

**REQUEST FOR PROPOSALS
FOR
CITY OF SAN BERNARDINO
FOR
RFP F-22-80A
OUTSIDE ARMED SECURITY SERVICES**



**CITY OF SAN BERNARDINO
290 North D Street
San Bernardino, California 92401
Telephone: (909) 384-7272
WWW.SBCITY.ORG**

CITY OF SAN BERNARDINO
NOTICE INVITING PROPOSALS
OUTSIDE ARMED SECURITY SERVICES
RFP F-22-80A

PUBLIC NOTICE IS HEREBY GIVEN that proposals will be received by the City of San Bernardino via Planetbids until 3:00 PM, February 23, 2023. Proposals received after this date will be returned to the proposers unopened. Faxed or electronically submitted proposals will not be accepted.

The City is requesting proposals to provide: **Outside Armed Security Services**

The award of this contract is subject to available budget adequate to carry out the provisions of the proposed agreement including the identified scope of work. The City reserves the right to reject any or all proposals determined not to be in the best interest of the City.

Interested proposers may download copies of the Request for Proposals ("RFP") by visiting the City's web site, www.sbcity.org. All addenda will be published on the City's website.

For more information regarding the RFP, please contact:

City of San Bernardino Purchasing Department
www.purchasing@sbcity.org

**CITY OF SAN BERNARDINO
REQUEST FOR PROPOSALS**

OUTSIDE ARMED SECURITY SERVICES

I. BACKGROUND AND INTRODUCTION

The City of San Bernardino ("City") is requesting proposals from qualified firms¹ ("Proposers") for **Outside Armed Security Services** ("Services").

To serve and promote the welfare of its residents, the City intends to procure the Services, as described below.

The City is in process of revitalizing downtown San Bernardino, and the Regal Theater is an integral part of downtown. Security is important for safe patronage, especially during night hours. Moviegoers should have safety measures in place to enhance their theater-going experience.

II. REQUEST FOR PROPOSALS

A. Scope of Services

The Services sought under this Request for Proposals ("RFP") are set forth in more detail in **Exhibit "A"**, attached hereto and incorporated herein by this reference. Notwithstanding the inclusion of such Services in **Exhibit "A"**, the final scope of Services negotiated between City and the successful Proposer shall be set forth in the Professional Service Agreement executed by and between City and the successful Proposer. A copy of the Agreement is attached hereto as **Exhibit "C"** and incorporated herein by this reference.

B. City Contact for this RFP

The principal contact for the City regarding this RFP will be Michelle Parra, Buyer for the Purchasing Department, (909)384-5242, purchasing@sbcity.org or a designated representative, who will coordinate the assistance to be provided by the City to the Proposer.

C. Requests for Clarification

All questions, requests for interpretations or clarifications, either administrative or technical must be requested in writing and directed to the City Contact for this RFP, identified above.

All written questions, if answered, will be issued to all prospective proposers via email notification from Planetbids. Oral statements regarding this RFP by any persons should be considered unverified information unless confirmed in writing. To ensure a response, questions must be submitted to Planetbids by 3:00 p.m. local time on the date identified in the Proposal Schedule. Each Proposer is responsible for ensuring that it has received all addenda, clarifications, supplemental information and responses to questions prior to submitting a

¹Use of the term "firm" shall mean individual proprietorship, partnership, Limited Liability Company, corporation or joint venture.

proposal.

D. Pre-Proposal Meeting

Meeting is not required.

E. Content and Format of Proposal

Proposals shall be concise, well organized and demonstrate qualifications and applicable experience. Proposals shall include one (1) electronic proposal submitted to Planetbids. Proposals shall be organized, tabbed, and numbered in the order presented below. Proposals must include page numbers for all pages in the proposal.

Proposals shall be in the following order and shall include:

1. Executive Summary: (limit: **1** page) Summarize the content of your proposal in a clear and concise manner.
2. Table of Contents: (limit: **1** page)
3. Identification of Proposer: (limit: **1** page)
 - a. Legal name and address of the company.
 - b. Legal form of company (partnership, corporation).
 - c. If company is a wholly owned subsidiary of a "parent company," identify the "parent company."
 - d. Name, title, address and telephone number of the proposed representative to contact concerning the Proposal Submittal.
 - e. California Business License Number
4. Staffing Resources: (limit: **2** pages)
 - a. Firm Staffing and Key Personnel
 - (i) Provide the number of staff to be assigned to perform the Services and the names/discipline/job title of each as well as your firm's capacity to provide additional personnel as needed.
 - (ii) Identify three (3) persons that shall be principally responsible for working with the City. Indicate the role and responsibility of each individual. If the Proposer is chosen as a finalist, these principal individuals must attend the interview and in-person presentation.

- (iii) Describe proposed team organization, including identification and responsibilities of key personnel. Please include one-page resumes.
- (iv) Provide brief biographies of individuals that shall be working directly with the City.

b. Subcontractors

- (i) The Proposer shall identify functions that are likely to be subcontracted and identify the subcontractor(s) that is anticipated to perform each function, if known at this time.

5. Fiscal Stability: (limit: **4** pages- not including supporting documentation)

- a. The Proposer should provide evidence of corporate stability including:
 - (i) A current report from any commercial credit rating service such as Dunn and Bradstreet or Experian; **or**
 - (ii) A letter from a financial institution stating a current line of credit; **and**
 - (iii) Latest audited financial statement and/or annual report that has been certified by a CPA. This information will remain confidential and is not subject to public disclosure.

6. Experience and Technical Competence: (limit: **5** pages)

a. Experience

- (i) The Proposer shall provide a description of how the Proposer's experience, technical and professional skills will meet the goals and fulfill the general functions identified in this RFP.
- (ii) Describe the past experience of the staff to be assigned to perform the Services in performing similar services.
- (iii) The Proposer shall state the number of years the firm has conducted business. Proposer must have at least four (4) years' experience in providing the required scope of Services for public clients.
- (iv) Provide three (3) references regarding the Proposer's experience and performance performing similar services. Include the following information: (1) Organization/City, contact name, phone number, e-mail address; and (2) project size and description, if applicable, and description of services.

- (v) Describe the Proposer's local experience and knowledge of City.

b. Project Specific Experience

- (i) The Proposer shall provide a description of the three most relevant service contracts held within the last five years, one page per project, to include:
 - (a) Role of the firm
 - (b) Dollar value of the services
 - (c) Dollar value of the fee
 - (d) Description of services
 - (e) Staffing
 - (f) Duration of providing services
 - (g) Relationship to client
 - (h) Contact name, position, entity name, telephone number, fax number and e-mail address for each project.
- (ii) If any of the following has occurred, please describe in detail:
 - (a) Failure to enter into a contract or professional services agreement once selected.
 - (b) Withdrawal of a proposal as a result of an error.
 - (c) Termination or failure to complete a contract.
 - (d) Debarment by any municipal, county, state, federal or local agency.
 - (e) Involvement in litigation, arbitration or mediation. Conviction of the firm or its principals for violating a state or federal antitrust law by bid or proposal rigging, collusion, or restrictive competition between bidders or proposers, or conviction of violating any other federal or state law related to bidding or professional services performance. Knowing

concealment of any deficiency in the performance of a prior contract.

- (f) Falsification of information or submission of deceptive or fraudulent statements in connection with a contract.
- (g) Willful disregard for applicable rules, laws or regulations.

Information regarding any of the above may, at the sole discretion of the City, be deemed to indicate an unsatisfactory record of performance.

c. Technical Competence

- (i) Description of in-house resources (i.e., computer capabilities, software applications, modem protocol, modeling programs, etc.)
- (ii) Ability to draw upon multi-disciplinary staff to address the services requested in this RFP.

7. Proposed Method to Accomplish the Work: (limit: **2** pages) Describe the technical and management approach to providing the services to the City. Proposer should take into account the scope of the Services, goals of the City, and general functions required. Include a draft first year schedule of tasks, milestones, and deliverables that will provide for timely provision of the Services. In reviewing the scope of Services and goals described in **Exhibit "A"**, the Proposer may identify additional necessary tasks and is invited to bring these to the City's attention within the discussion of its proposed method to accomplish the work.

8. Fee Proposal: (limit: **10** pages) Please provide a Unit Cost fee proposal for the scope of Services. The fee proposal shall include hourly rates for all personnel for "Additional Work" (as such term is defined in the proposed Agreement attached hereto as **Exhibit "B"**). **Fee Proposal shall be uploaded** separately to Planetbids under the "Cost File" tab.

9. Certificate of Insurance: (limit: **2** pages) - not including supporting documentation) See the Agreement, attached hereto as **Exhibit "B"**, for a description of the insurance requirements. Proposer shall provide a copy of their Certificate of Insurance showing that their insurance meets the requirements of the city.

10. Litigation: (limit: **2** pages) Provide litigation history for any claims filed by your firm or against your firm related to the provision of Services in the last five (5) years.

11. Other Information: (limit: **2** pages) This section shall contain all other pertinent information regarding the following:

- a. Demonstration of record of staffing tasks efficiently and completing projects on time and within the allocated budget.

- b. Description of community involvement.
- c. Description of any previous involvement with the City.
- d. A statement that the Proposer has no conflicts of interest in connection with providing the Services.

12. Certification of Proposal: This section shall state:

“The undersigned hereby submits its proposal and, by doing so, agrees to furnish services to the City in accordance with the Request for Proposal (RFP), and to be bound by the terms and conditions of the RFP.”

13. Appendices: (limit: 2 pages)

F. No Deviations from the RFP

In submitting a proposal in response to this RFP, Proposer is certifying that it takes no exceptions to this RFP including, but not limited to, the Agreement. If any exceptions are taken, such exceptions must be clearly noted in the proposal and may be reason for rejection of the proposal. As such, Proposer is directed to carefully review the proposed Agreement and, in particular, the insurance and indemnification provisions therein. If proposer does not take any exceptions or deviations from the terms and conditions indicated in the agreement, then the proposer must indicate this information by making a statement within the proposal documents.

G. Selection Process

- 1. The City will evaluate proposals based on the following criteria:
 - a. The Proposer is properly licensed to practice in the State of California.
 - b. The Proposer has no conflict of interest with regard to any other work performed by the firm for the City.
 - c. Clarity and conformance of proposal to the RFP.
 - d. Content of the proposal.
 - e. Proposer's experience and performance.
 - f. Team members' experience and performance.
 - g. Fee proposal.
 - h. Comments by references. (Pass/Fail)
 - i. Exceptions/Deviations to RFP/Agreement Template

(Pass/Fail)

j. Litigations (Pass/Fail)

2. During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from Proposers, or to allow corrections of errors or omissions.

3. It is the City's intent to select a Proposer best evidencing demonstrated competence and professional qualification to perform the Services. The City reserves the right to reject all proposals, select by proposal review only or interview as needed. Certain Proposers may be selected to make a brief presentation and oral interview after which a final selection will be made. The successful Proposer will be selected on the basis of information provided in the RFP, in-person presentations, and the results of the City's research and investigation. Upon selection of a Proposer, the City will endeavor to negotiate a mutually agreeable Agreement with the selected Proposer. In the event that the City is unable to reach agreement, the City will proceed, at its sole discretion, to negotiate with the next Proposer selected by the City. The City reserves the right to contract for services in the manner that most benefits the City including awarding more than one contract if desired.

4. After negotiating a proposed Agreement that is fair and reasonable, City staff will make the final recommendation to the City Council concerning the proposed Agreement. The City Council has the final authority to approve or reject the Agreement.

H. Protests

1. Protest Contents: Protests based on the content of the RFP shall be submitted to the City no later than ten (10) calendar days prior to the scheduled proposal submittal deadline. If necessary, the proposal submittal deadline may be extended pending a resolution of the protest. Proposer may protest a contract award if the Proposer believes that the award was inconsistent with City policy or this RFP is not in compliance with law. A protest must be filed in writing with the City (email is not acceptable) within five (5) business days after receipt of notification of the contract award. Any protest submitted after 5 p.m. of the fifth business day after notification of the contract award will be rejected by the City as invalid and the Proposer's failure to timely file a protest shall waive the Proposer's right to protest the contract award. The Proposer's protest must include supporting documentation, legal authorities in support of the grounds for the protest and the name, address and telephone number of the person representing the Proposer for purposes of the protest. Any matters not set forth in the protest shall be deemed waived.

2. City Review: The City will review and evaluate the basis of the protest, provided that the protest is filed in strict conformity with the foregoing. The City shall provide the Proposer submitting the protest with a written statement concurring with or denying the protest. Action by the City relative to the protest will be final and not subject to appeal or reconsideration. The procedure and time limits set forth in this section are mandatory and are the Proposer's sole and exclusive remedy in the event of protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

I. Proposal Schedule

The tentative schedule is as follows:

ACTION	DATE
Release of Request for Proposal	January 26, 2023
Last Day to Submit Questions for Clarification received by the City on or before 3:00 pm	February 8, 2023
Clarifications Issued by City on or before 3:00 pm	February 14, 2023
Deadline for Receipt of Proposals submitted on or before 3:00 pm	February 23, 2023

The above scheduled dates are tentative and City retains the sole discretion to adjust the above schedule. Nothing set forth herein shall be deemed to bind City to award a contract for the above-described professional Services and City retains the sole discretion to cancel or modify any part of or all of this RFP at any time.

J. Submittal Requirements

1. General: It is strongly recommended that the Proposer submit proposals in the format identified in this RFP to allow the City to fully evaluate and compare the proposal. All requirements and questions in the RFP should be addressed and all requested data shall be supplied. The City reserves the right to request additional information which, in the City's opinion, is necessary to assure that the Proposer's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the Agreement.

2. Preparation: Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Responses should emphasize the Proposer's demonstrated capability to perform the Services. Expensive bindings and promotional materials, etc., are not necessary or desired. However, technical literature that supports the approach to providing the Services and work plan should be forwarded as part of the proposal. Emphasis should be concentrated on completeness, approach to the work and clarity of proposal.

3. Site Examination: Proposers may visit the City and its physical facilities to determine the local conditions which may in any way affect the performance of the work; familiarize themselves with all federal, state and local laws, ordinances, rules, regulations, and codes affecting the performance of the work; make such investigations, as it may deem necessary for performance of the Services at its proposal price within the terms of the Agreement; and correlate its observations, investigations, and determinations with the requirements of the Agreement.

4. Authorization: The proposal shall be signed by an individual, partner, officer or officers authorized to execute legal documents on behalf of the Proposer.

5. Confidentiality of Proposal: Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, proposals submitted in response to this RFP shall be held confidential by City and shall not be subject to disclosure under the California Public Records Act (Cal. Government Code section 6250 *et seq.*) until after either City and the successful Proposer have completed negotiations and entered into an Agreement or City has rejected all proposals. All correspondence with the City including responses to this RFP shall become the exclusive property of the City and shall become public records under the California Public Records Act. Furthermore, the City shall have no liability to the Proposer or other party as a result of any public disclosure of any proposal or the Agreement.

If a Proposer desires to exclude a portion of its proposal from disclosure under the California Public Records Act, the Proposer must mark it as such and state the specific provision in the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if a Proposer submits trade secret information, the Proposer must plainly mark the information as "Trade Secret" and refer to the appropriate section of the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked "Confidential", "Trade Secret" or "Proprietary" ("Proprietary Information"), the City will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction. Proposer shall have five (5) working days after receipt of such notice to give City written notice of Proposer's objection to the City's release of Proprietary Information. Proposer 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.

Proposals which indiscriminately identify all or most of the proposal as exempt from disclosure without justification may be deemed unresponsive and disqualified from further participation in this procurement.

Submittal Instructions: Electronic PDF file format via Planetbids. Please allow time for system to process your proposal. The Proposal must be received no later than 3:00pm PST, on or before February 23, 2023. The City shall not be responsible for proposals that are not received on time. The City will not be responsible for and will **not** accept late bids due to slow internet connection, or incomplete transmissions.

K. General Conditions

1. Amendments to RFP: The City reserves the right to amend the RFP and issue to all Proposers an addendum.

2. Amendments to Proposals: Unless specifically requested by the City, no amendment, addendum or modification shall be accepted after a proposal has been submitted to City. If a change to a proposal that has been submitted is desired, the submitted proposal must be withdrawn and the replacement proposal submitted prior to the deadline stated herein for receiving proposals.

3. Non-Responsive Proposals: A proposal may be considered non-responsive if conditional, incomplete, or if it contains alterations of form, additions not called for, or other irregularities that may constitute a material change to the proposal.

4. Costs for Preparing: The City shall not compensate any Proposer for the cost of preparing any proposal, and all materials submitted with a proposal shall become the property of the City. The City will retain all proposals submitted and may use any idea in a proposal regardless of whether that proposal is selected.

5. Cancellation of RFP: City reserves the right to cancel this RFP at any time prior to contract award without obligation in any manner for proposal preparation, interview, fee negotiation or other marketing costs associated with this RFP.

6. Price Validity: Prices provided by Proposers in response to this RFP are valid for **120** days from the proposal due date. The City intends to award the contract within this time but may request an extension from the Proposers to hold pricing, until negotiations are complete and the contract is awarded.

7. No Commitment to Award: Issuance of this RFP and receipt of proposals does not commit the City to award a contract. City expressly reserves the right to postpone the proposal for its own convenience, to accept or reject any or all proposals received in response to this RFP, to negotiate with more than one Proposer concurrently, or to cancel all or part of this RFP.

8. Right to Negotiate and/or Reject Proposals: City reserves the right to negotiate any price or provision, task order or service, accept any part or all of any proposals, waive any irregularities, and to reject any and all, or parts of any and all proposals, whenever, in the sole opinion of City, such action shall serve its best interests and those of the tax-paying public. The Proposers are encouraged to submit their best prices in their proposals, and City intends to negotiate only with the Proposer(s) whose proposal most closely meets City's requirements at the lowest estimated cost. The Agreement, if any is awarded, shall go to the Proposer whose proposal best meets City's requirements.

9. Non-Discrimination: The City does not discriminate on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability or gender in consideration for an award of contract.

Publication Date of RFP: **January 26, 2023**

EXHIBIT A

SCOPE OF SERVICES: OUTSIDE ARMED SECURITY GUARD DUTIES AND RESPONSIBILITIES AT THE REGAL THEATER, DOWNTOWN SAN BERNARDINO

The overall duty of an armed Security Guard is to protect the Regal Theater's property, employees and visitors. Here are their daily responsibilities:

- Patrolling and monitoring activities on the Regal Theater's premises Monday through Sunday, 12 PM to 2 AM, to discourage criminals and ensure the environment is safe and secure for movie-goers.
- Evicting trespassers and violators and detaining perpetrators while following legal protocols before relevant authorities arrive to take over.
- Controlling the entrance and departure of employees, movie-goers, and vehicles according to protocols.
- Monitoring surveillance cameras to watch out for any disruptions or unlawful activities.
- Providing detailed reports on daily activities and any incidents that may have occurred to management.
- Using provided communication devices such as two-way radios in a clear and concise manner.

Bidders must acknowledge all requirements of scope of work, previous section, including all categories and sub-points.

Please Sign and Acknowledge Here: _____

If Bidder can provide additional services that are related to the services above, but not mentioned in this section, please list the additional services and detail how they will be beneficial to the city

BIDDER'S RESPONSE:

EXHIBIT “B”

Fee Proposal

<u>Description</u>	<u>Unit of Measure</u>	<u>Price</u>
Straight Hours	40 per week	
Overtime Hours	6 per week	
46 Total Hours per week of Coverage		
Calculation for Weekly Pricing		
40 Straight Hours X	\$	\$_____per week rate
6 Overtime Hours X	\$	\$_____per week rate
Weekly Wage + Overtime Wage		\$_____per week total
Weekly Total X 52 Weeks = Fiscal 2023 Cost		\$_____Fiscal Year Total
Total Cost Fiscal Year Cost		\$

EXHIBIT C

CITY OF SAN BERNARDINO

PROFESSIONAL SERVICE AGREEMENT

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF SAN BERNARDINO AND [***INSERT NAME***]

This Agreement is made and entered into as of [***INSERT MONTH***] [***INSERT DATE***], 2022 by and between the City of San Bernardino, a charter city and municipal corporation organized and operating under the laws of the State of California with its principal place of business at Vanir Tower, 290 North D Street, San Bernardino, CA 92401 ("City"), and [***INSERT NAME***], a [***INSERT TYPE OF ENTITY AND STATE - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY***] with its principal place of business at [***INSERT ADDRESS***] (hereinafter referred to as "Consultant"). City and Consultant are hereinafter sometimes referred to individually as "Party" and collectively as the "Parties."

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

[***INSERT DESCRIPTION***] (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. Incorporation of Recitals. The recitals above are true and correct and are hereby incorporated herein by this reference.

2. Services. Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

3. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel identified in their proposal. Consultant warrants that Consultant is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement. Consultant further represents that no City employee will provide any services under this Agreement.

4. Compensation.

a. Subject to paragraph 4(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "A." *****Alternatively, the compensation schedule may be described here*****

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$*****INSERT NOT TO EXCEED AMOUNT*****. This amount is to cover all related costs, and the City will not pay any additional fees for printing expenses. Consultant may submit invoices to City for approval. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. The invoice shall describe in detail the services performed and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

5. Additional Work. If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

a. Adjustments. No retroactive price adjustments will be considered. Additionally, no price increases will be permitted during the first year of this Agreement, unless agreed to by City and Consultant in writing. *****Additionally, the City may include a CPI price adjustment, delete the following language if such adjustment will not be used***** Annual increases shall not exceed the percentage change in the Consumer Price Index- All urban consumers, All Items - (Series ID# CUURS49CSA0) Riverside-San Bernardino – Ontario, CA areas for the twelve (12) month period January through January immediately preceding the adjustments and be subject to City's sole discretion and approved (if needed) for budget funding by the City Council.

6. Term. This Agreement shall commence on the Effective Date and continue through the completion of services as set forth in Exhibit "A," unless the Agreement is previously terminated as provided for herein ("Term"). *****Alternatively, the term can be spelled out in this section without reference to the Exhibit*****

7. Maintenance of Records; Audits.

a. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City for inspection and/or audit at mutually convenient times for a period

of four (4) years from the Effective Date.

b. Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

8. Time of Performance. Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed. Consultant shall complete the services required hereunder within Term.

9. Delays in Performance.

a. 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 the Consultant's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the project site; (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); and (4) 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.

b. 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. Delays shall not entitle Consultant to any additional compensation regardless of the Party responsible for the delay.

c. Notwithstanding the foregoing, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

10. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of

clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

11. Standard of Care. Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. Consultant's performance shall conform in all material respects to the requirements of the Scope of Work and meet the Key Performance Indicators, attached hereto as Exhibit "B" and incorporated herein by this reference. *****IF NO PERFORMANCE INDICATORS WILL BE USED DELETE THE ABOVE LANGUAGE AND ACCOMPANYING EXHIBIT B***]**

12. Conflicts of Interest. During the term of this Agreement, Consultant shall at all times maintain a duty of loyalty and a fiduciary duty to the City and shall not accept payment from or employment with any person or entity which will constitute a conflict of interest with the City.

13. City Business Certificate. Consultant shall, prior to execution of this Agreement, obtain and maintain during the term of this Agreement a valid business registration certificate from the City pursuant to Title 5 of the City's Municipal Code and any and all other licenses, permits, qualifications, insurance, and approvals of whatever nature that are legally required of Consultant to practice his/her profession, skill, or business.

14. Assignment and Subconsultant. 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. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

15. Independent Consultant. Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided. Any personnel performing the work governed by this Agreement on behalf of Consultant 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 under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

16. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Additional Insured

The City of San Bernardino, 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.

b. Commercial General Liability

(i) 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.

(ii) 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.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX)
exclusion deleted
- (7) Contractual Liability with respect to this Contract
- (8) Broad Form Property Damage
- (9) Independent Consultants Coverage

(iv) 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.

(v) The policy shall give City, its elected and appointed officials, 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.

(vi) 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.

c. Automobile Liability

(i) 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.

(ii) 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).

(iii) The policy shall give City, its elected and appointed officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) 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.

d. Workers' Compensation/Employer's Liability

(i) 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.

(ii) 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.

e. Professional Liability (Errors and Omissions)

Article I. 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 endorsed to include contractual liability applicable to this Agreement and 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.

f. Privacy/Network Security (Cyber)

At all times during the performance of the work under this Agreement, the Consultant shall maintain privacy/network security insurance for: (1) privacy breaches, (2) system breaches, (3) denial or loss of service, and the (4) introduction, implantation or spread of malicious software code, in a form and with insurance companies acceptable to the City.

g. Aviation and/or Drone Liability *****REMOVE SECTION IF NOT APPLICABLE*****

At all times during the performance of the work under this Agreement, the Consultant shall maintain Aviation and/or Drone Liability insurance for bodily injury and property damage, in a form and with insurance companies acceptable to the City.

h. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

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	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)
Cyber Liability	\$1,000,000 per occurrence and aggregate
Aviation and/or Drone Liability	\$1,000,000 per occurrence limit ***REMOVE IF NOT APPLICABLE***

(ii) Defense costs shall be payable in addition to the limits.

(iii) 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.

i. Evidence Required

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.

j. Policy Provisions Required

(i) 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 the 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.

(ii) 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, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) 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.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide 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.

(v) 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.

k. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) 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.

l. Additional Insurance Provisions

(i) 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.

(ii) 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.

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

(iv) 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.

m. Subconsultant Insurance Requirements. 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.

17. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel reasonably approved by the City), indemnify and hold the City, its elected and appointed officials, officers, employees, agents, and authorized 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, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged 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, attorneys' fees and other related costs and expenses. This indemnification clause excludes Claims arising from the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, the City Council, members of the City Council, its employees, or authorized volunteers. Consultant's indemnification obligation shall survive the expiration or earlier termination of this Agreement.

b. 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 the extent which the Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant in the performance of the services or this Agreement, 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.

18. California Labor Code Requirements. 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. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. 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 to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subcontractors 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).

*****IF CITY IS AWARE THAT THE CONSULTANT WILL PERFORM WORK SUBJECT TO PREVAILING WAGE LAW, PLEASE CONTACT LEGAL COUNSEL TO OBTAIN GUIDANCE REGARDING REVISING THE FOLLOWING PROVISION*****

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 Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements.

19. Verification of Employment Eligibility. By executing this Agreement, Consultant 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, and shall require all subconsultants and sub-subconsultants to comply with the same.

20. Laws and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Bernardino, State of California.

21. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days’ written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days’ written notice to City only in the

event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

22. Attorneys' Fees. In the event that litigation is brought by any Party in connection with this Agreement, the prevailing Party shall be entitled to recover from the opposing Party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing Party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof. The costs, salary, and expenses of the City Attorney's Office in enforcing this Agreement on behalf of the City shall be considered as "attorneys' fees" for the purposes of this Agreement.

23. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant's professional services occurs, Consultant shall, at no cost to City, provide all other services necessary to rectify and correct the matter to the sole satisfaction of the City and to participate in any meeting required with regard to the correction.

24. Prohibited Employment. Consultant shall not employ any current employee of City to perform the work under this Agreement while this Agreement is in effect.

25. Costs. Each Party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

26. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

27. Organization. Consultant shall assign *****INSERT NAME***** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

28. Limitation of Agreement. This Agreement is limited to and includes only the work included in the Project described above.

29. Notice. Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to the following addresses and shall be effective upon receipt thereof:

CITY:

City of San Bernardino
Vanir Tower, 290 North D Street
San Bernardino, CA 92401
Attn: *****INSERT DEPARTMENT HEAD
TITLE OR "City Manager"***]**

CONSULTANT:

*****INSERT NAME, ADDRESS &
CONTACT PERSON***]**

With Copy To:

City of San Bernardino
Vanir Tower, 290 North D Street
San Bernardino, CA 92401
Attn: City Attorney

30. Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

31. 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 other interests protected by the State or Federal Constitutions. 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.

32. Entire Agreement. This Agreement, including Exhibit "A," represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. 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. This is an integrated Agreement.

33. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such determination shall not affect the validity or enforceability of the remaining terms and

provisions hereof or of the offending provision in any other circumstance, and the remaining provisions of this Agreement shall remain in full force and effect.

34. 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.

35. Non-Waiver. The delay or failure of either Party at any time to require performance or compliance by the other Party of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. The waiver of any right or remedy with respect to any occurrence or event shall not be deemed a waiver of any right or remedy with respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

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

37. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain, or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

38. Amendments. Only a writing executed by all of the Parties hereto or their respective successors and assigns may amend this Agreement.

39. City's Right to Employ Other Consultants. City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

40. Prohibited Interests. Consultant maintains and warrants that it has neither 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. For the term of this Agreement, no 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.

41. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one single Agreement.

42. Authority. The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so, the Parties hereto are formally bound to the provisions of this Agreement.

43. Electronic Signature. Each Party acknowledges and agrees that this Agreement may be executed by electronic or digital signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

44. *****DELETE SECTION IF THESE PENALTIES WILL NOT BE USED*****
Disciplinary Actions in Phases for Non-Performance. Failure for Consultant to perform its obligations under this Agreement or comply with the Performance Indicators may result in disciplinary action as follows:

(i) Informal Warning (Written or Verbal). Consultant is given a warning in regards to non-performance. If a verbal warning is issued, it will be confirmed with an electronic correspondence to the Consultant.

(ii) Formal Written Warning. A formal written warning is issued to Consultant pursuant to Section 29 of this Agreement. Consultant must respond within 5 to 10 days of receipt of the formal warning. Upon response from the Consultant, Consultant shall be provided a reasonable time to make corrections to their performance. This time period

(iii) Formal Penalty Issued. A penalty of 15% of the Consultant's current invoice amount or annual contract amount is deducted for non-performance after previous warnings have been issued.

(iv) Termination of Contract. If the performance has not been corrected after all warnings and previous penalties have been exhausted, City may terminate the contract pursuant to Section 21 of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF SAN BERNARDINO
AND [***INSERT NAME***]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF SAN BERNARDINO

CONSULTANT

APPROVED BY:

Robert D. Field
City Manager

Signature

ATTESTED BY:

Name

Genoveva Rocha, CMC
City Clerk

Title

APPROVED AS TO FORM:

Best Best & Krieger LLP
City Attorney