridor
Project Approval and Environmental Document (PA/ED) Phase**

Task 2.4 Engineering Surveys (WBS 160.20)

We assume additional engineering surveys would not be required for the project.

Task 3.0 Environmental Studies & Draft Environmental Document (WBS 165) Additional Work

Environmental analyses will be performed to meet California Environmental Quality Act (CEQA) Environmental Impact Report (EIR) and National Environmental Policy Act (NEPA) Environmental Assessment (EA) requirements. Thus, the Initial Study/Environmental Assessment (IS/EA) will be revised into an EIR/EA. Environmental analyses in the EIR/EA will be performed to meet California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) requirements, Federal Highway Administration (FHWA) guidelines, Caltrans Standard Environmental Reference (SER), and City of Ontario's CEQA implementation guidelines.

Scoping Additional Work

As stipulated by Section 15082 of the CEQA Guidelines (California Code of Regulations Title 14) preparation of an EIR must include consultation with responsible agencies, trustee agencies, federal agencies, and the general public. In support of the scoping effort, CONSULTANT will prepare a Notice of Preparation (NOP) for filing with the Office of Planning and Research and San Bernardino County Clerk and will assist the City with mail distribution of the NOP to responsible and trustee agencies and affected parties within 0.5 mile of the site.

In support of the scoping meeting, CONSULTANT will prepare the NOP to include a meeting notice for publication in one (1) newspaper of general circulation in the City and will provide the pdf file for posting on the State Clearinghouse (SCH), City and Caltrans websites. Additional materials to be provided at the scoping meeting include:

- One page project summary handout with English on 1 side and Spanish on the other
- Comment cards in both English and Spanish
- No more than 5 2' by 4' display boards of the proposed project
- One staff member fluent in Spanish to assist with translations as necessary
- Powerpoint presentation
- Name tags
- Water/snacks Will not be provided

It is assumed that the City will set the date and secure the venue for the scoping meeting. A CONSULTANT engineer and an environmental specialist will attend the meeting to discuss the project and the environmental review process.

Following completion of the 30-day NOP comment period, during which time responsible agencies and the public can provide feedback on the proposed project, CONSULTANT will prepare a scoping summary report to document the scoping efforts and comments received during the scoping period.

Assumptions: Up to 300 notices will be mailed; additional notices will be mailed at cost City to provide list of responsible and trustee agencies

*Deliverables: Draft and Final Notice of Preparation (NOP)
Mailing of NOP*

**I-10 / Grove Avenue IC and Corridor
Project Approval and Environmental Document (PA/ED) Phase**

*Filing NOP with County Clerk and SCH
Attendance at 1 Scoping Meeting
Presentation Materials
Draft and Final Scoping Summary Report*

Task 3.1 General Environmental Studies (WBS 165.10) Additional Work

Based on coordination with Caltrans District 8 environmental staff, the previously prepared technical reports will be updated as necessary. CONSULTANT will work closely with Caltrans to ensure updated technical studies or summary memoranda are prepared to meet the current content and format requirements of Caltrans and FHWA.

*All reports will be prepared using the most current of Caltrans' annotated outlines as of May 2022. Any changes to annotated outlines that occur once a study is under way are not covered by this scope and will require an amendment.

*It is assumed that the same three build alternatives will be evaluated in the technical studies/memoranda and that CONSULTANT will revise the technical studies/memoranda based on no more than 1 round of comments from the City and two rounds of comments from Caltrans for both Draft and Final versions of reports.

*All submittals of technical studies will be provided electronically.

Task 3.1.1 Community Impact Analysis {CIA} (WBS 165.10.15) Additional Work

A new Community Impact Assessment (CIA) will be prepared, incorporating relevant information from the previously approved CIA (March 2015) and CIA Addendum (September 2019). The new CIA will use 2020 Census data and provide analysis for all three build alternatives. The new CIA will be prepared in accordance with Caltrans' Environmental Handbook, Volume 4 guidance and will follow the Caltrans CIA template (November 2016).

Deliverables: Draft and Final Community Impact Assessment

Task 3.1.3 Noise Study (WBS 165.10.25) Additional Work

Based on discussions during a focus meeting with Caltrans District 8 Environmental Staff on March 24, 2022, a new Noise Study Report and Noise Abatement Decision Report will not be required unless new roadways have been built or if the Express Lanes on I-10 were not previously accounted for. Therefore, preparation of a new Noise Study Report and Noise Abatement Decision Report are not part of this scope. If new roadways have been built or if the Express Lanes on I-10 were not previously accounted for, then a separate scope and fee will be prepared to complete these documents and will require an amendment.

Task 3.1.4 – Air Quality Study and Greenhouse Gas Emissions/Global Climate Change {WBS 165.10.30} Additional Work

Air Quality Additional Work

A new Air Quality Technical Report (AQTR) will be prepared as an update to the previously approved Air Quality Technical Report (March 2017). The AQTR will be prepared following Caltrans' annotated outline

I-10 / Grove Avenue IC and Corridor Project Approval and Environmental Document (PA/ED) Phase

(December 15, 2017) and conform to the current air quality analysis requirements and regulations. The potential impacts to regional and local air quality from the project will be assessed using the California Emissions Estimator Model (CalEEMod) and California Line Source Dispersion Model (CALINE-4), with modeling based on updated traffic data. The potential construction impacts of each of the three alternatives will be analyzed using the Road Construction Emission Model (RCEM).

Upon approval of the AQTR, the previous draft of the Air Quality Conformity Analysis Report will be updated as necessary to document project-level conformity.

A filing for redetermination from Transportation Conformity Working Group (TCWG) that the project is not a Project of Air Quality Concern (POAQC) would have to be made, based on the new traffic numbers. CONSULTANT will prepare and file the PM Hot Spot Summary Form and attend the TCWG hearing as part of this task.

***Deliverables:** Draft and Final Air Quality Technical Report
PM Hot Spot Summary Form for TCWG
Attendance at 1 TCWG Hearing
Draft and Final Air Quality Conformity Analysis Report*

Climate Change Additional Work

Following Caltrans' annotated outline for capacity increasing projects (January 2022), a Climate Change Report will be prepared to document the project's potential GHG emissions and contribution to climate change. Using the latest CalEEMod, a quantified analysis of both the operational and construction greenhouse gas (GHG) emissions associated with the project will be performed. A CEQA significance determination will be made, and project-level GHG reduction strategies will be identified.

***Deliverables:** Draft and Final Climate Change Report*

Task 3.1.5 Water Quality Studies (WBS 165.10.35) Additional Work

Preliminary Drainage Report Additional Work

A new Preliminary Drainage Report will be prepared incorporating relevant information from the previously approved Preliminary Drainage Report (January 2016) and to address new comments on the previously prepared Addendum to Preliminary Drainage Report (December 2016). As part of the update, further coordination with San Bernardino County Flood Control District (SBCFCD) will be performed regarding proposed drainage modifications.

***Deliverables:** Draft and Final Preliminary Drainage Report*

Water Quality Assessment Report Additional Work

A new Water Quality Assessment Report (WQAR) will be prepared incorporating relevant information from the previously approved WQAR (March 2016) and WQAR Alternative 3 Addendum (January 2017). The new study will incorporate all three build alternatives and be prepared following Caltrans' annotated outline (February 9, 2018).

***Deliverables:** Draft and Final Water Quality Assessment Report*

Task 3.1.8 Draft Right of Way Relocation Impact Document (WBS 165.10.55) Additional Work

**I-10 / Grove Avenue IC and Corridor
Project Approval and Environmental Document (PA/ED) Phase**

Based on discussions during a focus meeting with Caltrans District 8 Environmental Staff on March 24, 2022, the Draft Relocation Impact Report, approved in July 2015 and the Supplement to the July 2015 Draft Relocation Impact Report, approved in February 2017, are still valid, and a new, updated or supplemental report is not required.

If Caltrans District 8 Environmental Staff decide an update is required, the effort to produce a new, updated or supplemental document is not part of this scope and will require an amendment.

Task 3.1.9 Location Hydraulic & Floodplain Study (WBS 165.10.60) Additional Work

Location Hydraulic Study Additional Work

A new Location Hydraulic Study will be prepared as an update to the previously approved Location Hydraulic Study Addendum (February 2017). The new study will be prepared following Caltrans' annotated outline (June 23, 2020).

Deliverables: Draft and Final Location Hydraulic Study

Floodplain Evaluation Report Additional Work

A new Floodplain Evaluation Report (FER) will be prepared incorporating relevant information from the previously approved FER (July 2015) and the FER Alternative 3 Addendum (February 2017). The new FER will be based on the latest floodplain evaluation criteria.

Deliverables: Draft and Final Floodplain Evaluation Report

Task 3.1.11 Initial Site Assessment (ISA), Aerially Deposited Lead (ADL), and Asbestos Study (WBS 165.10.80) Additional Work

Initial Site Assessment Additional Work

A new Initial Site Assessment (ISA) will be prepared. Phase I Environmental Site Assessments (ESAs) are prepared to evaluate if recognized environmental conditions (RECs) are present on project sites. RECs are the likely presence of hazardous substances or petroleum products in soil, soil vapor or groundwater at the property indicative of a release. The Phase I ISA will be prepared in general accordance with ASTM Phase I Standard E1527-13, which is based on review of the historical records (topographic maps, historic Sanborn Fire Insurance Maps, aerial photographs, etc.), environmental database review, property records review, property owner interviews, and site reconnaissance. Caltrans ISA Checklist will also be completed.

Based on discussions during a focus meeting with Caltrans District 8 Environmental Staff on March 24, 2022, the previously Aerially Deposited Lead Site Investigation (October 2015) and Asbestos Containing Materials and Lead Based Survey (October 2015) remain valid and will not require updates.

Limitations: No environmental lien data will be reviewed.

Phase II Site Investigations are not included in this scope.

Deliverables: Draft and Final Initial Site Assessment

Task 3.2 Biological Studies (WBS 165.15) Additional Work

Task 3.2.3 Natural Environment Study (NES) Report (WBS 165.10.20) Additional Work

I-10 / Grove Avenue IC and Corridor Project Approval and Environmental Document (PA/ED) Phase

First, the CNDDDB and IPaC databases will be searched to determine the level of effort to update the Natural Environment Study (Minimal Impact) (NESMI). The database search results will be compared to the previous database search results. If there are no changes in the species identified in the new database search results, then a memorandum will be prepared to update the NESMI and the NESMI Alternative 3 Addendum. The level of effort for the preparation of this memorandum is dependent on the results of the database search results. This memorandum will be prepared incorporating relevant information from the previously approved NESMI (January 2016) and NESMI Alternative 3 Addendum (July 2017). The memorandum will include analysis of all three build alternatives. New database searches along with field inspection and visual surveys of the project area will be performed to identify any new or changed biological resources found within the project area. Alternatively, a memo documenting the changes in baseline conditions and updated database searches may be prepared to show that the same impacts on sensitive biological resources would occur.

Updates to the Jurisdictional Delineation (September 2015) and Alternative 3 Jurisdictional Memo (May 2017) are expected to be required, in compliance with current USACE requirements. However, the combined updated delineation will be needed just prior to permit submittal to USACE.

*Deliverables: Draft and Final Memorandum
Draft and Final Revised Jurisdictional Delineation*

Task 3.3 Cultural Resource Studies (WBS 165.20) Additional Work

CONSULTANT will review previous efforts to identify historic properties and determine what efforts will be needed to make certain the modified project continues to comply with environmental laws and regulations. The previous Area of Potential Effect (APE) map and eligibility findings and results from the original various archaeological and historic resource survey reports, including any resources previously evaluated and found ineligible for listing in the National Register of Historic Places (NRHP) and California Register of Historic Resources (CRHR) will also be reviewed. In consideration of any new activities proposed, a preliminary determine will be made whether the modified project remains allows for the same APE boundaries as originally created and whether or not there are parcels that have now been included due to the passage of time. An updated records search at the South Central Coastal Information Center (SCCIC) at CSU-Fullerton will be conducted to determine whether any additional cultural resource surveys, and their results, were conducted in or near the APE in the interim. A memorandum will be prepared summarizing this preliminary review and analysis and identify whether or not further cultural documentation will need to be updated. Should additional documentation be required a separate scope and fee will be prepared to complete these documents and will require an amendment.

Deliverables: Preliminary Assessment Draft/Final

Previously Approved Technical Studies

It is assumed that no updates are required for the following previously approved technical studies:

- Archaeological Survey Report (March 2017)
- Historic Property Survey Report (March 2017)
- Historic Resources Evaluation Report (March 2017)

**I-10 / Grove Avenue IC and Corridor
Project Approval and Environmental Document (PA/ED) Phase**

- Noise Study Report (May 2019)
- Noise Abatement Decision Report (June 2019)
- Paleontological Evaluation Report/Paleontological Identification Report (March 2017)
- Preliminary Geotechnical Report (January 2017)
- Aerially Deposited Lead Site Investigation (October 2015)
- Asbestos Containing Material and Lead-Based Paint Survey (October 2015)
- Visual Impact Assessment (September 2019)

It is also assumed that no other new technical studies would be required for the project.

Task 3.4 Draft Environmental Document (WBS 165.25) Additional Work

Using the previously completed Draft IS/EA, an EIR/EA will be prepared in accordance with the Caltrans Standard Environmental Reference, FHWA Technical Advisory T6640.8A, 23 CFR 771, California Code of Regulations Title 14, Division 6, Chapter 3 Sections 15000-15387, Public Resources Code 21000-21177, and SAFETEA-LU Section 6005, as revised by MAP-21. CONSULTANT will prepare the EIR/EA incorporating the findings provided in the technical analyses (from both updated studies and previously approved studies as appropriate), including discussion of critical environmental issues identified, analysis of the cumulative effects of the project, avoidance, minimization, and mitigation measures to be implemented, and a list of potential permits required. The purpose and need statement will be updated to address project sustainability.

A Draft EIR/EA for public circulation will be prepared following Caltrans' annotated outline (January 2022). It is assumed that no more than two rounds of comments from Caltrans and two rounds of comments from the City will be required for finalization of the Draft EIR/EA. Once the City and Caltrans have approved the Draft EIR/EA as ready for circulation, a Notice of Completion (NOC), Notice of Availability (NOA) and the Draft EIR/EA will be prepared for posting on the Office of Planning and Research State Clearinghouse and City websites. CONSULTANT will work with the City to post the NOA with the San Bernardino County Clerk, publish the NOA in one (1) newspaper of general circulation, and mail the NOA to those property owners and occupants of the properties located immediately adjacent (approximately 0.5 mile) to the project footprint. CONSULTANT will also prepare individual NOA letters to trustee and responsible agencies.

During the 45-day circulation period of the Draft EIR/EA, CONSULTANT will assist the City at one (1) public meeting. In support of the meeting, the following materials will be provided by CONSULTANT:

- One page project summary handout with English on 1 side and Spanish on the other
- Comment cards in both English and Spanish
- Up to 5 2'x4' display boards
- One staff member fluent in Spanish to assist with translations as necessary
- Powerpoint presentation
- Name tags
- Water/snacks Will not be provided

It is assumed that the City will set the date and secure the venue for the meeting. A CONSULTANT engineer and an environmental specialist will attend the meeting to discuss the project, the findings of the Draft EIR/EA, and the subsequent environmental review process.

**I-10 / Grove Avenue IC and Corridor
Project Approval and Environmental Document (PA/ED) Phase**

Also, 3 hard copies of the Draft EIR/EA will be provided; one (1) for the City and one (1) for two (2) local libraries.

*Assumptions: Additional review cycles beyond two (2) for the City and two (2) for Caltrans will require an amendment to this contract (or will be billed on a time and materials basis).
Payment of County Clerk filing fees are not included in this task.*

*Deliverables: Draft and Final Draft EIR/EA
Notice of Completion
Notice of Availability
Mailing of up to 300 NOA and NOA letters
Filing with County Clerk and SCH
Attendance at one (1) Public Meeting
Presentation Materials*

Task 4.0 Permits, Agreements and Route Adoptions (WBS 170) Additional Work

Task 4.1 1602 Lake and Streambed Alteration Agreement

Consultant will prepare the draft permit notification materials for a Standard Agreement including the calculation of temporary and permanent impacts to California Department of Fish and Wildlife (CDFW) jurisdictional resources, supporting exhibits and documents, and a revegetation plan for temporarily disturbed areas. As the permittee, the City will be responsible for submitting the notification and necessary supporting materials to the CDFW South Coast Region (Region 5) via the Environmental Permit Information Management System (EPIMS) Permitting Portal. In addition, the City will be responsible for payment of the necessary permit fees.

Assumptions:

- City will be responsible for submittal of the application via the CDFW Environmental Permit Information Management System (EPIMS) Permitting Portal
- City will be responsible for paying necessary permit fees
- 1 City review cycle of the application materials
- 1 CDFW review cycle
- City will be responsible for securing any necessary compensatory mitigation

Task 4.2 Section 401 Water Quality Certification

Consultant will prepare the draft permit application materials for a Water Quality Certification including the calculation of temporary and permanent impacts to waters of the State, supporting exhibits and documents, and a revegetation plan for temporarily disturbed areas. A Tier I – Alternatives Analysis will be prepared in support of the permit application. The Consultant will initiate the process by requesting a pre-filing meeting with the California Regional Water Quality Control Board (Region 8 Santa Ana). As the permittee, the City will be responsible for submitting the permit application to the Regional Water Quality Control Board. In addition, the City will be responsible for payment of the necessary permit fees.

I-10 / Grove Avenue IC and Corridor Project Approval and Environmental Document (PA/ED) Phase

Assumptions:

- Only a Tier I Alternatives Analysis is required
- City will be responsible for the electronic submittal of the application to California Regional Water Quality Control Board (Region 8 Santa Ana)
- City will be responsible for paying necessary permit fees
- 1 City review cycle of the application materials
- 1 RWQCB review cycle
- City will be responsible for securing any necessary compensatory mitigation

Task 4.3 Section 404 Nationwide Permit

Consultant will prepare the draft permit application materials (Pre-construction Notification) for a Nationwide Permit including a jurisdictional delineation report, the calculation of temporary and permanent impacts to waters of the U.S., supporting exhibits and documents, and a revegetation plan for temporarily disturbed areas. As the permittee, the City will be responsible for submitting the permit application to the U.S. Army Corps of Engineers, Los Angeles District.

Assumptions:

- City will be responsible for the electronic submittal of the application to the U.S Army Corps of Engineers, Los Angeles District
- 1 City review cycle of the application materials
- 1 USACE review cycle
- City will be responsible for securing any necessary compensatory mitigation

Task 5.0 Circulate Draft Environmental Document and Select Preferred Project Alternative {WBS 175} Additional Work

Task 5.3 Public Comment Responses and Correspondence (WBS 175.15) Additional Work

Based on comments received during the Draft EIR/EA comment period, CONSULTANT will prepare responses to the individual comments on environmental issues in the Draft EIR/EA.

It is assumed that no more than 20 comment letters or 100 individual comments will require a response. Should a greater amount of comments be received or should attorneys provide comments requiring a more detailed response, CONSULTANT will renegotiate the budget for this task.

Deliverables: Draft and Final Responses to Comments

Task 6.0 Approve Project Report and Final Environmental Document (WBS 180) Additional Work

Task 6.1 Final Project Report (WBS 180.05) Additional Work

A Final Project Report will be circulated for comments and review. Comments received will be addressed and a Final Project Report will be resubmitted and circulated for signatures.

Task 6.1.2 Approved Project Report (WBS 180.05.10)

CONSULTANT will obtain approval signatures for the Project Report.

**I-10 / Grove Avenue IC and Corridor
Project Approval and Environmental Document (PA/ED) Phase**

Deliverable: Approved Project Report (PR)

Task 6.1.3 Updated Storm Water Data Report (WBS 180.05.15)

CONSULTANT will update and obtain approval of the Storm Water Data Report (SWDR).

Deliverable: Approved Storm Water Data Report (SWDR)

Task 6.2 Final Environmental Document (WBS 180.10) Additional Work

Upon approval of the responses to comments, a Final EIR/EA will be prepared incorporating any necessary changes to the Draft EIR/EA. The Final EIR/EA will include a disposition of all comments received on the Draft EIR/EA and responses to those comments. It is assumed that no more than two rounds of comments from the City and two rounds of comments from Caltrans will be required for finalization of the Final EIR/EA. Following review by Caltrans District 8 staff and Headquarters, Caltrans will certify the document.

For each identified significant effect, Findings of Effect will be prepared following the Caltrans template (May 2020).

If there are unavoidable significant environmental effects, a Statement of Overriding Considerations will be prepared following the Caltrans template (May 2020).

CONSULTANT will also prepare a Finding of No Significant Impact (FONSI) for the project.

CONSULTANT will attend one (1) Ontario City Council hearing on the project and prepare a Notice of Determination (NOD) for City signature. Payment of County Clerk and CDFW filing fees for the NOD are not included in this task.

*Assumptions: Additional review cycles beyond two (2) for the City and two (2) for Caltrans will require an amendment to this contract (or will be billed on a time and materials basis).
Payment of County Clerk and CDFW filing fees are not included in this task.*

Deliverables: Draft and Revised Final PR

Draft and Revised Final EIR/EA

Preparation of Findings of Effect

Preparation of Statement of Overriding Considerations

Preparation of Finding of No Significant Impact

Attendance at one (1) City Council hearing

Preparation of Notice of Determination

Filing of Notice of Determination with County Clerk and SCH



3200 E. Guasti Road, Suite 200 - Ontario, California 91761 - (909) 218-3600 - Fax: (909) 218-3605 - www.parsons.com

Attachment - Progress Report

Project: I-10/Grove Avenue Interchange; Corridor Tasks

Date: 04/17/2023

Progress Period: August 8, 2020 TO March 31, 2023

Job Number: 647776

1. Progress This Period

WBS	Description
01100	Project Management
	Coordinated with Project Team, City, and Caltrans staff
02100	Preliminary Engineering Studies & Draft Project Report
	No work this period
03100	Environmental Studies & Environmental Document
	No work this period
04100	Permits, Agreements & Route Adoption
	No work this period
05100	Circulate DED & Select Preferred Alternative
	No work this period
06100	Approve Project Report & Final Environmental Document
	- Submit ISA and Final EIR/EA to Caltrans on Aug. 19 - Call with Caltrans on Oct 20 to discuss ISA comments from Oct 6 - Obtained FHWA conformity on Aug. 27 and added to AQR and AQCA - Revised ISA and resubmitted to Caltrans on Oct 28 - Revised ISA per Nov 5 comments and resubmitted on Nov 12 (got approval on Nov. 30) - Revised Final EIR/EA to incorporate ISA findings - Submit revised Final EIR/EA to City for review/signature - Submit revised Final EIR/EA to Caltrans on Dec 2 - Obtain updated IPac database per Caltrans comment on Jan 26 - Coordinated with Caltrans to finish their review of the Final EIR/EA - Responded to Caltrans comments and revised and resubmitted the Final EIR/EA for final Caltrans review/approval - Environmental Document – Signed by Caltrans on April 30, 2021 - NOD, NOA, Findings and ED submission and filing.
07100	Other Direct Costs
	No work this period

2. Anticipated Progress Next Period

- None

3. Pending Issues & Potential Resolutions

- None



Attachment - Progress ReportProject: I-10/Grove Avenue Interchange; Interchange TasksDate: 04/21/2023Progress Period: August 9, 2020 TO March 31, 2023Job Number: 647776**1. Progress This Period**

WBS	Description
01200	Project Management
	• No work this period
02200	Preliminary Engineering Studies & Draft Project Report
	• No work this period
03200	Environmental Studies & Draft Environmental Document
	• No work this period
04200	Permits, Agreements & Route Adoption
	• Grove/I-10 Environmental/Cultural • I-10/Grove Tech Study Compilation and meetings • Grove Interchange all and notes on DED, ISA, SOW
05200	Circulate DED & Select Preferred Alternative
	• No work this period
06200	Approve Project Report & Final Environmental Document
	• No work this period
07200	Other Direct Costs
	• No work this period

2. Anticipated Progress Next Period

- Proceed with Updating Environmental Document to EIR-EA. (Waiting for Amendment)

3. Pending Issues & Potential Resolutions

- None

EXHIBIT "C-8"
SCHEDULE FOR ADDITIONAL SCOPE OF SERVICES FOR I-10 GROVE AVENUE INTERCHANGE

CONTRACT TASKS	2023						2024												2025											
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Notice to Proceed/Approved Amendment 9																														
Task 1 Project Management (100)																														
Task 2: Preliminary Engineering Studies & Draft Project Report (160)																														
Task 3: Environmental Studies & Draft Environmental Document (165)																														
Task 4: Permits, Agreements & Route Adoption (170)																														
Task 5: Circulate DED & Select Preferred Alternative (175)																														
Task 6: Approve Project Report & Final Environmental Document (180)																														

EXHIBIT "C-8"
COMPENSATION

Original Contract (2012)														Amend. 1 (2015) Grove Corridor Plats	Amend. 3 (2016) I- 10 / Grove IC VA	Amend #4 (2016) I-10 Grove IC Alternative 3 Development	Amendment #6 (2020) I-10 / Grove IC Additional Noise Mfg. & PARSONS	Amendment #9 Corridor PA/ED Completion and I-10/Grove IC PARSONS				
CONTRACT TASKS	TOTAL	Parsons	Iteris	Psomas	VMS	OPC	Harris & Associates	Group Delta	Entech	Cogstone	Helix	Arellano	LAE	Fehr & Peers	Psomas	Parsons	Iteris	PARSONS	OPC	Entech	PARSONS	PARSONS
Task 1 Project Management (100)	\$ 597,448	\$ 380,704											\$ 10,000					\$ 18,810				\$ 18,734
Task 2 Preliminary Engineering Studies & Draft Project Report (160)	\$ 2,329,444	\$ 891,499	\$ 242,333	\$ 120,841	\$ 38,445	\$ 42,730	\$ 103,817	\$ 72,864						\$ 19,424	\$ 22,540	\$ 17,761	\$ 20,210	\$ 161,433	\$ 5,477			\$ 570,068
Task 3 Environmental Studies & Draft Environmental Document (165)	\$ 2,655,933	\$ 435,564				\$ 50,272		\$ 60,132	\$ 47,087	\$ 42,952	\$ 35,310	\$ 35,194						\$ 97,378	\$ 8,453	\$ 13,328	\$ 60,000	\$ 1,170,263
Task 4 Permits, Agreements & Route Adoption (170)	\$ 220,299	\$ 75,639																\$ -	\$ -	\$ -		\$ 144,660
Task 5 Circulate DED & Select Preferred Alternative (175)	\$ 481,860	\$ 109,410																\$ -	\$ -	\$ -		\$ 371,950
Task 6 Approve Project Report & Final Environmental Document (180)	\$ 935,749	\$ 120,979																\$ -	\$ -	\$ -		\$ 214,770
ODCs	\$ 80,479	\$ 23,300	\$ 7,625	\$ 5,800	\$ 600			\$ 19,477		\$ 1,500		\$ 6,500						\$ 4,000	\$ 1,500			\$ 10,177
I-10 / Grove Avenue IC and Grove Corridor Total	\$ 6,100,713	\$ 2,037,095	\$ 249,958	\$ 126,641	\$ 39,045	\$ 93,003	\$ 103,817	\$ 152,473	\$ 47,087	\$ 44,452	\$ 35,310	\$ 41,694	\$ 10,000	\$ 19,424	\$ 22,540	\$ 17,761	\$ 20,210	\$ 300,821	\$ 13,930	\$ 14,828	\$ 60,000	\$ 2,650,633

Corridor Tasks	Total	Parsons	Iteris	Psomas	VMS	OPC	Harris & Associates	Group Delta	Entech	Cogstone	Helix	Arellano	LAE	Fehr & Peers	Psomas	Parsons	Iteris	PARSONS	OPC	Entech	PARSONS	PARSONS
Task 1 Project Management (100)	\$ 109,102	\$ 91,369											\$ 10,000									\$ 7,737
Task 2 Preliminary Engineering Studies & Draft Project Report (160)	\$ 876,955	\$ 213,960	\$ 242,333	\$ 120,841	\$ 38,445	\$ 42,730	\$ 103,817	\$ 72,864						\$ 19,424	\$ 22,540							
Task 3 Environmental Studies & Draft Environmental Document (165)	\$ 400,883	\$ 104,535				\$ 50,272		\$ 60,132	\$ 47,087	\$ 42,952	\$ 35,310	\$ 35,194								\$ 25,409		
Task 4 Permits, Agreements & Route Adoption (170)	\$ 18,153	\$ 18,153																				
Task 5 Circulate DED & Select Preferred Alternative (175)	\$ 26,258	\$ 26,258																				
Task 6 Approve Project Report & Final Environmental Document (180)	\$ 72,188	\$ 29,035																				\$ 42,983
ODCs	\$ 46,120	\$ 5,141	\$ 7,625	\$ 5,800	\$ 600			\$ 19,477		\$ 1,500		\$ 6,500										\$ 177
Corridor Total:	\$ 1,550,189	\$ 488,452	\$ 249,958	\$ 126,641	\$ 39,045	\$ 93,003	\$ 103,817	\$ 152,473	\$ 47,087	\$ 44,452	\$ 35,310	\$ 41,694	\$ 10,000	\$ 19,424	\$ 22,540	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 25,409	\$ 30,892

Interchange Tasks	Total	Parsons	Iteris	Psomas	VMS	OPC	Harris & Associates	Group Delta	Entech	Cogstone	Helix	Arellano	LAE	Fehr & Peers	Psomas	Parsons	Iteris	PARSONS	OPC	Entech	PARSONS	PARSONS
Task 1 Project Management (100)	\$ 488,347	\$ 289,335																				\$ 16,100
Task 2 Preliminary Engineering Studies & Draft Project Report (160)	\$ 1,452,489	\$ 677,530														\$ 17,761	\$ 20,210	\$ 161,433	\$ 5,477			\$ 570,068
Task 3 Environmental Studies & Draft Environmental Document (165)	\$ 1,655,051	\$ 331,028																\$ 97,378	\$ 8,453	\$ 13,328	\$ 34,000	\$ 1,170,263
Task 4 Permits, Agreements & Route Adoption (170)	\$ 202,145	\$ 57,485																\$ -	\$ -	\$ -		\$ 144,660
Task 5 Circulate DED & Select Preferred Alternative (175)	\$ 455,102	\$ 83,152																\$ -	\$ -	\$ -		\$ 371,950
Task 6 Approve Project Report & Final Environmental Document (180)	\$ 263,732	\$ 91,944																\$ -	\$ -	\$ -		\$ 171,787
ODCs	\$ 33,659	\$ 18,159																\$ 4,000	\$ 1,500			\$ 10,000
Interchange Total:	\$ 4,950,524	\$ 1,548,843	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 17,761	\$ 20,210	\$ 300,821	\$ 13,930	\$ 14,828	\$ 34,000	\$ 2,599,231

Project Total Check:	\$ 6,100,713	\$ 2,037,095	\$ 249,958	\$ 126,641	\$ 39,045	\$ 93,003	\$ 103,817	\$ 152,473	\$ 47,087	\$ 44,452	\$ 35,310	\$ 41,694	\$ 10,000	\$ 19,424	\$ 22,540	\$ 17,761	\$ 20,210	\$ 300,821	\$ 13,930	\$ 14,828	\$ 60,000	\$ 2,650,633
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CITY OF ONTARIO

Agenda Report
February 20, 2024

SECTION:
CONSENT CALENDAR

Department: Fire Department
Prepared By: Janny Phan
Staff Member Presenting:
Mike Gerken, Fire Chief
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 5

SUBJECT: AUTHORIZE THE PURCHASE OF A FIRE SAFETY TRAILER WITH JHB GROUP, INC.

RECOMMENDATION: That the City Council authorize the City Manager or designee to execute the purchase of a Fire Safety Trailer from JHB Group, Inc. of Lake in the Hills, Illinois, in the amount of \$212,463 plus a 3% contingency of \$6,374 to mitigate any unforeseen issues with supply chain surcharges and manufactures price increases, for a total not-to-exceed amount of \$218,837.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Maintain the Current High Level of Public Safety

FISCAL IMPACT: The Fiscal Year 2023-24 Adopted Operating Budget includes appropriations in the Equipment Services Fund for the purchase of a Fire Safety Trailer in the amount of \$212,463 plus a 3% contingency of \$6,374 to mitigate any unforeseen issues with supply chain surcharges and manufacturers' price increases, for a total not-to-exceed amount of \$218,837.

BACKGROUND & ANALYSIS: For decades, the Ontario Fire Department has been dedicated to educating the community on the importance of fire and life safety. The commitment to public education involved using a fire safety trailer as a key tool for outreach. Through the use of this trailer, people of all ages were able to learn about a wide range of fire and life safety topics and engage in realistic simulations. Due to the age of the previous fire safety trailer and wear and tear, it is necessary to purchase a new trailer.

The purchase of this safety trailer will allow enhanced educational experience to citizens. Numerous studies have demonstrated that people retain information more effectively when they are able to hear, visualize, and engage in hands-on activities. The selected proposal will deliver a trailer that allows the participant to come across common household fire scenarios including a kitchen, bedroom and BBQ grill and move through motion activated activities that allow for an instructional or self-guided experience. It will also be equipped with a shake, rattle and roll severe weather simulator along with a fire extinguisher training/simulation system. By incorporating simulation in the new trailer, the Ontario Fire Department will be able to deliver a comprehensive, fully ADA compatible, and immersive educational experience.

In December 2023, the City solicited proposals on PlanetBids for a fire safety trailer and notified 237 potential bidders. After receiving two competitive bids, Staff reviewed proposals for trailer specifications, content clarity, warranty, project timeline, fee proposal, and experience. JHB Group, Inc.'s proposal is thorough and showcases experience in safety trailers. Staff is recommending the purchase of the safety trailer from JHB Group, Inc. in the amount of \$212,463.

CITY OF ONTARIO

Agenda Report
February 20, 2024

SECTION:
CONSENT CALENDAR

Department: Planning
Prepared By: Jamie Richardson
Staff Member Presenting:
Scott Murphy, Executive Director Community
Development
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 6

SUBJECT: A PROFESSIONAL SERVICE AGREEMENT WITH SWA GROUP FOR THE DESIGN AND PREPARATION OF CONSTRUCTION DOCUMENTS FOR THE ONTARIO ARENA PLAZA

RECOMMENDATION: Authorize the City Manager, or designee, to execute a Professional Service Agreement with SWA Group, of Laguna Beach, California, for the preparation of the design and construction documents for the Ontario Arena Plaza for a not-to-exceed amount of \$970,147.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Invest in the Growth and Evolution of the City's Economy

Operate in a Businesslike Manner

Focus Resources in Ontario's Commercial and Residential Neighborhoods

Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The contract proposes the expenditure of a not-to-exceed amount of \$970,147. If approved, appropriations in the Capital Projects Fund will be included in the Mid-Year Budget Update Report to City Council as needed.

BACKGROUND & ANALYSIS: In June of 2022, the City approved a Development Plan to construct four mixed-use buildings totaling 63,655 commercial square feet and 694 dwelling units on 13.3 acres of land located at 4000 East Ontario Center Parkway and the southeast and southwest corner of Via Piemonte and Via Villagio, within the Mixed-Use land use district of the Piemonte Overlay of the Ontario Center Specific Plan. The overall concept for the approved project is to construct a mixed-use development that encourages entertainment, dining, and pedestrian activities by creating spaces for a variety of uses in proximity to each other, including residential, retail, dining, gathering, and entertainment. The main elements of the mixed-use development incorporate ground floor restaurants and retail, with four levels of residential apartments above. The ground level will also be used for residential parking that will be fully covered by residential common open spaces on the level above.

The focal feature of this mixed-use development is a 2-acre public Ontario Arena Plaza proposed between the Toyota Arena on the west and the 5-story mixed-use buildings to the east and southeast. The Ontario Arena Plaza will provide pedestrian connectivity north to existing and proposed commercial uses and between the Toyota Arena and proposed mixed-use developments. The vision for the Ontario Arena Plaza is to create an engaging space for activities and leisure. The Ontario Arena Plaza should serve as the “living room” for the entertainment district, where people can gather for special events, entertainment and social interaction. In addition, the Ontario Arena Plaza is envisioned to serve as an economic catalyst for visitors attending a venue at the Toyota Arena and attracting visitors to the restaurant/retail areas and new businesses.

In collaboration with the ASM Global (Toyota Arena), and Adept (the Developer for the mixed-use development), a conceptual design (See Exhibit A – Ontario Arena Plaza Conceptual Design) for the Ontario Arena Plaza was prepared. The contract with SWA Group will provide final design and construction drawings for development of the plaza.



PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and SWA Group (SWA), a California Corporation, with its principal place of business at 570 Glenneyre Street, Laguna Beach, California, California 92651-2453 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing Architecture, Landscape Architecture, and Engineering services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional services for the Design and Preparation of the Construction Plans for the Ontario Arena Plaza project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Architecture, Landscape Architecture, and Engineering consulting services necessary for the Project ("Services"). The Services are

more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from February 20, 2024 to February 20, 2027, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **NINE HUNDRED SEVENTY THOUSAND ONE HUNDRED FORTY-SEVEN DOLLARS (\$970,147)** without the written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Payment shall not constitute acceptance of any Services completed by Consultant. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "C" of this Agreement.

3.2.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3 Responsibilities of Consultant.

3.3.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Any personnel performing the Services on behalf of Consultant shall not be employees of City.

and shall at all times be under Consultant's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultants officers, employees or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. 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, and workers' compensation insurance.

3.3.2 Schedule of Services. Consultant shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.3.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.3.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Sean O'Malley, PLA Managing Principal.

3.3.5 City's Representative. The City hereby designates Rudy Zeledon, Community Development Assistant Director or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Services or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services or change the Consultant's total compensation subject to the provisions contained in this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.3.6 Consultant's Representative. Consultant hereby designates Sean O'Malley, PLA Managing Principal or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her 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 Services under this Agreement.

3.3.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at

all reasonable times.

3.3.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.3.9.2 Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

3.3.9.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other

Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.3.10 Laws and Regulations; Employee/Labor Certification.

3.3.10.1 Compliance with Laws. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause.

3.3.10.2 Employment Eligibility; Consultant. Consultant certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subconsultants and sub-subconsultants to comply with the same. Consultant certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement.

3.3.10.3 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.4 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any

other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3.10.6 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3.11 Insurance.

3.3.11.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.3.11.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than \$2,000,000 per occurrence and no less than \$4,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$2,000,000 combined limit for each occurrence.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with

limits of not less than \$2,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

3.3.11.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability: (1) Additional Insured: The City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) Professional Liability (Errors & Omissions): 1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

(D) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

3.3.11.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.3.11.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.3.11.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.3.11.8 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.3.11.9 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.3.11.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.3.11.11 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(C) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(D) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(F) Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.3.11.12 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. 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 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. 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. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over \$25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants.

3.4.3 Compliance Monitoring. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

3.4.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by

giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6 Indemnification.

3.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.7 General Provisions.

3.7.1 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents

created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7.2 Independent Contractors and Subcontracting.

3.7.2.1 Use of Consultants. Consultant is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2750.3 and Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018). To ensure that Consultant is in compliance with the California Labor Code, Consultant shall only utilize its employees to provide the Services. Consultant may not provide the services through any independent contractor, subcontractor or subconsultant ("Subcontractor(s)") unless approved by the City as set forth in Section 3.7.2.2 below. Consultant represents and warrants that all personnel who perform the Services on Consultant's behalf are Consultant's employees, and that Consultant complies with all applicable laws, rules and regulations governing its employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders.

3.7.2.2 Prior Approval Required. Consultant shall not use any Subcontractor to provide the Services, or any portion of the work required by this Agreement, without prior written approval of City. In the event that City authorizes Consultant to use a Subcontractor, Consultant shall enter into a written agreement with the Subcontractor, which must include all provisions of the Agreement, including a restriction on the Subcontractor's use of further independent contractors, subcontractors or subconsultants without the City's prior written consent.

3.7.3 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:	SWA Group 570 Glenneyre Street Laguna Beach, CA 92651 ATTN: Sean O'Malley
City:	City of Ontario 303 East "B" Street Ontario, CA 91764 ATTN: Rudy Zeledon, Community Development Assistant Director

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.7.4 Ownership of Materials and Confidentiality.

3.7.4.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.7.4.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.7.4.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.7.4.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless,

pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.7.4.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.7.4.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the release notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of an objection notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.7.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.7.6 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.7.7 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 costs of such action.

3.7.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work,

disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.7.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.7.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.7.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.7.12 Assignment or Transfer. Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.7.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.7.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.7.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. 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.

3.7.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.7.17 Invalidity; 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.

3.7.18 Prohibited Interests. Consultant maintains and warrants 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. Consultant warrants 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. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. 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.

3.7.19 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.7.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7.21 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

SIGNATURES ON NEXT PAGE

**SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO AND
SWA GROUP**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

CITY OF ONTARIO

SWA GROUP

Approved By:

Scott Ochoa
City Manager

By: _____

Its: Contracting Agent

Approved as to Form:

Printed Name: Sean O'Malley

Best Best & Krieger LLP
City Attorney

Attested By:

City Clerk

EXHIBIT "A"
SCOPE OF SERVICES

EXHIBIT "B"
SCHEDULE OF SERVICES

SWA Group shall provide all services described in the Proposal (Ontario Arena Plaza) dated February 1, 2024, identified in Exhibit A.

EXHIBIT "C"
COMPENSATION

Compensation is described in the Proposal (Ontario Arena Plaza) dated February 1, 2024, under Fees and Terms identified in Exhibit A.

SWA Laguna Beach

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R Joseph Runco
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David P Thompson
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Jack Wu
Shuntaro Yahiro
Ji Hyun Yoo
Peiwen Yu
Yang Zhang

Revised February 1, 2024

January 25, 2024

City of Ontario
303 East B Street
Ontario, CA 91764

Attn: Jamie Richardson, Senior Landscape Architect
Re: Ontario Arena Plaza Proposal
Ontario, San Bernardino County, California

Dear Jamie:

We are pleased to submit the following proposal for Professional Services in connection with the project referenced above.

This Agreement is by and between SWA Group (SWA), a California corporation, and the City of Ontario (the Client), a municipal corporation organized under the laws of the State of California.

SWA shall provide professional services on the project referenced above, the extent of which is indicated on the attached drawing entitled Exhibit A, which may be generally described as the 2-acre plaza area bound by the Toyota Arena mixed-use project currently under construction. SWA has hired a team of professional sub-consultants for this project as follows: Tait & Associates, Inc. (Exhibit B) civil engineering and surveying; tk1sc, member of WSP, (Exhibit C) electrical engineering and lighting design; Aquatic Design Group, Inc. (Exhibit D) water feature engineering; Glasir Design (Exhibit E) for irrigation engineering; JJS Structural, Inc. (Exhibit F) structural engineering; and Cumming Management Group, Inc. (Exhibit G) for cost estimation. SWA has yet to select a Dry Utility Consultant due to scope uncertainties at the date of this proposal.

I. SCOPE OF SERVICES

A. SWA's team will provide conceptual design, design development, construction documentation, construction observation services & record drawings, and as later described, for the following scope items:

1. Landscape Architecture
 - a. Pedestrian and plaza pavements.
 - b. Landscape walls, steps, railings and related site elements not a part of the buildings, if any.
 - c. Planting.
 - d. Fences, trellises, shade structures, decks and fixed seating devices, if any.
 - e. Site furnishings including benches, tables, umbrellas, planter pots, trash receptacles, bike racks and drinking fountains, if any.
 - f. Coordination, locating, and utility connection for temporary event structures & kiosks.

2. Civil Engineering
 - a. Site surveying, grading, stormwater, fire access, hydrant and utility design as indicated in Exhibit B.
 3. Lighting & Electrical Engineering
 - a. Lighting design, lighting engineering and site electrical engineering as indicated in Exhibit C; includes electrical connections to city-designed broadband, Wi-Fi, and other low voltage structures.
 4. Water Feature Engineering
 - a. Architectural design and mechanical/electrical/plumbing (MEP) engineering for up to two (2) water features as indicated in Exhibit D.
 - b. Scope assumes a water wall and pop-jet style fountain as indicated in the City's Request for Proposal document.
 5. Irrigation Engineering
 - a. Design and engineering of high efficiency, weather sensing irrigation downstream from the point of connection as indicated in Exhibit E.
 6. Structural Engineering
 - a. Structural design, details and calculations for up to two (2) shade structures and three (3) retaining wall types as indicated in Exhibit F.
 7. Cost Estimating Services
 - a. Architects & Engineers Opinions of Probable Costs.
 - b. Third-party cost estimating as indicated in Exhibit G.
 8. Dry Utility Consulting
 - a. A labor budget of \$10,000 is included in this proposal; however, the scope of work cannot be determined until the design has progressed. Work performed beyond this labor budget allotment will be considered Additional Services for a fee to be determined between the parties in writing.
 9. If required, child play areas conceptual layout with pre-fab equipment only; does not include local code compliance and/or permitting requirements.
 10. Landscape soils management.
 11. Coordination of site graphics.
 12. Coordination of site artwork.
 13. Coordination of Design Team.
- B. The scope and fee included herein may be adjusted after the Concept Phase to reflect additions to, or subtraction from, the program elements related to the final concept design; fee adjustments will be negotiated between the parties in writing.

C. Limitations & Assumptions

1. Design of Scope Items shall not include structural provisions for support of such items in the structure of the building; penetrations of the structure of the building for structural, mechanical, electrical or plumbing connections; actual connection to structural, mechanical, electrical and plumbing systems of the building (other than point-of-connection in planters for irrigation); waterproofing of the structure or protective covering of that waterproofing; or waterproofing of penetrations of the structure.
2. It is assumed that previously prepared surveys, boundary mapping, and base mapping (utilities and other infrastructure) will be provided by the Client for the adjacent and existing developments. This proposal assumes that the provided data can be used and relied upon for existing and join conditions.

D. Sub-consultants Not Contracted to SWA

If requested by the Client, SWA may retain and direct the services of the following professional consultants. Fees for such services are not included in this contract and shall be the subject of future agreements.

1. Engineering services: Geotechnical, or Environmental.
2. Soils consultant.
3. Graphic design, wayfinding and signage.
4. Communications, website design, multi-media.
5. Professional perspective renderings or animations.
6. Arborist, horticultural consultants.
7. All consultants not listed in the Scope of Services.

II. PROCEDURE

A. Preliminary Concept

The purpose of this task is to develop an overall design concept for the site and to document in written and graphic form the layout and character of the project.

1. Project Kickoff
 - a. Assist the Client in providing project background materials in digital format including scope, overview and timeline in advance of the kickoff meeting.
 - b. Attend a formal kickoff meeting, organized by the Client's Project Development Team (PDT), to review and discuss expectations, clarify project tasks and establish procedures.
 - c. The Client will provide full information regarding requirements for the project, including a program which shall set forth space requirements and relationships, flexibility and expandability, special equipment, systems and site requirements.
 - d. TAIT will distribute initial utility notices to all utilities identified within the limits of work based on USA – DigAlert search and records will be requested from all identified utilities. Utility locating and potholing will be provided by others.

2. Site Analysis & Background

- a. Visit the project site (with or without the Client) and become familiar with overall characteristics and relationship to adjacent developments around the site, and obtain initial photographic coverage.
- b. On the basis of background studies, on-site investigation, base maps and special information provided by the Client and other project consultants, SWA shall consider and evaluate the following:
 - i. Planning Factors:
 - (i) City TOP Policy Plan;
 - (ii) City transportation master plan;
 - (iii) City bike and trail master plan;
 - (iv) Ontario Center Specific Plan – Piemonte Overlay;
 - (v) City storm drain, water and sewer master plans;
 - (vi) Relationships to Toyota Arena and existing and future developments;
 - (vii) Property boundaries and easements;
 - (viii) Utility location, availability and easements.
 - ii. Natural Factors:
 - (i) Topography, slopes and orientation;
 - (ii) Soils and geological factors;
 - (iii) Hydrology, drainage patterns;
 - (iv) Climate and wind factors.

3. Survey and Site Background Studies

- a. TAIT will initiate the preparation of the conceptual design plans. Assuming hydrology and WQMP for master site will be provided by the Client, and other documents that are historical to the project and adjoining developments.
- b. A full drone aerial survey of the work limits (assumed to be 2-acres) as well as pickup topographic survey of the existing joins (southern and northern roadway as well as frontage of the Ontario Arena). This task does not include new boundary or easement/encumbrance mapping and it is assumed that base mapping and site control will be provided by others. If full boundary and control mapping is required to be provided by TAIT, an additional services fee will be required.

4. Tour

- a. SWA will organize a field tour with the PDT to visit similar local projects for planning, design and programming focused on context, scale and character.
 - i. The field trip will allow for up to ten (10) people.
- b. Provide a summary report of the tour with photos, presentations and synopsis of discussions in PDF format.

5. Refined Conceptual Design

- a. Building on the preliminary conceptual design for the Plaza together with conclusions from site research, lessons from projects site tour, input from the PDT, and the key plan components, SWA shall prepare a final concept design for the Arena Plaza addressing:
 - i. Conceptual grading and stormwater management;
 - ii. Vehicular circulation for maintenance and solid waste pick up;
 - iii. Well-defined and unique pedestrian walkways, connectivity, linkages, seating areas, gathering spaces and overall pedestrian experience;
 - iv. Landscape design and character, paving construction materials and water feature details;
 - v. Programming/Placemaking, including passive and active areas, entertainment areas, and outdoor dining opportunities;
 - vi. Character and design theme for amenities including seating areas, furniture, lighting, temporary structures, kiosk, and restroom facilities.

6. Deliverables

- a. Landscape Architectural Deliverables:
 - i. Opportunities and constraints diagram;
 - ii. Site analysis diagram;
 - iii. Plan sketches;
 - iv. Overall illustrative plans;
 - v. Overall diagram of landscape typologies;
 - vi. Diagram of circulation system;
 - vii. Conceptual grading plan;
 - viii. Concept narrative with reference imagery;
 - ix. Conceptual water feature designs;
 - x. Supplemental digital exhibits for key strategies and approaches.
- b. Civil Engineering Deliverables:
 - i. Topographic survey and base map;
 - ii. Refined conceptual design plans, and deliverables as indicated in Exhibit B.
- c. Site Lighting & Electrical Engineering Deliverables:
 - i. Conceptual lighting plan, layout and fixture selection as indicated in Exhibit C;
 - ii. Preliminary electrical engineering as indicated in Exhibit C.
- d. Irrigation Engineering Deliverables:
 - i. Conceptual system design as indicated in Exhibit E.

7. Meetings

- a. Visit with project site (with or without the Client) one (1) time; attend one (1) kickoff meeting with the Client; and provide one (1) tour with the Client and/or the PDT.
- b. In addition, attend up to five (5) virtual or in-person meetings with the Client and/or the PDT, during this phase if needed.

8. Duration

The duration for Phase A will not exceed six (6) weeks.

B. Design Development

1. Following approval of the design and the Client's authorization to commence design development, SWA's team shall prepare design development drawings and a preliminary estimate of probable construction cost for the design. The design development plans will define the character and essentials of the project, including selection of materials. An overall strategy for site soils will be identified, including recommended analysis, stockpiling, removal amendments, etc. Plant selections will be refined based on soils suitability or limitations. Stormwater management, infiltration and treatment areas will be identified and coordinated with other project consultants. Water feature mechanical and electrical systems.
2. Design development of civil engineering scope of work as indicated in Exhibit B.
3. Design development of lighting and electrical engineering scope of work as indicated in Exhibit C.
4. Design development of water features engineering scope of work as indicated in Exhibit D.
5. Design development of irrigation engineering scope of work as indicated in Exhibit E.
6. Design development of structural engineering scope of work as indicated in Exhibit F.
7. Deliverables
 - a. Landscape Architectural:
 - i. Layout and materials plan;
 - ii. Area enlargement plans;
 - iii. Planting plan;
 - iv. Irrigation typology diagram;
 - v. Site furnishings, lighting, materials images;
 - vi. Plant list;
 - vii. Sections and/or elevations;
 - viii. Design development, key element details;
 - ix. Preliminary water demand estimate;
 - x. Preparation of code required Cal Green shade coverage analysis documents;
 - xi. Preliminary estimate of probable construction costs.

b. Civil Engineering Deliverables:

- i. Plans and reports as indicated in Exhibit B.

c. Lighting & Electrical Engineering Deliverables:

- i. Fixture selections, plans, diagrams and calculations as indicated in Exhibit C.

d. Water Feature Deliverables:

- i. Plans, outline specifications and building criteria as indicated in Exhibit D.

e. Dry Utility Coordination

- i. A labor budget of \$10,000 is included in this proposal; however, the scope of work cannot be determined until the design has progressed. Work performed beyond this labor budget allotment will be considered Additional Services for a fee to be determined between the parties in writing.

8. Meetings

Attend up to six (6) meetings with the Client and/or the PDT (virtual or in-person), during this phase if needed.

9. Duration

The duration for Phase B will not exceed six (6) weeks.

C. Construction Documentation

1. Upon the Client's approval of the design development plans and preliminary cost estimate, SWA will develop working drawings and technical sections of specifications to construct the work in one (1) drawing package, and shall prepare a final estimate of probable construction cost. Technical sections of specifications shall be prepared in Construction Specifications Institute (CSI) MasterFormat. The Client shall be responsible for Bidding and Contract Requirements and General Requirements divisions of the specifications.

2. SWA shall prepare working drawings and technical sections of specifications to reasonably conform to applicable codes and regulations of governmental bodies having jurisdiction over the work at the time of preparation.

3. In developing working drawings and technical sections of specifications, SWA's team shall coordinate its services with those of other project consultants to maintain a construction budget in accordance with the preliminary design estimate of probable construction cost accepted by the Client at the end of the preliminary design phase. When the final estimate of probable construction cost is one hundred twenty percent (120%) of the preliminary design budget estimate, or less, the final estimate will be acceptable to the Client.

4. Deliverables

a. Landscape Architectural Deliverables:

- i. Material schedules;
- ii. Layout plan;
- iii. Area enlargement plans;
- iv. Irrigation plan;
- v. Irrigation water use calculations, as required;

- vi. Tree planting plan;
- vii. Ground plane planting plan;
- viii. Plant list;
- ix. Construction, irrigation, & planting details for all landscape elements;
- x. Mock up details;
- xi. Technical landscape specifications in CSI format;
- xii. Updated cost estimate.
- b. Civil Engineering Deliverables:
 - i. Construction documents as indicated in Exhibit B.
- c. Lighting & Electrical Deliverables:
 - i. Construction documents as indicated in Exhibit C; including electrical connections to city-designed low voltage, broadband and Wi-Fi items.
- d. Water Feature Deliverables:
 - i. Mechanical, electrical, plumbing and structural engineering construction documents, calculations and specifications as indicated in Exhibit D.
- e. Irrigation Engineering
 - i. Construction documents as indicated in Exhibit E.
- f. Structural Deliverables:
 - i. Construction documents, calculations and specification as indicated in Exhibit F.
- g. Cost Estimator Deliverables:
 - i. 90% Construction Document Statement of Probable Construction Cost as indicated in Exhibit G.
- 5. Additional drawing packages will be considered Additional Services provided for an amount to be agreed upon between the parties in writing.
- 6. Meetings

Attend up to twelve (12) virtual or in-person meetings with the Client and/or the PDT, during this phase if needed.
- 7. Duration

The duration for Phase C will not exceed twelve (12) weeks.
- D. Construction Observation
 - 1. SWA's team shall make periodic visits to the site (outlined under 11. below) to familiarize itself generally with the progress and quality of construction and to determine in general if the construction is proceeding in accordance with SWA's design intent and construction documents. On the basis of its observations while at the site, SWA will keep the Client informed of the progress of construction. SWA may recommend to the Client the rejection of work failing to conform to the contract documents.

2. This phase does not include design updates to the plans.
3. SWA shall select and pre-tag specimen plant materials that are to be City-supplied or proprietarily selected.
4. SWA shall prepare and process change orders with prior approval of Client.
5. Provide clarification of construction documents and respond to contractor Requests for Information.
6. Review and approve sample and material submittals specified dealing specifically with water features.
7. SWA shall endeavor to secure compliance by the contractor to the plans and specifications. SWA shall not be responsible for construction means, methods, techniques, sequences or procedures, or job-site safety, in connection with the work and the Client agrees to hold SWA harmless from and against any and all losses, claims, or damages arising out of or related to contractor's errors or omissions, or failure to carry out the work in accordance with the contract documents.
8. All punch list items will be reviewed in the field by the Contractor and City Inspector with verification of completeness to be provided prior to preparation and signature/stamp of the grading certification for the City's records. Certification includes visual inspection of field elements only and does not include survey.
9. Inspections, surveying, and CM services are assumed to be provided by the City.
10. Deliverables
 - a. Site visit reports.
 - b. Submittals review.
 - c. Review of mock-ups and shop drawings.
 - d. Field sketches for clarifications purposes.
 - e. Responses to RFI's.
 - f. Punch list report.
11. Construction Site Visits

Thirty (30) site visit/construction observation meetings will be provided that may be scheduled as follows:

 - a. Client pre-construction coordination.
 - b. Pre-construction meeting with contractor.
 - c. Layout of hardscape elements.
 - d. Mockup review.
 - e. Estimate four (4) for civil engineering.
 - f. Fine grading.
 - g. Estimate two (2) for lighting.
 - h. Estimate three (3) for irrigation.
 - i. Estimate five (5) for water features.

- j. Nursery visit.
- k. Planting.
- l. Punch list/substantial completion (begin establishment period).
- m. End of establishment period/final acceptance.

12. Additional site visits/construction observation meetings can be provided as Additional Services.

E. Record Drawings

- 1. Compile all documents provided by the City from the General Contractor affecting the final configuration of the work. These may include:
 - a. Contractor's as-built drawings, survey records, plan changes, change orders, and other contract documents.
- 2. Produce the Record Drawings for the future reference of Owner and Public Agencies.
- 3. The Record Drawings will be a full set of plans stamped "As- Built" in red, in digital format.
- 4. This task assumes that the design is followed in the field and that only minor updates/notations will be required. If design change is conducted it will be subject to an Additional Service Fee.
- 5. There are no meetings during this phase.
- 6. The duration for Phase E will not exceed two (2) weeks.

III. OPTIONAL SERVICES

Expanded Topographic Survey & Boundary Survey, as indicated in Exhibit B.

IV. DEVELOPMENT BUDGETS

- A. As part of Design Development Phase, a proposed landscape construction budget for all items of work under the Scope of Services shall be established and approved.
- B. This budget shall be revised and approved at the completion of the Construction Documentation Phase.
- C. In the event that this budget is reduced or increased by more than 20% between the time of approval of the schematic design phase and the time of award of a construction contract, cost of modification of drawings and specifications to meet the changed project budget shall be considered Additional Services.

V. DESIGN APPROVAL

The City Planning Director, or a designer appointed by the City, will be designated as the person responsible for design direction to SWA for this project and has the authority for design approval. In the event that the design, as approved by this person is rejected by others, and re-design is required, such re-design services shall be compensated as Additional Services.

VI. MEETINGS

- A. This proposal includes Professional Service time for up to twenty-six (26) in-person meetings or virtual online meetings for coordination or presentations with the Client, the PDT, or agencies, as outlined per phase above.
- B. Additional meetings with the Client and/or the PDT shall be provided as Additional Services.
- C. Travel expenses shall be billed as Reimbursable Costs pursuant to Appendix A.

VII. EXCLUSIONS TO SCOPE OF SERVICES

Items not specifically identified in the scope of services sections of this proposal are excluded from this work effort and if requested by the Client shall be considered Additional Services. The Client shall provide the following information or services as required for performance of the work. SWA assumes no responsibility for the accuracy of such information or services and shall not be liable for error or omissions therein. Should SWA be required to provide services in obtaining or coordinating compilation of this information, such services shall be charged as Additional Services.

1. Soils testing and/or engineering.
2. Existing site engineering and utility base information.
3. Engineering other than that provided within the Scope of Services.
4. Shoring design.
5. Gas or telecom design.
6. Easement mapping.
7. Geotechnical services.
8. Utility locating and potholing.
9. Site environmental studies and documentation.
10. Plan check, permit fees, utility company fees, or any fees as may be required by regulatory agencies.
11. Off site and street lighting design.
12. Interior planting design.
13. Wayfinding and signage.
14. Theatrical lighting or show lighting.
15. BIM/REVIT or similar.
16. LEED documentation preparation and analyses.
17. Graphic design.
18. Professional renderings.
19. Expediting, code, zoning consultant.
20. Any item not specifically addressed in this proposal.

VIII. FEES AND TERMS

Services described above shall be provided for the fixed sum of Nine Hundred, Nine Thousand and Sixty-Seven (\$909,067) Dollars, not including Reimbursable Costs, Optional Services, or those Excluded Services, in accordance with the terms and conditions in Appendix A attached hereto and which is incorporated and made part of this Agreement by reference.

We estimate the following fee breakdown by phase:

	<u>Phase</u>	<u>Fee</u>	<u>Meetings</u>	<u>Duration</u>
A.	Site Analysis & Refined Conceptual Design	\$133,366	8 meetings	6 weeks
B.	Design Development	\$217,798	6 meetings	6 weeks
C.	Construction Documentation	\$456,649	12 meetings	12 weeks
D.	Construction Observation	\$80,426	30 site visits	N/A
E.	Record Drawings	\$20,828	No meetings	2 weeks
		Fee Total*		
		\$909,067		
		<i>*not including reimbursable costs</i>		

We estimate the cost of Reimbursable Costs as identified in Appendix A will not exceed \$45,000 (approximately 5%) without further authorization from the Client. Total Contract Value NTE \$954,067.

<u>OPTIONAL Service</u>	<u>Fee</u>
Expanded Topographic Survey & Boundary Survey	\$16,080
Combined Fee Total with Optional + Costs	\$970,147

We would be pleased to answer questions you may have or to clarify the various points above. If this proposal meets with your approval, please issue a formal agreement so we may commence with work.

Sincerely yours,

SWA Group



Sean O'Malley
Contracting Agent
Landscape Architect, CA License #3286
Landscape Architects are licensed by the State of California.

SOM/SR/dp

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APPENDIX A

Appended to and part of Agreement for Professional Services between SWA Group (SWA) and the City of Ontario (the Client), a municipal corporation organized un the laws of the State of California (the Client), dated February 1, 2024.

This Agreement supersedes any previous agreement or arrangement in relation to the Services (whether oral or written) and represents the entire understanding in relation to the Services.

FEES FOR PROFESSIONAL SERVICES

Services outlined under the Scope of Services shall be provided for the fixed sum stipulated in the Agreement for Professional Services.

REIMBURSABLE COSTS

The following costs shall be reimbursed at cost plus ten percent (10%) and are not included in the Fee for Professional Services:

- A. Cost of copies of drawings, specifications, reports and cost estimates; in-house prints, reprographic and photographic reproduction of drawings and other documents furnished or prepared in connection with the work of this contract.
- B. Cost of commercial carrier and public transportation, lodging, car rental and parking, subsistence and out-of-pocket expenses. Private automobile travel at the IRS-allowable rate at the time of traveling.
- C. Delivery or messenger expenses, cost of postage other than first class mail.

ADDITIONAL SERVICES

Provided SWA has been paid per this agreement, Additional Services may be provided for an amount to be agreed upon between the parties in writing. The following principal(s) are committed to this project:

Principals	Rate / Hour
O'Malley	\$341
Rydzon	\$225

Other principals, if used on this project, have rates ranging from \$220 to \$352 an hour. These rates may be increased subsequently without written notice. Current staff rates range between \$110 and \$180.

Additional Services are any services not included within the contract scope and include but are not limited to:

- A. Special renderings, special process printing, special equipment, special printed reports or publications, maps and documents, requested by the Client and approved in writing.
- B. Making planning surveys, feasibility studies, and special analyses of the Client's needs to clarify requirements for project programming.
- C. Master planning.
- D. Preparation of technical sections of specifications in other than Construction Specifications Institute (CSI) format.
- E. Revisions and changes in drawings, specifications or other documents when such revisions are inconsistent with approvals or instructions previously given by the Client; required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or the preparation of alternates or deductive change orders requested by the Client.

- F. Repackaging or modifications to plans due to changes by other consultants following completion of SWA's 100% construction documents.
- G. Plan preparation for and construction observation of portions of a project let on a segregated bid basis or to be phased during construction.
- H. Services with respect to replacement of any work damaged during construction.
- I. Services required as a result of the default or insolvency of contractor.
- J. Providing prolonged construction observation should the construction time be substantially extended through no fault of SWA.
- K. Providing services if, in Guaranteed Maximum Price (GMP) projects, the construction budget for SWA scope items is reduced through no fault of SWA.
- L. Providing services if, in "fast-track" projects, revisions to design or construction documents are required because of prior construction commitments or changes required in the construction process or phasing outside the control of SWA.
- M. Cost of review as to form of lenders documents, certifications and consents to assignment requested of SWA during the term of this Agreement.
- N. Fees for additional consultants not included in SWA's Basic Services and retained with the approval of the Client.
- O. In-house professional photography.
- P. 3D printing.

STATEMENTS

Fees for Professional Services shall be billed monthly for progress payment based upon percentage of work complete. Reimbursable Costs shall be billed with fee invoices. The Client will notify SWA of any disputes or questions regarding an invoice within fifteen (15) days of the Client's receipt of the invoice in question.

ACCOUNTS

Accounts are payable net thirty (30) days from date of invoice at our office in Sausalito, California. A service charge of 1.25% of invoice amount per month (15% annual rate) will be applied to all accounts not paid within sixty (60) days of invoice date.

INSURANCE

At all times during the performance of its services under this Agreement, SWA shall maintain in full force and effect the following insurance, with the coverages and limits specified:

- A. Workers' compensation insurance, including occupational disease, in accordance with the statutory requirements set forth by the state in which the work is to be performed, and employer's liability insurance covering all of SWA's employees engaged in the performance of this Agreement, in the sum of \$1,000,000.00.
- B. Commercial general liability insurance, including Landscape Architect protective liability and contractual liability insurance, covering death or bodily injury and property damage of \$1,000,000.00 for any one accident, bodily injury and property damage combined single limit.
- C. Commercial automobile liability insurance covering SWA for claims arising from hired and non-owned vehicles covering death or bodily injury and property damage with limits of \$1,000,000.00 for any one accident, bodily injury and property damage combined single limit.

- D. Professional liability (errors and omissions) insurance, on a claims-made basis, with limits of \$2,000,000.00 per claim and \$4,000,000.00 in the aggregate.
- E. Certificates of insurance covering any or all of the above insurance required to be maintained by SWA shall be provided to the Client upon written request.
- F. Should the Client request in writing that modifications be made to the stated policy limits or deductibles, SWA shall use its best efforts to have its insurers accommodate such modifications. All charges and additional premiums levied by insurers for such modifications shall be paid by the Client in advance.
- G. Upon written request by the Client, SWA shall use its best efforts to have the Client named as an additional insured on the Commercial general liability and Commercial automobile liability policies described above, subject to acceptance by the insurer.

INDEMNIFICATION

- A. To the extent of available coverage under the insurance coverage as provided in this Agreement, SWA shall indemnify and save harmless (but not defend) the Client against any and all loss, liability and damages arising out of any claim, suit or legal proceeding to recover damages for wrongful death, bodily injury, illness or disease, or injury to, or destruction of property to the extent caused by the negligent errors or omissions or willful misconduct of SWA, its subcontractors, agents or employees.
- B. The Client shall indemnify and save harmless SWA from and against any and all loss, liability and damage arising out of any claim, suit or legal proceeding to recover damages for wrongful death, bodily injury, illness or disease, or injury to, or destruction of property, to the extent caused by or attributable to:
 - 1. The negligent errors or omissions or willful misconduct of the Client, its contractors, subcontractors, agents or employees.
 - 2. Any hazardous substance, condition, element or material, or any combination of the foregoing, produced by the Client; or emitted intentionally or unintentionally from the property on which the project is located or from the facilities to be designed; or specifically required by the Client to be used or incorporated by SWA into the work to be performed by SWA. SWA shall not be under any duty or obligation to investigate for the existence of such conditions, and shall not be responsible for any failure to discover such conditions.
 - 3. Failure of the Client to provide information or services required to be provided by the Client under the terms of this Agreement or from any inaccuracy, error or omission in such information or services.
 - 4. Any claim asserted by an individual Home Owner or a Homeowners' Association formed for or associated with this project or any portion of this project, except to the extent caused by the negligence of SWA, its subcontractors, agents or employees. The Client's obligation to indemnify SWA under this clause shall include (without limitation) reimbursement to SWA for all reasonable costs incurred in the defense of such claims, including attorneys' fees incurred in connection with any appeal of a legal action, and all reasonable settlement costs, unless SWA is found to be negligent with respect to such claim under the dispute resolution procedures agreed to in this Agreement, upon which finding the Client shall have no duty to reimburse SWA for any such damages or costs which are attributable to SWA's negligence.

STANDARD OF CARE

The standard of care applicable to this Agreement shall be that level of care and skill ordinarily practiced by professionals practicing in the same discipline, location, and at the same time as the services provided by SWA.

LIMITATION OF LIABILITY

The Client agrees, to the fullest extent permitted by law, to limit the liability of the SWA and SWA's officers, directors, partners, employees, shareholders, owners and subconsultants (the SWA Parties) for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the SWA Parties shall not exceed \$50,000.00, or one half (½) of the Architect's total stipulated fee for the services rendered under this Agreement, whichever amount may be greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

CONFIDENTIALITY

SWA will take reasonable precautions to protect and maintain the confidentiality of any information supplied by the Client during the course of this Agreement which is identified in writing by the Client as being confidential information, except to the extent that disclosure of such information to third parties is necessary in the performance of SWA's services. This clause shall not apply to any information which is in the public domain, or which was acquired by SWA prior to the execution of this Agreement, or obtained from third parties under no obligation to the Client.

RIGHT TO SUSPEND SERVICES

SWA shall have the right to suspend services on this project if (a) the parties have not executed a written contract for SWA's services and unpaid invoices have been rendered with an aggregate balance exceeding \$5,000.00; or (b) unpaid project invoices over ninety (90) days old exceed \$5,000.00 in the aggregate.

AUTHORIZATION TO PROCEED

If SWA is authorized to commence and/or continue providing its services on the project, either verbally or in writing, prior to the full execution of a written contract, such authorization shall be deemed an acceptance of this proposal, and all such services shall be provided and compensated for in accordance with the terms and conditions contained herein as though this proposal were fully executed by the Client.

OWNERSHIP OF DOCUMENTS

Original drawings and other documents, as instruments of professional service, are the property of SWA. None of them is to be used on other projects except by written agreement of SWA. One reproducible set of final documents will be furnished to the Client upon request. The Client has license to use/reproduce for purposes of this project provided payments are made to SWA when due.

ESTIMATES OF PROBABLE COST

As SWA has no control over construction costs or contractor's prices, any construction cost estimates are made on the basis of the SWA's experience and judgment as a design professional; but SWA cannot and does not warrant or guarantee that contractor's proposals, bids or costs will not vary from its estimates.

DOCUMENTS FURNISHED IN ELECTRONIC MEDIA

Drawings and data provided to SWA in digital format must be in a form acceptable to SWA. Drawing files shall be in AutoCAD dwg format version 2010 or higher, or an SWA-approved alternative. All files must be created with a legal license. As restricted by copyright law, SWA cannot accept any dwg or other file generated under an educational AutoCAD software license.

Instruments of professional service provided by SWA in electronic media form, once released by SWA, may be subject to inaccuracies, anomalies and errors due to electronic translation, formatting or interpretation. SWA is not responsible for

errors and omissions because of these conditions, nor for those resulting from conversion, modification, misinterpretation, misuse or reuse by others after electronic media is released by SWA.

CURRENCY

All payments to SWA will be made in lawful United States currency, free and clear of any taxes, liens or deductions of any type. The Client will reimburse SWA if any such assessments occur.

CREDITS/ACKNOWLEDGMENTS

SWA shall be given proper credit and acknowledgments for all services rendered including, but not limited to, planning, design and implementation. Proper credit shall be defined as being named by the Client (or their agent/client) in project identification boards, published articles, promotional brochures, social media and similar communications.

FORCE MAJEURE

SWA shall not be responsible for any delay in the performance or progress of the work, or liable for any costs or damages sustained by the Client resulting from such delay, caused by any act or neglect of the Client or the Client's representatives, or by any third person acting as the agent, servant or employee of the Client, or by changes ordered in the work, or as a result of compliance with any order or request of any federal, state or municipal government authority or any person purporting to act therefore, or by acts of declared or undeclared war or by public disorder, riot or civil commotion, or by any other cause beyond the reasonable control and without the fault or negligence of SWA. In the event of any such delay, SWA shall proceed with due diligence to alleviate such delay and continue the performance of all obligations under this Agreement. The time during which SWA is delayed in the performance of the work, shall be added to the time for completion of its services to the extent such time is specified in this Agreement. All additional costs or damages resulting from any delay in the performance or progress of the work caused by any act or neglect of the Client, its agents or representatives, shall be borne entirely by the Client.

LAW

This Agreement shall be interpreted and enforced according to the laws of the State of California.

VALIDITY

Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of the Agreement are declared to be severable.

DISPUTE RESOLUTION

Any controversy, claim or dispute arising out of or relating to the interpretation, construction, or performance of this Agreement, or breach thereof, shall be referred to voluntary, nonbinding mediation to be conducted by a mutually acceptable mediator prior to resorting to arbitration pursuant to the JAMS Arbitration Rules then in effect. Arbitration through JAMS shall be the sole and exclusive venue for any dispute and the Client waives any right to challenge such jurisdiction. The Prevailing Party—defined as the party ultimately more successful relative to the final offer or demand—shall be entitled to recover its reasonable attorneys' fees and costs. All disputes shall be governed by the law of the jurisdiction where the project is located.

SUCCESSORS AND ASSIGNS

It is mutually understood and agreed that this Agreement shall be binding upon the Client and its successors and assigns and upon SWA, its successors and assigns. Neither party shall assign nor transfer its interest in this Agreement or any part thereof without the written consent of the other party.

TERMINATION AND WORK STOPPAGE

It is understood that these services may be terminated upon ten (10) days' written notice for good reason by either party. In this event, SWA shall be compensated for all work performed prior to date of termination at the rates set forth above. Additionally, in the event that the Client stops the project for longer than thirty (30) days, SWA will be compensated for all work which has been performed by SWA prior to the date of work stoppage and payment shall be paid by the Client for such work to SWA within thirty (30) days of SWA's invoice to the Client for those services rendered.

If the Project is suspended or not active for more than nine (9) months, SWA may, at its discretion, re-negotiate with the Client its compensation hereunder.

If the Project is suspended or not active for more than twelve (12) months, this Agreement will be terminated without notice.

REVOCATION

This proposal shall be considered revoked if acceptance is not received within sixty (60) days of the date hereof. If SWA does not receive a signed copy within this period, SWA reserves the right to revise the fees.

ENTIRE AGREEMENT

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representations, by any party which are not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties.

END

EXHIBIT A

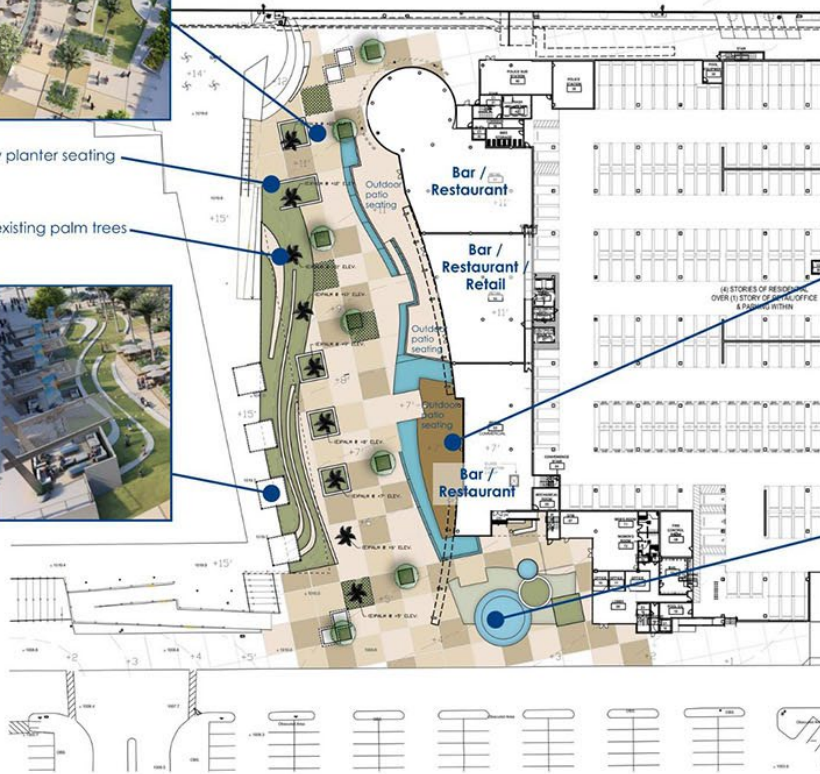
- Pedestrian zone
- Terraced slope
- Outdoor seating
- Water feature
- Planter seating
- Shade trees



New planter seating

Maintain existing palm trees

- Shaded seating
- Gathering space
- Meeting spot
- People watching
- Respite areas
- Terraced slope
- Formal & informal passive spaces



- Continuation of water feature
- Outdoor seating
- 2nd level flexible space and balcony for stage, bar & restaurant



- Dry-deck fountain
- Movable tables & seating

September 21, 2023

Mr. Steve Rydzon, PLA, ASLA
Principal
SWA
570 Glenneyre Street
Laguna Beach, California 92651

RE: Proposals for Civil Engineering Design Services for Ontario Areana Plaza Project

Dear Mr. Rydzon,

TAIT & Associates, Inc. (TAIT) is pleased to submit the enclosed proposal in response to the Civil Engineering Services for the City of Ontario's RFP for the Ontario Arena Plaza Project.

WORK PLAN/SCOPE OF WORK

The scope of work presented below has been structured based on the City's RFP work structure and are further described as follows:

1 – PROJECT KICKOFF (1 WEEK)

Attend Kick-Off Meeting

TAIT & assigned Project Engineer will be in attendance at the design Kickoff meeting. It is assumed the meeting will be held digitally with SWA taking the lead on the agenda/minutes.

Project Research, Set Up, & Utility Notification

TAIT will compile the City provided records, reports, and CAD base files as part of this task to set up the project files. TAIT will also distribute initial utility notices to all utilities identified within the limits of work based on USA – Digalert search and records will be requested from all identified utilities. NOTE – utility locating and potholing is not included as part of this proposal and are assumed to not be required or provided by others

Task 1 Deliverables: Utility Notices, Records, and Coordination

2 – SITE ANALYSIS (3 WEEKS)

Design Field Walk

A Single design field walk is assumed as part of this task. Walk will be done in conjunction with other team members and include site photographs and notation of existing field improvements.

Existing Records & Data Review

This task is provided to allow for review and analysis of existing design plans, reports (assumed hydrology and WQMP for master site to be provided), and other documents that are historical to the project and adjoining developments.

Added Topographic Survey & Base Mapping

It is assumed that previously prepared surveys, boundary mapping, and base mapping (utilities and other infrastructure) will be provided for the adjacent and existing developments. This proposal assumes that the provided data can be used and relied upon for existing and join conditions. Additionally, per RFP requirements, TAIT's scope also includes a full drone aerial survey of the work limits (Assumed to be approximately 2 Acres) as well as pickup topographic survey of the existing joins (southern and northern roadway as well as frontage of the Ontario Arena). This task does not include new boundary or easement/encumbrance mapping and it is assumed that base mapping and site control will be provided by others. If full boundary and control mapping is required to be provided by TAIT, an alternate task has been provided for such additional efforts.

Preliminary Design Review Summary

Upon completion of the records research, topographic survey, base mapping compilation, and review of the existing design records as well as proposed site plan, TAIT will prepare a design review summary report that will summarize the proposed constrains, opportunities, and parameters for the plaza design. The report will include commentary on demolition, grading, drainage, water quality, and utility impacts.

Project Team Meeting (Digital)

A Single project team meeting is assumed as part of this task to review the findings with the City and the Team.

Task 2 Deliverables: Design Field Walk Notes/photos, Topographic Survey, Design Review Summary,

3 – FIELD TRIPS (3 WEEKS)

It is assumed that TAIT involvement with the field trips will not be required.

4 – REFINED CONCEPTUAL PLAZA DESIGN (SCHEMATIC DESIGN)

Conceptual Design Plans

Upon receipt of the site plan and completion of the previous tasks, TAIT will initiate the preparation of the conceptual design plans (assumed at Schematic Design Level). Plan sheets assumed as part of this task include:

SHEET DESCRIPTION	SCALE	SHEETS
<i>Title Sheet</i>	--	1
<i>Conceptual Demolition & Impact Plans</i>	1" = 20'	1
<i>Conceptual Grading Plans</i>	1" = 10'	2
<i>Conceptual Drainage Plans</i>	1" = 20'	1
<i>Conceptual Utility Plans</i>	1" = 20'	1
Total Sheet Count	--	6

Submittal & QA/QC: Prior to each submittal (assumed max 2), TAIT will conduct a full QA/QC review. Upon completion of the QA/QC review, TAIT staff will incorporate the noted comments and will begin compiling the plans for submittal to SWA. It is assumed all processing will be by SWA

Preliminary Hydrology Report:

A preliminary hydrology report will be prepared to analyze the pre/post drainage conditions and confirm the anticipated peak flows. Due to the fact that the existing site is completely developed with little landscaping and the new improvements will incorporate a high percentage of landscaping/improvements, it is anticipated that peak flow detention systems will not be required.

Preliminary WQMP

A preliminary WQMP will be prepared per RFP requirements. It is assumed that infiltration rates will be provided by the City's previously completed geotechnical report. This task includes design and preliminary sizing of proposed BMP improvements, initial layout, and compilation of the preliminary report for the City's review. Final sizing, detailing, O&M, as well as MCA documents will be included in the final report.

Preproject Team Meetings & Coordination

Limited meetings & coordination have been assumed as part of this task. A total of 16 hours of effort for meetings & coordination are initially assumed. All meetings are assumed to be digital meetings.

Task 4 Deliverables: 1st & 2nd Conceptual Plan Submittal, Preliminary WQMP, Preliminary Hydrology Report

5 –CONSTRUCTION DOCUMENTS

Construction Drawings

Upon approval of the conceptual design plans, TAIT will initiate the preparation of the construction drawing phase. Plan sheets assumed as part of this task include:

SHEET DESCRIPTION	SCALE	SHEETS
Title Sheet/Details	--	2
Detail/Section Sheet	--	2
Demolition Plan [1" = 20']	1" = 20'	1
Grading Plan [1" = 10']	1" = 10'	2
Drainage Improvement Plan [1" = 20']	1" = 20'	1
Field Survey [1" = 20']	1" = 20'	1
Horizontal Control Plan [1" = 10']	1" = 10'	2
Erosion Control Plan [1" = 20']	1" = 20'	1
Water/Sewer Plan [1" = 20']	1" = 20'	1
Fire Access Plans [1" = 40']	1" = 40'	1
Public Water Plans [1" = 40']	1" = 40'H / 1" = 4'V	2
Total Sheet Count	--	16

Submittal & QA/QC: Prior to each submittal (assumed at 80%, 100%, & Final), TAIT will conduct a full QA/QC review. Upon completion of the QA/QC review, TAIT staff will incorporate the noted comments and will begin compiling the plans for submittal to SWA. It is assumed all processing will be by SWA

SWPPP

Per RFP requirements, TAIT will prepare the SWPPP for the projects inclusion in the bidding documents. TAIT will upload the documents to the SMARTS system, however, it will be the City's responsibility to certify and pay the required fees in order to obtain the required DIR number for the proposed grading improvements.

Final WQMP

A Final WQMP will be prepared per RFP requirements. Based on approved site plan and design, final sizing of proposed BMP improvements, layout, and compilation of the final report for the City's review will be conducted. Final sizing, detailing, O&M, as well as MCA documents will be included in this version of the report.

Final Hydrology Report:

Final hydrology report will be prepared to provide final sizing and validation of the peak flows anticipated for the site. As noted before, due to the fact that the existing site is completely developed with little landscaping and the new improvements will incorporate a high percentage of landscaping/improvements, it is anticipated that peak flow detention systems will not be required.

Specifications

TAIT will prepare civil technical specifications for inclusion in the SWA specification package. TAIT's scope includes technical specifications for Civil Improvements only.

Engineer's Cost Estimate

TAIT will prepare an engineer's cost estimate for civil improvements at the 80% & the 100% submittal.

Project Team Meetings & Coordination

Limited meetings & coordination have been assumed as part of this task. A total of 24 hours of effort for meetings & coordination are initially assumed. All meetings are assumed to be digital meetings.

Task 5 Deliverables: 80%, 100%, & Final Plans, WQMP, Hydrology Report, SWPPP, Specs, Estimate

6 –RECORD DRAWINGS (AS-BUILT PLANS)

As-Built Plans

Upon completion of the construction project, TAIT will capture the City provided contractor redlines and prepare a final As-Built Plan set. This task assumes that the design is followed in the field and that only minor updates/notations will be required. If complete design change is conducted, additional hours and fees will be required. This task also assumes As-Built are provided in PDF only.

ALT- 1 Expanded Topographic Survey & Boundary Survey is OPTIONAL

ALT-1: Expanded Topographic Survey & Boundary Survey

As noted above, this task is provided should the previous survey and boundary mapping not be provided to TAIT. Task includes review of City provided Title report, drafting of encumbrances, drafting of project boundary, and further expanded topographic and control survey for identification of further limits of work and joins.

7. Construction Assistance (RFI, Submittal, Field Meetings, Etc.)

TAIT will provide construction assistance services on an as-needed basis through the course of construction. This task assumes a construction duration of approximately 4 months and a total of 96 hours of blended rate support for the project. Tasks assumed to be part of construction assistance include:

- | | |
|--|----------|
| • Attendance at Pre-Con Meeting | 4 Hours |
| • Review Submittals | 16 Hours |
| • Review RFI & Response to Contractor | 40 Hours |
| • OAC Meetings (Digital, intermittent, Max 16) | 16 Hours |
| • Field Meetings (Assumes Max 4) | 16 Hours |

This task does not include design updates to the plans and only includes the above noted items. Inspections, Surveying, and CM services are assumed to be provided by the City and are excluded from TAIT's scope.

8. Final Punch List & Precise Grading Certification

This task includes a single punch list walk conducted at the end of construction to generate a single construction punch list for the Contractor's review and implementation. It is assumed that all punch list items will be reviewed in the field by the Contractor and City Inspector with verification of completeness to be provided to TAIT prior to preparation and signature/stamp of the grading certification for the City's records. Certification includes visual inspection of field elements only and does not include survey.

ASSUMPTIONS

This scope of work is based on the following key assumptions:

- Records, reports, CAD files, and geotechnical report (including infiltration rates) are provided the City and adjacent developers
- Survey is to be combined with City/adjacent developer provided boundary, utility, and expanded topographic survey data
- Schematic design is limited to two submittals
- Construction drawings are limited to three submittals
- All plan sheets not included in this list are assumed to be extra (eg. Wall plans, street improvement plans, public utility extensions, etc.)
- Dry utility (Electrical, gas, telecom) design is not included and provided by others
- Fire access plans will be prepared in conjunction with the adjacent development to show fire truck circulation along the western edge of the residential development and the frontage of the plaza. Location of fire riser, DCDA, and FDC as well as number of hydrants required for the residential development will be provided by the adjacent development.

- It is assumed that a public water system extension will be required between Via Pimonte and Ferrari Lane in order to provide the required public fire hydrant access through the site. For budgeting purposes, the proposed scope assumes up to 1,000 LF of public water main extension through the project area. FDC, DCDA, and other private connection locations and sizes are to be provided by others. TAIT's design includes the stubs for future connections as well as hydrants only. Pressure calculations and modeling is not included in TAIT's scope and assumed to be provided by others.
- Proposed easements are assumed to not be required. Should such mapping be requested, additional hours and fees will be required.

CLOSURE

David Sloan will be the contact person for this procurement and can be reached at (714) 560-8643 or dsloan@tait.com at any time should you have any questions regarding our proposal.

Very truly yours,

TAIT & ASSOCIATES, INC.



David Sloan, PE
Vice President – Director of Engineering

EXHIBIT C – ENGINEERING AND CONSULTING SCOPE OF SERVICES DESCRIPTIONS**Professional Services**

We will provide full-service engineering / consulting services.

Engineering / Consulting Basic Scope of Services Options

Based upon the indicated Professional Services, the following specific Scope of Services options are included in this scope.

Scope Included	Basic Engineering / Consulting / Design Service Description
☐	Mechanical Engineering services.
☒	Electrical Engineering services.
☐	Plumbing Engineering services.
☐	Structural Engineering services.
☒	Architectural Lighting Design services.
☐	Utility Company Coordination services.
☐	Energy & Sustainability Consulting services.
☐	Fire Protection Engineering services.
☐	Renewables services.
☐	Technology System Design services.

Project Specific Scope Clarifications

Scope to include:

1. Assumes 2022 CA Building Codes will be applicable. Excludes any above-standard sustainability targets other than what is required by the CA State energy code.
2. Prescriptive Title-24 calculations and documentation will be provided. Does not include a detailed energy performance simulation to determine EUI.
3. This proposal assumes deliverables aligned with the RFP: (1) Concept plan and (3) CD Deliverables at approximately 35%, 75%, 100%. Additional deliverables will incur addition fee.
4. This proposal assumes that the fountain equipment will be provided and/or documented by the Fountain Consultant. Tk1sc will coordinate the equipment electrical loads with Consultant for power distribution.
5. This proposal assumes all Citizen Advisory Committee meetings, City Staff and public site visits, public workshops/meetings and City Council workshops/meetings are to be attended by the project primary consultant and sub consultants will not need to attend. Said meetings are not included in this scope.
6. This proposal assumes the submittal of final Construction Documents to the governmental agencies for the purpose of obtaining construction permits will be by others.
7. The drawing format is assumed to be AutoCAD.

Lighting Design Includes:

- a. Pedestrian area lighting
- b. Landscape lighting for select landscape and trees
- c. Landscape lighting for select benches, features, or shade structures
- d. Lighting for externally illuminated Project ID signage (does not include all wayfinding signage, assumes pedestrian lighting is sufficient)

- e. -Thematic lighting by way of color and control of landscape/architectural lighting. (Does not include theatrical lighting or show lighting. This can be provided at an additional cost).
- f. Photometrics as required for review and compliance
- g. Coordination with landscape architect for lighting locations and style
- h. Coordination with electrical engineer for energy and controls
- i. Sports Field Lighting for recreational purposes (will be designed to suit community needs)

Electrical Design Includes:

- a. Electrical Design assumes that existing service is adequate to accommodate new design. New or upgraded electrical service will result in added fee for service coordination. Connections for electrical are assumed to be provided within new adjacent development or existing site panel in Toyota Arena.
- b. Calculate and complete California Title 24 Energy Efficiency Standards documents for site lighting and externally illuminated monument signage element. Monument signage element design will be by others.
- c. Show Compliance with CalGreen Backlight, Uplight and Glare (BUG) rating requirements.
- d. Electrical design for lighting and power needs, including provide power provisions for - irrigation equipment, kiosks, fountain equipment, and Project ID Signage
- e. Additional Power provisions can be included for additional fee.
- f. Electrical power provisions for Wifi/Broadband design provided by the City of Ontario. Fee includes two design review/coordination meetings to review design and power plans.

Fee does not include security, audio-visual or telecom, but these services can be provided by tk1sc for an additional fee. The base electrical fee assumes that designs will be provided by others and coordinated for power locations necessary.

If Lighting Design Exhibit C(LD) is included, specify the following:

Number / description of Lighting Design Renderings: One (1)

Number / description of Lighting Design Photo Simulations: None

Number / description of Lighting Design Aiming / Adjusting Site Visits: Two (2)

Number / description of custom lighting fixtures: None

Number of Submittal Reviews (assumes of entire lighting package): Two (2)

Engineering / Consulting Sub-Consultants

Sub-consultants are not proposed for this project.

Engineering / Consulting Design and Construction Administration Phases

Phases Included	Phase Descriptions
☐	Feasibility / Programming Phase services.
☒	Design Phase services.
☒	Design Development Phase services.
☒	Construction Document Phase services (includes Building Department services).
☒	Construction Administration Phase services (includes Bidding services).

Engineering / Consulting Design Phase Meeting(s)

Design Meeting(s): Up to Two (2).

Construction Administration Phase Visit(s)

CA Visit(s): Up to Two (2).

Engineering / Consulting Permit Packages and Construction Phase(s)

Number of Permit Package(s): One (1)

Number of Construction Phase(s): One (1)

LEED Design and Certification

Although we can provide these services, this scope of work does not include design or commissioning related scope efforts in pursuit of a LEED certification.

Building Information Model (BIM) Services

Although we can provide these services, this scope of work does not include assistance in creating a Building Information Model (BIM). AutoCAD will be the primary design authoring tool.

Record Drawing Drafting Services

Although we can provide these services, this scope of work does not include any CAD/BIM drafting of as-built conditions.

Commissioning Scope of Services

Although we can provide these services, this scope of work does not include in any commissioning efforts or services. Our basic engineering services includes any required coordination and BOD documentation as required by a third-party commissioning agent.

-----END-----

EXHIBIT C(MEP) - MEP ENGINEERING SCOPE OF SERVICES**A. Design Services:**

1. Confer with the Architect, Owner, and other Consultants to determine design criteria, design, and scope of work.
2. If applicable, review as built / record documentation provided by Client.
3. If applicable, consultant will visually review the reasonably accessible portions of the existing facilities to ascertain in general the accuracy of the Project's applicable "as built" documentation, taking such photographs and preparing such documents for consultant's internal use as are in consultant's judgment appropriate and economically justified; but these service will not involve the preparation of detailed "as builds," nor any detailed surveys, any destructive investigation or inspection or any testing of materials or equipment.
4. Provide preliminary calculations and single-line diagrams.
5. Establish approximate sizes and space requirements for new equipment.
6. Prepare schematic plans in the consultant's standard format and level of detail.
7. Provide schematic catalog cut sheets of equipment, as required.
8. Prepare outline specifications in the consultant's standard format and level of detail.

B. Design Development Services:

1. Provide up-to-date preliminary calculations and single-line diagrams.
2. Provide up-to-date approximate sizes and space requirements for new equipment.
3. Prepare design development plans in the consultant's standard format and level of detail.
4. Provide design development catalog cut sheets of equipment, as required.
5. Prepare outline specifications in the consultant's standard format and level of detail.

C. Construction Document Services:

1. Finalize sizes and space requirements for all new equipment.
2. Prepare construction documents, in the consultant's standard format and level of detail, suitable for obtaining a building permit in accordance with the local building department and/or governing authority.
3. Provide energy calculations / documentation as required to meet minimum energy code compliance.
4. Prepare specifications in the consultant's standard format and level of detail.
5. Respond to plan check corrections as required to assist in obtaining plan check approval.

D. Construction Administration Services:

1. Provide support services for assisting prospective bidders related to construction document interpretations, clarifications, and supplement documentation, as required to support the design intent. Provide responses to all pre-bid inquiries from prospective bidders regarding construction documents and specifications.
2. Review shop drawings, manufacturers' prints, submittals and samples furnished by the Contractor pursuant to the industry-standard protocol set forth in AIA Document A201-2007.
3. Confer with the Architect, Contractors and other Consultants to resolve related construction issues.
4. Make field observations as directed, per the quantity listed in Exhibit C, in order to review the progress of the work and to be available to address contractor questions, but not to provide construction inspection.
5. Assistance in preparation of Verified Reports, if required.

E. Optional Additional Services Available at an Additional Fee:

1. Structural engineering.
2. Temporary power design / documentation.
3. Submittal of any documents to any governmental agencies.
4. Value engineering services if the in-scope construction costs are within budget.
5. Services resulting from significant changes in the scope of the project's features. The building department submittal documents are considered final design documents. Design changes after submittal to the building department are not included in this proposal. Minor revisions as required due to the normal evolution of the project are included.
6. Preparation or submittal of detailed photometric reports unless specifically required by the local governmental agencies.
7. Early procurement packages separate from the construction document packages.
8. Opinions of probable cost.
9. Out of area travel.
10. Evaluation of feasibility of proposed enhancements above building standard HVAC systems (e.g. thermal storage, co-generation, etc.) not documented.
11. Piped fluids for laboratories.
12. Above building standard waste (e.g., acid waste) for laboratories.
13. Pre-Action fire suppression.
14. Non-aqueous fire protection systems (e.g., FM 200, aerosol, or other gaseous fire suppression).

F. Services Not Included:

1. All backgrounds, and requested architectural details, are to be provided by the Architect in CAD “.dwg” or “.rvt” format.
2. Any street lighting / signalization drawings or specifications.
3. Detailed cost estimates – although coordination with the project’s cost estimator is included.
4. Dimensions and elevations for in-scope devices. This proposal assumes that all critical dimensions of all scope related devices will be documented on the architectural drawings.
5. Off-site work.
6. Plan Check fees, Permit fees, Utility Company fees, or fees of any kind.
7. Rational analysis for smoke control management systems.
8. Plumbing site utilities 5'-0" outside of building.
9. Irrigation systems.
10. Site gas piping upstream of public utility meter.
11. Investigation of base shell systems to determine deficiencies (e.g., capacity, acoustic, operational, etc.).
12. Infrastructure changes (e.g., central plant, utility distribution, primary air distribution, etc.).
13. Detailed / comprehensive evaluation and/or formal written report outlining the impacts of applicable local codes and ordinances. Applicable code research for engineering purposes is included.
14. Design review for projects greater than 50,000 square feet or projects containing “complex mechanical systems”, in accordance with the requirements of the 2019 CEC Title-24 Standards.
15. Physical inspection and/or inventory of any existing equipment and/or systems.
16. Food service engineering (infrastructure for food service equipment included).
17. Pool / Water Feature Consulting (infrastructure services for pool / water feature are included).
18. Involvement with removal of hazardous materials.
19. Architectural design services.
20. Dewatering systems.
21. Storm water capture, management, and treatment systems design.
22. Contracting.

-----END-----

EXHIBIT C(LD) - LIGHTING DESIGN SCOPE OF SERVICES**A. Design Services:**

1. Conference/teleconference with the Architect, Client, and other consultants to discuss illumination criteria; LEED, CalGreen or other sustainability goals; project cost guidelines; and schedule parameters.
2. Site survey to assess existing conditions and surrounding conditions.
3. Review of current Architectural, Interior Design, Signage / Graphic and Landscape information for all areas within the scope of work.
4. Gathering and reviewing relevant code requirements.
5. Preparing a Conceptual / Schematic Design Presentation, which may include image boards and/or PowerPoint presentation, which may include the following:
 - a. Reference images
 - b. Preliminary diagrammatic layouts of light fixtures on backgrounds provided by the Architect
 - c. Preliminary fixture cut sheets and/or application images
 - d. If specifically included in Exhibit C – providing renderings of the lighting design scheme, based on either 2D files (jpeg, PhotoShop) or 3D files (Revit, Sketch-Up) provided by the Architect. Specific quantities and types per Exhibit C.
 - e. If specifically included in Exhibit C – provide photo-simulations. Specific quantities and types per Exhibit C.
6. Preliminary equipment cost estimate of intended lighting design (not including installation costs), based on estimated quantities and quotations from manufacturers' representatives.
7. Preliminary illumination calculations, as required.

B. Design Development Services:

1. Conferences/teleconferences with the Architect, their Consultants and Clients.
2. Aid in procurement of samples of major fixture types as required for review by design team.
3. Design and layout of proposed lighting fixtures on CAD drawing files prepared by the Architect / Client (using AutoCAD 2010 or later and/or Revit 2014 as required).
4. Lighting Fixture Schedules and Specifications, including manufacturer name, model number, lamp type and description.
5. Aid in Value Engineering recommendations as required for compliance with the project budget.
6. Revised illumination calculation studies as required.
7. Preliminary layout of lighting control system intent.

C. Construction Document Services:

1. Conferences/teleconferences with the Architect, their Consultants, Clients and Contractor.
2. Providing assistance in coordinating lighting design with architectural, electrical, mechanical and landscape design.

3. Providing revised design and layout of lighting fixtures on CAD drawing files prepared by the Architect (using AutoCAD 2010 or later and/or Revit 2014 as required).
4. Revised Lighting Fixture Schedules and Specifications.
5. Revised illumination calculations, as required.
6. Revised layout of control system intent.
7. Final development of the deliverables submitted at 100% Construction Documents to incorporate Plan Check comments.

D. Construction Administration Services:

1. Providing support services for assisting prospective bidders related to construction document interpretations, clarifications, and supplement documentation, as required to support the design intent. Providing responses to all pre-bid inquiries from prospective bidders regarding construction documents and specifications.
2. Reviewing any cost saving alternates submitted during the bid selection period for functional capabilities, compatibility with the approved design, and compliance with recognized design standards. Cost reduction changes or field revisions submitted after the award of the contract will be invoiced separately on an hourly basis as an Additional Service.
3. Reviewing shop drawings, manufacturers' prints, submittals, and samples furnished by the Contractor pursuant to the industry-standard protocol set forth in AIA Document A201-2007.
4. Conferring with the Architect, Contractors, and other Consultants to resolve related construction issues.
5. Making field observations as directed, per the quantity listed in Exhibit C, in order to review the progress of the work and to be available to address contractor questions, but not to provide construction inspection.

E. Optional Additional Services Available at an Additional Fee:

1. Services resulting from significant changes in the scope of the project's features. Minor revisions as required due to the normal evolution of the project are included.
2. If specifically included in Exhibit C – providing concept design and preliminary drawings of custom lighting fixtures.
3. If specifically included in Exhibit C – providing a final review of lighting installation and supervision of focusing of adjustable lighting fixtures and programming of lighting control system, as necessary per final design, and criteria established by Client. The Electrical Contractor, Specialty Contractor, and/or Client's Representative will supply personnel to perform this work in compliance with local laws and union agreements. Specific quantities of visits per Exhibit C.

F. Services Not Included:

1. Structural engineering or engineering services of any kind.
2. Off site and street lighting design.
3. Physical inspection and/or inventory of any existing equipment and/or systems.

4. Lighting Designer will provide code research relating to reasonably accessible applicable codes and laws for the Project; however, a formal written report outlining the impacts of applicable local codes and ordinances is not included.
5. Dimensions and elevations for in-scope devices. This proposal assumes that all critical dimensions of all scope related devices will be documented on the architectural drawings.
6. Providing take-offs or quantities of specified fixtures beyond Schematic estimates.

-----END-----

1.0 INTRODUCTION

- 1.1 AQUATIC DESIGN GROUP, INC. of Carlsbad, California (hereinafter referred to as "CONSULTANT"), proposes to provide consulting design services to SWA, (hereinafter referred to as "CLIENT") for the following project:

Ontario Arena Plaza Water Features
Ontario, California

- 1.2 In conformance with the Request for Proposal dated 7 September 2023 as issued by Ryan Parr, CONSULTANT shall provide:

2.0 SCOPE OF WORK

- 2.1 CONSULTANT shall provide design and engineering services as hereinafter described for the following water features:

2.1.1 Main Water Feature(s) with Water Walls, Stepping / Tiered Features, and Interactive Jet Features

2.1.2 Drydeck Fountain Feature with Interactive Jets

2.1.3 Circular Reflective Water Feature

3.0 SCOPE OF SERVICES

- 3.1 Design Development Phase:

3.1.1 CONSULTANT shall review the program furnished by CLIENT to ascertain the requirements of the project and shall arrive at a mutual understanding of such requirements with CLIENT.

3.1.2 Based upon the mutually agreed upon program, schedule and construction budget requirements, CONSULTANT shall prepare, for approval by CLIENT, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to water feature mechanical and electrical systems. Design Development Phase deliverables shall include the following:

3.1.2.1 Preliminary water feature piping plan.

3.1.2.2 Preliminary water feature underwater lighting plan.

3.1.2.3 Outline specification in CSI format.

3.1.3 CONSULTANT shall provide CLIENT with building and infrastructure requirements, including design criteria, as needed to service the water feature equipment, including:

- 3.1.3.1 Water feature mechanical vault dimensions.
 - 3.1.3.2 Sanitary/storm sewer requirements and points of connection.
 - 3.1.3.3 Domestic water requirements and points of connection.
 - 3.1.3.4 Electrical requirements and points of connection.
- 3.1.4 CONSULTANT shall submit to CLIENT an estimate of probable construction cost based upon current area, volume, or other unit costs.

3.2 Construction Documents Phase:

- 3.2.1 Based upon the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by CLIENT, CONSULTANT shall prepare, for approval by CLIENT, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for construction of the water feature(s). Construction Documents Phase deliverables shall include the following:

3.2.1.1 Mechanical Drawings:

- Water feature piping plan.
- Water feature mechanical equipment piping plan.
- Water feature mechanical equipment sections.
- Miscellaneous water feature mechanical details.

3.2.1.2 Electrical Drawings:

- Water feature underwater lighting plan.
- Water feature single phase panel schedule.
- Miscellaneous water feature electrical details.

3.2.1.3 Structural Drawings:

- Water feature dimensional construction drawings.
- Miscellaneous water feature structural details and finishes with primary design by others.

- 3.2.1.4 Final form water feature technical specifications in CSI format.

- 3.2.2 CONSULTANT shall advise CLIENT of any adjustments to previous estimates of probable construction cost indicated by changes in requirements or general market conditions.

- 3.2.3 CONSULTANT shall assist CLIENT in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and the Contractor, as it relates to the design program elements.
- 3.2.4 CONSULTANT shall assist CLIENT in connection with CLIENT's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

3.3 Construction Observation Phase:

- 3.3.1 CONSULTANT shall be a representative of and shall advise and consult with CLIENT: 1) during construction until final payment to the Contractor is due; and 2) as an Additional Service at CLIENT's direction from time to time during the correction period described in the Contract for Construction. CONSULTANT shall have authority to act on behalf of CLIENT only to the extent provided in this proposal unless otherwise modified. CONSULTANT shall provide the following construction support services:
 - 3.3.1.1 Provide clarification, as required, of construction documents and respond to contractor requests for information.
 - 3.3.1.2 Review and approval of sample and material submittals specified in Contract Documents dealing specifically with water features.
 - 3.3.1.3 Assistance with the issuance and negotiation of change orders.
 - 3.3.1.4 Review of contractor-submitted Record Drawings for contract conformance and completeness based upon field observations.
- 3.3.2 CONSULTANT shall visit the site at intervals appropriate to the stage of construction or otherwise agreed by CLIENT and CONSULTANT in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents. However, CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations, CONSULTANT shall keep CLIENT informed of the progress and quality of the Work and shall endeavor to guard CLIENT against defects and deficiencies in the Work.

3.4 Visits to the Project Site:

3.4.1 CONSULTANT shall visit the offices of CLIENT and/or the Project Site in conformance with the following schedule:

- | | | |
|---------|-----------------------------------|-----------------------|
| 3.4.1.1 | Design Phases..... | Three (3) site visits |
| 3.4.1.2 | Construction Observation Phase... | Five (5) site visits |

4.0 EXCLUSIONS TO SCOPE OF SERVICES

4.1 CLIENT shall provide full information regarding requirements for the project, including a program which shall set forth CLIENT's design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment, systems and site requirements. Additional information that may be required by CONSULTANT as prepared by other members of the project team shall include:

4.1.1 Base sheets in digital (AutoCAD .dwg) format, including, but not limited to, the following:

- | | |
|---------|--|
| 4.1.1.1 | Proposed drawing title block. |
| 4.1.1.2 | Site plan illustrating proposed water feature and water feature equipment locations. |

4.1.2 Utilities design to water feature mechanical equipment points of connection, including:

- | | |
|---------|---|
| 4.1.2.1 | Sanitary sewer. |
| 4.1.2.2 | Storm sewer. |
| 4.1.2.3 | Domestic water. |
| 4.1.2.4 | Electrical distribution, including single line diagrams, three phase power, motor control center and/or motor starters. |

4.1.3 Architectural design of water features.

4.1.4 Landscape design including hardscape, landscape, irrigation, site drainage, fencing, site lighting, shade structures, and FF&E.

4.1.5 Miscellaneous plan check and permit fees as may be required by regulatory agencies.

4.1.6 CONSULTANT shall design primary water waterproofing of water retaining structure, defined as the interior surface of water retaining side of water feature / basin. Secondary waterproofing shall be excluded from scope, which is defined as any

waterproofing to protect substructure below or adjacent to water feature. This includes adjacent planters, buildings, vaults, etc. If water feature is on-structure, a third-party waterproofing consultant shall provide secondary waterproofing and drainage to contain any water that may occur as a required redundant system.

4.1.7 CLIENT shall provide a complete bid documents set, featuring 100% construction drawings, specifications and addenda in an electronic format to CONSULTANT.

4.1.8 Storm Water Management Programming, Civil site work, water remediation and runoff control per jurisdictional requirements.

5.0 INDEMNITY

5.1 CONSULTANT and CLIENT mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from their own negligent acts, errors or omissions, or willful misconduct in the performance of their services under this Agreement, to the extent that each party is responsible for such damages, liabilities and costs on a comparative basis of fault.

5.2 In the event CONSULTANT's indemnity obligations set forth above are in conflict with the Prime Contract or Agreement signed by CLIENT for this specific project, CONSULTANT agrees that the indemnity obligations provided in the Prime Contract shall govern in all instances to the fullest extent permitted by law.

5.3 These indemnification provisions shall survive the termination or expiration of this Agreement and shall remain in full force and effect as long as permitted by law.

6.0 USE OF DOCUMENTS / ELECTRONIC FILES

6.1 CLIENT acknowledges the CONSULTANT's construction documents as instruments of professional service. Nevertheless, the drawings and specifications shall become the property of CLIENT upon completion of the work and payment in full of all monies due to the CONSULTANT. CLIENT shall not reuse or make any modifications to the drawings and specifications without the prior written consent of CONSULTANT. CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold the CONSULTANT harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the construction documents by CLIENT or any person or entity that acquires

or obtains the plans and specifications from or through CLIENT without the written authorization of the CONSULTANT.

- 6.2 Electronic files may be provided by CONSULTANT for review by CLIENT and use by the Design Team in the preparation of construction documents. CONSULTANT assumes no responsibility for determining whether the data or software format are correct, up-to-date, or together represent actual conditions, or liability for the translations or results thereof. Acceptance or use by CLIENT of electronic files shall constitute a total release from liability, and as an indemnification for all costs or expenses from any claims, suits, judgments, or any other actions or liability as a result of such use. Under no circumstances shall delivery of the electronic files be deemed a sale by CONSULTANT, and CONSULTANT makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall CONSULTANT be liable for any loss of profit of any consequential damages as a result of re-use of electronic files. Drawing plan views may be delivered in AutoCAD .dwg or Adobe .pdf format. Drawing detail sheets are considered proprietary and will be delivered in AutoCAD .dwf or Adobe .pdf format only.

8.0 TIME

8.1 CONSULTANT shall prosecute design work in conformance with the following schedule, contingent upon receipt of all required information (program, base sheets, etc.) from CLIENT or CLIENT's designated representative:

8.1.1 Design Development Phase: Complete within forty-five (45) calendar days of CONSULTANT's receipt of fully executed professional services agreement between CLIENT and CONSULTANT.

8.1.2 Construction Documents Phase: Complete within sixty (60) calendar days of approval of Design Development Documents and authorization to proceed with Construction Documents Phase.

9.0 AUTHORIZED SIGNATURES

- 9.1 This proposal is valid for thirty (30) calendar days from the date referenced below and is submitted for and on behalf of CONSULTANT by:

AQUATIC DESIGN GROUP, INC.



By: Scott Palmer
Its: Director of Marketing



By: Gregory S. Ferrell, AIA
Its: Principal

18 September 2023

Date

GLASIR DESIGN

424 New Jersey Lane
Placentia, CA 92870
714-514-9930
chris@glasirdesign.com

EXHIBIT E - February 1, 2024

September 13, 2023

This is an agreement for irrigation consulting services to be performed by Glasir Design (Consultant), as requested by **The SWA Group** (Client), for the project listed below.

Project Name/Location:
Ontario Arena Plaza
Ontario, California

Client Info:
The SWA Group
570 Glenneyre Street
Laguna Beach, CA 92651
Attn: Mr. Stephen Rydzon, PLA, Principal
srydzon@swagroup.com, (949) 607-0158

The client and the consultant agree to the following:

A. Consultant agrees to provide the following services:

Provide irrigation consulting services for the above referenced project. The project is the design of a landscape irrigation system for new planting areas within a 2-acre gathering plaza adjacent to an existing sports arena in Ontario, California. The project is limited to the proposed 2-acre project area and shall be designed using AutoCAD drafting software on no more than two (2) sheets of irrigation plan drawings at an appropriate scale. The client shall provide an e-transmit of the AutoCAD drawings to include all required x-reference drawings, image files and plotting "ctb" files. Additional submittals (other than direct municipal agency irrigation plan check revisions) and other design documents, not listed below, are excluded from the consultant's scope of work and fee proposal.

This scope of work is based on the city issued RFP provided by the client on September 7, 2023.

Site Analysis/Conceptual Design –the consultant shall visit the site to review existing irrigation system and review the city's preferred irrigation standards for the new irrigation design. After the initial site review of the site, the consultant will prepare a preliminary irrigation plan to aid the generation of a preliminary cost estimate and identify any irrigation components that may require a long lead time. The consultant will discuss with the client and city proposed value engineering options for the irrigation plan prior to starting irrigation construction documents. One (1) irrigation preliminary plan submittal is included in this phase of work.

Construction Documents - The consultant shall provide complete overhead rotary, bubbler, and drip irrigation construction drawings including plans, notes, materials legends, installation details, water pressure calculations, pump station design, estimated water use calculation (WELO), irrigation run time calculations, specifications, and cost estimate. The fee assumes that there will be no more than three (3) submittals of the construction document irrigation drawings (60%, & 90%, and Final). After the installation of the irrigation system, the consultant shall provide record drawings based on contractor provided as-builts.

Construction Administration - the consultant shall provide construction support services in the form of the review and written comments on contractor materials submittals, as well as any contractor issued irrigation related requests for information (RFIs). the consultant shall provide field observation services during construction to observe and report on the installation of the irrigation system. The consultant recommends that site observations be provided at the following milestones: irrigation mainline and valve location review, irrigation coverage test, and final walk. The scope and fees assume no more than three (3) construction observations shall be provided. The fees for the construction observations include travel time to the site, field time and a written field report or punch list.

Glasir Design grants **The SWA Group** permission to use the above proposal information to respond to any RFPs related to this project, and to create a sub-consultant agreement that may be signed later.

Proposal created by Chris Curry of Glasir Design.



September 14, 2023

RE: Proposal #1202
Ontario Arena Plaza
Ontario, CA

Steve Rydzon
SWA
570 Glenneyre Street
Laguna Beach, CA 92651

Mr. Rydzon:

We are pleased to provide this proposal for structural engineering services on the above referenced project between **JJS Structural, Inc.** and **SWA**. The *Scope of Services* listed below outlines the tasks to be performed for the new landscape project located at the address above. This letter will also serve as a contractual agreement to perform the services if signed and returned to our office.

1. Project Description

- a. Landscape features at the new Arena Plaza, as follows:
 - i. Concrete and / or CMU retaining walls
 - 1. (3) different wall styles, each with varying heights assumed (6'-0" tall, max.)
 - ii. (2) different types of steel shade structures
 - iii. C.I.P. concrete stairs and steel handrails

2. Scope of Services

- a. Design development (DD) phase
 - i. Attend project conference calls to coordinate design
- b. Construction documents (CD) phase, including structural calculations
 - i. Respond to plan check corrections
- c. Construction administration (CA) phase
 - i. Respond to RFI's
 - ii. Review and approve shop drawings and submittals
- d. Plan check meetings, site or structural observation visits, responding to bidder RFI's and record drawings are not included in the scope and will be an additional fee

3. Structural Systems

- a. Retaining walls will be designed as both CMU and P.I.P. concrete
- b. Shade structures will be steel, supported on concrete pad footings or grade beams
- c. Stairs will be C.I.P. concrete with steel handrails

4. Assumptions and Exclusions

The scope described above is the total scope of work and any additional work/scope will be considered additional services to be performed on a time-and-material basis. Assumptions and exclusions include:

- a. The fee/scope contained herein is based on the RFP from the City of Ontario as well as an email from Steve Rydzon on 09/08/23

- b. Design development (DD) includes providing most structural member locations, estimating sizes and coordinating with the team
- c. Construction documents (CD) include final structural design documents with all relevant structural information shown and ready for jurisdiction review and bid
- d. Construction administration (CA) phase includes coordination with the design team and site contractors during construction to address unforeseen issues during the design process
- e. Shoring design is excluded
- f. Client will provide architectural background drawings for our use
- g. Architect / Owner revisions are excluded, including excessive revisions during design
- h. Construction changes or repairs are excluded
- i. Revisions due to code change are excluded

6. Construction Documents

- a. Our office will create structural plans, details and general notes with supporting calculations that meet the requirements of the latest building code. The documents will be provided in electronic file .pdf format. Plan files are also available in .dwg format for the plan view sheets only as requested. The documents must be approved by the governing jurisdiction before the start of construction.

7. Electronic Files

- a. All electronic file used to create the structural documents are the sole property of JJS Structural. If requested by a subcontractor, the electronic files may be provided for their use. The structural information is not to be revised or modified from the approved design. The results of the subcontractor's use of our electronic files is not implied or warranted to match or meet the original design performed by our office. JJS Structural reserves the right to refuse to provide the electronic files.
- b. JJS Structural uses architectural electronic drawing files provided to our office by the client. These files are the property of the architect/engineer of record. Approval to use the files in our drawings must be obtained from the architect/engineer, by the client or the subcontractor, prior to our office providing our electronic files.

10. Indemnification

- a. JJS Structural, Inc. (SE) shall indemnify and hold harmless SWA (Client) and its officers, members, directors, partners, employees, and subconsultants against any and all claims, damages, losses and expenses to the extent they are caused by the negligent acts, errors, or omissions of the SE or its employees in the performance of its services under this Agreement, subject to the Risk Allocation provisions in Item 11 below.
- b. The Client shall indemnify and hold harmless the SE and its officers, members, directors, partners, employees, and subconsultants from and against any and all claims, damages, losses and expenses arising out of or resulting from Client's performance of its obligations under this Agreement, provided that any such claims, damage, loss or expense is caused in whole or in part by the negligent act or omission and/or strict liability of the Client, anyone directly or indirectly employed by the Client (except the SE) or anyone for whose acts any of them may be liable and provided that they are not caused by the negligent performance by the SE of services under the agreement. This indemnification shall include any claim, damage or loss due to the presence of hazardous materials.
- c. Neither party shall have any obligation to defend or pay for the defense costs of the other party unless such costs are recoverable under applicable law.
- d. For third party claims, to the fullest extent permitted by law, the Client hereby agrees to indemnify, hold harmless and defend the SE, including its officers, members, directors, partners, agents, employees, and subconsultants from and against all third party claims, including bodily injury, property damage, products liability, demands, damages and losses, causes of actions, judgments, fines, penalties and claims expense including attorney fees, litigation costs, expert witness fees and any other expenses caused or alleged to have been caused by anything other than negligent performance by the SE of services under the agreement related to this project. Said indemnification shall also apply to any deductible that the SE may be obligated to pay under its Professional Liability Policy resulting therefrom.
- e. The Client shall require that its construction contractor(s) endorse commercial general liability coverage to include the Client, the SE and the SE's consultants as additional insureds for claims caused in whole or in part by the contractor's negligent acts or omissions during the contractor's operations. All such additional insured coverage shall be primary and non-contributory, with provision for separation of insureds.

13. Review of Contractor's Work

- a. The SE will not supervise, direct, or have control over the Contractor's work. The SE shall not be responsible for the Contractor's means, methods, procedures, techniques, or sequences of construction, nor for safety programs or procedures employed by the Contractor on the job site. The SE shall not be responsible for the Contractor's failure to carry out work in accordance with the Contract Documents.

17. Corporate Protection

- a. It is intended by the parties to this agreement that the SE's services in connection with the project(s) shall not subject the SE's individual owners, officers or employees to any legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, the client agrees that as the client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the SE, and not against any of SE's individual owners, officers or employees.

18. Jobsite Safety

- a. The Client acknowledges that the SE does not have any authority or responsibility for general jobsite safety and for the safety of persons who are not the employees of the SE or SE's subconsultant(s). It is understood and agreed that the SE will not be responsible for the job safety or site safety of the project and shall not be responsible for compliance with safety programs and related OSHA regulations required to be followed by the Contractor or its employees, Subcontractors, and agents. Jobsite safety shall be the sole responsibility of the Contractor or Client.

19. Waiver of Certifications

- a. No party to this Agreement shall be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement. No party to this Agreement shall be required to sign any documents which would result in that party having to certify, guarantee, or warrant the existence of conditions which they cannot ascertain.

20. Severability

- a. Any term or provision of this agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this agreement shall remain in full force and effect.

22. Force Majeure

- a. SE shall not be responsible for delays caused by factors beyond SE's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, government ordered industry shutdowns, power or server outages, acts of nature, widespread infectious disease outbreaks (including, but not limited to epidemics and pandemics), failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or disapprove of SE's services or work product, or delays caused by faulty performance by the Client's or by contractors of any level. When such delays beyond SE's reasonable control occur, the Client agrees that SE shall not be responsible for damages, nor shall SE be deemed in default of this Agreement.

If this meets with your approval, please sign and date where indicated. By signing below, you are in agreement with the fees that are to be charged and payment thereof and you are authorizing the structural design to begin. Please feel free to contact us with any questions you may have.

Sincerely,



Jason Skudlarski, PE, #C67712 - California
President
JJS Structural, Inc.

Accepted By: _____
Steve Rydzon Date

1. Project Overview

- 1.1. The project is a construction of the Arena Plaza at Ontario, California. The proposed plaza shall be in various locations. The scope of work includes but not limited to landscaping, paving, outdoor seating, planter seating, shade trees, gathering space, water feature, dry-deck fountain, shade structure, site utilities and site electrical and lighting.

2. Cost Estimating Scope of Work

- 2.1. Cumming will undertake a full and detailed review of the project documents including the program, concept studies, and any provided geotechnical reports, etc. We will develop a statement of probable cost that encompasses all direct and indirect cost of work.
- 2.2. Prepare statement of probable construction cost at the end of 90% Construction Document.
- 2.3. Attend kick-off meeting.
- 2.4. Meet with the design team to outline the cost report and gain understanding of project objectives.
- 2.5. Attend conference calls related to cost management.
- 2.6. The Cost Manager shall provide market related advice on construction cost, overhead cost and general conditions cost for preparation of estimates.
- 2.7. Based upon the review of estimates with design team, Cumming have allowed minor updates per design phase reflecting the comments. Any major scope changes will be subject to additional fees.
- 2.8. Our estimate is based on a duration of 10-15 business days from the date we received the documents.

5. Exclusions

- 5.1. Any scope of work not mentioned in this proposal.
- 5.2. Reconciliation with Contractor or Third-Party Estimator.
- 5.3. Value Engineering Services.
- 5.4. Owner soft costs management is excluded, however can be performed at an additional service.



- Pedestrian zone
- Terraced slope
- Outdoor seating
- Water feature
- Planter seating
- Shade trees



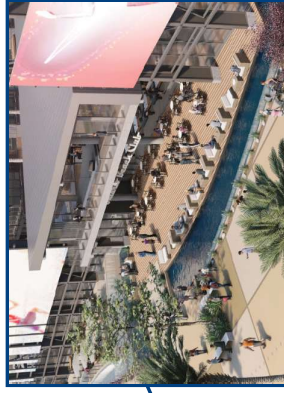
New planter seating

Maintain existing palm trees

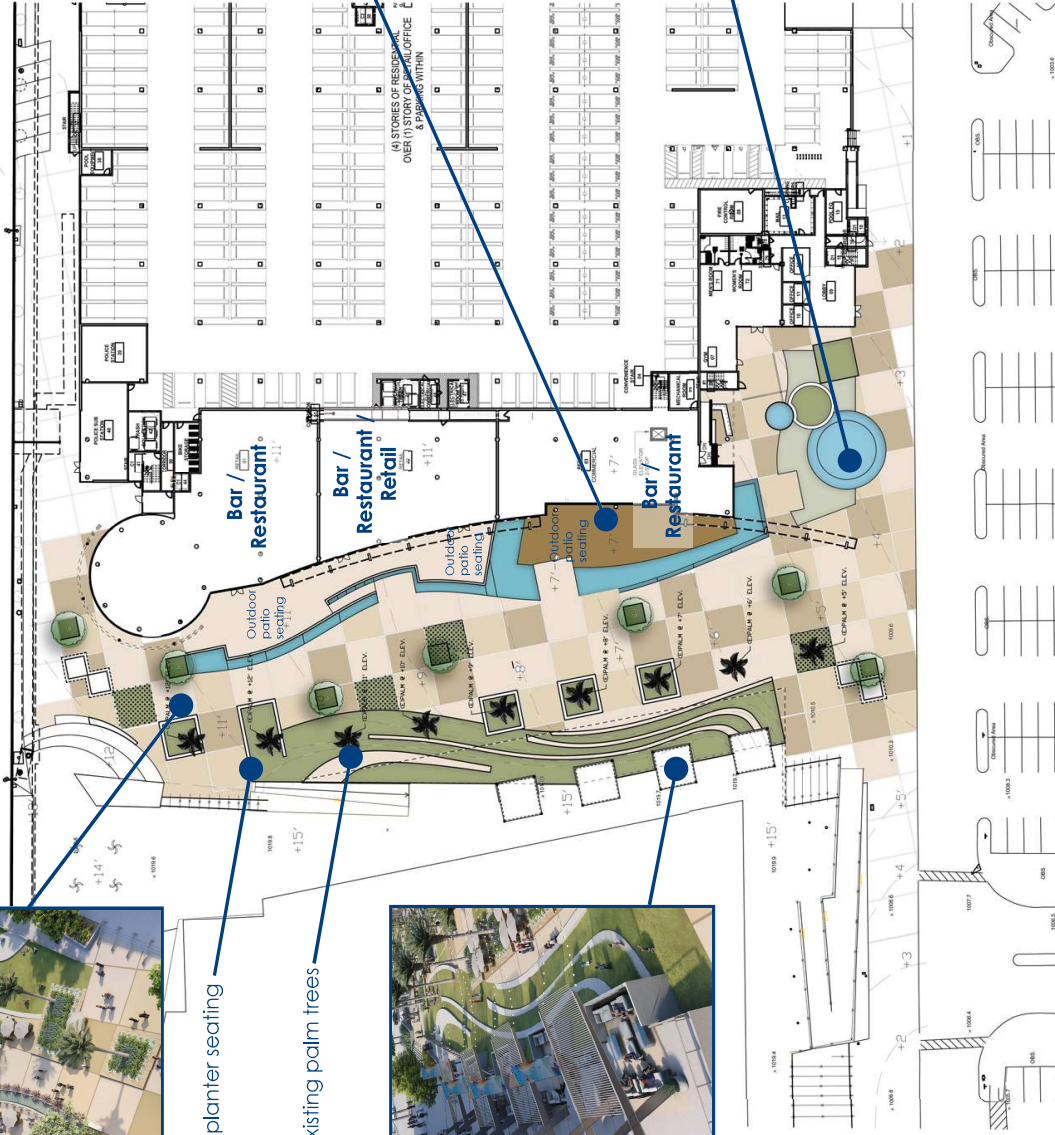
- Shaded seating
- Gathering space
- Meeting spot
- People watching
- Respite areas
- Terraced slope
- Formal & informal passive spaces

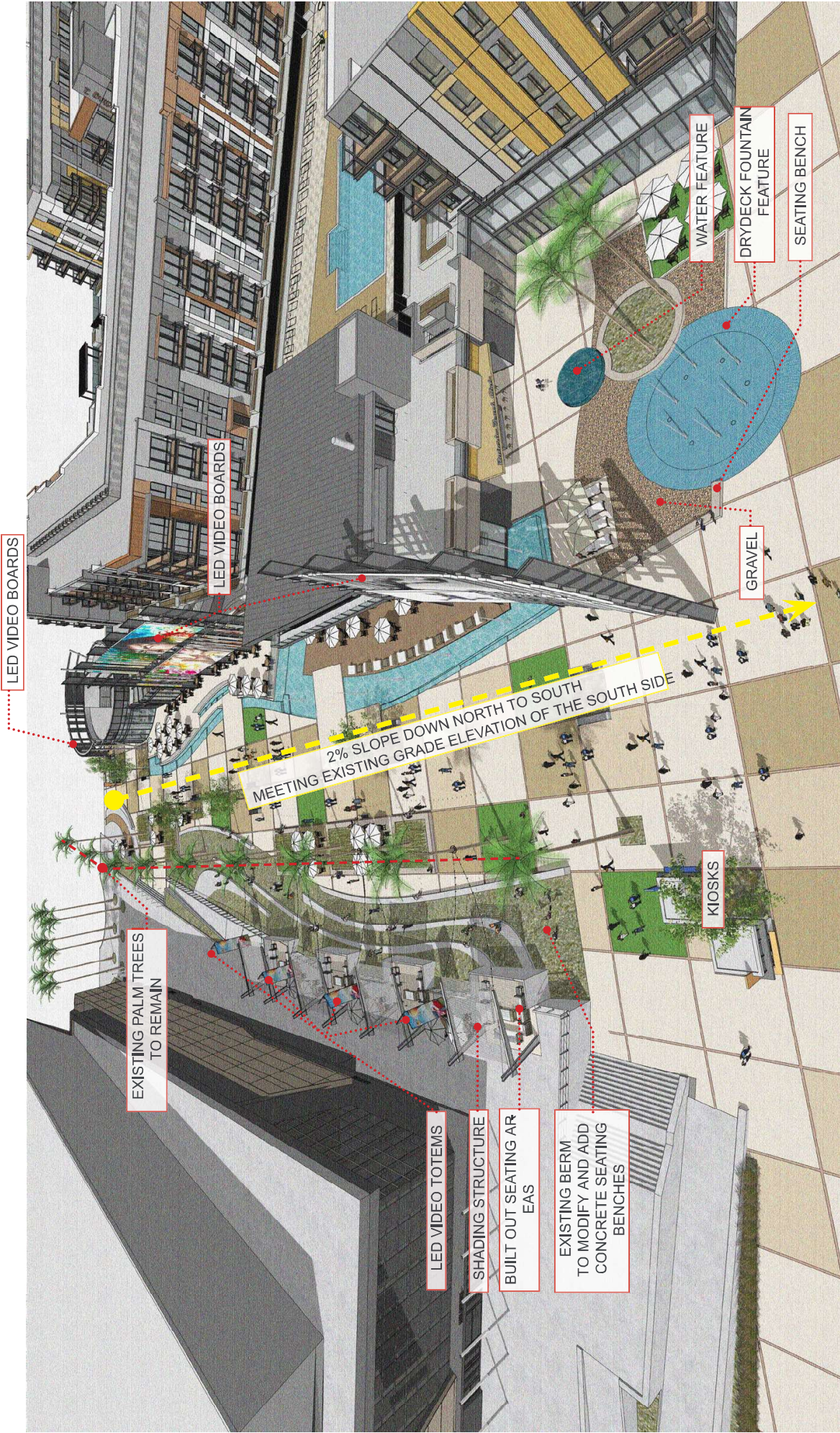


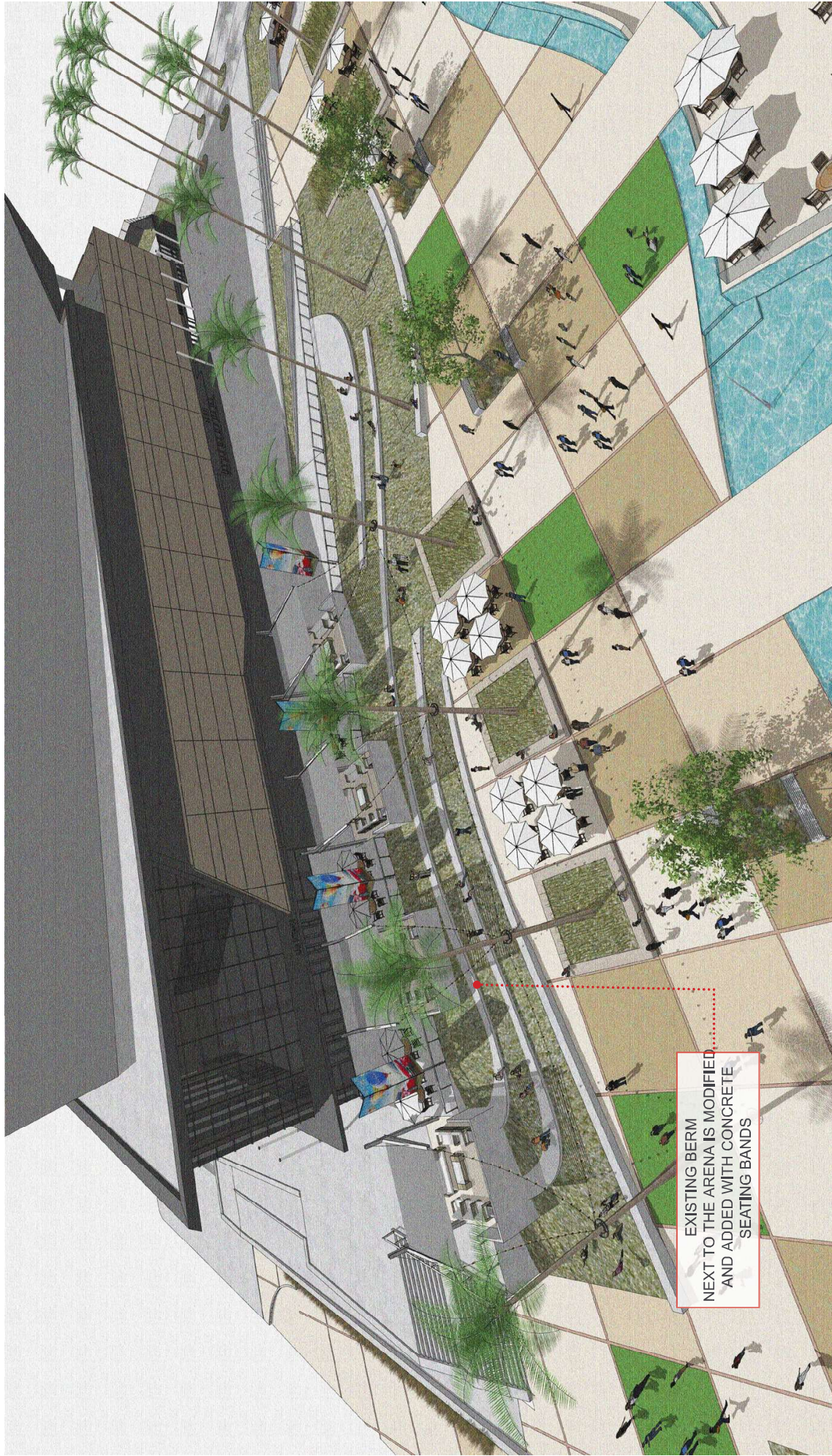
- Continuation of water feature
- Outdoor seating
- 2nd level flexible space and balcony for stage, bar & restaurant



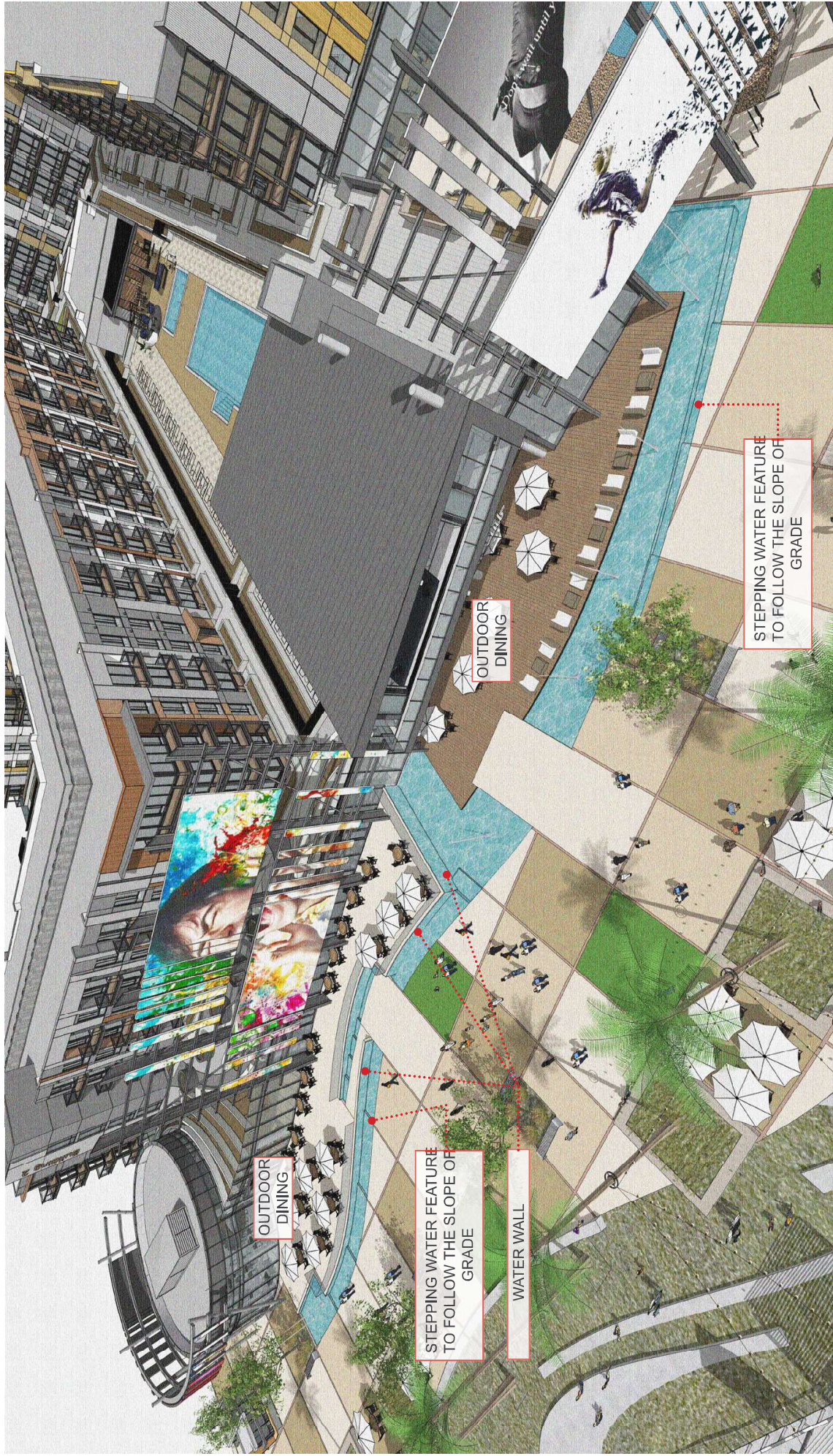
- Dry-deck fountain
- Movable tables & seating



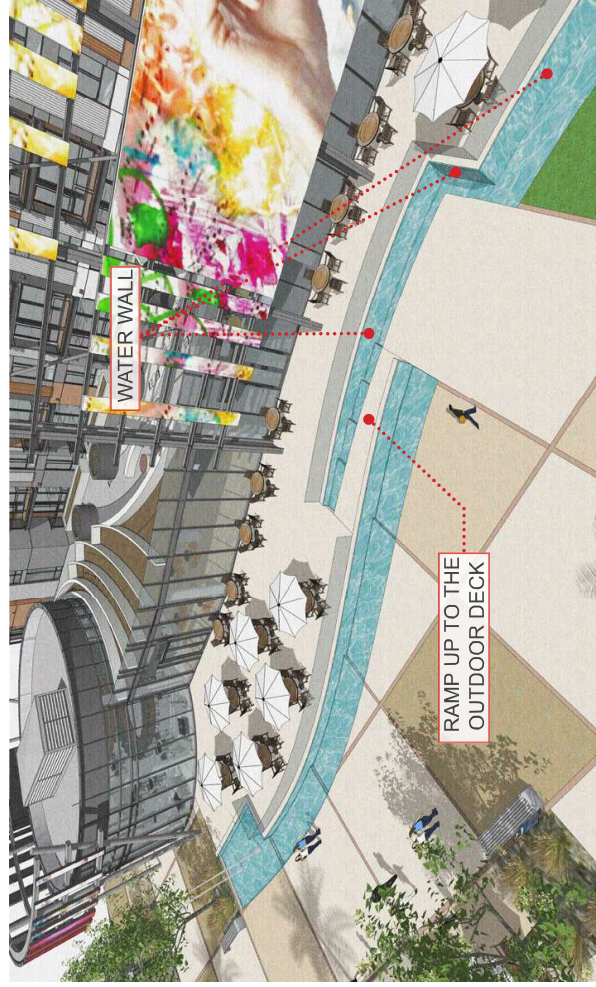




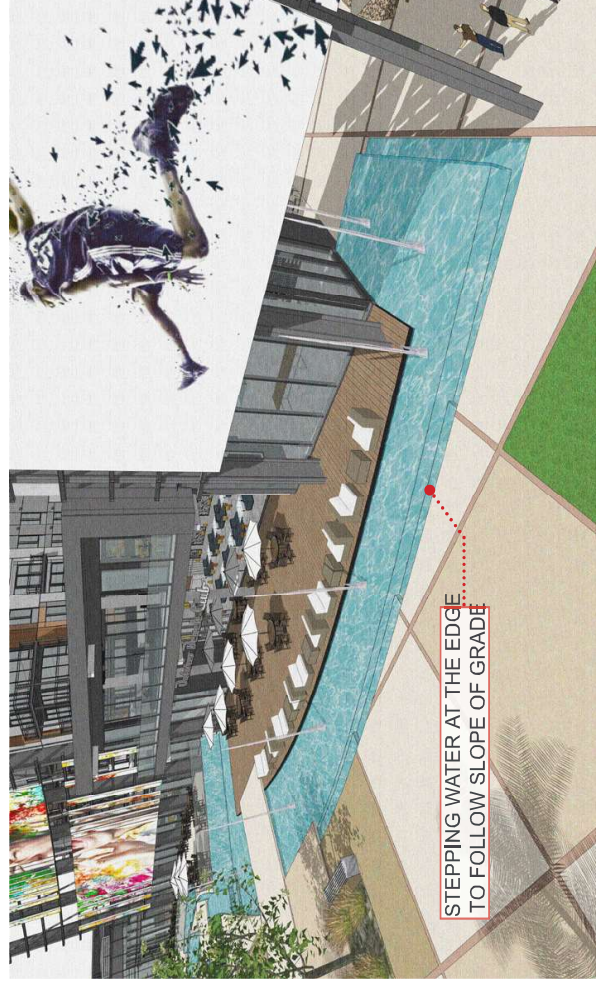
ONTARIO PLAZA - BERM WITH CONCRETE SEATING BENCHES



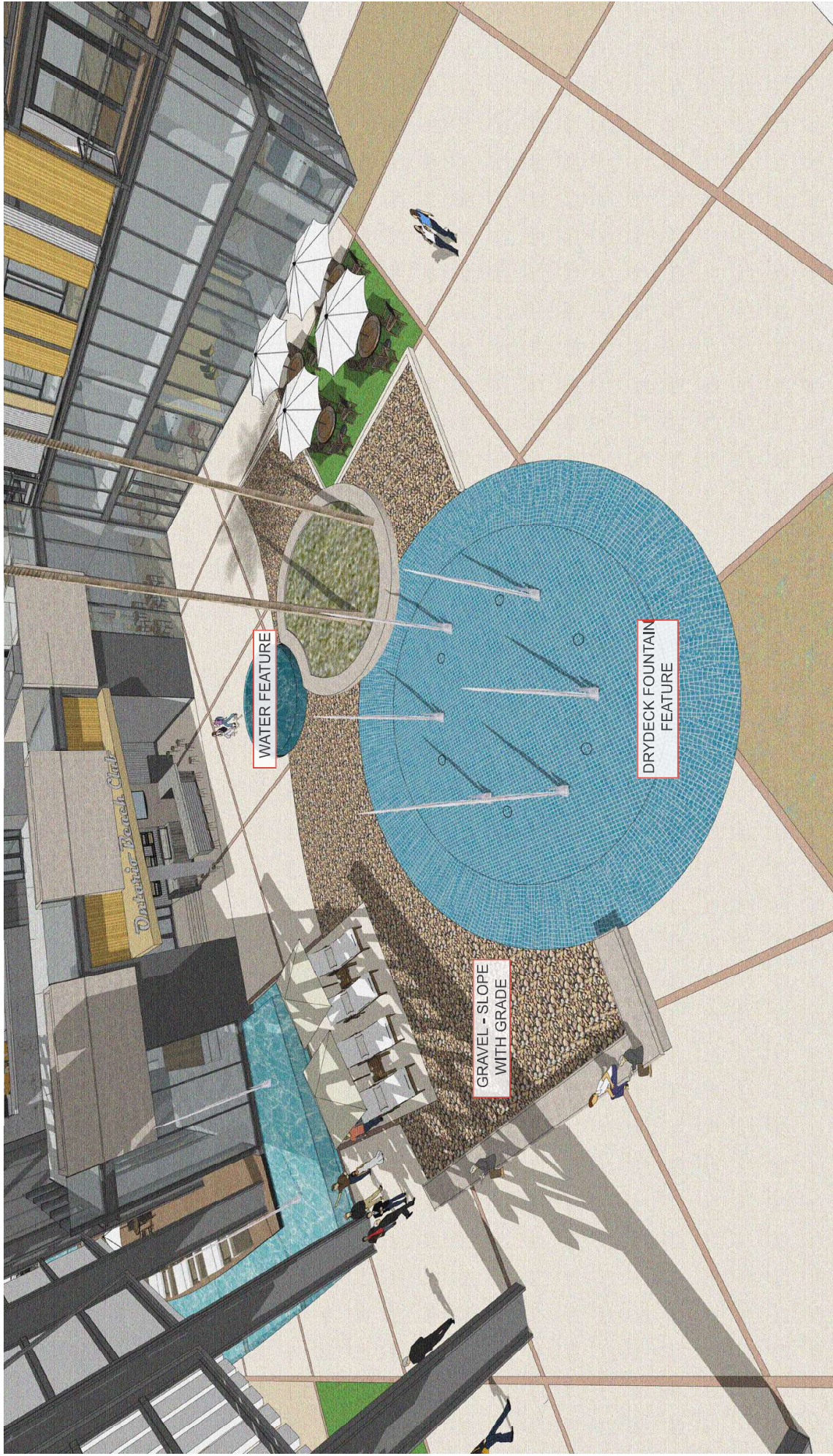
ONTARIO PLAZA - MAIN WATER FEATURE



ONTARIO PLAZA - MAIN WATER FEATURE - NORTH PORTION



ONTARIO PLAZA - MAIN WATER FEATURE - SOUTH PORTION





CITY OF ONTARIO

Agenda Report
February 20, 2024

SECTION:
CONSENT CALENDAR

Department: Fire Department
Prepared By: Joseph Ramos
Staff Member Presenting:
Mike Gerken, Fire Chief
Reviewed By: Sagar Patel
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 7

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT WITH WITT O'BRIEN'S, LLC FOR A CONTINUITY OF OPERATIONS PLAN

RECOMMENDATION: That the City Council authorize the City Manager, or designee, to execute a Professional Services Agreement with Witt O'Brien's, LLC, for consulting services in the creation of a citywide Continuity of Operations Plan, inclusive of the Continuity of Government and Disaster Recovery plans for a not-to-exceed contract amount of \$211,900.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner

FISCAL IMPACT: The Fiscal Year 2023-24 Adopted Operating Budget includes appropriations in the General Fund for consulting services in the creation of a citywide Continuity of Operations Plan.

BACKGROUND & ANALYSIS: After experiencing the most recent global pandemic and learning from the experiences of municipal agencies affected by cyber-attacks, the City recognized the importance of taking active measures to prepare for a complete disruption to City services. While the City has strengthened its plans within hazard mitigation and emergency operations, the City sought out consulting services through a competitive bidding process to develop a Continuity of Operations Plan (COOP), which will also incorporate the Continuity of Government (COG), and Disaster Recovery (DR) plans within the COOP.

COOP planning is the effort within individual agencies to ensure they can continue to perform their mission essential functions during a wide range of emergencies. It is the initiative that ensures our City agencies and departments are able to continue their essential daily functions. COOP requires planning for any event – natural, human-caused, and technological threats, which may cause an agency to relocate its operations to an alternate or other continuity site to assure continuance of its essential functions.

In November 2023, the City solicited proposals through the City's bid management system and received five proposals to accomplish this project. Witt O'Brien's, LLC, was recommended by a

review committee of City Staff. Witt O'Brien's, LLC is a California based-firm with a track record of experience in writing continuity, and other emergency, plans for municipal agencies in comparison to other proposals submitted.

Staff recommends awarding a contract to Witt O'Brien's, LLC for consulting services to write this comprehensive emergency plan and ultimately strengthen the entire City's resiliency in a time of disaster.



PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered as of [REDACTED], by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and **Witt O'Brien's, LLC**, a **Limited Liability Company**, with its principal place of business at **818 Town & Country Blvd., Suite 200, Houston, Texas 77024** ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing **Continuity Of Operations Project emergency management planning services** to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional services for the **Continuity Of Operations Project** ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in

accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **April 01, 2024 to August 30, 2025**, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Two Hundred Eleven Thousand Nine Hundred dollars (\$211,900)** without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Payment shall not constitute acceptance of any Services completed by Consultant. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "C" of this Agreement.

3.2.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3 Responsibilities of Consultant.

3.3.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Any personnel performing the Services on behalf of Consultant shall not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of

Consultant or any of Consultants officers, employees or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. 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, and workers' compensation insurance.

3.3.2 Schedule of Services. Consultant shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.3.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.3.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Jason Sirney, Deputy Practice Lead, Readiness & Resilience.

3.3.5 City's Representative. The City hereby designates Joseph Ramos, Emergency Manager or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Services or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services or change the Consultant's total compensation subject to the provisions contained in this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.3.6 Consultant's Representative. Consultant hereby designates Jason Sirney, Deputy Practice Lead, Readiness & Resilience or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her 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 Services under this Agreement.

3.3.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.3.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.3.9.2 Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

3.3.9.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of

the Party responsible for the delay, shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.3.10 Laws and Regulations; Employee/Labor Certification.

3.3.10.1 Compliance with Laws. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause.

3.3.10.2 Employment Eligibility; Consultant. Consultant certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subconsultants and sub-subconsultants to comply with the same. Consultant certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement.

3.3.10.3 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.4 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. City may

seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3.10.6 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3.11 Insurance.

3.3.11.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.3.11.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than \$2,000,000 per occurrence and no less than \$4,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$2,000,000 combined limit for each occurrence.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than \$2,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect

the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

3.3.11.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability: (1) Additional Insured: The City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) Professional Liability (Errors & Omissions): 1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

(D) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

3.3.11.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees,

agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants to the extent of the liabilities assumed by Insurer under this agreement

3.3.11.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.3.11.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.3.11.8 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.3.11.9 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.3.11.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.3.11.11 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification. If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(B) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(C) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(D) Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.3.11.12 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. 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 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is

\$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. 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. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over \$25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants.

3.4.3 Compliance Monitoring. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

3.4.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least ten (10) days before the effective date of such termination. If termination for cause, City will provide written notice and explanation of breach to Consultant and allow Consultant fifteen (15) days to remedy. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6 Indemnification.

3.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death resulting from any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents directly related the performance of the Consultant's Services, the Project or this Agreement, attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers. Said indemnification, defense, and hold harmless actions shall be limited to the extent of liability assumed by Contractor under this Agreement. In no event shall either party be liable for any exemplary, punitive, incidental, special, indirect or consequential damages of any kind, including, without limitation, any loss of profits or revenue, loss of use of property or equipment and business interruption losses, regardless of the cause of such damages, including, without limitation, any negligence (whether active, passive, sole, concurrent or gross), breach of duty (whether statutory, contractual or otherwise) or any other fault of either party or any other person or entity, and regardless of whether the claim is based in contract, tort, strict liability or otherwise. Notwithstanding any contrary provision in this agreement, contractor's liability for any and all claims arising out of or in connection with the agreement or the services shall not exceed, in the aggregate, two times the fees actually paid by client to contractor within the twelve (12) months preceding the event giving rise to the claim under this agreement. Such limitation of liability shall apply even if the liability asserted is based on negligence (whether active, passive, sole, concurrent or gross), breach of duty (whether statutory, contractual or otherwise) or any other fault of contractor or any other person or entity, and regardless of whether the claim is based in contract, tort, strict liability or otherwise; provided, however, for the avoidance of doubt, that such limitation of liability shall not apply if the liability asserted is based on fraud or willful misconduct

3.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.7 General Provisions.

3.7.1 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7.2 Independent Contractors and Subcontracting.

3.7.2.1 Use of Consultants. Consultant is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2750.3 and Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018). To ensure that Consultant is in compliance with the California Labor Code, Consultant shall only utilize its employees to provide the Services. Consultant may not provide the services through any independent contractor, subcontractor or subconsultant ("Subcontractor(s)") unless approved by the City as set forth in Section 3.7.2.2 below. Consultant represents and warrants that all personnel who perform the Services on Consultant's behalf are Consultant's employees, and that Consultant complies with all applicable laws, rules and regulations governing its employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders.

3.7.2.2 Prior Approval Required. Consultant shall not use any Subcontractor to provide the Services, or any portion of the work required by this Agreement, without prior written approval of City. In the event that City authorizes Consultant to use a Subcontractor, Consultant shall enter into a written agreement with the Subcontractor, which must include all provisions of the Agreement, including a restriction on the Subcontractor's use of further independent contractors, subcontractors or subconsultants without the City's prior written consent.

3.7.3 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties by email with delivery receipt, at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: Witt O'Briens, LLC
818 Town & Country Blvd., Suite 200
Houston, TX 77024

ATTN: Director of Contracts
Phone: 281-606-4721

Alternate Phone: (202) 207-2935

contractrequests@wittobriens.com with a copy to
cjoiner@wittobriens.com

City: City of Ontario
303 East "B" Street
Ontario, CA 91764
ATTN: Joseph Ramos, Emergency Manager

Such notice shall be deemed made when email delivery receipt is received, personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.7.4 Ownership of Materials and Confidentiality.

3.7.4.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.7.4.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.7.4.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless

Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.7.4.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted. Notwithstanding the foregoing, the City acknowledges, understands and agrees that Consultant will not be liable for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity due to any alternative use by City or a third party; redistribution for use other than the purpose for which it was created; or selling to a third party.

3.7.4.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.7.4.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the release notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of an objection notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.7.5 Cooperation; Further Acts. The Parties shall fully cooperate with one

another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.7.6 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.7.7 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 costs of such action.

3.7.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.7.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.7.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.7.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.7.12 Assignment or Transfer. Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.7.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease

of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.7.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.7.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. 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.

3.7.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.7.17 Invalidity; 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.

3.7.18 Prohibited Interests. Consultant maintains and warrants 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. Consultant warrants 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. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. 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.

3.7.19 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.7.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7.21 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

SIGNATURES ON NEXT PAGE

**SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO AND
WITT O'BRIEN'S, LLC**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

CITY OF ONTARIO

WITT O'BRIEN'S, LLC

Approved By:

Scott Ochoa
City Manager

By: _____

Its: _____

Approved as to Form:

Printed Name: _____

Best Best & Krieger LLP
City Attorney

By: _____

Its: _____

Printed Name: _____

Attested By:

City Clerk

[If Corporation, TWO SIGNATURES,
President OR Vice President AND Secretary
OR Treasurer REQUIRED]

EXHIBIT "A" SCOPE OF SERVICES

TABLE 1 – RATE SCHEDULE

Labor Category	Hourly Rate
Project Executive	\$170.00
Project Manager	\$150.00
Planner	\$130.00
Junior Planner	\$90.00

TABLE 2 – FEE PROPOSAL

City of Ontario Continuity of Operations				
TASKS	ROLE	EST HOURS	RATE	PRICE
Task 1: Project Initiation and Kick Off Kick Off Meeting, Convene Core Planning Team, Document Request & Review, Monthly PM Meetings, Reporting	Project Executive	20	\$170.00	\$3,400.00
	Project Manager	40	\$150.00	\$6,000.00
	Sr Planner	18	\$130.00	\$2,340.00
	Planner	0	\$130.00	\$0.00
	Jr Planner	16	\$90.00	\$1,440.00
	Travel			\$3,000.00
	Sub-Total Task 1	94		\$16,180.00
Task 2: Mission Essential Functions Departmental Surveys and Worksheets, Departmental Interdependencies, Stakeholder Workshops, Establish Essential Functions	Project Executive	20	\$170.00	\$3,400.00
	Project Manager	72	\$150.00	\$10,800.00
	Sr Planner	120	\$130.00	\$15,600.00
	Planner	100	\$130.00	\$13,000.00
	Jr Planner	100	\$90.00	\$9,000.00
	Travel			\$4,500.00
	Sub-Total Task 2	412		\$56,300.00
Task 3: Business Impact Analysis Business Impact Analysis, Threat Assessment, Disaster Recovery Planning Assessment, Cross Function and Departmental Alignment Analysis	Project Executive	8	\$170.00	\$1,360.00
	Project Manager	60	\$150.00	\$9,000.00
	Sr Planner	110	\$130.00	\$14,300.00
	Planner	80	\$130.00	\$10,400.00
	Jr Planner	110	\$90.00	\$9,900.00
	Travel			\$3,000.00
	Sub-Total Task 3	368		\$47,960.00
Task 4: Plan Development Departmental Worksheet Analysis, Continuity Plan Development, Recovery Plan Development, First Draft Plan Submission, Final Drafts	Project Executive	8	\$170.00	\$1,360.00
	Project Manager	48	\$150.00	\$7,200.00
	Sr Planner	174	\$130.00	\$22,620.00
	Planner	131	\$130.00	\$17,030.00
	Jr Planner	161	\$90.00	\$14,490.00
	Travel			
	Sub-Total Task 4	522		\$62,700.00
Task 5: Continuity Exercise Initial Planning Meeting, Exercise Planning, Final Planning Meeting, TTX Material Development, Exercise Facilitation, AAR/IP	Project Executive	32	\$170.00	\$5,440.00
	Project Manager	40	\$150.00	\$6,000.00
	Sr Planner	40	\$130.00	\$5,200.00
	Planner	16	\$130.00	\$2,080.00
	Jr Planner	56	\$90.00	\$5,040.00
	ODCs/Printing			\$500.00
	Travel			\$4,500.00
	Sub-Total Task 5	184		\$28,760.00
		1580		\$211,900.00

CITY OF ONTARIO

Agenda Report
February 20, 2024

SECTION:
CONSENT CALENDAR

Department: Police Department
Prepared By: Mary Salem
Staff Member Presenting:
Mike Lorenz, Chief of Police
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 8

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT WITH GANS AND PUGH ASSOCIATES, INC. FOR EQUIPMENT AND SOFTWARE SERVICES

RECOMMENDATION: That the City Council approve and authorize the City Manager or his designee to execute a Professional Services Agreement with Gans and Pugh, of Herndon, Virginia, for equipment and software services in the amount of \$1,123,388.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Maintain the Current High Level of Public Safety

Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: The Fiscal Year 2023-24 Adopted Budget includes appropriations of \$1,123,388 in the Department of Justice (DOJ) Asset Seizure Fund.

BACKGROUND & ANALYSIS: The Ontario Police Department (OPD) is dedicated to enhancing operations with state-of-the-art equipment and software to reduce crime in the City with the goal to increase the organization's ability to locate and apprehend offenders in a less invasive manner. The acquisition of equipment and software provided by Gans and Pugh Associates, Inc. will greatly impact the safety of our community members and our officers by improving the ability to locate and apprehend offenders, as well as assisting in locating our most vulnerable during their time of need such as critical missing persons, kidnappings, or trafficked citizens. OPD will benefit from this equipment and software both judicially and operationally. Because Ontario has relied on other police departments for assistance in priority cases and unfortunately, there have been situations where these agencies were unable to assist, it is imperative to have full access to this equipment and software to ensure the Police Department can better control the outcome of these situations. In addition, OPD has strengthened relationships and enhanced uniformity with Fontana Police Department, Anaheim Police Department, San Bernardino County Sheriff's Department, Riverside County Sheriff's Department, Homeland Security Investigations, and United States Marshals Service while using this equipment and software. As a result, Staff recommends the approval of a sole source agreement with Gans and Pugh Associates, Inc. for specialized equipment and software.



PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO AND
GANS & PUGH ASSOCIATES, INC.**

1. PARTIES AND DATE.

This Agreement is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764 ("City") and Gans & Pugh Associates, Inc., a Virginia Corporation with its principal place of business at 690 Center St., Ste 201, Herndon, VA 20170 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing equipment and software services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional services for the FalcoNet Trigger Fish project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional equipment and software consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from October 31, 2023, to October 31, 2024 unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than (2) additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **One Million One Hundred Twenty Three Thousand Three Hundred Eighty-Eight** (\$1,123,388.00) without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Payment shall not constitute acceptance of any Services completed by Consultant. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "C" of this Agreement.

3.2.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3 Responsibilities of Consultant.

3.3.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Any personnel performing the Services on behalf of Consultant shall not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultants officers, employees or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due

such personnel in connection with their performance of Services under this Agreement and as required by law. 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, and workers' compensation insurance.

3.3.2 Schedule of Services. Consultant shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.3.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.3.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Josh Walker.

3.3.5 City's Representative. The City hereby designates Lt. Scott Payne, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Services or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services or change the Consultant's total compensation subject to the provisions contained in this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.3.6 Consultant's Representative. Consultant hereby designates Josh Walker, Sales Representative, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her 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 Services under this Agreement.

3.3.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.3.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in

the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.3.9.2 Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

3.3.9.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.3.10 Laws and Regulations; Employee/Labor Certification.

3.3.10.1 Compliance with Laws. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause.

3.3.10.2 Employment Eligibility; Consultant. Consultant certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subconsultants and sub-subconsultants to comply with the same. Consultant certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement.

3.3.10.3 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.4 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3.10.6 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3.11 Insurance. [See attached COI]

3.3.11.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.3.11.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than \$2,000,000 per occurrence and no less than \$4,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than \$2,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

3.3.11.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with

regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Workers' Compensation: insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(C) Cyber Liability Insurance: with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

3.3.11.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.3.11.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.3.11.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not

been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.3.11.8 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.3.11.9 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.3.11.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.3.11.11 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(C) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(D) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from

liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(F) Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.3.11.12 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. 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 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. 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. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over \$25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants.

3.4.3 Compliance Monitoring. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

3.4.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6 Indemnification.

3.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss

or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.7 General Provisions.

3.7.1 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7.2 Independent Contractors and Subcontracting.

3.7.2.1 Use of Consultants. Consultant is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2750.3 and Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018). To ensure that Consultant is in compliance with the California Labor Code, Consultant shall only utilize its employees to provide the Services. Consultant may not provide the services through any independent contractor, subcontractor or subconsultant ("Subcontractor(s)") unless approved by the City as set forth in Section 3.7.2.2 below. Consultant represents and warrants that all personnel who perform the Services on Consultant's behalf are Consultant's employees, and that Consultant complies with all applicable laws, rules and regulations governing its employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders.

3.7.2.2 Prior Approval Required. Consultant shall not use any Subcontractor to provide the Services, or any portion of the work required by this Agreement, without prior written approval of City. In the event that City authorizes Consultant to use a Subcontractor, Consultant shall enter into a written agreement with the Subcontractor, which must include all provisions of the Agreement, including a restriction on the Subcontractor's use of further independent contractors, subcontractors or subconsultants without the City's prior written consent.

3.7.3 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: Gan & Pugh Associates, Inc.
690 Center Street, Ste 201
Herndon, VA 20170
ATTN: Alan Orbeta, President

City: City of Ontario
303 East "B" Street
Ontario, CA 91764
ATTN: Records Management

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.7.4 Ownership of Materials and Confidentiality.

3.7.4.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.7.4.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.7.4.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.7.4.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.7.4.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.7.4.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the release notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of an objection notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.7.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.7.6 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.7.7 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 costs of such action.

3.7.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.7.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.7.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.7.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.7.12 Assignment or Transfer. Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.7.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are

for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.7.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.7.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. 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.

3.7.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.7.17 Invalidity; 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.

3.7.18 Prohibited Interests. Consultant maintains and warrants 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. Consultant warrants 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. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. 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.

3.7.19 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.7.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7.21 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

3.8 Federal Provisions. When funding for the services is provided, in whole or in part, by an agency of the federal government, Consultant shall also fully and adequately comply with the provisions included in Exhibit "A-1" (Federal Requirements) attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

SIGNATURES ON NEXT PAGE

**SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO AND
GANS & PUGH ASSOCIATES, INC.**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

CITY OF ONTARIO

GANS & PUGH ASSOCIATES, INC.

Approved By:

[Scott Ochoa]
[City Manager]

By: _____

Its: President

Approved as to Form:

Printed Name Alan Orbeta

Best Best & Krieger LLP
City Attorney

By: _____

Its: Administrator/Secretary

Printed Name: Christina Dietz

Attested By:

City Clerk

EXHIBIT "A" SCOPE OF SERVICES



ENGINEERING REPRESENTATIVES

GANS & PUGH ASSOCIATES, INC.

690 Center St. Suite 201 Herndon, VA 20170
Telephone: (703) 709-0305
Email: chay@ganspugh.com / christina@ganspugh.com

Quotation

Name: Justin Johnson
Email: jjohnson@ontariopolice.org

Completed By: Christina Dietz
Date: 10/23/2023
Quotation No: Q-04309
Sales Rep: Josh Walker
Email: jwalker@ganspugh.com

Cognyte				
Quantity	Part Number	Product Description	List Price	Total (USD)
1.00	FalcoNet	Cognyte FalcoNet core system: 9 x full SDR BTS (2G/3G/4G/5G) Includes: 4 x 4G/5G SDR TDD BTS (radios) Heat Map, Silent Call, MuCom + Enhancer	\$765000	\$765000
1.00	Path-DF	Pathfinder DF	\$35000	\$35000
1.00	Package	New 2023 Chevy Suburban with Covert Code 3 package, police radio install and FalcoNet system integration *Vehicle taxes and registration not included *Vehicle warranty is provided by original manufacturer and not included in Cognyte's Prime SLA program Includes: Vehicle Deployment Kit with roof Antennas	\$148000	\$148000
1.00	Package	Roof Rails for large SVU	\$5000	\$5000
1.00	Package	Power Cables, Omni antennas, Directional antennas, CUTTA (LNA), AC & APM	Included	Included
1.00	Warranty	3 years Prime Warranty – 24/7 Technical Support	Included	Included
1.00	Training	Standard Training - 5 Days at customer location Advanced Training – 5 Days at customer location	Included	Included
1.00	Nano-Sniper	Nano-Sniper WiFi system MAC catching, MAC-IMSI Correlation, True MAC Revealer	\$80000	\$80000
Cognyte Quote Total (USD):				\$1,033,000

CITY OF ONTARIO

Agenda Report
February 20, 2024

SECTION:
CONSENT CALENDAR

Department: Public Works
Prepared By: Niles Boyer
Staff Member Presenting:
Tito Haes, Executive Director Public Works
Reviewed By: Bonnie Tam, Gina Gomez
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 9

SUBJECT: AN AMENDMENT TO THE DESIGN SERVICES AGREEMENT WITH COMMUNITY WORKS DESIGN GROUP FOR ON-CALL ARCHITECTURAL DESIGN SERVICES FOR THE SOUTH BON VIEW PARK FIELD LIGHTING DESIGN PROJECT

RECOMMENDATION: That the City Council authorize the City Manager or his designee to execute Amendment No. 5 to the Design Services Agreement with Community Works Design Group, of Riverside, California, to provide on-call architectural design services for the South Bon View Park Field Lighting Design Project in the amount of \$49,745 for a total not-to-exceed contract amount of \$474,450.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The Fiscal Year 2023-24 Adopted Budget includes appropriations in the Capital Projects-Measure Q Fund for the South Bon View Park Field Lighting Design Project. The recommended Amendment No. 5 will increase the contract amount by \$49,745, funded by Measure Q, for a total not-to-exceed contract amount of \$474,450.

BACKGROUND & ANALYSIS: The proposed architectural design services include new field lighting construction for the multi-purpose field area located at South Bon View Park. The lighting design project will increase the park's availability for community sports users. The Community Works Design Group was selected from our on-call architectural design firms as the scope of work of this project is similar to that of the De Anza Park Improvement project.

In addition, the architectural design services include schematic design and design development of a proposed Space Plan, preparation of construction drawings, technical specifications, processing of drawings through the City Plan Check process and assistance during the construction administration phase, and normal structural, electrical, and mechanical engineering services.



PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 5 TO THE DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND COMMUNITY WORKS DESIGN GROUP

1. Parties and Date.

This Amendment No. 5 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **Community Works Design Group**, a CORPORATION ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Consultant have entered into an agreement entitled "Design Services Agreement for On-Call Landscape Architectural Services PW 1819-1" dated July 2, 2019 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement for the proposed new lighting project at South Bon View Park Multi-Purpose Field increasing the contract amount by **\$49,745** for a new not-to-exceed contract amount of **Four Hundred Seventy-Four Thousand and Four Hundred Fifty Dollars (\$474,450)**. The Parties have heretofore entered into that Amendment No. 1 dated November 1, 2022, Amendment No. 2 dated July 15, 2022, Amendment No. 3 dated June 6, 2023, and Amendment No. 4 dated November 21, 2023.

2.3 Amendment Authority. This Amendment No. 5 is authorized pursuant to Section 3.10.1 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.10.1 of the Agreement is hereby amended in its entirety to read as follows:

3.10.1 Consultant's Compensation for Basic Services. "City shall pay to Consultant, for the performance of all Services rendered under this Agreement, the total not to exceed amount in accordance with City Council approved work plans and budgets.

(“Total Compensation”). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit “B” and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.”

Exhibit B is hereby deleted in its entirety and replaced with Attachment A attached hereto and incorporated herein by reference.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 5, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 5. From and after the date of this Amendment No. 5, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 5.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 5.

3.4 Severability. If any portion of this Amendment No. 5 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5 Integration. This Amendment represents the entirety of the Parties’ understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR AMENDMENT NO. 5 TO THE DESIGN SERVICES
AGREEMENT BETWEEN THE CITY OF ONTARIO
AND COMMUNITY WORKS DESIGN GROUP**

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 5 as of the day and year first above written.

CITY OF ONTARIO

COMMUNITY WORKS DESIGN GROUP

Approved By:

By: _____

Scott Ochoa
City Manager

Its: _____

Printed Name: _____

Approved as to Form:

By: _____

Best Best & Krieger LLP
City Attorney

Its: _____

Printed Name: _____

Attested By:

[If Corporation, TWO SIGNATURES,
President OR Vice President AND Secretary
OR Treasurer REQUIRED]

City Clerk



January 16, 2024

Mr. Niles Boyer, Interim Municipal Services Director
CITY OF ONTARIO – PUBLIC WORKS AGENCY
1333 S. Bon View Avenue
E: nboyer@ontarioca.gov

Subject: Proposal for Professional Design Services for South Bon View Park Lighting Improvements

Dear Niles:

On behalf of the firm of Community Works Design Group, we are pleased to present this proposal to provide schematic planning, construction plans, specifications, cost estimates, and construction administration for the multi-purpose field lighting and associated electrical improvements for new Musco Lighting, including any site work needed to rehabilitate the areas affected by new construction.

In addition to discussing the project parameters with the City, we have reviewed all provided correspondence and Musco lighting design for the project scope and site.

Our proposal covers key issues we feel to be of greatest significance for the smooth, efficient completion of the project. The members of the Design Team and I appreciate your consideration of our firm to continue our professional consulting services for this project.

Respectfully submitted,

COMMUNITY WORKS DESIGN GROUP

A handwritten signature in blue ink, appearing to read "Scott Rice", is written over the printed name and title.

Scott Rice ASLA, LEED AP, CASp
President
Landscape Architect CA#5111
Certified Access Specialist CASp-709
scott@cwdg.fun

SCOPE OF SERVICES

Services provided by Community Works Design Group (CWDG) for the City will continue to reflect City and Community expectations established in our Statement of Qualifications for On-Call Landscape Architectural Services with the City of Ontario Public Works Agency.

TASK 1. SITE ANALYSIS/ PROJECT ASSESSMENT

1. We will meet with City staff at the project site to kick off the project and to review existing conditions in detail. We will attend all meetings as required during this phase of the project, either virtually or in-person – whichever platform is best suited to support the meeting discussion.
2. Since the site work is limited to electrical and lighting upgrades, Valued Engineering, Inc. will prepare a topographic survey base of the areas of improvement to determine current finished ground levels to ensure all lights are evenly installed.
3. Our electrical subconsultant, Design West Engineering, will review the existing SCE service as well as existing switchgear and panels, in order to properly plan for reuse of the aforementioned items with new circuits provided where needed.
4. We will have Geotek conduct borings for a geotechnical report to evaluate known soil conditions and how they may affect proposed light poles as specified by Musco Lighting. Note: Structural calculations are included under Musco Lighting.
5. We will prepare a critical path schedule, identifying key submittal dates and progress milestones for City review and approval.

TASK 1. SITE ANALYSIS/ PROJECT ASSESSMENT- DELIVERABLES

- Topographical Survey in DWG and PDF
- Geotechnical Report
- PDF copies of all documents
- Regular e-mail progress updates and ongoing coordination documentation
- Preliminary Schedule

TASK 2. SCHEMATIC DESIGN

1. We will develop an initial blackline conceptual plan, using the as-built file supplemented by aerial photography as a base, in order to determine rough alignment, grades and construction quantities.

2. We will prepare an initial construction cost estimate of the aforementioned quantities for City review. Our electrical engineering subconsultant will provide opinions of probable costs for providing adequate power to the new multi-purpose field lighting.
3. We will meet with the City to determine which improvements align with the available budget.
4. Once these key decisions have been made, we will develop a color conceptual plan. We will plan on participating in one public meeting with the City and stakeholders as part of the conceptual design process.
5. Upon review of City input, we will adjust and finalize these exhibits.

TASK 2. PRELIMINARY DESIGN - DELIVERABLES

- Blackline Concept Plan
- Cost Estimate with updates
- Color Plan and Exhibits with supporting photos
- PDF copies of all documents
- Regular e-mail progress updates and ongoing coordination documentation

TASK 3. DESIGN DEVELOPMENT/ CONSTRUCTION DOCUMENTS

There will be two phases of Construction Documents. The first phase will include the Design Development, noted above, in which we will bring the drawings to approximately 50% completion. Plans at this stage will outline all demolition/protection items as well as items to be constructed. These plans will be turned over to the City for staff review in order to determine any final adjustments prior to working out details and beginning specifications. Once approved, our office will continue on the Construction Documents until 100% complete, where they will be turned over to City staff and Departments as required for final review.

1. DEMOLITION PLANS: We will prepare demolition plans, highlighting which existing site features will be protected in place, and identify items and quantities of areas to be removed to make way for the proposed improvements.
2. GRADING PLANS: Valued Engineering Inc. will prepare limited grading plans to provide contractors with enough information to ensure that new improvements and rehabilitated areas comply with current requirements.

3. CONSTRUCTION PLANS/ DETAILS: Construction Drawings will include site plans and details associated with construction of the above-and-below grade electrical components and any other hardscape elements defined through the conceptual design.
4. PLANTING/ IRRIGATION PLANS: We will prepare irrigation and planting plans showing the adjustment where existing planting areas are affected by new construction. We will utilize drought tolerant shrubs and trees if and where turf is no longer appropriate for the sake of maintenance or usability.
5. ELECTRICAL PLANS: Design West Engineering will provide electrical plans for providing necessary power to support the multi-purpose field lighting improvements.
6. COST ESTIMATES: Final estimates of probable costs will be prepared for review.
7. CLIENT MEETINGS: We will meet with the City as needed to review and refine plans, specifications and estimates to best align with the City's available funding. (No limit on meetings).

TASK 3. DESIGN DEVELOPMENT/ CONSTRUCTION DRAWINGS - DELIVERABLES

- Construction Documents prepared in AutoCAD, printed to 24"x36" at 20 scale maximum
- PDF copies of all documents
- Regular e-mail progress updates and ongoing coordination documentation
- Final Cost Estimates

TASK 4. BIDDING PHASE

1. Community Works Design Group will assist the City in conducting a Pre-Bid meeting and provide written documentation of the meeting, noting direction given to contractors, questions asked and follow-up clarifications or addendum items.
2. We will assist the City in evaluating bids.
3. We will assist the City in conducting a pre-award meeting and in preparing the contract for construction.

TASK 4. BIDDING - DELIVERABLES

- Spreadsheet of Bid Line Items
- PDF copies of all documents
- Regular e-mail progress updates and ongoing coordination documentation
- Design, coordination, and preparation of meeting agendas

TASK 5. CONSTRUCTION PHASE

1. CONTRACT ADMINISTRATION: CWDG and the design team will review shop drawings and material samples, respond to Contractor Requests for Information (RFI's), and review project submittals. CWDG will attend periodic construction progress meetings.
2. FIELD OBSERVATION & SUPERVISION: CWDG will provide field observations with our staff as requested. Visits shall be performed at the current hourly rates listed in Attachment 1. CWDG shall advise and consult with the City during the construction phase.
CWDG shall assist the City in determining the amount owed to the Contractor by reviewing his application for payment.

TASK 5. CONSTRUCTION - DELIVERABLES

- PDF copies of all documents
- Regular e-mail progress updates and ongoing coordination documentation

PROJECT TIMING

We are prepared to begin our services immediately upon receipt of Notice to Proceed (NTP) by the City of Ontario, and to run various City projects concurrently. The City may wish to stagger the incoming projects, and we will adjust the schedule accordingly. For example, if an NTP is issued on February 26, 2024 we foresee the following tentative milestones:

February 26, 2024	Notice to Proceed; CWDG and team proceed with site investigation, kick-off meeting, etc.
March 22, 2024	Submit Schematic Plan to City for review; allow 2-3 weeks City review
April 4, 2024	Receive Schematic Plan feedback from City; begin Design Development
April 30, 2024	Submit 50% plans to City for review; allow 2-3 weeks City review
May 24, 2024	Submit 90% plans
June 7, 2024	Submit 100% plans
June – July 2024	Bidding/ CC award of construction
August – Nov. 2024	Construction (estimated 3 months*)

The timeline above reflects a steady pace of project progression. However, our firm has the bandwidth and proven performance to expedite the design sequence if deemed necessary.

** Length of construction may be affected by the lead time of the production and delivery of the Musco lights.*

FEE PROPOSAL

The following is our proposed fee to provide all work mentioned in the Scope of Work outline for the South Bon View Lighting Improvement project:

	<u>Consultant Services</u>		<u>Fee</u>
Task 1.	Site Analysis/ Project Assessment	LUMP SUM	\$ 3,570
	Geotechnical Report	LUMP SUM	\$ 9,130
	Site Survey	LUMP SUM	\$ 3,700
Task 2.	Preliminary Design	LUMP SUM	\$ 5,635
Task 3.	Design Development/ Const. Dwgs	LUMP SUM	\$ 16,740
Task 4.	Bidding Support	Hourly/ NTE	\$ 2,060
Task 5.	Construction Administration	Hourly/ NTE	\$ 7,910
	Reimbursables	ALLOW	\$ 1,000
		Total	\$ 49,745

The scope and fees listed above reflect our understanding of the project and all of the work we are recommending for the successful completion of this project. However, we are open to negotiating our exact scope and fees to best suit the City's needs and available budget.

1. Provisions of On-Call Landscape Architect Services PW 1819-1 shall take precedence for this proposal.

CITY OF ONTARIO

Agenda Report
February 20, 2024

SECTION:
CONSENT CALENDAR

Department: Public Works
Prepared By: Niles Boyer
Staff Member Presenting:
Tito Haes, Executive Director Public Works
Reviewed By: Bonnie Tam, Gina Gomez
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 10

SUBJECT: AN AMENDMENT TO THE DESIGN SERVICES AGREEMENT WITH ROBERT BORDERS AND ASSOCIATES FOR ON-CALL ARCHITECTURAL DESIGN SERVICES FOR HOMER BRIGGS PARK AND ANTHONY MUNOZ PARK CONCESSION AREA UPGRADES AND ROOF DESIGN PROJECT

RECOMMENDATION: That the City Council authorize the City Manager or his designee to execute Amendment No. 20 to the on-call Design Services Agreement with Robert Borders and Associates, of Costa Mesa, California, for the Anthony Munoz Park Concession Area Upgrades in the amount of \$185,669 for a total not-to-exceed contract amount of \$838,131.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The Fiscal Year 2023-24 Adopted Budget includes appropriations in the Capital Projects-Measure Q Fund for the Homer Briggs Park and Anthony Munoz Park Concession Area Upgrades and Roof Design Project. The recommended Amendment No. 20 will increase the total contract amount by \$185,669, funded by Measure Q, for a total not-to-exceed contract amount of \$838,131.

BACKGROUND & ANALYSIS: The proposed Amendment to the architectural design services includes renovations and upgrades to facilities located at Homer Briggs and Anthony Munoz Parks. The concession area upgrades and roof design project will provide uniformity of the concession areas.

The architectural design services include schematic design and design development of a proposed Space Plan, preparation of construction drawings, technical specifications, processing of drawings through the City Plan Check process and assistance during the construction administration phase and normal structural, electrical, and mechanical engineering services.



PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

**AMENDMENT NO. 20 TO THE DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO AND
ROBERT BORDERS AND ASSOCIATES**

1. Parties and Date.

This Amendment No. 20 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario (“City”) and **Robert Borders and Associates**, a Corporation (“Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

2.1 Agreement. The City and Consultant have entered into an agreement entitled “Design Services Agreement” dated January 1, 2020 (“Agreement”).

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to revise the scope of services for the Western Little League (Homer Briggs Park) and AYSO66 (Anthony Munoz Park) concession kitchens along with the re-roof design for an existing storage building at Anthony Munoz Park increasing the not-to-exceed amount by **One Hundred Eighty-Five Thousand and Six Hundred Sixty-Nine Dollars (\$185,669)**. The Parties have heretofore entered into that Amendment No. 1 dated March 15, 2020, Amendment No. 2 dated June 22, 2020, Amendment No.3 dated November 19, 2020, Amendment No. 4 dated December 5, 2020, Amendment No. 5 dated January 15, 2021, Amendment No. 6 dated April 6, 2021, Amendment No. 7 dated August 11, 2021, Amendment No. 8 dated September 30, 2021, Amendment No. 9 dated September 30, 2021, Amendment No. 10 dated February 1, 2022, Amendment No. 11 dated October 1, 2022, Amendment No. 12 dated January 5, 2023, Amendment No. 13 dated May 17, 2023, Amendment No. 14 dated June 20, 2023, Amendment No. 15 dated June 20, 2023, Amendment No. 16 dated August 15, 2023, Amendment No. 17 dated September 19, 2023, Amendment No. 18 dated November 7, 2023 and Amendment No. 19 dated November 7, 2023.

2.3 Amendment Authority. This Amendment No. 20 is authorized pursuant to Section 3.8.1 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.10.1 of the Agreement is hereby amended in its entirety to read as follows:

“3.10.1 Consultant's Compensation for Basic Services. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, with the total not to exceed amount of **Eight Hundred Thirty-Eight Thousand and One Hundred Thirty-One Dollars (\$838,131)** ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement."

Exhibit A is hereby deleted in its entirety and replaced with Attachment A attached hereto and incorporated herein by reference.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 20, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 20. From and after the date of this Amendment No. 20, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 20.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 20.

3.4 Severability. If any portion of this Amendment No. 20 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5 Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR AMENDMENT NO. 20 TO THE
DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO
AND ROBERT BORDERS AND ASSOCIATES**

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 20 as of the day and year first above written.

CITY OF ONTARIO

Robert Borders and Associates

Approved By:

By: _____

Scott Ochoa
City Manager

Its: _____

Printed Name: _____

Approved as to Form:

By: _____

Best Best & Krieger LLP
City Attorney

Its: _____

Printed Name: _____

Attested By:

[If Corporation, TWO SIGNATURES,
President OR Vice President AND Secretary
OR Treasurer REQUIRED]

City Clerk

03 January 2024

City of Ontario Public Works Agency
 1333 South Bon View Ave.
 Ontario, CA 91761

Attention: Niles Boyer
 Interim Municipal Services Director

Project: CITY OF ONTARIO
 Anthony Munoz Field Storage Building
 Ontario, CA

Subject: Architectural Services Proposal

Dear Niles:

Borders Architects is pleased to submit our proposal to provide Architectural Services for the proposed partial demolition and remodel, to the existing approximate 300 Sq Ft. storage building located at 1221 West 5th Street. Included with the building renovation will be replacing of the exiting roof framing & roof, addition of lighting and minor cleanup of finishes as needed. We understand from our discussion that the renovated building will serve as storage for the adjacent sports fields equipment.

Our services on this project will include Schematic Design and preparation of Construction Drawings, Technical Specifications, processing drawings through the City Plan Check process and assistance during the Construction Administration Phase. Normal Structural and Electrical Engineering are included.

We propose that our work be performed as follows:

A. BASIC SERVICES:

1. SCHEMATIC DESIGN:
 - a. Field verify existing building, bleachers and site area within scope of proposed work.
 - b. Establish basis design and work with the City to produce preliminary schematic plans.
2. CONSTRUCTION DOCUMENTS PHASE: Construction Documents and Technical Specifications will be prepared per Borders Architectural Standards and will be based upon the approved space plan. The Construction Documents will include the following:
 - a. Site plan indicating area of work.
 - b. Demolition Plan
 - c. Floor Plan, indicating walls, doors & windows and egress requirements.
 - d. Reflected ceiling plan showing light fixtures patterns & locations.
 - e. Finish material plans indicating all interior and exterior material selections.

Continued on Next Page...

- f. Outlet location plan, indicating electrical, telephone and data outlets.
 - g. Building sections, exterior & interior elevations and details as needed.
 - h. Structural Engineering plans prepared by our consultant.
 - i. HVAC and Electrical Engineering plans prepared by our consultants.
 - j. Book format Technical Specifications.
 - k. Submittal & processing the Construction Documents through the City Plan Check process.
 - l. Obtain Cost Estimate.
 - m. Preparation of as-built drawings from contractors redline mark ups.
3. BIDDING & NEGOTIATION PHASE: Provide general coordination & support; respond to bidders, attend bid job walk, etc. An allowance has been included for this phase and will be billed on a time and material basis.
4. CONSTRUCTION CONTRACT ADMINISTRATION PHASE: Provide administration of the contract during construction including (1) on-site visit & (1) virtual walk, review of submittals & RFI's, (1) prelim and (1) final punch walk, virtual meetings as needed, etc.
5. ASSUMPTIONS: Our Proposal is based upon certain assumptions that are listed below.
- a. Normal Building permit plan check processing is included. Special permits, Health Dept. review, planning approval, etc. beyond the scope of normal building permit submittal are not included and would be considered Additional Services.
 - b. Engineering for security, fire alarm, audio-visual, data, and telephone communication systems are not included. Conduit-only systems are included.
 - c. Civil Engineering, Geotechnical Engineering & Landscape Architecture services are not included.
 - d. Drawings will be prepared with architectural industry standards. Any client mark ups that deviate from the architectural standards will be an add service and billed on a time and materials basis.
- B. ADDITIONAL SERVICES:** Additional Services are those services requested that are not specifically included as Basic Services; i.e., Preparation of additional revisions to the space plan, selection of new finishes, additional furniture coordination, beyond the scope, construction administration etc. will be considered additional services.

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C. COMPENSATION:

1. BASIC SERVICES: Compensation will be on a time and material basis utilizing the hourly rate include below. The fee for this work will not exceed \$47,494.00 without prior approval from The City of Ontario. **The proposed fees are valid for a period of 3 months from the date of proposal.** The breakdown is as follows:

BASIC SERVICES

Architecture:

Schematic Design	\$3,945.00
Construction Documents	15,090.00
Bidding & Negotiation	1,328.00 (8 Hr. Allowance)
Construction Administration	<u>2,975.00</u> (18 Hr. Allowance) *
Subtotal	\$23,338.00

Consultant:

Cost Estimating	\$920.00
Structural Engineering	6,095.00
Structural Const. Administration	2,415.00
MEP Site Survey	1,150.00
MEP Engineering	5,463.00
MEP Construction Admin	863.00
Technical Specifications	<u>5,750.00</u>
Subtotal	\$22,656.00

Reimbursable Expenses \$1,500.00 (Allowance) *

Total Basic Services Fee \$47,494.00

*This amount may increase or decrease as expenses are incurred during the course of the Project, such as plan check fees, printing, etc.

2. ADDITIONAL SERVICES: Performed on an hourly basis utilizing the hourly rates indicated below. Consultants' fees for Additional Services will be invoiced at a multiple of 1.15 times the amount expended by our firm.

a. Hourly Rates:

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal	\$215.00
Senior Project Manager/Associate	\$195.00
Project Manager	\$165.00
Senior Designer	\$160.00
Intermediate Designer	\$140.00
Junior Designer	\$115.00
Senior Drafter	\$150.00
Intermediate Drafter	\$125.00
Junior Drafter	\$100.00
Clerical/Word Processor	\$85.00

3. REIMBURSABLE EXPENSES: Out-of-pocket expenses incurred on behalf of the Project such as travel, messenger services, plan check fees, printing, plotting, photography and other forms of reproducing drawings, specifications and documents will be billed to the Client as a reimbursable expense. **These expenses will be invoiced at our cost plus 15% and are not considered part of Basic Services. An allowance has been provided for this purpose.**

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4. **PAYMENT METHOD:** Invoices for services rendered and reimbursable expenses shall be submitted once a month on a net 30-day basis. Payments due and unpaid are subject to interest from the date payment is due at the maximum prevailing legal rate.

D. TERMS & CONDITIONS:

1. The Standard Form of Agreement Between Owner and Architect, AIA Document B151, 1997 Edition will be used as a reference for terms and conditions on this project.

- E. INSURANCE:** The Borders Architects insurance coverage currently in force is listed below. Similar coverage is required of our major engineering consultants.

<u>TYPE</u>	<u>CARRIER</u>	<u>LIMIT</u>	<u>DEDUCTIBLE</u>
Professional Liability	National Casualty	\$2,000,000 Per Occurrence \$4,000,000 Aggregate	\$10,000.00 Per Claim
Comprehensive General Liability	Continental Casualty	\$1,000,000 Per Occurrence \$2,000,000 Aggregate	
Umbrella Liability	Continental Casualty	\$2,000,000	
Auto Liability	Continental Casualty	\$1,000,000	
Workers' Compensation	American Casualty Co. of Redding PA	\$1,000,000	

F. REMODELING/REHABILITATION DISCLAIMER:

Inasmuch as the remodeling and/or rehabilitation of an existing building requires that certain assumptions be made regarding existing conditions, and because some of these assumptions may not be verifiable without expending additional sums of money, or destroying otherwise adequate or serviceable portions of the building, the Client will hold harmless, indemnify and defend the Architect from and against any and all claims arising out of the professional services provided under this agreement. The Architect agrees to be responsible for his or his employee's own negligent acts, errors, or omissions in the performance of their professional service. It is understood and agreed that this contract does not contemplate handling of, or design including use of, asbestos or any hazardous waste material. Therefore, Client agrees to hold harmless, defend and indemnify the Architect for all claims, lawsuits, expenses or damages arising from or related to the handling, use, treatment, purchase, sale, storage or disposal of asbestos, asbestos products or any hazardous waste materials, or hazardous materials in general.

G. AMERICANS WITH DISABILITIES ACT (ADA):

The Americans with Disabilities Act (ADA) requires removal of architectural barriers in existing facilities where such removal is readily achievable. Client acknowledges that the definition of "readily achievable" contained in the ADA is flexible and subject to interpretation on a case-by-case approach. The requirements of the ADA will therefore be subject to various possibly contradictory interpretations. The Architect will use its best professional efforts to interpret applicable ADA requirements and to advise Client as to the modifications to Client's facility that may be required to comply with the ADA. The Architect, however, cannot and does not warranty or guarantee that Client's facility will fully comply with interpretation of ADA requirements by regulatory bodies or court decisions.

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CITY OF ONTARIO
Architectural Services Proposal
03 January 2024
Page 4

This Proposal has been structured to reflect the level of services that we anticipate will best serve your needs on the Project. We would be pleased to respond to any alternatives that you wish to consider or answer any questions at your convenience.

We appreciate the opportunity to continue our relationship with City of Ontario and thank you for allowing us to present this proposal. If this proposal is acceptable, please sign one copy and return to our office.

Sincerely,

BORDERS ARCHITECTS

Loren Della Marna

Loren Della Marna, NCARB, AIA, LEED AP BD+C
Principal

DJP:jrg

Approved _____ Date _____

03 January 2024

City of Ontario Public Works Agency
 1333 South Bon View Ave.
 Ontario, CA 91761

Attention: Niles Boyer
 Interim Municipal Services Director

Project: CITY OF ONTARIO
 Anthony Munzo Field Concession Building
 Ontario, CA

Subject: Architectural Services Proposal

Dear Niles:

Borders Architects is pleased to submit our proposal to provide Architectural Services for the proposed interior improvements to the existing approximate 800 Sq Ft. Concession building located at 1221 West 5th Street. Included with the building renovation will be upgrading the existing kitchen hood & exhaust, providing new kitchen equipment, counters, finishes and lighting. We understand from our discussion that the renovated building will serve as the concession area, storage and utilities for the adjacent sports fields.

Our services on this project will include Schematic Design and preparation of Construction Drawings, Technical Specifications, processing drawings through the City Plan Check and County Health Department process and assistance during the Construction Administration Phase. Normal Structural, Electrical and Mechanical Engineering are included.

We propose that our work be performed as follows:

A. BASIC SERVICES:

1. SCHEMATIC DESIGN:
 - a. Field verify existing building and site area within scope of proposed work.
 - b. Establish basis design and work with the City to produce preliminary schematic plans.
2. CONSTRUCTION DOCUMENTS PHASE: Construction Documents and Technical Specifications will be prepared per Borders Architectural Standards and will be based upon the approved space plan. The Construction Documents will include the following:
 - a. Site plan indicating area of work.
 - b. Demolition Plan
 - c. Floor Plan, indicating walls, doors & windows and egress requirements.
 - d. Reflected ceiling plan showing light fixtures patterns & locations.
 - e. Finish material plans indicating all interior and exterior material selections.
 - f. Outlet location plan, indicating electrical, telephone and data outlets.

Continued on Next Page...

- g. Building sections, interior elevations and details as needed.
 - h. Structural Engineering plans prepared by our consultant.
 - i. HVAC and Electrical Engineering plans prepared by our consultants.
 - j. Book format Technical Specifications.
 - k. Submittal & processing the Construction Documents through the City Plan Check process.
 - l. Obtain Cost Estimate.
 - m. Preparation of as-built drawings from contractors redline mark ups.
3. BIDDING & NEGOTIATION PHASE: Provide general coordination & support; respond to bidders, attend bid job walk, etc. An allowance has been included for this phase and will be billed on a time and material basis.
4. CONSTRUCTION CONTRACT ADMINISTRATION PHASE: Provide administration of the contract during construction including (1) on-site visit & (1) virtual walk, review of submittals & RFI's, (1) prelim and (1) final punch walk, virtual meetings as needed, etc.
5. ASSUMPTIONS: Our Proposal is based upon certain assumptions that are listed below.
- a. Normal Building permit plan check processing is included. Special permits, planning approval, etc. beyond the scope of normal building permit submittal are not included and would be considered Additional Services.
 - b. Engineering for security, fire alarm, audio-visual, data, and telephone communication systems are not included. Conduit-only systems are included.
 - c. Civil Engineering, Geotechnical Engineering & Landscape Architecture services are not included.
 - d. Drawings will be prepared with architectural industry standards. Any client mark ups that deviate from the architectural standards will be an add service and billed on a time and materials basis.
- B. ADDITIONAL SERVICES:** Additional Services are those services requested that are not specifically included as Basic Services; i.e., Preparation of additional revisions to the space plan, selection of new finishes, additional furniture coordination, beyond the scope, construction administration etc. will be considered additional services.

C. COMPENSATION:

1. BASIC SERVICES: Compensation will be on a time and material basis utilizing the hourly rate include below. The fee for this work will not exceed \$63,886.00 without prior approval from The City of Ontario. **The proposed fees are valid for a period of 3 months from the date of proposal.** The breakdown is as follows:

BASIC SERVICES

Architecture:

Schematic Design	\$4,725.00
Construction Documents	19,260.00
Bidding & Negotiation	1,328.00 (8 Hr. Allowance)*
Construction Administration	<u>2,975.00 (18 Hr. Allowance) *</u>
Subtotal	\$28,288.00

Consultant:

Cost Estimating	\$1,725.00
Structural Engineering	5,635.00
Structural Const. Administration	2,300.00
MEP Site Survey	2,013.00
MEP Engineering	13,225.00
MEP Construction Admin	2,300.00
Technical Specifications	<u>6,900.00</u>
Subtotal	\$34,098.00

Reimbursable Expenses \$1,500.00 (Allowance) *

Total Basic Services Fee \$63,886.00

*This amount may increase or decrease as expenses are incurred during the course of the Project, such as plan check fees, printing, etc.

2. ADDITIONAL SERVICES: Performed on an hourly basis utilizing the hourly rates indicated below. Consultants' fees for Additional Services will be invoiced at a multiple of 1.15 times the amount expended by our firm.

a. Hourly Rates:

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal	\$215.00
Senior Project Manager/Associate	\$195.00
Project Manager	\$165.00
Senior Designer	\$160.00
Intermediate Designer	\$140.00
Junior Designer	\$115.00
Senior Drafter	\$150.00
Intermediate Drafter	\$125.00
Junior Drafter	\$100.00
Clerical/Word Processor	\$85.00

3. REIMBURSABLE EXPENSES: Out-of-pocket expenses incurred on behalf of the Project such as travel, messenger services, plan check fees, printing, plotting, photography and other forms of reproducing drawings, specifications and documents will be billed to the Client as a reimbursable expense. ***These expenses will be invoiced at our cost plus 15% and are not considered part of Basic Services. An allowance has been provided for this purpose.***

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4. **PAYMENT METHOD:** Invoices for services rendered and reimbursable expenses shall be submitted once a month on a net 30-day basis. Payments due and unpaid are subject to interest from the date payment is due at the maximum prevailing legal rate.

D. TERMS & CONDITIONS:

1. The Standard Form of Agreement Between Owner and Architect, AIA Document B151, 1997 Edition will be used as a reference for terms and conditions on this project.

- E. INSURANCE:** The Borders Architects insurance coverage currently in force is listed below. Similar coverage is required of our major engineering consultants.

<u>TYPE</u>	<u>CARRIER</u>	<u>LIMIT</u>	<u>DEDUCTIBLE</u>
Professional Liability	National Casualty	\$2,000,000 Per Occurrence \$4,000,000 Aggregate	\$10,000.00 Per Claim
Comprehensive General Liability	Continental Casualty	\$1,000,000 Per Occurrence \$2,000,000 Aggregate	
Umbrella Liability	Continental Casualty	\$2,000,000	
Auto Liability	Continental Casualty	\$1,000,000	
Workers' Compensation	American Casualty Co. of Redding PA	\$1,000,000	

F. REMODELING/REHABILITATION DISCLAIMER:

Inasmuch as the remodeling and/or rehabilitation of an existing building requires that certain assumptions be made regarding existing conditions, and because some of these assumptions may not be verifiable without expending additional sums of money, or destroying otherwise adequate or serviceable portions of the building, the Client will hold harmless, indemnify and defend the Architect from and against any and all claims arising out of the professional services provided under this agreement. The Architect agrees to be responsible for his or his employee's own negligent acts, errors, or omissions in the performance of their professional service. It is understood and agreed that this contract does not contemplate handling of, or design including use of, asbestos or any hazardous waste material. Therefore, Client agrees to hold harmless, defend and indemnify the Architect for all claims, lawsuits, expenses or damages arising from or related to the handling, use, treatment, purchase, sale, storage or disposal of asbestos, asbestos products or any hazardous waste materials, or hazardous materials in general.

G. AMERICANS WITH DISABILITIES ACT (ADA):

The Americans with Disabilities Act (ADA) requires removal of architectural barriers in existing facilities where such removal is readily achievable. Client acknowledges that the definition of "readily achievable" contained in the ADA is flexible and subject to interpretation on a case-by-case approach. The requirements of the ADA will therefore be subject to various possibly contradictory interpretations. The Architect will use its best professional efforts to interpret applicable ADA requirements and to advise Client as to the modifications to Client's facility that may be required to comply with the ADA. The Architect, however, cannot and does not warranty or guarantee that Client's facility will fully comply with interpretation of ADA requirements by regulatory bodies or court decisions.

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This Proposal has been structured to reflect the level of services that we anticipate will best serve your needs on the Project. We would be pleased to respond to any alternatives that you wish to consider or answer any questions at your convenience.

We appreciate the opportunity to continue our relationship with City of Ontario and thank you for allowing us to present this proposal. If this proposal is acceptable, please sign one copy and return to our office.

Sincerely,

BORDERS ARCHITECTS

Loren Della Marna

Loren Della Marna, NCARB, AIA, LEED AP BD+C
Principal

DJP:jrg

Approved _____ Date _____

03 January 2024

City of Ontario Public Works Agency
 1333 South Bon View Ave.
 Ontario, CA 91761

Attention: Niles Boyer
 Interim Municipal Services Director

Project: CITY OF ONTARIO
 Homer F. Briggs Field Concession Building
 Ontario, CA

Subject: Architectural Services Proposal

Dear Niles:

Borders Architects is pleased to submit our proposal to provide Architectural Services for the proposed interior improvements and remodel to the existing approximate 1500 Sq Ft. Concession building located at 2099 S. Oaks Ave. Included with the building renovation will be adding a new kitchen hood & exhaust system, new kitchen equipment, counters, finishes, interior grease interceptor and reconfigured storage areas on the 2nd floor. We understand from our discussion that the renovated building will serve as the concession area, meeting room, announcers booth, storage and utilities for the adjacent sport fields.

Our services on this project will include Schematic Design and preparation of Construction Drawings, Technical Specifications, processing drawings through the City Plan Check and County Health Department process and assistance during the Construction Administration Phase. Normal Structural, Electrical and Mechanical Engineering are included.

We propose that our work be performed as follows:

A. BASIC SERVICES:

1. SCHEMATIC DESIGN:
 - a. Field verify existing building, bleachers and site area within scope of proposed work.
 - b. Establish basis design and work with the City to produce preliminary schematic plans.
2. CONSTRUCTION DOCUMENTS PHASE: Construction Documents and Technical Specifications will be prepared per Borders Architectural Standards and will be based upon the approved space plan. The Construction Documents will include the following:
 - a. Site plan indicating area of work.
 - b. Demolition Plan
 - c. Floors Plan, indicating walls, doors & windows and egress requirements.
 - d. Reflected ceiling plan showing light fixtures patterns & locations.
 - e. Finish material plans indicating all interior and exterior material selections.

Continued on Next Page...

- f. Outlet location plan, indicating electrical, telephone and data outlets.
 - g. Building sections, interior elevations and details as needed.
 - h. Structural Engineering plans prepared by our consultant.
 - i. HVAC and Electrical Engineering plans prepared by our consultants.
 - j. Book format Technical Specifications.
 - k. Submittal & processing the Construction Documents through the City Plan Check process.
 - l. Obtain Cost Estimate.
 - m. Preparation of as-built drawings from contractors redline mark ups.
3. **BIDDING & NEGOTIATION PHASE:** Provide general coordination & support; respond to bidders, attend bid job walk, etc. An allowance has been included for this phase and will be billed on a time and material basis.
4. **CONSTRUCTION CONTRACT ADMINISTRATION PHASE:** Provide administration of the contract during construction including (1) on-site visit & (1) virtual walk, review of submittals & RFI's, (1) prelim and (1) final punch walk, virtual meetings as needed, etc.
5. **ASSUMPTIONS:** Our Proposal is based upon certain assumptions that are listed below.
- a. Normal Building permit plan check processing is included. Special permits, planning approval, etc. beyond the scope of normal building permit submittal are not included and would be considered Additional Services.
 - b. Engineering for security, fire alarm, audio-visual, data, and telephone communication systems are not included. Conduit-only systems are included.
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- B. ADDITIONAL SERVICES:** Additional Services are those services requested that are not specifically included as Basic Services; i.e., Preparation of additional revisions to the space plan, selection of new finishes, additional furniture coordination, beyond the scope, construction administration etc. will be considered additional services.

C. COMPENSATION:

1. BASIC SERVICES: Compensation will be on a time and material basis utilizing the hourly rate include below. The fee for this work will not exceed \$74,289.00 without prior approval from The City of Ontario. **The proposed fees are valid for a period of 3 months from the date of proposal.** The breakdown is as follows:

BASIC SERVICES

Architecture:

Schematic Design	\$6,225.00
Construction Documents	23,605.00
Bidding & Negotiation	1,328.00 (8 Hr. Allowance)*
Construction Administration	<u>3,335.00</u> (20 Hr. Allowance) *
Subtotal	\$34,493.00

Consultant:

Cost Estimating	\$2,760.00
Structural Engineering	6,555.00
Structural Const. Administration	2,530.00
MEP Site Survey	2,013.00
MEP Engineering	15,238.00
MEP Construction Admin	2,300.00
Technical Specifications	<u>6,900.00</u>
Subtotal	\$38,296.00

Reimbursable Expenses \$1,500.00 (Allowance) *

Total Basic Services Fee \$74,289.00

*This amount may increase or decrease as expenses are incurred during the course of the Project, such as plan check fees, printing, etc.

2. ADDITIONAL SERVICES: Performed on an hourly basis utilizing the hourly rates indicated below. Consultants' fees for Additional Services will be invoiced at a multiple of 1.15 times the amount expended by our firm.

a. Hourly Rates:

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
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Intermediate Drafter	\$125.00
Junior Drafter	\$100.00
Clerical/Word Processor	\$85.00

3. REIMBURSABLE EXPENSES: Out-of-pocket expenses incurred on behalf of the Project such as travel, messenger services, plan check fees, printing, plotting, photography and other forms of reproducing drawings, specifications and documents will be billed to the Client as a reimbursable expense. **These expenses will be invoiced at our cost plus 15% and are not considered part of Basic Services. An allowance has been provided for this purpose.**

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4. **PAYMENT METHOD:** Invoices for services rendered and reimbursable expenses shall be submitted once a month on a net 30-day basis. Payments due and unpaid are subject to interest from the date payment is due at the maximum prevailing legal rate.

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1. The Standard Form of Agreement Between Owner and Architect, AIA Document B151, 1997 Edition will be used as a reference for terms and conditions on this project.

- E. INSURANCE:** The Borders Architects insurance coverage currently in force is listed below. Similar coverage is required of our major engineering consultants.

<u>TYPE</u>	<u>CARRIER</u>	<u>LIMIT</u>	<u>DEDUCTIBLE</u>
Professional Liability	National Casualty	\$2,000,000 Per Occurrence \$4,000,000 Aggregate	\$10,000.00 Per Claim
Comprehensive General Liability	Continental Casualty	\$1,000,000 Per Occurrence \$2,000,000 Aggregate	
Umbrella Liability	Continental Casualty	\$2,000,000	
Auto Liability	Continental Casualty	\$1,000,000	
Workers' Compensation	American Casualty Co. of Redding PA	\$1,000,000	

F. REMODELING/REHABILITATION DISCLAIMER:

Inasmuch as the remodeling and/or rehabilitation of an existing building requires that certain assumptions be made regarding existing conditions, and because some of these assumptions may not be verifiable without expending additional sums of money, or destroying otherwise adequate or serviceable portions of the building, the Client will hold harmless, indemnify and defend the Architect from and against any and all claims arising out of the professional services provided under this agreement. The Architect agrees to be responsible for his or his employee's own negligent acts, errors, or omissions in the performance of their professional service. It is understood and agreed that this contract does not contemplate handling of, or design including use of, asbestos or any hazardous waste material. Therefore, Client agrees to hold harmless, defend and indemnify the Architect for all claims, lawsuits, expenses or damages arising from or related to the handling, use, treatment, purchase, sale, storage or disposal of asbestos, asbestos products or any hazardous waste materials, or hazardous materials in general.

G. AMERICANS WITH DISABILITIES ACT (ADA):

The Americans with Disabilities Act (ADA) requires removal of architectural barriers in existing facilities where such removal is readily achievable. Client acknowledges that the definition of "readily achievable" contained in the ADA is flexible and subject to interpretation on a case-by-case approach. The requirements of the ADA will therefore be subject to various possibly contradictory interpretations. The Architect will use its best professional efforts to interpret applicable ADA requirements and to advise Client as to the modifications to Client's facility that may be required to comply with the ADA. The Architect, however, cannot and does not warranty or guarantee that Client's facility will fully comply with interpretation of ADA requirements by regulatory bodies or court decisions.

Continued on Next Page...

This Proposal has been structured to reflect the level of services that we anticipate will best serve your needs on the Project. We would be pleased to respond to any alternatives that you wish to consider or answer any questions at your convenience.

We appreciate the opportunity to continue our relationship with City of Ontario and thank you for allowing us to present this proposal. If this proposal is acceptable, please sign one copy and return to our office.

Sincerely,

BORDERS ARCHITECTS

Loren Della Marna

Loren Della Marna, NCARB, AIA, LEED AP BD+C
Principal

DJP:jrg

Approved _____ Date _____

CITY OF ONTARIO

Agenda Report

February 20, 2024

SECTION:

CONSENT CALENDAR

Department: Utilities
Prepared By: Thomas Palmieri
Staff Member Presenting:
Scott Burton, Utilities General Manager
Reviewed By: Dennice Raygoza, Albert G
Gastelum, Michael Sigsbee
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 11

SUBJECT: A PROFESSIONAL DESIGN SERVICES AGREEMENT WITH STANTEC CONSULTING SERVICES INC. FOR THE EDISON AVENUE AND BON VIEW AVENUE WATER IMPROVEMENTS AND BON VIEW AVENUE SEWER IMPROVEMENT PROJECT, OMUC CONTRACT NO. UT1079

RECOMMENDATION: That the City Council approve and authorize the City Manager, or designee to execute a Professional Design Services Agreement with Stantec Consulting Services Inc., of Irvine, California, for design and bid support services for Edison Avenue and Bon View Avenue Water Improvements and Bon View Avenue Sewer Improvement Project, OMUC Contract No. UT1079, for a total amount of \$479,171 plus a 15% contingency of \$71,876 for a total not-to-exceed amount of \$551,047, and a term from February 20, 2024 to February 20, 2027.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Invest in the Growth and Evolution of the City's Economy

Operate in a Businesslike Manner

Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: The proposed Agreement to Stantec Consulting Services Inc. is for \$479,171 plus a 15% contingency of \$71,876 for a total not-to-exceed amount of \$551,047. The term of the Agreement will be from February 20, 2024 to February 20, 2027.

If approved, appropriations in the amount of \$236,950 from New Model Colony Local Sewer Development Impact Fee Fund and \$314,097 from New Model Colony Local Water Development Impact Fee Fund will be included in the next Quarterly Budget Update Report to City Council. Funding is to provide design and bid support services for Edison Avenue and Bon View Avenue Water Improvements and Bon View Avenue Sewer Improvement Project (DIF Project No's SW010 and WT011). Appropriations were not originally included in the budget to avoid over appropriation of funds. There is no impact to the General Fund.

BACKGROUND & ANALYSIS: Ongoing development has necessitated the need for a new fire station on the west side of Ontario Ranch in order to provide timely and adequate fire protection and emergency response services to new customers in the area. Fire Station 11 is proposed to be constructed on Bon View Avenue, between Eucalyptus Avenue and Edison Avenue. Currently, this area does not have direct water or sewer service.

Utility infrastructure will be required to support the construction of Fire Station 11 and further development in the vicinity. Using the Water and Sewer Master Plans in conjunction with future development plans, Staff has identified the need to construct new water and sewer infrastructure along Bon View Avenue and Edison Avenue. Depending on the final location of Fire Station 11, the project will provide up to 0.5 mile of 12-inch potable water main in Edison Avenue between Bon View Avenue and Grove Avenue; up to 0.5 mile of 12-inch potable water in Bon View Avenue between Edison Avenue and Eucalyptus Avenue, and up to 0.5 mile of 18-inch sewer main in Bon View Avenue between Edison Avenue and Eucalyptus Avenue.

The scope of the design services for the project includes a preliminary design report, CEQA documents, two separate bid packages consisting of plans and specifications for construction, and bid support services for the water and sewer improvements.

On November 16, 2023, three proposals were received in response to the Request for Proposals (RFP) Bid No. 1702 for Edison Avenue and Bon View Avenue Water Improvements and Bon View Avenue Sewer Improvement Project, OMUC Contract No. UT1079:

Bidder	Locations
Albert A. Webb Associates, Inc.	Riverside, CA
IMEG Corporation	Ontario, CA
Stantec Consulting Services, Inc.	Irvine, CA

Staff reviewed the proposals based upon qualifications, understanding of the City' s needs, history of completing similar projects, and criteria specified in the RFP. After careful evaluation, Stantec Consulting Services, Inc. of Irvine, California, was selected as best overall qualified respondent.



PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO DESIGN SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City"), and **Stantec Consulting Services Inc.**, a **Corporation**, with its principal place of business at **38 Technology Drive, Irvine, CA 92618** (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant. Consultant desires to perform and assume responsibility for the provision of certain professional **engineering** design services required by the City on the terms and conditions set forth in this Agreement. Consultant warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Consultant is a corporation or other organization, the Project Consultant designated pursuant to Section 3.2, and not the Consultant itself, shall be fully licensed to practice as an **engineer** in the State of California.

2.3 Project. City desires to engage Consultant to render such services for the **OMUC Contract No. UT 1079 Edison Avenue and Bon View Avenue Water Improvements and Bon View Avenue Sewer Improvements** ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Consultant.

3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **engineering** and related services necessary for the full

and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from **February 20, 2024** to **February 20, 2027**, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Project Consultant; Key Personnel.

3.2.1 **Engineer of Record**. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates **Jeff Dunn** (License No. **C58455**) to act as the **Engineer of Record** for the Project. The **Engineer of Record** shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the **Engineer of Record** shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new **Engineer of Record** shall be of at least equal competence as the prior **Engineer of Record**. In the event that City and Consultant cannot agree as to the substitution of a new **Engineer of Record**, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the **Engineer of Record**, Consultant has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Consultant may substitute others of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause.

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Consultant shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Consultant may delegate without relieving Consultant from administrative or other responsibility under this Agreement. Consultant shall be responsible for the coordination and cooperation of Consultant's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Consultant shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Consultant's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Consultant at Consultant's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Consultant shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. Consultant shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Consultant shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Consultant. Consultant shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Consultant shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Consultant and City.

3.5.3 Americans with Disabilities Act. Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Consultant shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Consultant brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Consultant's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Consultant, and the Consultant shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Consultant request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Consultant shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Consultant shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Consultant shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances

regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. Failure to comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Consultant on an independent contractor basis and Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be 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 in connection with their performance of Services under this Agreement and as required by law. 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, and workers' compensation insurance.

3.7 Schedule of Services.

3.7.1 Consultant Services. Consultant shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Consultant shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Consultant agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Consultant shall prepare an estimated time schedule for the performance of Consultant's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Consultant cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Consultant without the prior written approval of City. If the Consultant's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Consultant will be responsible.

3.7.4 Excusable Delays. Any delays in Consultant's work caused by the following may be added to the time for completion of any obligations of Consultant: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Consultant; and (5) any Force Majeure Event (as defined herein) or other unforeseen occurrence not due to any fault or negligence on the part of Consultant. Neither the City nor the Consultant shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Force Majeure Events. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Services and Agreement. Should a Force Majeure Event occur, the non-performing Party shall, within fifteen (15) calendar days of the beginning of an Force Majeure Event, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.7.6 Request for Excusable Delay Credit. The Consultant shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the Parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Consultant for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the Parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Consultant make an application for an extension of time, Consultant shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Services.

3.8.1 Request for Services. At City's request, Consultant may be asked to perform services not otherwise included in this Agreement, not included within the basic services

listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted architectural practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary for the Consultant to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Consultant pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Consultant was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Consultant to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Consultant.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Consultant is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Consultant's services for the Project.

3.9 City Responsibilities. City's responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Consultant all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget

limitation information, the City shall provide the Consultant with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Consultant, City shall furnish Consultant with, or direct Consultant to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates **Dennis Mejia, PE, Utilities Engineering Division Manager**, or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Consultant, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Consultant of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Consultant's Compensation for Basic Services. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **Four Hundred Seventy-Nine Thousand, One Hundred Seventy-One Dollars (\$479,171)** ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Consultant perform Additional Services. As used herein, Additional Services means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Consultant shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the Project. Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of \$1,000; and (5) other costs, fees and expenses in excess of \$1,000.

3.10.4 Payment to Consultant. Consultant's compensation and reimbursable expenses shall be paid by City to Consultant no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Consultant shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Consultant shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the Parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Consultant shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review

the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Consultant shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Consultant. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Consultant is liable under the Agreement or state law. Payments to the Consultant for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Consultant shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from Parties not within the Consultant's reasonable control.

3.10.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and Since the total compensation is \$1,000 or more, Consultant agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. 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. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Consultant or its consultants to comply with the Prevailing Wage Laws.

(a) Registration/DIR Compliance. If the Services are being performed as part of an applicable "public works project" of over \$25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain

registration for the duration of the Project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant.

3.11 Notice to Proceed.

Consultant shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Consultant's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Consultant shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Consultant shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Consultant. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Consultant may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Consultant as provided in this Agreement.

3.12.2 City's Suspension of Work. If Consultant's Services are suspended by City, City may require Consultant to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Consultant.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Consultant shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Consultant's Services under this Agreement. Upon payment of the amount required to be paid to Consultant pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. Consultant shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Consultants. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Consultant shall provide to City copies of all Project Documents required by City. In addition, Consultant shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Consultant grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

- (a) The construction of all or part of this Project.
- (b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;
- (c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Consultant shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Consultant prepares or causes to be prepared pursuant to this Agreement. Consultant shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Consultant makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Consultant and provided to Consultant by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

3.14 Indemnification.

3.14.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.14.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.15 Insurance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant to commence work on any

subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.15.1 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, Consultant shall, at its expense, procure and maintain in full force and effect for the duration of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

3.15.2 Additional Insured. The City of Ontario, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Consultant's and its subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

3.15.3 Commercial General Liability

(a) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

- (i) Bodily Injury and Property Damage
- (ii) Personal Injury/Advertising Injury
- (iii) Premises/Operations Liability
- (iv) Products/Completed Operations Liability
- (v) Aggregate Limits that Apply per Project
- (vi) Explosion, Collapse and Underground (UCX) exclusion deleted
- (vii) Contractual Liability with respect to this Contract
- (viii) Broad Form Property Damage
- (ix) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

3.15.5 Workers' Compensation/Employer's Liability

(a) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and

in an amount indicated herein. This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

Coverage	Combined Single Limit
Commercial General Liability	\$2,000,000 per occurrence/ \$4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$2,000,000 per claim and aggregate (errors and omissions)

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

3.15.9 Policy Provisions Required

(a) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(d) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(e) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.15.11 Additional Insurance Provisions

(a) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(b) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold

amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(c) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(d) Neither the City nor the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.15.12 Subconsultant Insurance Requirements

(a) Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.16 Records.

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Consultant shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for **engineering** services between City and the Consultant chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Consultant shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Consultant prepares for the Project. Consultant shall require all consultants who prepare any other documents for the Project to submit the same written certification. Consultant shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Consultant shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Bernardino County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

3.27 Safety.

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Consultant shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Consultant's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

CITY:

City of Ontario
303 East "B" Street
Ontario, CA 91764

Attn: **Dennis Mejia, P.E., Utilities Engineering**
Division Manager, OMUC

CONSULTANT:

Stantec Consulting Services Inc.
38 Technology Drive Suite 200,
Irvine CA 92618
Attn: **Jeff Dunn**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.30 Time of Essence.

Time is of the essence for each and every provision of this Agreement.

3.31 City's Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. Consultant maintains and warrants 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 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.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, 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.

3.33 Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.34 Labor Certification.

By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.35 Subcontracting.

As specified in this Agreement, Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

3.36 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.37 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the Parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the Parties hereto. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which

are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

SIGNATURES ON FOLLOWING PAGE

**SIGNATURE PAGE FOR DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO
AND STANTEC CONSULTING SERVICES INC.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ONTARIO

Stantec Consulting Services Inc.

Approved By:

Scott Ochoa
City Manager

By: _____

Its: _____

Approved as to Form:

Printed Name: _____

Best Best & Krieger LLP
City Attorney

By: _____

Its: _____

Printed Name: _____

Attested By:

City Clerk

**[If Corporation, TWO SIGNATURES,
President OR Vice President AND
Secretary OR Treasurer REQUIRED]**

EXHIBIT “A”

PROPOSED SCOPE OF SERVICES

FOR

PROVIDING PROFESSIONAL DESIGN SERVICES

FOR

EDISON AVENUE AND BON VIEW AVENUE WATER IMPROVEMENTS AND

BON VIEW AVENUE SEWER IMPROVEMENTS (UT1079)

The Consultant is responsible for providing the following general Scope of Services:

1. GENERAL REQUIREMENTS.

The Consultant shall complete a single preliminary design report, two separate improvement construction bid packages, and provide bidding support for:

- Water Improvements - 0.5-mile, 12-inch potable water main in Edison Avenue between Bon View Avenue and Grove Avenue, where it will be connected to an existing 30-inch transmission main located on Grove Avenue; a 0.5-mile, 12-inch potable water main in Bon View Avenue between Edison Avenue and the Eucalyptus Avenue, where it will connect at an existing 12-inch water main stub out north of the intersection of Eucalyptus Avenue and Bon View Avenue;
- Sewer Improvements - 0.5 mile, approximately 30 feet to 35 feet deep, 18-inch sewer main in Bon View Avenue between Edison Avenue and the Eucalyptus Avenue, where it will be connected to an existing 18-inch sewer manhole north of the intersection of Eucalyptus Avenue and Bon View Avenue.

These proposed water and sewer mains will support the future development of Fire Station No. 11 located at the intersection of Bon View Avenue and Edison Avenue. Please refer to the Site Exhibit (Attachment 1).

Right-of-way (R/W) Analysis: There is limited development along the specified corridors for these proposed water and sewer mains. To accommodate future planned development and existing infrastructure, the existing R/W limits may need to be widened to the ultimate planned limits. The Consultant will conduct an analysis of all the impacted properties where R/W limits must be widened if the mains were to be constructed at their ultimate location. If the preferred alignment of the proposed 12-inch water mains and 18-inch sewer main requires immediate R/W or easement procurement, an optional task will be executed to conduct appraisal and acquisition of those areas. The execution of this optional task will be contingent upon the design and construction schedule for Fire Station No. 11. Based on this R/W analysis, City will determine the best alignment to

proceed with following the completion of the PDR and prior to the start of design for the construction bid packages.

1.1 Basic Services. Consultant agrees to perform all the necessary professional, engineering (e.g. mechanical, electrical, plumbing, structural, civil, site engineering), and any other necessary engineering services mutually agreeable to the parties for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services will be excluded from the basic services listed above: “N/A”, NOT APPLICABLE.

1.3 Communication with City. Consultant will participate in consultations and conferences with authorized representatives of City and/or other local, regional, or State agencies concerned with the Project, which may be necessary for the completion of the Project or the development of documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences will continue throughout the planning and development of the Project. Consultant will take direction only from the City’s Representative, or any other representative specifically designated by the City for this Project, including any Construction Manager hired by the City.

1.3.1 Weekly Project Check-ins. Consultant will provide a minimum of one brief weekly project update via telephone call to the City’s Project Manager and follow-up the telephone call with a brief email to summarize the discussion. The Weekly Check-in will include: current project status; tasks or items completed since last project update; tasks and items expected to be completed in the coming week; any issues that may affect project status; and any action items for the Consultant and City.

1.3.2 Meeting Agendas and Minutes with Action Items. Agendas, with attachments, will be sent at least one full business day prior to the date of the meeting. Meeting Minutes (draft and final) with Action Items will be sent within three business days after: all Meetings regarding the Project, including meetings with the City or any other parties; and after all Project communications regarding change in project status.

1.3.3 Monthly Billings. Invoices will include, at a minimum, number of hours budgeted for each task or sub-task, number of hours spent during the month and cumulative for the project. In addition, the monthly invoices will identify labor, indirect and other project related costs incurred during the month and brief description of the activities. Consultant will provide to the Project Manager one (1) electronic copy (smart pdf).

1.3.4 Monthly Billing Status Reports. A Monthly Billing Status Report will be submitted with the Monthly Billing Invoice, which includes: summary of work completed and review of work status relative to budget and schedule. Any divergences between work completed and budget expended and schedule needs to be specifically explained and addressed to avoid future budget short-comings and delays in schedule.

1.3.5 **Updated Project Schedule.** The Project Schedule will be updated monthly, or whenever there is an expected change to the deliverables schedules and will address any deviation from the schedule, if any. Updated project schedules will be sent with the appropriate weekly check-in.

1.3.6 **Updated Project Budget.** The Project Budget (including an itemized Costs Estimate) will be updated whenever there are changes that are expected to significantly impact estimated Project Budget, and at a minimum, with the completion of each task.

1.3.7 **Kickoff Meeting:** Consultant will organize, prepare, and facilitate the Project Kickoff Meeting. The kickoff meeting will include an agenda and a review of project scope, schedule, establish project communication procedures, define project deliverables, and meeting schedule.

1.3.8 **Decision Log:** Consultant will maintain a decision log in order to record the decisions made by the project team. The decision log will contained all decisions, including those made during the technical workshops, project meetings, telephone conversations and emails. Decision Log at the minimum will include the following heading: item number, date, item action description, decision made, action taken, notes.

1.3.9 **Format of Deliverables:** Consultant will submit all original documents in one or more of the followings formats as directed to by the City: MS Word, MS Excel, MS Project, MS Power Point, PDF, AutoCAD, Arc GIS.

PROJECT TASKS

Task 1 - Preliminary Design Report (PDR) for proposed 12-inch water mains & 18-inch sewer mains

Objective: At least two alternative alignments within Bon View Avenue and Edison Avenue must be studied for the proposed 12-inch water mains and 18-inch sewer mains. The first alignment must be consistent with the City's standard utility location details (Std. Dwg 1302 & 1303), based on the ultimate R/W widths included in the City's Streets and Highways Master Plan. These guidelines are available at the City's website (<https://www.ontarioca.gov/Engineering/DesignGuidelines>). The second alignment shall be placed within existing R/W limits to the extent possible to limit or eliminate the need for R/W appraisal and acquisition at this time.

For each proposed alignment, the Consultant shall perform R/W analysis, conduct utility research and potholing within master planned R/W limits; identify requirements, including permits, and coordinate with the City of Ontario, Southern California Edison (SCE), Inland Empire Utilities Agency (IEUA), Water Resources Control Board – Division of Drinking Water (DDW), City of Chino, San Bernardino County Flood Control District (SBCFCD), Southern California Gas Co., Zenith Energy, telecommunications system, and various land developers/residents; then draft a PDR that includes a preliminary plan and profile, project approach, geotechnical investigation and establishes performance requirements.

Task 2 – CEQA Compliance

Objective: Prepare appropriate environmental documentation to fulfill CEQA requirements associated with the project.

Task 3 – Engineering Design Services and Project Management

Objective: Develop two sets of biddable construction documents, one for the 12-inch water mains and one for the 18-inch sewer main.

Task 4 – Bid Phase Support Services

Objective: Provide complete bid phase support for construction documents developed under Task 3.

Task 5 – Additional Services

Objective: Consultant is encouraged in its proposals to identify any additional work that is not specified in this Scope of Work that would be, in its opinion, necessary to complete the project.

TASK 1 - PRELIMINARY DESIGN REPORT (PDR) FOR PROPOSED 12-INCH POTABLE WATER MAINS AND 18-INCH SEWER MAIN

Task 1.1 Project Kick-Off Meeting

Consultant shall review the final draft of the City of Ontario 2020 Sewer Master Plan and Water Master Plan (Attachment 2), and the City of Ontario Streets and Highways Master Plan (Attachment 3) in preparation of the kickoff meeting.

The kick off meeting will be required with Ontario Municipal Utilities Company (OMUC) to discuss design criteria, performance requirements, and project approach.

- Consultant will begin this project with a kick-off meeting with City staff. This meeting is a key opportunity for City representatives and the Consultant team to steer and further clarify critical elements of the project. The meeting agenda will focus on the project understanding, team member involvement, project constraints, project progress, and anticipated design development impediments. This meeting will also include a review of background information and project scope as well as an overview of the project schedule, objectives, milestones, and details.
- Consultant will interview key personnel of the Engineering and Operations staff to incorporate design preferences and fully understand the issues influencing the project.
- Consultant will establish a single point of contact and communicate to that person for the duration of the Project to provide timely information relative to the Project issues.
- Consultant will prepare project weekly status reports, meeting minutes and recognize critical issues early on to discuss and resolve them with City staff.
- The project requires project management which includes project setup, scheduling, controlling, and correspondence. Correspondence includes telephone conversations, emails, project status reports, monthly status reports, project memorandums when necessary and detailed monthly invoices.

Deliverable: Meeting agenda, handouts, meeting minutes

Task 1.2 Coordination & Alignment Study

The project will require some coordination with SCE, IEUA, DDW, City of Chino, SBCFCD, Southern California Gas Co., Zenith Energy, and various land developers/residents. The Consultant will establish a point of contact from each agency that will be able to provide any technical input and submit all necessary plans, and specifications to secure all approvals and permits that will be necessary to construct the project. Consultant, on the City's behalf, shall procure all permits, waivers, licenses, and other authorizations necessary to accomplish work.

At least two alternative alignments within Bon View Avenue and Edison Avenue must be studied for each of the proposed 12-inch water mains and 18-inch sewer main. The first alignment must be consistent with the City's utility locations for standard street details (Std. Dwg 1302 & 1303), based on the ultimate R/W widths included in the City of Ontario Streets and Highways Master Plan. These guidelines are available on the City's website. The second alignment shall be placed

within existing R/W limits to mitigate or eliminate the need for R/W appraisal and acquisition at this time.

Each alignment must consider existing utility lines and future planned development and utility improvements. For example, Edison Avenue is a major arterial and is expected to contain several large size facilities including sewer, storm drain, recycled water, gas, electrical, and communication lines.

Deliverable: Draft and Final PDR

Task 1.3 Right-of-Way Analysis

Subtask 1.3.1. Right-of-Way Assessment

The existing right-of-way along Bon View Avenue is currently in its ultimate planned right-of-way width at 66-feet wide. However, property owners have impeded into the existing right-of-way which has reduced the effective width to 50-feet in certain locations.

The existing right-of-way along Edison Avenue varies from 66-feet wide for most of the street to 90-feet wide for a segment west of Grove Avenue. The ultimate planned right-of-way width for Edison Avenue is 160-feet. Please refer to the City of Ontario Streets and Highways Master Plan (Attachment 3).

A significant amount of right-of-way acquisition and community outreach is required to place the proposed water and sewer mains in compliance with City's standard drawings for utility locations for standard street sections. The design and construction for this project must be completed prior to the completion of Fire Station No. 11 located around the intersection of Bon View Avenue and Edison Avenue. As a result of potential time constraints from the construction of Fire Station No. 11, it may be preferable to construct the 12-inch water mains and 18-inch sewer main within existing R/W limits so that R/W acquisition is not necessary for this project. Nevertheless, the preferred alignments of the proposed 12-inch water mains and 18-inch sewer main may necessitate professional right-of-way acquisition and appraisal for developed/undeveloped, vacant and/or unimproved, residential and/or commercial properties.

The Consultant will review existing land records and identify all properties impacted by the master planned streets and the conceptual water and sewer main alignments, to determine the locations and extent that additional R/W is required along each corridor. The PDR shall include an analysis that projects the cost to procure the necessary land, a flow chart of tasks and their timeframe to complete the acquisition process, and a tabulated list of impacted properties with the respective amounts of land that must be acquired.

Deliverable: Right-of-Way Assessment

Subtask 1.3.2. Optional – Appraisal & Acquisition

If R/W acquisition is required to construct the preferred alignments of the proposed 12-inch water mains and 18-inch sewer main, the Consultant shall produce appraisal reports, in accordance with

standards of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice, for full or partial acquisitions, easements, temporary construction easements, leased or licensed properties and sale or disposition of excess/surplus properties. Meetings with the property owners may or may not be required at the option of the City and will be determined on a case-by-case basis. When acquisition is necessary, the Consultant shall assist the City with various right-of-way acquisition and appraisal assignments including but not limited to:

- A. The Consultant shall retain an experienced and independent MAI (or equivalently credentialed) real property appraiser ((hereinafter referred to as “Appraiser”), as defined and accredited by the Appraisal Institute, to prepare and appraisal of the fair market value of the property. Payment for the appraisal will be based on hourly rates shown in the Appraiser's proposal and will be subject to not to exceed provision in the contract. Payment for the Appraiser's litigation support, if necessary, will be based on hourly rates shown in the Appraiser's proposal and will be subject to a not to exceed provision in the contract.
- B. Pre-condemnation planning assistance.
- C. Relocation assistance, business reestablishment, replacement housing and relocation plan.
- D. Obtain and review property files and title reports.
- E. If any legal issues exist during the course of the appraisal assignment, the appraiser shall request legal opinion. All legal opinions shall be rendered by the City Attorney.
- F. Preparation and review of all necessary legal documents for property acquisition.
- G. Prepare notices of public hearing for individual property owners regarding resolutions of necessity.
- H. Assist the City's staff in preparing staff report for resolution hearing.
- I. Resolution of Necessity preparation and assistance with supporting evidence and related documents to establish the City's right to take the property necessary for the project (includes attending resolution hearing).
- J. Provide assistance to legal counsel in preparation and filing of all legal documents necessary to commence an eminent domain action(s) for the required parcel(s).
- K. Provide assistance to legal counsel in obtaining court order(s) for prejudgment possession to allow project-related construction activities to commence (within thirty (30) to ninety (90) days after commencement of the action).
- L. Provide assistance to legal counsel in defending all challenges to City's right to take and/or claims for project blight, severance damage or other legal issues.
- M. Provide assistance to legal counsel necessary to litigate individual cases to settlement, final judgment, and appeal, if necessary.
- N. The Appraiser shall prepare grant deeds and temporary easements, prepare, and submit offers and negotiate right-of-way purchase/sale contracts to acquire the property.
- O. The Appraiser shall provide litigation support if condemnation of the property is necessary. Payment for acquisition services will be based on hourly rates shown in the Appraiser's proposal and will be subject to a not to exceed provision in the contract. Payment for the

Appraiser's litigation support, if necessary, will be based on hourly rates shown in the Appraiser's proposal and will not be subject to a not to exceed provision in the contract.

Deliverable: Appraisal Assessment and Execution Plan

Task 1.4 Data Collection, Utility Research and Notification

Data relevant to the required engineering work will be identified, collected, and assembled. The primary purpose will be to identify data required from the City, utility companies, permittee, agencies with vested interest in the project (e.g. SCE, IEUA, DDW, City of Chino, SBCFCD, Southern California Gas Co., Zenith Energy, telecommunications systems, and various land developers/residents) and other sources to ensure that the design proceeds in accordance with the requirements of the many entities involved. The final design should also consider ultimate street elevations for Edison Avenue and Bon View Avenue. Information will include, but not be limited to, existing maps, reports, record drawings and other data that are readily available in hardcopy or electronic format. A list of all the requested documents collected under this task, including a brief item description, will be provided to the City.

Deliverable: Inventory of existing information/data

Task 1.5 Topographic Survey

Consultant will perform a complete surveying and aerial mapping of the site. These services will provide for topographic survey and verification of existing elevations, slopes, and improvements within the project area. Prior to the topographic survey, Underground Service Alert and ground penetrating radar services should mark out the existing utilities to allow for most accurate data collection. The topographic survey will serve as the project base drawing. City provided Atlas Maps and record drawings to help supplement the base drawing. Consultant will provide the following surveying services:

- Obtain permits (applications) as required from other agencies.
- Research county records for survey control.
- Establish survey ground control for aerial mapping using NAD83 coordinates and City/County benchmarks.
- Provide aerial mapping by photogrammetric methods at 40-scale, one foot contour intervals, width of survey shall be R/W to R/W (CADD & PDF files).
- Consultant shall provide an aerial survey correlated with the State Plane Coordinate System to obtain a one-foot contour interval topographic and orthographic images at least 100 feet beyond the Project limits including horizontal and vertical control and benchmark delineation consistent with established control and existing City facilities.
- Existing roadway features between the right-of-way, including street addresses for parcels on both sides of the streets, curb and gutter, edges of pavement, sidewalks/parkways, curb returns, curb ramps, driveways; alley intersections, bus pads, bike lanes, street striping, traffic loops.

- Below and above-ground structures including but not limited to poles, existing vaults, and boxes.
- Existing signs; power poles, guy wires.
- Locations of trees that are four inches in diameter or greater, within or adjacent to the street right-of-way.
- Locations of USA utility markings within the project limits.
- Locations of ground penetrating radar services markings in the alleys within the project limits; Invert depths of sewer and storm drain manholes and catch basins.

Deliverable: CADD & PDF files with aerial mapping and topography

Task 1.6 Potholing Services

The location of existing utilities can be critical to the definition of the design basis for the project work. Following a desktop investigation of the existing utilities in the project area, the Consultant will prepare a specific scope for the potholing effort in the project area. Areas of special concern will be the interface locations with existing major utilities including water, sewer, storm water, electrical power, and instrumentation. Potholing services will be performed with the assistance of a surveying subcontractor to be retained by the Consultant.

The type of street pothole repair includes slurry backfill with permanent hot mix pavement repair. See “Coring or Bore Hole Replacement Detail” in (Attachment 4). Consultant will obtain an encroachment and traffic control permit for the potholing from the City. Traffic control plans and traffic control for potholing will be provided by the consultant in accordance with City requirements. Excavation permit fee will be waived.

Consultant shall be responsible for developing a pothole plan for locating and profiling existing utilities and submitting the plan to City for approval. After the City’s approval, Consultant shall be responsible for conducting the required potholing. For the purpose of providing a fee for this scope, Consultant shall assume that there will be forty (40) pothole locations approximately 5 feet to 8 feet deep.

Deliverable: Potholing reports

Task 1.7 Geotechnical Investigation

The Consultant will need to obtain all required permits to perform work within the project area. Provide geotechnical engineering services necessary to conduct an evaluation of existing geological conditions and hazards, including exploratory work, laboratory and field testing, and professional guidance on the tests to be made.

The evaluation and report shall include but is not limited to: borings not to exceed 750 foot spacing along the Bon View Avenue and Edison Avenue corridors for the proposed 12-inch water mains and 18-inch sewer main, to determine subsurface conditions and site geology, soil bearing capacity, presence of rock and rock removal capability factors/analysis, anticipated excavation characteristics of materials along the main alignments or at the proposed sites, groundwater conditions and dewatering, R-values, moisture content, density, gradation, consolidation,

expansion, soil contamination issues, laboratory test results (max density, sieve analysis, Atterberg limit), soil corrosivity, soil chemistry test results (pH, resistivity, sulfate content), corrosion protection and control, pipeline bedding requirements, suitability of native material for backfill, and shoring recommendations. For the purpose of this RFP, the investigation shall include eight (8) borings along the preferred alignments, a minimum of one (1) at every project street and spaced at maximum of 750 feet.

Upon completion of geotechnical investigations and potholing, all damaged pavements shall be repaired with a permanent hot asphalt mix placed by an asphalt pavement contractor duly licensed for this type of work. The type of street boring hole repair includes slurry backfill with permanent hot mix pavement repair. See “Coring or Bore Hole Replacement Detail” in (Attachment 4). Consultant will obtain an encroachment and traffic control permit for the potholing from the City. Traffic control plans and traffic control for potholing will be provided by the Consultant in accordance with City requirements. Excavation permit fee will be waived.

Consultant shall submit an initial geotechnical report by a California Registered Geologist or geotechnical firm interpreting the data of the exploratory work and testing and summarizing its recommendations. Three (3) copies and one (1) electronic copy of the draft geotechnical report shall be submitted for review. If recommendations of the geotechnical report require further detailed geotechnical investigations, the Consultant shall perform the recommended evaluations as directed by the City. Following resolution of all OMUC review comments, three (3) copies and one (1) electronic copy of the final geotechnical report shall be submitted. Incorporate all geotechnical requirements into the planning and design phases of the Project in conformance with the industry standard of care.

Deliverable: Geotechnical investigation report

Task 1.8 Opinion of Probable Construction Cost

An initial opinion of probable construction cost will be prepared and will include construction costs, engineering costs, appropriate contingencies, and an allowance for administrative costs. The cost estimate will incorporate the Consultant's experience with similar projects as well as current, market driven construction costs. Contact will be made with equipment suppliers and manufacturers to obtain budget pricing for major equipment items.

The initial opinion of probable construction cost will be included as a section in the PDR and will be updated throughout the course of the project. At a minimum, the construction costs will be updated at the 60, 90, and 100 percent completion levels. The Consultant will provide opinion of probable construction cost which will form the basis upon which the bid schedule items and quantities will be developed.

Deliverable: Separated Opinion of probable construction cost for Water and Sewer Improvements

Task 1.9 Project Schedule

An initial project schedule will be prepared including design, bidding, construction, and post construction activities. The City will be advised on the schedule impact of project technical decisions and the project schedule will be consistently updated (on at least a monthly basis) to

reflect current project status. The project schedule will be included as a section in the PDR and will be updated throughout the course of the project. At a minimum, the project schedule will be updated at the 60, 90, and 100 percent completion levels.

Deliverable: Separated Schedule for Water and Sewer Improvements

Task 1.10 Preliminary Design Report

Consultant will prepare a Preliminary Design Report (PDR) and plans that summarizes consultants' evaluation of the project's constraints, which include the following:

- Design criteria for each proposed improvement,
- Site considerations, flood elevations, drainage requirements, etc.,
- Preliminary plan and layouts (30% Design)
- Utility requirements, conflicts, and solutions,
- Potential traffic control conflicts and solutions,
- State Water Resources Control Board and other utility company horizontal and vertical clearance requirements,
- CEQA requirements,
- Construction scheduling requirements to be included in the construction documents,
- Project schedule including design, bidding, and construction activities,
- Work plan that identifies and discusses the various project constraints and scope items that must be addressed and recommend a plan of action(s) that should be followed to deliver the project,
- Requirements from other agencies,
- Geotechnical factors affecting design,
- Opinion of probable construction costs
- Preliminary drawing list,
- Specifications Table of Contents

The Design Report will also memorialize the specified materials proposed for the project. A summary of the City-approved variances and deviations from standard plans will be included in the Design Report. Approval of the pipeline alignment by the City will be based on Consultant's topographic map and pothole logs.

Deliverable: Draft and Final PDR

Task 1.11 Preliminary Design Workshops

Conduct preliminary design workshops including a detailed presentation to OMUC personnel at completion of Draft and Final PDR to discuss the project, schedule, cost, constraints, and transition plan to final design.

Consultant shall summarize all findings, results, conclusion, and recommendations into a Draft PDR. The Consultant shall submit five (5) copies of each the Draft PDR including one (1) electronic copy (smart pdf) and original files for OMUC review.

OMUC comments on the Draft PDR shall be incorporated into a Final PDR. The Consultant shall submit five (5) copies of each the Final PDR including one (1) electronic copy (smart pdf) and original files for OMUC data retention.

Deliverable: Draft and Final PDR Workshops Presentation and Meeting Minutes

Task 1.12 Public and Private Agency Utility Coordination

Utility coordination will resume with the public and private agencies at the completion of the 30% plan submittal. Copies of the 30% plans will be submitted to each utility provider affected by project; comments received by each will be incorporated into the construction documents. Consultant shall keep a log of all communications with the utility companies.

Deliverable: Communication Log and Notes

TASK 2 - CEQA COMPLIANCE

Task 2.1 CEQA Compliance

The project is an updated revision from a component of the 2012 Infrastructure Master Plans approved by the City Council on December 4, 2012. A Mitigated Negative Declaration was prepared and approved for the 2012 Infrastructure Master Plans pursuant to the provisions of CEQA. However, an analysis of the project has determined that there is no significant deviation from the description of this component of the overall 2012 Infrastructure Master Plans. The Consultant will coordinate with the City's CEQA representative and Planning Department. The City will file a Notice of Exemption and pay all fees with San Bernardino County, County Clerk and with the California Department of Fish and Wildlife. Consultant will provide technical input for filing of the Notice of Exemption by the City

Deliverable: A NOE for the Water Improvements and a NOE for the Sewer Improvements

TASK 3 - ENGINEERING DESIGN SERVICES AND PROJECT MANAGEMENT

For all tasks within this section, the Consultant is to have the understanding that the City will require a separate set of deliverables, one for water improvements and one for sewer improvements, for each task and/or sub-tasks.

Task 3.1 Preliminary Design (60%) Submittal

Upon completion of Task 1, the Consultant shall compile all gathered information and prepare preliminary design plans. Preliminary design shall include recommended alignments of the pipelines including profiles and connections to existing services. After the Preliminary Design is approved by the City, the Consultant shall proceed with the detailed design.

The Consultant shall adhere to all design requirements and guidelines within the documents on the City's website at <https://www.ontarioca.gov/Engineering/DesignGuidelines>.

For the Water Improvement Design:

The design will include but not be limited to tie-in connections and necessary related appurtenances, service laterals and water meters, air/vacuum release valve assemblies, blow-off/manual drain assemblies and fire hydrant assemblies.

The plans will illustrate and specify the water main, type of material, sizes, restrained lengths, construction sequencing, bypass piping locations, and the quantity required for the water main improvement construction.

For the Sewer Improvement Design:

The design will include but not be limited to tie-in connections and necessary related appurtenances, manholes, service laterals.

The plans will illustrate and specify the sewer main, type of material, sizes, construction sequencing, bypass piping locations, and the quantity required for the sewer main improvement construction.

Along with the 60% construction plan submittal for both the Water Improvements and Sewer Improvements, the Consultant will submit two sets of technical specifications for both improvement projects. The submittal will include the City's front-end contract documents which will be tailored for the project, technical specifications, and appendices. The City will provide the front end document boiler plate and sample technical specifications.

Consultant will provide the plans sheets at 1" = 40' for horizontal and 1" = 4' for vertical scale. The plan set will include title sheet, notes, and standard details. The standard details are provided by the City. Design drawings shall show street addresses and approximate locations of all services to be replaced. Connection details for all proposed pipelines shall be shown at a scale of 1" = 10'. Drawings shall also include typical street cross sections showing existing, proposed and future improvements.

Consultant will attend a meeting with City staff to review and discuss the 60% plan-check comments and other City staff feedback. Consultant shall maintain a log of 60% plan review comments and responses.

Deliverable: Two sets of Plans & Specifications Submittals (one for Water Improvements and one for Sewer Improvements)

Task 3.2 Detailed Design (90%) Submittal

With preliminary design (60%) review comments from the City and other entities, Consultant shall prepare detailed design Plans, Specifications and Estimate (PS & E) for the proposed improvements. Plans shall be prepared using computer aided design software (AutoCAD) and shall be printed on size 24x36 paper. The 90% plan submittal shall be stamped and signed by a

California Registered Professional Engineer. The 90% special provisions and technical specifications (PS & E) shall be prepared and submitted. The City will review the submitted PS & E, provide comments, and request revisions until it is in compliance with City standards and policies.

The 90% design submittal will include:

For the Water Improvement Design:

Tie-in connections, details and necessary related appurtenances, service laterals, water meters, air/vacuum release valve assemblies, blow-off/manual drain assemblies and fire hydrant assemblies.

The plans will illustrate and specify the dimensions, stationing, water main, type of material, sizes, restrained lengths, construction sequencing, bypass piping locations, and the quality required for the water main improvement construction.

For the Sewer Improvement Design:

Tie-in connections, details and necessary related appurtenances, manholes, and service laterals.

The plans will illustrate and specify the dimensions, stationing, sewer main, type of material, sizes, restrained lengths, construction sequencing, bypass piping locations, and the quality required for the sewer main improvement construction.

Along with the 60% construction plan submittal for both the Water Improvements and Sewer Improvements, the Consultant will submit two sets of technical specifications for both improvement projects. The submittal will include the City's front-end contract documents which will be tailored for the project, technical specifications, and appendices.

Consultant will provide the plans sheets at 1" = 40' for horizontal and 1" = 4' for vertical scale. The plan set will include title sheet, notes, and standard details. The standard details are provided by the City.

Consultant will attend a meeting with City staff to review and discuss the 90% plan-check comments and other City staff feedback. Consultant shall maintain a log of 90% plan review comments and responses. If warranted by the plan check comments, Consultant shall submit one more iteration of the 90% plans and specifications for review and approval.

Deliverable: Two sets of Plans & Specifications Submittals (one for Water Improvements and one for Sewer Improvements)

Task 3.3 Final Design Revisions

Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Design and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier

City direction or Consultant's professional judgment. Consultant shall bring any such conflicts and/or inconsistencies to the attention of City. The parties agree that Consultant, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent Consultant or other Consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes, additions, deletions, or corrections are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

Task 3.4 Final Working Drawings and Specifications (100% Submittal)

Upon approval of the 90% design PS & E by the City, the Consultant shall prepare the final working documents for bid. A complete set of 100% stamped and signed mylar plans and specifications shall be submitted to the City. Such Final Working Drawings and Specifications shall be developed from the Preliminary Design Phase and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in detail all the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Consultant with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Consultant will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Consultant which may not be shown on the as-built drawings.

Deliverable: Two sets of Plans & Specifications Submittals (one for Water Improvements and one for Sewer Improvements)

Task 3.5 Permits

In accordance with the permit requirements identified in Task 1, Consultant shall obtain permits from the following agencies for construction of the project:

- City of Ontario
- State Water Resource Control Board
- Any other Agency Permits

As needed, Consultant will assist the City to obtain the State Water Resources Control Board's approval for the areas that the proposed potable water main alignments do not meet the separation

criteria stated in the California Code of Regulations Title 22, Chapter 16, Section 64572 (See City Standard number 4001). Consultant shall submit detailed plans with vertical and horizontal alignments, specifications, and other exhibits necessary to show the standard installation and the proposed installation for which the alternative is being requested.

Deliverable: Approved Permits (one for Water and one for Sewer Improvements)

Task 3.6 Opinion of Construction Cost (60%, 90% and 100% Submittal)

During the preparation of the 60%, 90% and 100% submittal packages, Consultant will prepare an Opinion of Construction Cost (OCC) for each portion of the project. The OCC will be tabularized in the same format as the construction document bid sheet.

Deliverable: Two Opinions of probable construction cost (one for Water and one for Sewer Improvements) with each submittal package

TASK 4 – BID PHASE SUPPORT SERVICES

For all tasks within this section, the Consultant is to have the understanding that the City will require a separate set of bid supporting services, one for water improvements and one for sewer improvements, for each task and/or sub-tasks.

Task 4.1 Pre-Bid Conference

A pre-bid conference will be conducted at a date, time, and location selected by the City. Consultant will perform the following tasks:

- Prepare meeting agenda and facilitate meeting,
- Instruct prospective bidders and suppliers as to the types of information required by the contract documents and the format in which the bids should be presented,
- Review special project requirements and contract documents in general,
- Receive requests for interpretations that will be resolved by addendum through the City's electronic bid management system,
- Conduct a site visit, and
- Prepare minutes of the conference.

Deliverable: Meeting agenda, handouts, meeting minutes

Task 4.2 Miscellaneous Bid Phase Services

The following services will be provided during the bid phase:

- Interpret construction contract documents and provide written responses to questions from bidders requiring clarification during the bidding period. Anticipate up to 10 clarification requests,
- Prepare and issue addenda to the contract documents as required through the City's electronic bid management system Anticipate up to three (3) addenda,

- Review and evaluate the qualifications of the three (3) lowest apparent responsible bidders and the proposed major or specialty subcontractors. The review and evaluation will include such factors as work completed, inventory of equipment available for the work, financial resources, technical experience, reference checks, contractor's license, and
- Prepare and distribute formal bid tabulation sheets, evaluate bids, and make written recommendations to City concerning contract award.

Deliverable: Written responses to RFI, addenda and provide bid support

Task 4.3 Conformed Documents

At the conclusion of the bidding period, the contract documents, plans and specifications will be revised to incorporate any addenda or clarifications issued during the bidding phase. Five hard copy sets and a electronic set of conformed contract documents will then be delivered to the City for distribution.

Deliverable: Conformed construction documents

TASK 5 – ADDITIONAL SERVICES

Task 5.1 Additional Services

Consultant is encouraged in its proposals to identify any additional work that is not specified in this Scope of Work that would be, in its opinion, necessary to complete the project as defined herein. Consultant may propose additional services that in its opinion will improve the efficiency and quality of the project. If identified, the additional work or services must be included in the proposal but separated out in the Consultant's Fee Schedule as Optional Tasks. The City will have final discretion on acceptance and approval of these Optional Tasks.

Attachments:

Att.-1: Location Map

Att.-2: Final Draft of the City of Ontario 2020 Sewer Master Plan and Water Master Plan

Att.-3: City of Ontario Streets and Highways Master Plan

Att.-4: Coring or Bore Hole Replacement Detail

Att.-1:
Location Map

Att.-2:

Final Draft of the City of Ontario 2020 Sewer Master Plan

Final Draft of the City of Ontario 2020 Water Master Plan

Att.-3:

City of Ontario Streets and Highways Master Plan

Att.-4:

1.4 Coring or Bore Hole Replacement Detail.

ATTACHMENT “A”

STANTEC CONSULTING SERVICES INC.

**Proposal for Professional Edison Avenue Water Improvements and Edison and Bon View
Avenue Sewer Improvements (UT1079)**

December 14, 2023

**EXHIBIT “B”
FEE SCHEDULE**

CITY OF ONTARIO

Agenda Report

February 20, 2024

SECTION:

CONSENT CALENDAR

Department: Public Works
Prepared By: Cynthia Heredia-Torres
Staff Member Presenting:
Tito Haes, Executive Director Public Works
Reviewed By: Bonnie Tam, Andrea Ampig
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 12

SUBJECT: A CONSTRUCTION CONTRACT WITH RESOURCE ENVIRONMENTAL FOR THE EMERGENCY DEMOLITION AND SITE CLEARANCE OF THE ONTARIO BEST INN AT 1045 W MISSION AVE

RECOMMENDATION: That the City Council take the following actions:

- A. Authorize the City Manager or his designee to execute Construction Contract No. D&C23-028 Ontario Best Inn Demolition & Site Clearance with Resource Environmental, Inc., of Cerritos, California, for emergency demolition and site clearance activities on City owned property located at 1045 W Mission Avenue in the amount of \$346,500;
- B. Authorize a 15% contingency of \$51,975 to address any unforeseen issues that may arise during the demolition for a total not-to-exceed contract amount of \$398,475; and
- C. Authorize the City Manager or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts and filing a notice of completion at the conclusion of all demolition related activities.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The Fiscal Year 2023-24 Adopted Budget includes appropriations in the Capital Projects Fund for the Affordable Housing/Veteran Housing (Mission/Mountain) Acquisition. The recommended demolition services for the 1045 W Mission Avenue, Ontario Best Inn is \$346,500 with a 15% contingency of \$51,975 for a total contract amount not-to-exceed \$398,475.

BACKGROUND & ANALYSIS: The Best Ontario Inn will require emergency demolition, accepted under AQMD Rule 1403 (c14), due to the motel's state of disrepair caused by the previous owners and because of building code violations. The condition of the motel poses an immediate risk to public safety. After assessment, the Ontario Police Department recommends immediate demolition of the motel due to the property being inhabitable.

The work under this project will consist of the demolition and site clearance of a 23,000 square foot stucco hotel, including the pool demolition and backfill.

If approved, to expedite the demolition process, the contractual services of Resource Environmental, Inc., of Cerritos, California, will be secured. The City Council approved and contracted with Resource Environmental, Inc. on December 5, 2023, after a bid solicitation process for D&C23-002 404 N Euclid Demolition Project. The scope from the 404 N Euclid Demolition Project and the Emergency Demolition of the Best Ontario Inn is comparable in scope and aligns with the expected requirements. Resource Environmental, Inc's., expertise, and availability make them the ideal choice to handle the Emergency Demolition and Site Clearance in a timely and responsible manner.



PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. **D&C23-028** is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and Resource Environmental, Inc., sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

The Contractor shall perform all Work within the time stipulated in the Contract, and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5, below, for the following Project:

D&C23-028 Best Ontario Inn Demo

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **90** calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **THREE HUNDRED FORTY-SIX THOUSAND FIVE HUNDRED** Dollars (\$346,500). Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of \$200 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following

- Contract for Construction
- Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
- Applicable Local Agency Standards and Specifications, as last revised
- Approved and fully executed Change Orders
- Permits

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at <http://www.dir.ca.gov> and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

Resource Environmental, Inc.

By: _____

Its: _____

Printed Name: _____

ATTEST:

By: _____
Sheila Mautz, City Clerk

**[DELETE THE FOLLOWING SIGNATURE
LINE IF NOT REQUIRED]**

By: _____

Its: _____

APPROVED AS TO FORM:

Printed Name: _____

By: _____
Best Best & Krieger LLP
City Attorney

Contractor's License Number and
Classification

DIR Registration Number

**[IF CORPORATION, TWO SIGNATURES,
PRESIDENT OR VICE PRESIDENT AND
SECRETARY OR TREASURER
REQUIRED]**

END OF CONTRACT

CITY OF ONTARIO

Agenda Report
February 20, 2024

SECTION: **CONSENT CALENDAR**

Department: Public Works
Prepared By: Blaine M Ishii
Staff Member Presenting:
Tito Haes, Executive Director Public Works
Reviewed By: Bonnie Tam, Andrea Ampig
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 13

SUBJECT: A GOODS AND SERVICES AGREEMENT WITH AMERICAN RECLAMATION, INC. FOR SCRAP TIRE RECYCLING SERVICES

RECOMMENDATION: That the City Council take the following actions:

- A. Authorize the City Manager or his designee to execute a Goods and Services Agreement with American Reclamation, Inc., of Los Angeles, California, for Scrap Tire Recycling Services in an amount of \$215,000 per year for one (1) year, for a total contract amount of \$215,000;
- B. Authorize a 5% contingency of \$10,750 per year for one (1) year to address any unforeseen issues that may arise for a total not-to-exceed contract amount of \$225,750; and
- C. Authorize the City Manager or his designee to execute the optional three (3) one-year extensions to the Goods and Services Agreement in a total not-to-exceed amount of \$903,000 consistent with future budgets adopted by the City Council.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner

FISCAL IMPACT: The Fiscal Year 2023-24 Adopted Budget includes appropriations in the Integrated Waste Fund for Scrap Tire Recycling Services. The recommended Agreement is \$215,000 per year plus a 5% contingency of \$10,750 for a total annual cost of \$225,750. The total contract amount shall not exceed \$225,750 over the one-year term. At the City's discretion, three (3) additional one-year extensions may be exercised and shall not exceed \$225,750 per year for a total contract amount not-to-exceed \$903,000 over the four-year term. The total contract amount is for \$860,000 plus a 5% contingency of \$43,000 for a total not-to-exceed amount of \$903,000.

BACKGROUND & ANALYSIS: The City offers free tire drop-off services to residents Monday through Friday from 8:00 am to 5:00 pm at the Municipal Services Center (1425 S. Bon View Ave.) and collects abandoned tires within the City. Staff also produces scrap tires from City Operations. The program serves approximately 33,000 single-family homes and provides services to approximately 4,000 commercial and industrial businesses. American Reclamation, Inc. will provide recycling services for the tires collected through the City's programs. The services will be performed on an as-

needed basis depending on the volumes produced and collected.

American Reclamation, Inc. was the sole bidder for Scrap Tire Recycling Services on the City's electronic bid management system in response to Bid No 1726. Staff recommends awarding the Goods and Services Agreement to American Reclamation, Inc.



PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO GOODS & SERVICES AGREEMENT

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and American Reclamation, Inc., a corporation with its principal place of business at 4560 Doran Street Los Angeles, CA 90039 ("Vendor"). City and Vendor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. Vendor desires to perform and assume responsibility for the provision of certain services and goods required by the City on the terms and conditions set forth in this Agreement. Vendor represents that it is experienced in providing similar services and goods to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California and that is familiar with and understands the needs of City.

B. City desires to engage Vendor to sell to City the materials and/or equipment and/or render such services as more particularly described in this Agreement.

TERMS

1. SCOPE OF SERVICES.

1.1 General Scope of Services. Vendor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the Scrap Tire Recycling services ("Services") which are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

1.2 Goods. Vendor agrees to sell to City and City agrees to purchase the materials and/or equipment ("Goods") as specified and per the specifications attached hereto and incorporated herein as Exhibit "A." Unless specifically stated otherwise, the Goods shall be new and unused and of the current production year.

2. TERM.

2.1 The term of this Agreement shall be from February 20, 2024, to February 19, 2025 with three (3) additional one-year terms exercisable solely at the option of the City, unless earlier terminated as provided herein. Vendor shall provide all Goods and complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the work.

3. FEES AND PAYMENTS.

3.1 Compensation. Vendor shall receive compensation, including authorized reimbursements, for all Goods provided and Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed Two Hundred Fifteen Thousand Dollars (\$215,000) without written approval of City Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2 Payment of Compensation. Vendor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Vendor and Goods provided. The statement shall describe the amount of Services and Goods provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all non-disputed and approved charges thereon.

3.3 Reimbursement for Expenses. Vendor shall not be reimbursed for any expenses unless authorized in writing by City.

3.4 Extra Work. At any time during the term of this Agreement, City may request that Vendor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Goods and Services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Vendor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

4. RESPONSIBILITIES OF VENDOR.

4.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Vendor or under its supervision. Vendor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Vendor on an independent contractor basis and not as an employee. Vendor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Vendor shall also not be employees of City and shall at all times be under Vendor's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Vendor or any of Vendor's officers, employees or agents, except as set forth in this Agreement. Vendor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of providing Goods and Services under this Agreement and as required by law. Vendor 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, and workers' compensation insurance.

4.2 Schedule of Services.

4.2.1 Vendor shall perform the Services and provide Goods expeditiously, within the term of this Agreement, and in accordance with the Schedule of Goods and Services set forth in Exhibit "B" attached hereto and incorporated herein by reference ("Performance time"). Upon request of City, Vendor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Goods and Services. Vendor agrees that if the Goods are not provided and/or the Services are not completed within the Performance Time, it is understood, acknowledged and agreed that the City will suffer damage.

4.2.2 Neither City nor Vendor shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Vendor and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this Section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Agreement.

4.2.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Vendor to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

4.3 Conformance to Applicable Requirements. All work prepared by Vendor shall be subject to the approval of City.

4.4 Acceptance. The Goods shall be received subject to City's inspection and right of rejection. The Goods shall not be considered accepted until inspection, testing and/or use of the Goods is found to be in accordance with the City's specifications. Final inspection of the Goods shall be at the location specified herein, unless otherwise agreed in writing. If the Goods are found at any time to be defective in material or workmanship, or otherwise not in conformance with specifications, City shall have the right, in addition to any other rights which it may have under warranties or otherwise, to reject such Goods in whole or in part. Rejected Goods shall be held at Vendor's risk for a reasonable time thereafter and shall be returned or disposed of at Vendor's expense. No rejected Goods shall be replaced by Vendor without written instruction or authorization from City.

4.5 Coordination of Services. Vendor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

4.6 Standard of Care; Performance of Employees. Vendor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Vendor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Vendor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Vendor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City business license, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Vendor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Vendor's failure to comply with the standard of care provided for herein. Any employee of the Vendor or its sub-Vendors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed by the Vendor and shall not be re-employed to perform any of the Services provided under this Agreement.

4.7 Warranty. In addition to all warranties which may be provided by law, Vendor warrants that the Goods delivered hereunder shall, (a) be free from defect of material or workmanship and conform strictly to the specifications, drawings, or sample specified or furnished; (b) conform to drawings, plans, specifications, samples or other descriptions furnished, specified, accepted or approved by City; and (c) be merchantable and fit for the purposes intended. The warranty shall be for a period of one (1) year, or such longer period as provided by a manufacturer's warranty or as agreed to by Vendor and City, from the date of final written acceptance of the Goods by City. This warranty shall survive any inspection, delivery, acceptance, or payment by City of the Goods. Vendor, at its own expense, shall repair or replace, at the option of City, any defective Goods within two (2) business days after receipt of notice from City or within four (4) hours in case of emergency, as determined by City. Vendor also warrants that the Goods are free and clear of all liens and encumbrances whatsoever, that Vendor is conveying good and marketable title to same, and that Vendor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Goods. Vendor agrees to indemnify, defend and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

4.8 Reserved.

4.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Vendor may be required to do, or respecting the size of any payment to Vendor during the performance of this Contract, Vendor shall continue to perform the Work while said dispute is decided by the City. If Vendor disputes the City's decision, Vendor shall have such remedies as may be provided by law.

4.10 Laws and Regulations; Employee/Labor Certifications. Vendor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting its performance under this Agreement, including all Cal/OSHA requirements, and shall give all notices required by law. Vendor shall be liable for all violations of such laws and regulations in connection with this Agreement. If the Vendor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Vendor shall be solely responsible for all costs arising therefrom. City is a public entity

of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Vendor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

4.10.1 Employment Eligibility; Vendor. By executing this Agreement, Vendor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Vendor. Vendor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Vendor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Vendor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Vendor's compliance with the requirements provided for in Section 4.10 or any of its sub-sections.

4.10.2 Employment Eligibility; Subcontractors, and Consultants. To the same extent and under the same conditions as Vendor, Vendor shall require all of its subcontractors, and consultants performing any work relating to this Agreement to make the same verifications and comply with all requirements and restrictions provided for herein.

4.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Vendor verifies that they are a duly authorized officer of Vendor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Vendor or its subcontractors, or consultants to meet any of the requirements provided for in Sections 4.10.1 or 4.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Vendor under Section 4.10.2); or (3) failure to immediately remove from this contract any person found not to be in compliance with such requirements.

4.10.4 Labor Certification. By its signature hereunder, Vendor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

4.10.5 Equal Opportunity Employment. Vendor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or

applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Vendor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

4.10.6 Air Quality. Vendor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Vendor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Vendor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Vendor, its subcontractors, or others for whom Vendor is responsible under its indemnity obligations provided for in this Agreement.

4.10.7 Water Quality.

4.10.7.1 Management and Compliance. To the extent applicable, Vendor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency, the State Water Resources Control Board and the Santa Ana Regional Water Quality Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

4.10.7.2 Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Vendor or City to penalties, fines, or additional regulatory requirements. Vendor shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Vendor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole negligence or willful misconduct of the City, its officials, officers, agents, employees or authorized volunteers.

4.10.7.3 Training. In addition to any other standard of care requirements set forth in this Agreement, Vendor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Vendor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, City will provide Vendor with a list of training programs that meet the requirements of this paragraph.

5. PROJECT MANAGEMENT

5.1 City's Representative. The City hereby designates Blaine Ishii, Integrated Waste Director, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Vendor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

5.2 Vendor's Representative. Vendor hereby designates John Gasparian, Vice President and General Manager, or his or her designee, to act as its representative for the performance of this Agreement ("Vendor's Representative"). Vendor's Representative shall have full authority to represent and act on behalf of the Vendor for all purposes under this Agreement. The Vendor's Representative shall supervise and direct the Services, 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 work required under this Agreement.

6. INSURANCE.

6.1 Time for Compliance. Vendor shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Vendor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Section.

6.2 Minimum Requirements. Vendor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Vendor, its agents, representatives, employees or subcontractors. Vendor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

6.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. The policy shall not contain any exclusion contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29); or (2) cross liability for claims or suits by one insured against another.

6.2.2 Minimum Limits of Insurance. Vendor shall maintain limits no less than: (1) *General Liability* \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability* \$2,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease. Defense costs shall be paid in addition to the limits.

6.2.3 Manufacturer of Goods. If Vendor is also the manufacturer of any equipment included in the Goods, Vendor shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment with limits of not less than \$1,000,000.

6.2.4 Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or materially reduced, Vendor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Vendor or the City may withhold amounts sufficient to pay premium from Vendor payments. In the alternative, the City may suspend or terminate this Agreement.

6.2.5 Additional Insured. The City of Ontario, its directors, officials, officers, employees, agents, and volunteers shall be named as additional insureds on Vendor's and its subcontractors' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

6.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Vendor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

6.3.1 General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City of Ontario, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Services or ongoing and complete operations performed by or on behalf of the Vendor, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Vendor's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance, deductible, or self-insurance shall be called upon to protect it as a named insured. Any insurance, deductible, or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Vendor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 6.2.2, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 6.3.1.

6.3.2 Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Vendor's scheduled

underlying coverage. Any insurance, deductible, or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Vendor's insurance and shall not be called upon to contribute with it in any way. Policy shall contain or be endorsed to contain such provisions. Notwithstanding the minimum limits set forth in Section 6.2.2, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 6.3.2.

6.3.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Vendor.

6.3.4 All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officials, officers, employees, agents and volunteers, or any other additional insureds.

6.4 Separation of Insureds; No Special Limitations; Waiver of Subrogation. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. All policies shall waive any right of subrogation of the insurer against the City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Vendor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Vendor hereby waives its own right of recovery against City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

6.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Vendor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) the Vendor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

6.6 Subcontractor Insurance Requirements. Vendor shall not allow any subcontractors to commence work on any subcontract relating to the work under the Agreement until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. If requested by Vendor, the City may approve different scopes or minimum limits of insurance for particular subcontractors. The Vendor and the City shall be named as additional insureds on all subcontractors' policies of Commercial General Liability using ISO form 20 38, or coverage at least as broad.

6.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

6.8 Verification of Coverage. Vendor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates 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 and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

6.9 Reporting of Claims. Vendor shall report to the City, in addition to Vendor's insurer, any and all insurance claims submitted by Vendor in connection with the Services under this Agreement.

7. INDEMNIFICATION.

7.1 Scope of Indemnity. To the fullest extent permitted by law, Vendor shall defend, indemnify and hold the City, its officials, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Vendor, its officials, officers, employees, subcontractors, consultants or agents arising out of or in connection with the Services, the Goods or this Agreement, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Vendor's indemnity obligation shall not apply to such loss or damage which is caused by the sole negligence or willful misconduct of the City.

7.2 Additional Indemnity Obligations. Vendor shall defend, with counsel of City's choosing and at Vendor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and volunteers. In addition, Vendor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and volunteers as part of any such claim, suit, action or other proceeding. Vendor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Vendor shall reimburse City and its officials, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Vendor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and volunteers.

8. CALIFORNIA LABOR CODE

8.1 Prevailing Wages. Vendor 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 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and

the performance of other requirements on “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Vendor agrees to fully comply with such Prevailing Wage Laws. City shall provide Vendor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Vendor 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 Vendor’s principal place of business and at the project site. Vendor 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. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Vendor shall therefore comply with such Labor Code sections to the fullest extent required by law.

8.2 Registration. If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Vendor and all subcontractors must be registered with the Department of Industrial Relations. Vendor shall maintain registration for the duration of this Agreement and require the same of any subcontractor. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

8.3 Compliance Monitoring. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Vendor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Vendor or any subcontractor that affect Vendor’s performance of Services, including any delay, shall be Vendor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Vendor caused delay and shall not be compensable by the City. Vendor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Vendor or any subcontractor.

9. SAFETY.

Vendor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its services, the Vendor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

10. ACCOUNTING RECORDS.

Vendor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Vendor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Vendor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

11. TERMINATION OF AGREEMENT.

11.1 Grounds for Termination. City may, by written notice to Vendor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Vendor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Vendor shall be compensated only for those Services and Goods which have been adequately rendered to City, and Vendor shall be entitled to no further compensation. If terminated for cause because the Vendor refused or failed to deliver the Goods, the City may obtain Goods by whatever method it may deem expedient. If City's cost of obtaining the Goods, including compensation for additional managerial and administrative services, will exceed the unpaid balance of the Goods, Vendor will be liable for and will pay the difference to City. Vendor may not terminate this Agreement except for cause. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

11.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Vendor to provide all finished or unfinished documents and data and other information of any kind prepared by Vendor in connection with the performance of the Services under this Agreement. Vendor shall be required to provide such document and other information within fifteen (15) days of the request.

11.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, goods and services similar to those terminated.

12. GENERAL PROVISIONS.

12.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Vendor:

American Reclamation, Inc.

4560 Doran Street

Los Angeles, CA 90039-1006

Attn: John R. Gasparian, Sr., Vice President and General Manager

City:

City of Ontario
303 East "B" Street
Ontario, CA 91764-4196
Attn: Blaine Ishii, Integrated Waste Director

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

12.2 Subcontracting. Vendor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

12.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Vendor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Vendor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Vendor shall be barred from bringing and maintaining a valid lawsuit against the City.

12.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

12.5 City's Right to Employ Other Vendors. City reserves right to employ other Vendors in connection with the Goods and Services provided under this Agreement.

12.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

12.7 Assignment or Transfer. Vendor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

12.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Vendor include all personnel, employees, agents, and subcontractors of Vendor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this

Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

12.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

12.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. 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.

12.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 12.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

12.12 Invalidity; 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.

12.13 Prohibited Interests. Vendor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Vendor, to solicit or secure this Agreement. Further, Vendor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Vendor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Vendor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. 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.

12.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

12.15 Authority to Enter Agreement. Vendor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

12.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

12.17 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

SIGNATURES ON NEXT PAGE

**SIGNATURE PAGE FOR GOODS & SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO
AND AMERICAN RECLAMATION, INC.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the day and year first above written.

CITY OF ONTARIO

American Reclamation, Inc.

Approved By:

Scott Ochoa
City Manager

By: _____

Its: _____

Approved as to Form:

Printed Name: _____

Best Best & Krieger LLP
City Attorney

By: _____

Its: _____

Printed Name: _____

Attested By:

Assistant City Clerk

EXHIBIT "A"

SCOPE OF SERVICES

GENERAL

The City of Ontario is seeking bids for **Scrap Tire Recycling Services**. The City offer free drop-off service to residents at the Municipal Services Center, collects abandoned tires within the City and produces scrap tires from City operations. City tire collection averages 15 tons per month. This is an estimate only and not a guaranteed volume. company must be licensed and register in the State of California to practice work for which consideration is required.

The initial term of the contract resulting from this RFP shall be a one-year term from the date the City executes the contract plus three optional one-year extension periods at the City's discretion that are subject to the approval of the City Manager.

SERVICES TO BE PROVIDED

The Firm selected shall provide the following services:

- Provide tire pick up services for the City of Ontario at 1425 South Bon View Avenue, Ontario, California.
- Provide tire pick up services for the City of Ontario at the West Valley Materials Recovery Facility at 13373 Napa Street, Fontana, California.
- Provide 40 cubic yard bin(s) to store collected tires at the City Facility and West Valley Materials Recovery Facility.
- Provide collection of tires within one to two business days after notice from City.
- Provide full documentation for accounting and regulatory purposes.
- Transmit data directly to CalRecycle, on the City's behalf.
- Upon inspection, provide the best recycling solution based on tire collection.

EXHIBIT “B”

SCHEDULE OF SERVICES

Deliveries

All deliveries shall be made within 24-72 hours after receipt of order (ARO) and are to be made F.O.B. destination with a priced delivery invoice; option delivered with a packing/delivery slip and the invoice emailed with 24 hours of delivery (As determined by the City some special-order items may be exempt from delivery time frame).

Delivery Hours are Monday through Friday 6:00 a.m. and 3 p.m.

Delivery/Pick-up Locations:

1. Ontario Municipal Services Center – 1425 South Bon View Avenue, Ontario, CA 91761
2. West Valley Material Recovery Facility – 13373 Napa Street, Fontana, CA 92335

EXHIBIT "C"
COMPENSATION

Contractor will invoice City after completing each requested service with date and description of items and/or service performed. Periodic payments shall be made within 30 days of receipt of the invoice which includes a detailed description of the work performed.

No.	Description	Estimated Qty.	UOM	Per Unit Cost
1	Recycling Fee per Ton - Pick Up at Municipal Services Center and Materials Recovery Facility	573	Ton	\$375

CITY OF ONTARIO

Agenda Report
February 20, 2024

SECTION: ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

Department: Engineering
Prepared By: Tricia Maruki
Staff Member Presenting:
Scott Murphy, Executive Director Community
Development
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 14

SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CERTAIN SECTIONS OF CHAPTER 13 OF THE ONTARIO MUNICIPAL CODE RELATING TO THE FLOOD DAMAGE PREVENTION PROGRAM

RECOMMENDATION: That the City Council introduce and waive further reading of an Ordinance amending certain sections of Chapter 13 of the Ontario Municipal Code relating to the City's flood damage prevention program.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Maintain the Current High Level of Public Safety

FISCAL IMPACT: There is not a direct fiscal impact associated with this action.

BACKGROUND & ANALYSIS: The Federal Emergency Management Agency ("FEMA") manages the National Flood Insurance Program and publishes maps with flood insurance related information. The City is included in a recent Flood Insurance Rate Map (FIRM) update which automatically prompts a FEMA review of the City's current floodplain ordinance. Based on discussions with FEMA, the proposed ordinance includes language about Substantial Damage/Substantial Improvement determinations and is compliant with the current California Building Code elevation standards. The proposed ordinance has been reviewed by FEMA and the City Attorney.

ENVIRONMENTAL REVIEW: The Ordinance is not subject to the requirements of the California Environmental Quality Act ("CEQA") for the following reasons: The Ordinance is (1) not a "project" within the meaning of sections 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines, because it has no potential for resulting in a direct or indirect physical change in the environment; and (2) is exempt under section 15061, subdivision (b)(3), the general rule exemption, because it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CERTAIN SECTIONS OF CHAPTER 13 OF THE ONTARIO MUNICIPAL CODE RELATING TO THE FLOOD DAMAGE PREVENTION PROGRAM.

WHEREAS the City of Ontario by Ordinance Nos. 2109 (1980), 2409 (1988) and 2991 (2014) established the Flood Damage Prevention Program ("Program"), which is codified in Chapter 8-13 of the Ontario Municipal Code; and

WHEREAS the Federal Emergency Management Agency ("FEMA") manages the National Flood Insurance Program and publishes maps with flood insurance related information; and

WHEREAS FEMA undertook a review of the City's current Flood Damage Prevention Program and has notified the City that it is not in compliance with current requirements; and

WHEREAS FEMA has recommended revisions to the City's Program; and

WHEREAS FEMA requires the City to incorporate updated regulations into the Program; and

WHEREAS the City wishes to amend certain sections of Chapter 13 of the Municipal Code to comply with the direction provided by FEMA.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and are hereby incorporated herein by this reference.

SECTION 2. Amendment. Subsections (g), (k), (ii) and (jj) of Section 8-13.201 ("Definitions") are hereby revised to read as follows (deletions shown in ~~striketrough~~, additions in underline, current subsections to be subsequently renumbered):

(g) "Base flood elevation" means the elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM).

~~(k) "Flood Boundary and Floodway Map" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of flood hazard and the floodway.~~

(hh) “Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(ii) “~~Variation~~ Variance” means a grant of relief from the requirements of this chapter, which permits construction in a manner which would otherwise be prohibited by this chapter.”

SECTION 3. Amendment. Subsection (a) of Section 8-13.403 addition of subsection (5) is hereby added to read as follows (additions in underline):

“(5) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps when the analyses indicate changes in base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available.”

SECTION 4. Amendment. Subsection (f) of Section 8-13.403 is hereby added to read as follows (additions in underline, current subsection to be subsequently renumbered):

“(f) Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Building Official, in coordination with the Floodplain Administrator, shall:

(1) Require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work to the satisfaction of the Building Official; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.

(2) Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, when applicable, to the market value of the building or structure.

(3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.

(4) Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.”

SECTION 5. Amendment. Subsection (c) of Section 8-13.501 (“Standards of construction.”) is hereby amended to read as follows (deletions shown in ~~strikethrough~~, additions in underline):

“(1) New construction and substantial improvements of any structure shall have the lowest habitable floor, including basement, elevated to ~~or~~ at least one (1) foot above the base flood elevation. Nonresidential structures may meet the standards in §8-13.501(c)(3). Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor, or verified by the community building inspector to be properly elevated. Such certification or verification shall be provided to the Building Official.

(2) New construction and substantial improvement of any structure in Zone AH or AO shall have the lowest floor, including basement, elevated above the highest adjacent grade at least ~~as high as~~ one (1) foot higher than the depth number specified in feet on the FIRM, or at least two (2) feet if no depth number is specified. Nonresidential structures may meet the standards in § 8-13.501(c)(3). Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor, or verified by the community building inspector to be properly elevated. Such certification or verification shall be provided to the Building Official.

(3) Nonresidential construction shall either be elevated in conformance with §8-13.501(c)(1) or (2) or, together with attendant utility and sanitary facilities:

- (i) Be floodproofed so that ~~below the base flood level~~ the structure is watertight with walls substantially impermeable to the passage of water to a minimum of one (1) foot above the base flood elevation;

SECTION 6. Amendment. Subsection (d) of Section 8-13.601 (“Appeal board.”) is hereby deleted (deletions shown in ~~strikethrough~~, current subsection to be subsequently renumbered):

~~“(d) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (½) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing paragraphs (1) through (11) of subsection (c) of this section have been fully considered. As the lot size increases beyond one-half (½) acre, the technical justification required for issuing the variance increases.”~~

SECTION 7. Amendment. Subsection (a) of Section 8-13.504 (“Standards for manufactured homes.”) is hereby amended to read as follows (deletions shown in ~~strikethrough~~, additions in underline):

“(a) Be elevated so that the lowest floor is ~~at or~~ a minimum of one (1) foot above the base flood elevation; and”

SECTION 8. Amendment. Subsection (a) of Section 8-13.602 ("Conditions for variance.") is hereby amended to read as follows (deletions shown in ~~strike through~~, additions in underline):

“(a) A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic structure upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure. When the proposed work precludes the structure's continued designation as a historic structure, a variance shall not be granted and the structure and any repair, improvement, and rehabilitation shall be subject to the requirements of the building code in conjunction with the provisions of this Ordinance. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

SECTION 9. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, unconstitutional or otherwise struck-down by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more portions of this ordinance might be declared invalid.

SECTION 10. This Ordinance shall become effective thirty (30) days from its adoption.

SECTION 11. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this day of 2024.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held February 20, 2024 and adopted at the regular meeting held by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____, 2024 and that a copy of the Ordinance was published on _____, 2024 and _____, 2024 in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)