

22. Amendment No. 2 to Agreement with Anser Advisory Management, LLC (All Wards)

Recommendation:

It is recommended that the Mayor and City Council of the City of San Bernardino California,

1. Authorize the City Manager or designee to Approve Amendment No 2. to the Professional Services Agreement with Anser Advisory Management, LLC, for the project of Upgrade Various Signal Hardware at 224 Signalized Intersections on Various Arterials, for construction management and inspection services, as well as extending the agreement until December 30, 2024.



CONSENT CALENDAR

City of San Bernardino Request for Council Action

Date: May 15, 2024

To: Honorable Mayor and City Council Members

From: Charles A. Montoya, City Manager;
Lynn Merrill, Director of Public Works, Operations and Maintenance

Department: Public Works

Subject: **Amendment No. 2 to Agreement with Anser Advisory Management, LLC (All Wards)**

Recommendation:

It is recommended that the Mayor and City Council of the City of San Bernardino California,

1. Authorize the City Manager or designee to Approve Amendment No 2. to the Professional Services Agreement with Anser Advisory Management, LLC, for the project of Upgrade Various Signal Hardware at 224 Signalized Intersections on Various Arterials, for construction management and inspection services, as well as extending the agreement until December 30, 2024.

Executive Summary

The installation of traffic signal hardware, vehicle traffic signals heads, pedestrian signal heads, and American with Disability Act (ADA) push- buttons represents a strategic investment in enhancing traffic control, safety, and compliance with state and federal standards at the designated intersection on this project.

Background

The Highway Safety Improvement Program (HSIP) is a core Federal-aid program with the purpose to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State-owned roads and roads on tribal land. The HSIP requires a data-driven, strategic approach to improving highway safety on all public roads with a focus on performance.

The HSIP is legislated under Section 148 of Title 23, United States Code (23 U.S.C. 148) and regulated under Part 924 of Title 23, Code of Federal Regulations (23 CFR Part 924). The HSIP consists of three main components, the Strategic Highway Safety Plan (SHSP), State HSIP or program of highway safety improvement projects and the Railway-Highway Crossing Program (RHCP).

In addition, some states also have a High-Risk Rural Roads (HRRR) program if they had increasing fatality rate on rural roads. The HSIP Cycle 9 call for projects was announced in May 2018, and in August 2018, and the City of San Bernardino submitted an application to Upgrade Various Signal Hardware at 224 Signalized Intersections on Various Arterials Citywide. On December 27, 2018, the City received the HSIP grant in the amount of \$5,490,800 to do the project.

On June 19, 2019, the Mayor and City Council approved Resolution No. 2019-168 adopting the City's Annual Operating Budget for Fiscal Year 2019/20. The budget included Capital Improvement Plan (CIP) TC20-007 project for the Upgrade Various Signal Hardware at 224 Signalized Intersections on Various Arterials and established \$5,490,800 in HSIP Grant funds to support the project. The Design for the project was completed in July 2021, by Kimley-Horn and Associate at a total design cost of \$631,534.25. A construction contract was awarded by the City Council on Dec 15, 2021, to Baker Electric in the amount of \$3,799,306.

Anser Advisory was awarded a construction management and inspection contract on March 2, 2022, in the amount of \$280,000. Amendment No.1 for the Professional Service Agreement (PSA) was approved by the Mayor and the City Council on May 17, 2023, for extension of time without any impacts to the current construction management and inspection PSA with an expiration date of May 17, 2024.

Discussion

Anser Advisory Management, LLC has been providing construction management, project management, and inspection services for 224 signalized intersections on various arterials in the City of San Bernardino since March of 2022. Their team of construction managers and field inspectors has been actively involved in various aspects of the project, including reviewing requests for information (RFI), conducting bi-weekly progress meetings, managing change orders, resolving construction disputes, reviewing and controlling schedules, ensuring labor compliance, and processing progress payments for approval.

The City has requested Anser Advisory Management LLC to extend their Professional Service Agreement through Amendment No. 2. This extension is to provide support to the Public Works staff during the close-out stages of the project. Although the construction phase of the project has recently concluded and most of the punch list items have been addressed by the contractor, there are still some technical issues remaining with the hardware and software of the controller cabinet push-button programming in which their inspection team will work with the vendors in

resolving these issues.

Additionally, Anser Advisory will offer assistance during the close-out stages and handle the necessary paperwork for the California Department of Transportation.

The services that Anser Advisory will provide during this period include:

1. Troubleshooting and resolving technical issues related to the hardware and software of the controller cabinet push-button programming.
2. Providing support to the Public Works staff in finalizing the project's close-out requirements.
3. Processing the required forms and documentation for submission to the California Department of Transportation for final reporting of expenditures as follows:
 - a) Final Inspection Form
 - b) Final Reimbursement invoice
 - c) Final Detail Estimates.
 - d) Change Order summary.
 - e) Final Reporting -Utilization of Disadvantaged Business Enterprises.
 - f) Material Certificate.

The PSA extension of time has no impact on the overall budget of the project and will not result in an increase in the purchase order. The remaining budget left in the purchase order is \$39,470.81. Amendment No 2.to the PSA will expire on December 30, 2024.

There is no General Fund Impact. HSIP Federal funding in the amount of \$5,490,800 has been approved for Upgrade Various Signal Hardware at 224 Signalized Intersections on Various Arterials Project and is available for this project.

Design was completed at a total cost amount of \$631,534.25

The overall construction costs of the project are as follows:

Construction Bid	
Amount	\$3,799,306.00
Construction Contingency	\$ 383,000.00
Engineering & Inspections	\$ 300,000.00
Total Construction Project cost	\$4,482,306.00
Total Design and construction cost	\$5,113,804.25
Available Grant Fund Amount	\$5,490,800

2021-2025 Strategic Targets and Goals

This project is consistent with Key Target No.1e: Improved Operational & financial Capacity-Minimize risk and litigation exposure. Approval of this Amendment will result

in public improvements being constructed that minimize risk and litigation exposure through upgrading the existing traffic signals on various arterials within the City.

Fiscal Impact

There is no impact to the General Fund with this item. Sufficient grant funds exist for this project.

Conclusion

It is recommended that the Mayor and City Council of the City of San Bernardino California,

1. Authorize the City Manager or designee to Approve Amendment No 2. to the Professional Services Agreement with Anser Advisory Management, LLC, for the project of Upgrade Various Signal Hardware at 224 Signalized Intersections on Various Arterials, for construction management and inspection services, as well as extending the agreement until December 30, 2024.

Attachments

Attachment 1 - Amendment No. 2 Anser Advisory Management, LLC.

Attachment 2 - Amendment No. 1 Anser Advisory Management, LLC.

Attachment 3 - Original Professional Services Agreement

Ward:

All Wards

Synopsis of Previous Council Actions:

June 16, 2019, Adopted Resolution No. 2019-168 approving Capital Program
FY 2019/2020.

Dec 15, 2021, Adopted Resolution No. 2021-299 award Construction Contract to
Baker Electric

March 2, 2022, Adopted Resolution No. 2022-50 Award professional services
Agreement to Anser Advisory Management, LLC.

May 17, 2023, Mayor and City Council Amendment No 1. Extension of Time.

**SECOND AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT
WITH ANSER ADVISORY MANAGEMENT LLC**

This Second Amendment to the Professional Services Agreement is made and entered into as of May 15, 2024 ("Effective Date") by and between the City of San Bernardino, a charter city and municipal corporation ("City") and Anser Advisory Management LLC, a California corporation ("Consultant"). City and Consultant are sometimes referred to herein individually as a "Party" and collectively as "Parties."

RECITALS

A. WHEREAS, the City and the Consultant have entered into an agreement, dated March 2, 2022, for the purpose of providing professional services for construction management and inspection services for upgrade various traffic signal hardware at 224 signalized intersections (the "Master Agreement").

B. WHEREAS, the City and the Consultant have entered into Amendment No1, dated May 17, 2023, for the purpose of extending the professional services for construction management and inspection services for upgrade various traffic signal hardware at 224 signalized intersections.

C. WHEREAS, the Parties now desire to amend the Master Agreement in order to extend the term of the Master Agreement for an additional term of six months, for the continued performance of the services in accordance with the compensation provisions of the Master Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants, conditions, and promises contained in this Amendment No.2 and the Master Agreement, the Parties mutually agree as follows:

AGREEMENT

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

2. Term. The term of the Master Agreement shall commence on the Effective Date (May 15, 2024) and continue through the completion of services as set forth in Exhibit "A" or until December 30, 2024, whichever occurs earlier, unless the Agreement is previously terminated as provided for herein ("Term").

3. Compensation. There is no change to the total not to exceed compensation of the Master Agreement.

4. Full Force. Except as amended by this Amendment No. 2, all provisions of the Master Agreement, including without limitation the indemnity and insurance

provisions, shall remain in full force and effect and shall govern the actions of the Parties under this Amendment No. 2.

5. Electronic Transmission. A manually signed copy of this Amendment No. 2 which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment No.2 for all purposes. This Amendment No.2 may be signed using an electronic signature.

6. Counterparts. This Amendment No.2 may be signed in counterparts, each of which shall constitute an original.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR
SECOND AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT
WITH ANSER ADVISORY LLC**

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No.2 on the Effective Date first herein above written.

CITY OF SAN BERNARDINO

CONSULTANT

APPROVED BY:

Anser Advisory Management LLC

Charles A. Montoya
City Manager

Signature

APPROVED AS TO FORM:

Name

Best Best & Krieger LLP
City Attorney

Title

EXHIBIT A

ADDITIONAL SCOPE OF SERVICES

1. Processing the required forms and documentation for submission to the California Department of Transportation for final reporting of expenditures as follows:
 - a) Final Inspection Form
 - b) Final Reimbursement invoice
 - c) Final Detail Estimates.
 - d) Change Order summary.
 - e) Final Reporting -Utilization of Disadvantaged Business Enterprises.
 - f) Material Certificate.

**AMENDMENT NO. 1 TO
AGREEMENT FOR PROFESSIONAL SERVICES
ANSER ADVISORY MANAGEMENT LLC**

This Amendment No. 1 to the Professional Services Agreement for project management services is made and entered into as of May 17, 2023, by and between the City of San Bernardino, a charter city and municipal corporation ("City") and Anser Advisory Management LLC, a California corporation ("Consultant"). City and Consultant are sometimes referred to herein individually as a "Party" and collectively as "Parties."

A. WHEREAS, the City and Consultant have entered into an agreement dated March 3, 2022, for the purpose of providing construction management and inspection services (the "Master Agreement"); and

B. WHEREAS, the Parties now desire to amend the Master Agreement in order to extend the term of the Master Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants, conditions, and promises contained in this Amendment No. 1 and the Master Agreement, the Parties mutually agree as follows:

AGREEMENT

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

2. Term. The term of the Master Agreement shall be extended through May 17, 2024, unless earlier terminated.

3. Amendment to Section 6 of the Master Agreement. The last sentence of Section 6 of the Master Agreement shall be amended to read as follows:

"The total duration of the Agreement, including the exercise of any options, shall not exceed May 17, 2024."

4. Full Force. Except as amended by this Amendment No. 1, all provisions of the Master Agreement, as previously amended, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the Parties under this Amendment No. 1.

5. Electronic Transmission. A manually signed copy of this Amendment No. 1 which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment No. 1 for all purposes. This Amendment No. 1 may be signed using an electronic signature.

6. Counterparts. This Amendment No. 1 may be signed in counterparts, each of which shall constitute an original.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR
AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT
WITH ANSER ADVISORY MANAGEMENT LLC**

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 on the Effective Date first herein above written.

CITY OF SAN BERNARDINO

CONSULTANT

APPROVED BY:

Charles E. McNeely
Charles E McNeely
Interim City Manager

**ANSER ADVISORY MANAGEMENT
LLC**

Tyson Atwood
Signature

Tyson Atwood

ATTESTED BY:

Genoveva Rocha
Genoveva Rocha, CMC
City Clerk

Name

Senior Vice President

Title

APPROVED AS TO FORM:

Thomas Rice
Best Best & Krieger LLP
City Attorney

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF SAN BERNARDINO
AND ANSER ADVISORY MANAGEMENT, LLC.**

This Agreement is made and entered into as of March 2, 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 Anser Advisory Management, LLC., a limited liability company, with its principal place of business at 2677 N. Main Street, Suite 400, Santa Ana, CA 92705 (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:

Construction Management and Inspection Services for upgrade various traffic signal hardware at 224 signalized intersections (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 "B."

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 "B."

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **\$280,000**. 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

6. **Term.** The term of this Agreement shall be from **March 2, 2022 to March 2, 2023**, 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 set forth in each individual Task Order issued by the City. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

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.

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)

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. 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

(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 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 **Jonathan Smith** 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: City Manager

CONSULTANT:

Anser Advisory Management, LLC.
2677 N. Main St, Suite 400, Santa Ana CA
92705
Attn: Jonathan Smith , Project Manager

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. These nondiscrimination obligations shall include compliance with the statutes and authorities outlined in Exhibit "B", attached hereto and incorporated herein by this reference.

32. Entire Agreement. This Agreement, including Exhibit "B," 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. Federal Requirements. Consultant acknowledges and agrees that it shall comply with Federal requirements controlling the services provided under this Agreement. These requirements are more particularly described in Exhibit "C", attached hereto and incorporated herein by this reference.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF SAN BERNARDINO
AND ANSER ADVISORY MANAGEMENT, LLC.**

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

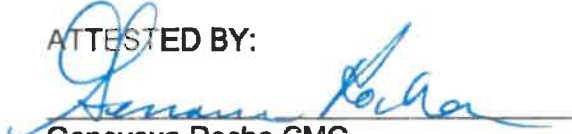
CITY OF SAN BERNARDINO

APPROVED BY:



Robert D. Field
City Manager

ATTESTED BY:



Genoveva Rocha, CMC
City Clerk

APPROVED AS TO FORM:



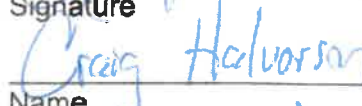
Best & Krieger LLP
City Attorney

CONSULTANT

**ANSER ADVISORY MANAGEMENT,
LLC.**



Signature



Name



Title