

Property Acquisition and/or Property Management Agent

Release Date: October 1, 2020
Submission Deadline: 5 pm on October 15, 2020

REQUEST FOR PROPOSALS

The City of Glendale, California is requesting proposals from qualified consulting firms to act as the City's real estate acquisition and/or property management agent. Any questions regarding this request for proposal should be directed to:

JACQUELINE SALES

ECONOMIC DEVELOPMENT COORDINATOR
GLENDALE ECONOMIC DEVELOPMENT DIVISION
633 EAST BROADWAY, SUITE 201
GLENDALE, CALIFORNIA 91206
PHONE 818.548.2005
EMAIL: JSALES@GLENDALECA.GOV



IMPORTANT NOTICE

COMMUNICATIONS WITH, AND GIFTS OR GRATUITIES TO, THE CITY COUNCIL AND OTHERS DURING THE RFP PROCESS ARE PROHIBITED

From the date the report to the City Council of the City of Glendale (“City”) recommending the issuance of this RFP is published until the date on which the City awards a contract, if any, a Proposer must not directly or indirectly give, furnish, donate, or promise any money, compensation, gift, gratuity, or anything of value to the Glendale City Council or to any City employee for the purpose of, or which has the effect of:

1. Securing or establishing an advantage over other Proposers;
2. Securing or recommending the selection of the Proposer’s Proposal; or
3. Securing or recommending a Contract award to any Proposer.

Violation of the forgoing prohibitions will constitute grounds for rejection of a proposal(s). Such rejection may be made within the sole and absolute discretion of the City.

As more specifically set forth herein below under “Submission Deadline and Requirements,” the **deadline for receiving proposals in response to this RFP is 5:00 pm on Thursday, October 15, 2020 (the “Deadline”).**

At all times following this Deadline, and continuing until the City awards a contract, if any contract is awarded (the “Review Period”), all Proposers and their surrogates are prohibited from communicating in any manner with any City Council member and City employee involved in the RFP process unless expressly authorized by this RFP.

This prohibition means that City Council members and City employees involved in the RFP process will not hold any meetings, conferences, or discussions via email, telephone, in-face, or by any form of social media or otherwise, with any Proposer during the Review Period. Provided, however, proposers and their representatives are not prohibited from making oral statements or presentations to one or more representatives of the City during a public meeting, and proposers may write to the City Council as a whole *after* City staff written recommendations are published in anticipation of a scheduled public meeting to consider the RFP.

INTRODUCTION

The City of Glendale (hereafter the “City”) invites qualified firms to submit proposals for real estate acquisition and/or property management services. Proposals must be submitted in accordance with all requirements of this Request for Proposal (RFP). Any deviations from,

clarifications to, or exceptions from the requirements of the RFP must be clearly identified and, if appropriate, listed separately as alternatives for consideration.

BACKGROUND

The City periodically requires property acquisition and property management services. The services may be required by the following departments:

- Economic Development - various city properties;
- Community Development - various affordable housing sites, and other properties;
- Community Services & Parks - various park and open space sites;
- Public Works – right of way acquisition; and,
- Glendale Water & Power - property acquisition and management of City facilities or infrastructure.

The City has also identified the need to build, to provide affordable housing or other public amenities which may require new land acquisitions. Property management services may be required for existing City-owned properties and for properties that have been acquired but have not yet been put to a public use.

With the exception of right-of-way acquisitions which are handled through the City's Public Works Department, the City has centralized its acquisition activities, including appraisal, negotiation and relocation) into its Economic Development Division within the Community Development Department. As part of this centralization, the City is seeking a firm to act as the City's acquisition agent, and to perform related tasks as more fully described in **Attachment A**.

In most instances, when a City Department or Division needs to acquire a property, that department contacts Economic Development. Economic Development would coordinate with the City Department and provide the scope of work for that acquisition to the selected firm. However, in some instances if the department has real estate acquisition experience, that department may work directly with the selected firm.

Proposers should clearly indicate whether their proposal is for real estate acquisition, property management agent, or both.

PROPOSAL REQUIREMENTS

Submittals should include, at a minimum, the following information and follow this outline.

1. Cover Letter

The cover letter should include an overall introduction to the submittal that is signed by an individual authorized to bind the proposing entity. The cover letter should contain a statement that confirms the submittal is a firm offer for a 60-day (or more) period.

2. Company Data

The submittal must include the firm's official name and address and indicate the type and location of the entity, e.g. corporation, company, joint venture, etc., and the name and address of the person(s) to whom notices should be sent. The individual(s) authorized to represent the company and their capacity must also be identified.

3. Program Approach

Proposers should provide a clear description of the overall program proposed and explanation of the basic purpose and general focus of the work and detail how proposal will meet or exceed the specific requirements of the RFP. The role of any subconsultants should be clearly explained.

Proposers have the option to respond to either real estate acquisition, property management agent, or both.

Please clearly indicate the category or categories for which you are applying. Proposals that cover both categories of services are encouraged.

5. Schedule of Costs

Proposals shall include a complete schedule of fees and costs, which fees and costs should be broken down by a unit/hourly rate, as applicable.

6. Program Staffing Plan

Proposals shall include an organizational chart that sets forth the name, classification, and title of all key staff members and management contacts of each individual assigned to provide services. Proposals shall identify a Project Manager and a detailed summary of his or her background and qualifications. The Project Manager shall be expected to make themselves available to staff as needed and to be available for public presentations as determined by staff. The specific responsibilities of the Project Manager and other key personnel of the team (including any subconsultants) should be detailed.

If consultants, advisors or subcontractors are to be used, describe the contractual relationship with the Proposer, and describe the consultant's, advisor's and subcontractor's specific responsibilities and tasks, and include resumes of their key personnel.

7. Resumes and Qualifications

Proposals must provide, as an appendix, the resumes and qualifications of key personnel (including consultants, advisors and sub-consultants) who will be assigned to the team. The Proposal should provide, at a minimum, information relating to personnel's education, experience and assignments involving services and requirements similar in nature and scope to those set forth in the RFP.

Resumes must include sufficient information that will allow for the quality and competence of personnel dedicated to the project to be accurately judged. Proposers must provide qualified personnel for the performance of services and contractual requirements of this program.

Minimum qualifications related to **Property Acquisition** services include:

- At least five years of demonstrated experience in public real estate/right-of-way/easement acquisition. Additional consideration will be given to firm/individuals with more than five years' experience.
- Individuals or firms must demonstrate a proven record of completing projects satisfactorily and on schedule, and an ability to acquire, obtain possession of properties.

Minimum qualifications related to **Property Management** services include:

- At least five years of demonstrated experience in activities related to property management, including but not limited to: collecting rents, providing and/or sub-contracting for ongoing building and ground maintenance and repair; coordinating payment of vendor fees; and other property management-related services. Additional consideration will be given to firm/individuals with more than five years' experience.
- Proposers must demonstrate a proven record of completing projects satisfactorily and on schedule.

8. References

Proposers must provide a list of three (3) former clients for whom similar or comparable services have been performed. Include the names of all references as well as a mailing address and telephone numbers.

9. Current Client List

Please provide a current list of your firm's clients and identify any potential conflicts of interest.

SELECTION PROCESS

The proposals received in response to this RFP will be screened by a selection committee. Primary consideration will be given to technical competence and ability as demonstrated in the proposal. The firm's willingness and ability to work closely with City staff, and the aptness of the proposal will also be considered.

Evaluation of the proposals may include, but is not limited to:

- Prior experience;
- Competence and experience of the personnel who will be responsible for performing the work;
- Willingness and capacity to devote appropriate resources to achieve the City objectives;
- Technical ability to perform; and
- Absence of conflicts of interest.

SUBMISSION REQUIREMENTS

Firms interested in and capable of undertaking the scope of services must submit a concise written proposal generally following the presented outline. Proposals shall be submitted with sufficient detail to allow for a thorough evaluation and comparative analysis. Proposals will not be judged by the volume of material presented and, therefore, should be concise.

Proposers must email an electronic copy of the proposal to apogossian@glendaleca.gov
Full proposals must be received by no later than October 15, 2020 by 5:00 pm, PST. Late submittals will not be accepted. Please ensure your proposal is received by requesting a read-receipt email and/or email confirmation.

ACCEPTANCE OF SUBMITTALS

At its sole discretion, the City may, for any reason, reject any and all submittals. The City may reject incomplete submittals or those lacking adequate information to allow effective evaluation of the submittal.

In addition to the written proposal submission, each qualified firm may be asked to make an oral presentation and be interviewed by a selection committee. Any oral interviews will be arranged with the individual identified in your proposal to receive notices.

The selected Consultant will be required to satisfy the City's insurance conditions as set forth in Attachment C.

ATTACHMENTS

Attachments:

- A – Scope of Work
- B – Conflict of Interest Forms
- C – Professional Services Agreement and Exhibits

Attachment A: Scope of Work

The ideal firm should be able to perform any and all of the activities below:

Real Estate Acquisition Responsibilities include:

Appraisal/Analysis:

Prior to initiating the acquisition process, the acquisition agent may be requested to determine an estimated value of a property for budgeting purposes. Once a department indicates a need to acquire a property, the acquisition agent ("Agent") would be responsible for notifying the property owner of the intent to appraise and obtaining an appraisal of the subject property and in coordination with the City provide all legally required noticing. The Agency could select the appraiser or be selected from a list of City-approved appraisers. Once an appraisal is complete, the Agent will be tasked with reviewing the appraisal for accuracy and using the information provided to analyze and recommend the appropriate initial offer amount and basis therefor. If authorized to do so by the City, the Agent will be responsible for preparing and making an offer on a property or to evaluate an unsolicited offer to purchase from a private property owner.

Authorization:

Upon preparation of an appraisal and analysis, the Agent would be available to work with City staff to prepare a report to the Council/Commission seeking authorization to make or respond to an offer and requesting negotiating authority. The report would indicate all pertinent information including the project for which the property is being acquired, a property profile, site characteristics, location, surrounding context, market information and a recommended opinion of fair market value.

Preparation of Offer Letters:

Should the City authorize making an offer to acquire, the Agent would be responsible for preparing an offer consistent with the requirements of Government Code Section 7267.2 and present the offer to the property owner.

Negotiation:

As the City's representative, the Agent would be responsible for the on-going property acquisition negotiations. The Agent must be available for City council closed session meetings and be prepared to discuss the status of negotiations and obtain any additional City authorization if necessary. This will require written reports outlining the status of property acquisition negotiations.

Open Session Reporting:

At the conclusion of a successful negotiation, the Agent would be responsible for preparing a report for formal approval by the City Council in open session. The report would include all the information discussed in the *Authorization* section herein above as well as any necessary information from the negotiation to allow the approving body to make an informed decision.

Escrow Settlement:

If formal approval is granted, the Agent would be responsible for the opening escrow, working with City staff on the property acquisition agreement, real property and (if necessary) personal property title documentation, and coordinating the transfer of title.

Pre-Eminent Domain Activities/Coordination:

In the event that the City and property owner cannot reach a negotiated agreement, the Agent should be thoroughly familiar with California eminent domain law and able to conduct real property acquisition negotiations in compliance therewith.

Tenant Relocation:

Public agency property acquisition triggers the obligation to relocate and provide benefits to existing tenants and owners. Though not mandatory, having one firm represent tenant relocation and property acquisition is highly desirable. At a minimum, the Agent should have a thorough understanding of California Relocation Assistance Law.

Property Disposition:

In some cases, the City may have land that it desires to dispose of or lease to a private party. The Agent should be able to assist the City in negotiating a fair market value sale or lease of such property and to work with City staff to coordinate preparation and execution of all documents necessary to affect the transfer or lease.

Reporting to City Executive Team:

The Agent will be requested to provide periodic reports of acquisition interest and activity to the City's executive team and keep all department heads up to date on the City's real estate portfolio.

Property Management Responsibilities include:

Property Management:

In the event an acquired property is not immediately developed, the Agent may be requested to manage the acquired asset (e.g. collect rents and perform property maintenance activities).

The Agent may also be asked to provide property management services for other City-owned properties. These services may include, but are not limited to, administering emergency and unsafe condition repairs; providing and/or sub-contracting for ongoing building and ground maintenance and repair; and coordinating payment of vendor fees.

Attachment B: Conflict of Interest Form



**City of Glendale
Disclosure - Campaign Finance Ordinance
Applicants Seeking Entitlement**

Submit to Permit Services Center, 633 E. Broadway, Rm. 101.
For more information, call 818-548-3200.

(To be Completed Prior to Preparation of Staff Reports for Consideration of Entitlement Matter by Council, Agency, or Authority, or at Time of Appeal to the City Council if the Applicant is also the Appellant)

In August 2011, the Glendale City Council adopted Ordinance No. 5744, which becomes effective on September 9, 2011 ("Ordinance"). The Ordinance prohibits campaign contributions from "applicants seeking entitlement," their contractors and subcontractors (including their architects, engineers, and design professionals) while the application is "pending" and for 12 months thereafter. The Ordinance also prohibits Council Members from voting on any matter pertaining to an entitlement if the Council member has received a campaign contribution from the applicant seeking the entitlement, or certain contractors or subcontractors of the applicant, within the 12-month period preceding the vote.

The Applicant and the Owner/Lessor hereby discloses as follows.

(If printing, please print legibly. Use additional sheets as necessary.)

1. Name of Applicant and Name of Owner/lessor on whose behalf application is filed:

Full Name	Title	Business Address	City	State	Zip

II. Officers or owners/investors of Applicant Entity. Please also disclose the following persons or entities related to the applicant entity: CEO/President, Chairperson, Chief Operations Officer, Chief Financial Officer, any member of the Board of Directors, and any individual or entity that owns 10% or more the contractor of applicant seeking entitlement, as well as any campaign +

Full Name	Title	Business Address	City	State	ZIP

III. Contractor of Applicant(s) Seeking Entitlement*

Full Name	Title	Business Address	City	State	ZIP

* "Contractor of Applicant Seeking Entitlement" means "a person who has, or has been promised, a contract as an architect, design professional, engineer, or general or prime contract with an applicant seeking entitlement. "Contractor of applicant seeking entitlement," includes not only the contracting party but also the CEO/President, Chairperson, Chief Operations Officer, Chief Financial Officer, any member of the Board of Directors, and any individual or entity that owns 10% or more the contractor of applicant seeking entitlement, as well as any campaign committee that is sponsored and controlled by the contracting party. Please list the names and addresses of all of these parties.

IV. Subcontractor of Applicant(s) Seeking Entitlement**

Full Name	Title	Business Address	City	State	ZIP

** "Subcontractor of Applicant Seeking Entitlement" means "a person who has, or has been promised, a subcontract as an architect, design professional, engineer, or perform other work with a contractor an applicant seeking entitlement."

"Subcontractor of applicant seeking entitlement" includes not only the subcontracting party, but also the CEO/President, Chairperson, Chief Operations Officer, Chief Financial Officer, any member of the Board of Directors, and any individual or entity that owns 10% or more the subcontractor of applicant seeking entitlement, as well as any campaign committee that is sponsored and controlled by the subcontracting party. Please list the name and addresses of all of these parties.

V. Disclosure. The Applicant Seeking Entitlement has made campaign or officeholder contributions in the preceding 12 months to City of Glendale elected officials as follows:

Elected Official	Name of Individual or Entity	Date of Contribution

I hereby certify, on behalf of the above-named applicant(s) and owner(s)/lessor(s), that the applicant seeking entitlement has made the campaign contributions as set forth above. I also certify that the names of all contractors of applicant and all subcontractors of applicant, as of today's date, are fully set forth above. I further acknowledge that the applicant has a continuing obligation to update this disclosure form if the applicant selects additional or substitute architects, design professionals, contractors or subcontractors within ten (10) days of the selection or change. I hereby certify that I have been legally authorized by the applicant/owner/lessor to submit this disclosure form and certify to the content hereof.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ at _____, California

Applicant's Signature _____, Print Applicant's Full Name _____

Applicant's Address _____

Applicant's Contact Phone Number _____

Applicant's Email Address _____



**ACKNOWLEDGMENT OF RECEIPT OF
CAMPAIGN FINANCE DISCLOSURE**
(To Be Submitted at Time of Application Submittal)

Submit to Permit Services Center, 633 E. Broadway, Rm. 101. For more information call 818-548-3200.

PROPERTY ADDRESS: _____

ENTITLEMENTS REQUESTED: _____

I hereby acknowledge, on behalf of the applicant(s) and owner(s)/lessor(s) for the project above, that the applicant seeking entitlement has received the campaign finance disclosure forms related to applicants seeking entitlement before the City Council, Redevelopment Agency and Housing Authority. I acknowledge it is the applicant's responsibility to review the requirements of the City's campaign finance ordinance, including its disclosure obligations and its applicability to the applicant and its contractors and subcontractors, which include architects, engineers, design professionals, prime or general contractors, and subcontractors retained by the applicant at the time the application is pending before the Council, Redevelopment Agency or Housing Authority.

Executed on _____ at _____, California

Applicant's Signature _____,

Print Applicant's Full Name _____

Attachment C: Professional Services Agreement

CONTRACT No. _____

PROFESSIONAL SERVICES AGREEMENT

BETWEEN THE CITY OF GLENDALE
AND

THIS AGREEMENT ("Agreement"), effective _____, 20____ ("Effective Date"), is between the City of Glendale ("CITY"), a municipal corporation, and _____ ("CONSULTANT"), a [(Name of State) corporation/ partnership/ limited partnership/ limited liability company/ a sole proprietor/ an individual] (collectively, "PARTIES" or individually, "PARTY").

RECITALS

A. CITY is a public entity organized and existing under its Charter and the State of California's Constitution.

B. CONSULTANT represents that CONSULTANT is, and will continue to be for this Agreement's duration, a [(Name of State) corporation in good standing/ partnership/ limited partnership/ limited liability company/ a sole proprietorship/ an individual.] ***[NOTE: staff must verify corporate status/partnership/LLC and Consultant's license, if any, and obtain proof.] [ADD, IF APPLICABLE: (which) (who) employs persons who are duly registered or licensed to practice in the State of California.]***

Commented [JS1]: Removed spaces

Commented [JS2]: Removed space

C. CONSULTANT possesses the competence, experience, expertise, skill, facilities, equipment, personnel, financial wherewithal, and other resources necessary to perform this Agreement's tasks in a professional and competent manner.

D. CONSULTANT desires to furnish and perform professional services for CITY, on the terms and conditions described in this Agreement. CONSULTANT has the legal authority to provide, engage in, and carry out the professional services set forth in this Agreement.

AGREEMENT

THEREFORE, CITY engages CONSULTANT's services, and in consideration of the PARTIES' mutual promises, the PARTIES agree as follows:

1.0 INCORPORATION OF RECITALS

1.1. The Recitals constitute the factual basis upon which CITY and CONSULTANT have entered into this Agreement. CITY and CONSULTANT acknowledge the Recitals' accuracy and, therefore, incorporate them into this Agreement.

2.0 TERM

[Select one of the following alternatives:]

2.1. **[OPTION 1]** This Agreement begins on the Effective Date, and continues in effect until completion of the work described in Article 3, unless this Agreement ends sooner according to the terms elsewhere in this document.

2.1. **[OPTION 2]** This Agreement's Term is [#] [months/ years], beginning on [DATE] and ending on [DATE] , unless this Agreement ends sooner according to the terms elsewhere in this document.

3.0 SERVICES

3.1. **Scope of Work.** CONSULTANT shall [specify services to be provided] ("the Services") in accordance with the Scope of Work, which is attached as "Exhibit A" to this Agreement and is incorporated into it by this reference. **[NOTE: "Exhibit A" must set forth in detail the nature and extent of services that professional person or firm will render. Scope of Work should identify specific tasks, list and describe any deliverables, and specify procedures/ criteria for acceptance.]**

3.2. **Written Authorization.**

(A) CONSULTANT shall not make changes in the Scope of Work, perform any additional work, or provide any additional material, without first obtaining written authorization from CITY. If CONSULTANT provides additional services or materials without written authorization, or if CONSULTANT exceeds the Maximum Cost in Paragraph 7.4 of this Agreement, CONSULTANT proceeds at CONSULTANT's own risk and without payment.

(B) CITY will authorize CONSULTANT to proceed with discrete tasks by issuing written Task Orders. Receipt of a written Task Order, signed by CITY's Project Manager, is a prerequisite for CONSULTANT to proceed with each task. **[ADD, IF APPLICABLE:** Each Task Order will specify a not-to-exceed price and a schedule for completion of the task. CONSULTANT shall not exceed the not-to-exceed price in each Task Order.] In performing each phase or task, CONSULTANT shall not exceed the Maximum Cost in Paragraph 7.4 of this Agreement. Issuance of a Task Order neither authorizes CONSULTANT to incur expenditures in excess of the Maximum Cost, nor relieves CONSULTANT from its responsibility for completing all of the Services within the Maximum Cost.

3.3. **Professional Standard of Care.** During this Agreement's Term:

(A) CONSULTANT and its Subconsultants, subcontractors, employees, and agents (collectively, "CONSULTANT PARTIES") shall perform all of the Services in this Agreement in an expeditious and professional manner, using professionals properly licensed and duly qualified to perform the Services.

(B) CONSULTANT PARTIES shall perform the work described in this Agreement in accordance with generally accepted professional practices and principles, and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by members of CONSULTANT PARTIES' profession currently practicing in California. By delivering the completed work, CONSULTANT PARTIES represent and certify that their work conforms to: the requirements of this Agreement; all applicable (federal, state, county, local, CITY) laws, rules, regulations, orders, and procedures; and the professional standard of care in California.

(C) CONSULTANT PARTIES are responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation: site conditions; existing facilities; seismic, geologic, soils, hydrologic, geographic, climatic conditions; applicable (federal, state, county, local, CITY) laws, rules, regulations, orders, and procedures; and all other contingencies or design considerations. Data, calculations, opinions, reports, investigations, or any other information or documents that CITY provides relating to site, local, or other conditions are not warranted or guaranteed, either expressly or implied, by CITY.

(D) When the Scope of Work requires or permits CITY's review, approval, conditional approval, or disapproval, CONSULTANT acknowledges that CITY's review, approval, conditional approval, or disapproval:

- (1) Is solely for the purposes of administering this Agreement and determining whether CONSULTANT is entitled to payment for its Services;
- (2) Is not to be construed as a waiver of any breach, or acceptance by CITY, of any responsibility— professional or otherwise— for the Services or CONSULTANT's work product;
- (3) Does not relieve CONSULTANT of the responsibility for complying with the standard of performance or professional care; or laws, regulations, or industry standards; and
- (4) Does not relieve CONSULTANT from liability for damages arising out of CONSULTANT's: negligent acts, errors, or omissions; recklessness; willful misconduct; or noncompliance with industry standards.

(E) Without additional compensation to CONSULTANT and at no cost to CITY, CONSULTANT shall correct or revise all errors, mistakes, or deficiencies in its work product, studies, reports, designs, drawings, specifications, or other services.

4.0 TIME FOR PERFORMANCE

[Select one of the following alternatives:]

4.1. **[OPTION 1]** CONSULTANT shall complete all of the Services by [DATE] .

4.1. **[OPTION 2]** CONSULTANT shall perform the Services according to the Project Time Schedule, which is attached as "Exhibit B" to this Agreement and is incorporated into it by this reference. CONSULTANT shall complete all of the Services by [DATE] .

4.2. If the Project Time Schedule calls for performance of the Services in phases or discrete increments, CONSULTANT shall not proceed from one phase or increment to the next without written authorization from CITY's Project Manager.

4.3. **Force Majeure.** If an event or condition constituting a "force majeure"— including, but not limited to, an act of God, labor dispute, civil unrest, epidemic, or natural disaster— prevents or delays a PARTY from performing or fulfilling an obligation under this Agreement, the PARTY is not in Default, under Paragraph 13.1 of this Agreement, of the obligation. A delay beyond a PARTY's control automatically extends the time, in an amount equal to the period of the delay, for the PARTY to perform the obligation under this Agreement. The PARTIES shall prepare and sign an appropriate document acknowledging any extension of time under this Paragraph.

5.0 PERSONNEL

5.1. **Project Management.** Each PARTY shall appoint a Project Manager. The Project Managers shall meet [SET FORTH SPECIFIC TIMES: hourly/ daily/ weekly/ as needed] to coordinate, review, and ensure CONSULTANT's performance under this Agreement. CITY's Project Manager will oversee the administration of CONSULTANT's tasks under this Agreement.

5.2. **Key Personnel.** CONSULTANT's project team shall work under the direction of the following key personnel [IDENTIFY CONSULTANT's KEY PERSONNEL AND TITLE] . [OR STATE: CONSULTANT shall employ the key personnel identified in "Exhibit A."] CONSULTANT shall minimize changes to its key personnel. CITY may request key personnel changes, and CITY may review and approve key personnel changes

proposed by CONSULTANT. CITY will not unreasonably withhold approval of key personnel assignments and changes.

5.3. **Use of Agents or Assistants.** With CITY's prior written approval, CONSULTANT may employ, engage, or retain the services of persons or entities ("Subconsultants") that CONSULTANT may deem proper to aid or assist in the proper performance of CONSULTANT's duties. CITY is an intended beneficiary of all work that the Subconsultants perform for purposes of establishing a duty of care between the Subconsultants and CITY. CONSULTANT is as responsible for the performance of its Subconsultants as it would be if it had rendered the Services itself. All costs of the tasks performed or the expenses incurred by the Subconsultants are chargeable directly to CONSULTANT. Nothing in this Agreement constitutes or creates a contractual relationship between CITY and anyone other than CONSULTANT.

5.4. **Independent Contractor.**

(A) CONSULTANT understands and acknowledges that CONSULTANT is an independent contractor, not an employee, partner, agent, or principal of CITY. This Agreement does not create a partnership, joint venture, association, or employer-employee relationship between the PARTIES. At its own expense, CONSULTANT is responsible for providing compensation; employment benefits; disability, unemployment, and other insurance; workers' compensation; training; permits and licenses; and office space for CONSULTANT and for CONSULTANT's employees and Subconsultants. CONSULTANT has, and shall retain, the right to exercise full control over the employment, direction, compensation, and discharge of all persons whom CONSULTANT uses in performing the Services under this Agreement. CONSULTANT shall provide the Services in CONSULTANT's own manner and method, except as this Agreement specifies. CONSULTANT shall treat a provision in this Agreement that may appear either to give CITY the right to direct CONSULTANT as to the details of doing the work, or to exercise a measure of control over the work, as giving CONSULTANT direction only as to the work's end result.

(B) CONSULTANT shall indemnify, defend (including CONSULTANT's providing and paying for legal counsel for CITY), and hold harmless CITY for any obligation; claim; suit; demand for tax or retirement contribution, including any contribution or payment to the Public Employees Retirement System (PERS); social security; salary or wages; overtime, penalty, or interest payment; or workers' compensation payment that CITY may be required to make on behalf of CONSULTANT, an employee of CONSULTANT, or any employee of CONSULTANT construed to be an employee of CITY, for the work done under this Agreement.

5.5. **Non-Discrimination in Employment.** CONSULTANT shall not discriminate against any employee or person who is subject to this Agreement because of race, color, religion, religious belief, national origin, ancestry, citizenship, age, sex, sexual orientation, marital status, pregnancy, parenthood, medical condition, or physical or mental disability.

5.6. **Disability Access Laws.** CONSULTANT represents and certifies that the work product, studies, reports, designs, drawings, and specifications that CONSULTANT prepares under this Agreement fully conform to all applicable disability access and design laws, regulations, and standards— including, but not limited to, the Americans with Disabilities Act (42 U.S.C. Sections 12101 *et seq.*) and Title 24 of the California Code of Regulations— when the Scope of Work requires or calls for compliance with those laws, regulations, or standards.

5.7. **Prevailing Wage Laws.** Services by persons deemed to be employees of CONSULTANT possibly may be subject to prevailing wages under California Labor Code Sections 1770-1781. CONSULTANT's sole responsibility is to comply with those requirements, should they apply. If a dispute based upon the prevailing wage laws occurs, CONSULTANT, at its expense, shall indemnify, defend (including CONSULTANT's providing and paying for legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, fines, penalties, wages, costs, or expenses pertaining to the prevailing wage laws.

5.8. **Workers' Compensation.** CONSULTANT understands and acknowledges that all persons furnishing services to CITY under this Agreement are, for the purpose of workers' compensation liability, employees solely of CONSULTANT and not of CITY. In performing the Services or the work under this Agreement, CONSULTANT is liable for providing workers' compensation benefits to CONSULTANT's employees, or anyone whom CONSULTANT directly or indirectly hires, employs, or uses. CITY is not responsible for any claims at law or in equity caused by CONSULTANT's failure to comply with this Paragraph.

6.0 FACILITIES

6.1. CONSULTANT shall provide all facilities necessary to fully perform and complete the Services. If CONSULTANT needs to use a CITY facility, CONSULTANT shall meet and confer with CITY before CONSULTANT begins the work that this Agreement requires, the PARTIES shall agree to any costs chargeable to CONSULTANT, and in an amendment to this Agreement, the PARTIES shall describe the facility's terms of use and its charges.

6.2. CONSULTANT shall pay for any damage to CITY property, facilities, structures, or streets arising out of CONSULTANT's use, occupation, operation, or activities in, upon, under, or over any portion of them.

7.0 PAYMENT

7.1. CITY's payment to CONSULTANT will be based upon CONSULTANT's Fee Schedule, which is attached as "Exhibit C" to this Agreement and is incorporated

into it by this reference. **[NOTE: "Exhibit C" must include a breakdown of the not-to-exceed amount, including hourly rates for project staff, any overtime rates, a list and the rate for any reimbursable expenses, or a statement that costs are included in the hourly rate, and an explanation of any mark-ups.]** Except as itemized in the Fee Schedule, CONSULTANT shall pay for all expenses, including reimbursable or out-of-pocket expenses, that CONSULTANT incurs in performing the Services. The Fee Schedule will remain in effect for the Agreement's Term.

[Select one of the following provisions:]

7.2. **Fee. [OPTION 1]** CITY shall pay for the Services in a lump sum, which is not to exceed _____ dollars (\$_____), upon CONSULTANT's satisfactory completion of the Services and CONSULTANT's delivery of the work product.

7.2. **Fee. [OPTION 2]** CITY shall pay for the Services that CONSULTANT performs in accordance with this Agreement at the hourly rate(s) specified in "Exhibit C," the TOTAL amount of which is not to exceed _____ dollars (\$_____).

7.2. **Fee. [OPTION 3]** CITY shall pay for the Services in _____ **IF PAYMENTS ARE IN INTERVALS, SPECIFY A PERIOD (e.g., monthly/ quarterly) OR SPECIFY A QUANTITY (e.g., two, three, five)** installments, the TOTAL amount of which is not to exceed _____ dollars (\$_____). Each installment will be payable upon satisfactory completion, in CITY's determination, of the work in each phase identified below, and in an amount proportionate to the work CONSULTANT performed or completed within each phase:

<u>Phase:</u>	<u>Description:</u>	<u>Amount:</u>
I -	_____ [Example: Construction Documents]	\$ _____
II -	_____ [Example: Bid Documents]	\$ _____
III -	_____ [Example: Construction Support]	\$ _____
IV -	_____ [Example: Project 's Closeout]	\$ _____
TOTAL		\$ _____

7.3. If CITY requires additional work not included in this Agreement, CONSULTANT and CITY shall negotiate the additional work, mutually agree on the amount of additional compensation, and memorialize the terms in either a separate written contract or an amendment to this Agreement.

7.4. **Maximum Cost.** CONSULTANT expressly acknowledges that the total cost to complete all tasks set forth in "Exhibit A" must not exceed _____ dollars (\$_____) ("Maximum Cost"). When CONSULTANT has billed 75% of the Maximum Cost, CONSULTANT shall provide written notice to CITY's Project Manager that CONSULTANT has expended 75% of the Maximum Cost.

7.5. **Taxes.** CONSULTANT shall pay all applicable (federal, state, county, local, CITY) excise, sales, consumer use, possessory interest, or other similar taxes required by law that are levied upon this Agreement or upon CONSULTANT's services under this Agreement.

7.6. **Invoices.** CONSULTANT shall submit an original, itemized invoice to CITY for approval, before receiving compensation. CONSULTANT shall submit the invoice at no more than monthly intervals. All invoices must include a summary of total costs, description of the Services performed, a brief itemization of costs associated with each task or phase, and the total phase or project costs to date.

8.0 AUDIT BY CITY

8.1. During this Agreement's Term and for a period of four (4) years after the expiration, cancellation, or termination of this Agreement, or any extension of it, CONSULTANT shall:

(A) Keep and maintain, in their original form, all records, books, papers, or documents related to CONSULTANT's performance of this Agreement; and

(B) Permit CITY or its authorized representatives, at all reasonable times, to have access to, examine, audit, excerpt, copy, photocopy, photograph, or transcribe all records, books, papers, or documents related to CONSULTANT's performance of this Agreement including, but not limited to: direct and indirect charges, and detailed documentation, for work CONSULTANT has performed or will perform under this Agreement.

9.0 DATA, RECORDS, PROPRIETARY RIGHTS

9.1. **Copies of Data.** CONSULTANT shall provide CITY with copies or originals of all data that CONSULTANT generates, uses, collects, or stores in relation to all work associated with this Agreement. Data that CONSULTANT generates, uses, collects, stores, or provides must be in a form acceptable to, and agreed upon by, CITY.

9.2. Ownership and Use.

(A) Unless CITY states otherwise in writing, each document—including, but not limited to, each report, draft, record, drawing, or specification (collectively, "work product")— that CONSULTANT prepares, reproduces, or causes its preparation or reproduction for this Agreement is CITY's exclusive property.

(B) CONSULTANT acknowledges that its use of the work product is limited to the purposes contemplated by the Scope of Work. CONSULTANT makes no representation of the work product's application to, or suitability for use in, circumstances not contemplated by the Scope of Work.

9.3. **Intellectual Property.**

(A) If CONSULTANT uses or incorporates patented, trademarked, or copyrighted work, ideas, or products— in whole or in part— into CONSULTANT’s work product, CONSULTANT represents that:

- (1) CONSULTANT holds the patent, trademark, or copyright to the work, idea, or product; or
- (2) CONSULTANT is licensed to use the patented, trademarked, or copyrighted work, idea, or product.

(B) Unless CITY states otherwise in writing, all proprietary rights or intellectual property rights, including copyrights, that arise from creation of the work under this Agreement vest in CITY. CONSULTANT waives and relinquishes all claims to proprietary rights and intellectual property rights, including copyrights, in favor of CITY.

(C) CONSULTANT shall indemnify, defend (including CONSULTANT’s providing and paying for legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, royalties, fines, penalties, costs, or expenses arising out of or alleging any infringement or misappropriation of a patent, copyright, trade secret, trade name, trademark, or other intellectual property right or proprietary right.

9.4. **Confidentiality.** CONSULTANT shall not use any information that it obtains from performing the Services for any purpose other than for fulfillment of CONSULTANT’s Scope of Work. Without CITY’s prior written authorization, CONSULTANT shall not disclose or publish— or authorize, permit, or allow others to disclose or publish— data, drawings, designs, specifications, reports, or other information relating to the Services or the work that CITY assigns to CONSULTANT or to which CONSULTANT has access.

9.5. **Public Records Act.**

(A) CONSULTANT acknowledges that this Agreement is a public record. This Agreement, its Exhibits, and all documents produced under this Agreement are subject to the California Public Records Act (Government Code Sections 6250 *et seq.*), including its exemptions. CONSULTANT acknowledges that CITY has no obligation to notify CONSULTANT when a request for records is received.

(B) CONSULTANT shall identify in advance all records, or portions of them, that CONSULTANT believes are exempt from production under the Public Records Act.

(C) If CONSULTANT claims a privilege against public disclosure or otherwise objects to the records’ disclosure, then:

- (1) CONSULTANT may, when notified by CITY of the request, seek protection from disclosure by timely applying for relief in a court of competent jurisdiction; or
- (2) CITY may either decline to produce the requested information, or redact portions of the documents and produce the redacted records.

(D) If CONSULTANT fails to identify one or more protectable documents, in CITY's sole discretion, and without its being in breach of this Agreement or its incurring liability to CONSULTANT, CITY may produce the records— in whole, in part, or redacted— or may decline to produce them.

(E) CONSULTANT shall indemnify, defend (including CONSULTANT's providing and paying for legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, fines, penalties, costs, or expenses arising out of or alleging CITY's refusal to publicly disclose one or more records that CONSULTANT identifies as protectable, or asserts is protectable.

10.0 CONFLICT OF INTEREST; CAMPAIGN CONTRIBUTIONS

10.1. **Conflict of Interest.** CONSULTANT represents and certifies that:

(A) CONSULTANT's personnel are not currently officers, agents, employees, representatives, or elected officials of CITY;

(B) CONSULTANT will not employ or hire a CITY officer, agent, employee, representative, or elected official during this Agreement's Term;

(C) CITY's officers, agents, employees, representatives, and elected officials do not, and will not, have any direct or indirect financial interest in this Agreement; and

(D) During this Agreement's Term, CONSULTANT will inform CITY about any possible conflict of interest that may arise as a result of any change in circumstances.

10.2. **Campaign Contributions.**

(A) CONSULTANT and its Subconsultants shall fully comply with Glendale Municipal Code Section 1.10.060, which places limitations on CONSULTANT's and its Subconsultants' ability to make campaign contributions to certain elected City officials or candidates for elected City office. Specifically, Section 1.10.060 prohibits:

- (1) A consultant (including a subconsultant)— who has a contract with the City of Glendale, Glendale Successor Agency, or the Housing Authority of the City of Glendale and that contract is subject to approval by the City Council, Successor Agency, or Housing Authority— from making a contribution to a City Council member, City Clerk, or City Treasurer, when the contract has a total anticipated or actual value of \$50,000 or more, or a combination or series of contracts having a value of \$50,000 or more; and
- (2) A City Council member, Successor Agency member, or Housing Authority member from voting on a contract in which a consultant (or a subconsultant) has provided a campaign contribution.

(B) CONSULTANT acknowledges that even if the Maximum Cost in Paragraph 7.4 of this Agreement is less than \$50,000, CONSULTANT still may be subject to the campaign contribution limitations in Municipal Code Section 1.10.060, when:

- (1) CONSULTANT and CITY amend the Scope of Services in this Agreement which increases the Maximum Cost to equal or exceed \$50,000; or
- (2) CITY, Glendale Successor Agency, or the Housing Authority awards CONSULTANT another contract which has a total anticipated or actual value of \$50,000 or more, or awards CONSULTANT a combination or series of contracts which have a value of \$50,000 or more.

(C) CONSULTANT represents and certifies that:

- (1) CONSULTANT has read and fully understands the provisions of Municipal Code Section 1.10.060;
- (2) CONSULTANT will not: (a) make a prohibited campaign contribution to an individual holding CITY elective office; or (b) otherwise violate Municipal Code Section 1.10.060; and
- (3) CONSULTANT shall timely complete, return, and update one or more disclosure or reporting forms that CITY provides.

11.0 INSURANCE

11.1. When CONSULTANT signs and delivers this Agreement to CITY, and during this Agreement's Term, CONSULTANT shall furnish CITY with insurance forms

that fully meet the requirements of— and contain provisions entirely consistent with— all of the “Insurance Requirements,” which are attached as “Exhibit D” (D-1 to D-___) to this Agreement and are incorporated into it by this reference.

11.2. This Agreement's insurance provisions:

(A) Are separate and independent from the indemnification and defense provisions in Article 12 of the Agreement; and

(B) Do not limit, in any way, the applicability, scope, or obligations of the indemnification and defense provisions in Article 12 of the Agreement.

12.0 **INDEMNITY**

12.1. To the maximum extent permitted by law— including, but not limited to, California Civil Code Section 2778— CONSULTANT, its employees, agents, Subconsultants, and persons whom CONSULTANT employs or hires (individually and collectively, “CONSULTANT INDEMNITOR”) shall indemnify, defend, and hold harmless CITY, its officers, agents, employees, and representatives (individually and collectively, “CITY INDEMNITEE”) from and against a “**liability**” [as defined in Subparagraph (A) below], or an “**expense**” [as defined in Subparagraph (B) below], or both, that arise out of, pertain to, or relate to an act, error, or omission of a CONSULTANT INDEMNITOR:

(A) “**Liability**” means claims, suits, actions, causes of action, proceedings, judgments, decrees, awards, settlements, liens, losses, damages, injuries, or liability of any kind, whether the **liability** is:

- (1) Actual or alleged;
- (2) In contract or in tort; or
- (3) For bodily injury (including accidental death), personal injury, advertising injury, or property damage.

(B) “**Expense**” means fees, costs, sums, penalties, fines, charges, or expenses of any kind, including, but not limited to:

- (1) Attorney's fees;
- (2) Costs of an investigation, litigation, arbitration, mediation, administrative or regulatory proceeding, or appeal;
- (3) Fees of an accountant, expert witness, consultant, or other professional; or
- (4) Pre or post: judgment interest or settlement interest.

12.2. Under this Article, CONSULTANT INDEMNITOR's defense and indemnification obligations:

(A) Apply to a **liability**, or an **expense**, or both, that arise out of, pertain to, or relate to the actual or alleged passive negligence of a CITY INDEMNITEE; but

(B) Do not apply to a **liability**, or an **expense**, or both, that arise out of, pertain to, or relate to the sole active negligence or willful misconduct of a CITY INDEMNITEE.

12.3. To the extent that CONSULTANT INDEMNITOR's insurance policy provides an upfront defense to CITY, CONSULTANT INDEMNITOR's obligation to defend a CITY INDEMNITEE under this Article:

(A) Means that CONSULTANT INDEMNITOR shall provide and pay for legal counsel, acceptable to CITY, for the CITY INDEMNITEE;

(B) Occurs when a claim, suit, complaint, pleading, or action against a CITY INDEMNITEE arises out of, pertains to, relates to, or asserts an act, error, or omission of CONSULTANT INDEMNITOR; and

(C) Arises regardless of whether a claim, suit, complaint, pleading, or action specifically names or identifies CONSULTANT INDEMNITOR.

12.4. Paragraph 12.3 does not limit or extinguish CONSULTANT INDEMNITOR's obligation to reimburse a CITY INDEMNITEE for the costs of defending the CITY INDEMNITEE against a **liability**, or an **expense**, or both. A CITY INDEMNITEE's right to recover defense costs and attorney's fees under this Article does not require, and is not contingent upon, the CITY INDEMNITEE's first:

(A) Requesting that CONSULTANT INDEMNITOR provide a defense to the CITY INDEMNITEE; or

(B) Obtaining CONSULTANT INDEMNITOR's consent to the CITY INDEMNITEE's tender of defense.

12.5. If CONSULTANT subcontracts all or any portion of the Services under this Agreement, CONSULTANT shall provide CITY with a written agreement from each Subconsultant, who must indemnify, defend, and hold harmless CITY INDEMNITEE under the terms in this Article.

12.6. CONSULTANT INDEMNITOR's obligation to indemnify, defend, and hold harmless CITY will remain in effect and will be binding upon CONSULTANT

INDEMNITOR whether the **liability**, or the **expense**, or both, accrues— or is discovered— before or after this Agreement’s expiration, cancellation, or termination.

12.7. Except for Paragraph 12.3, this Article’s indemnification and defense provisions are separate and independent from the insurance provisions in Article 11. In addition, the indemnification and defense provisions in this Article:

(A) Are neither limited to nor capped at the coverage amounts specified under the insurance provisions in Article 11; and

(B) Do not limit, in any way, the applicability, scope, or obligations of the insurance provisions in Article 11.

13.0 DEFAULT, REMEDIES, AND TERMINATION

13.1. **Default.** Default under this Agreement occurs upon any one or more of the following events:

(A) CONSULTANT refuses or fails— whether partially, fully, temporarily, or otherwise— to:

- (1) Provide or maintain enough properly trained personnel, or licensed personnel, or both, to perform the Services that this Agreement requires;
- (2) Pay for, obtain, maintain, or renew the insurance policies or coverages that this Agreement requires;
- (3) Comply with indemnification, defense, or hold harmless provisions that this Agreement requires; or

(B) CONSULTANT, or its personnel, or both— whether partially, fully, temporarily, or otherwise:

- (1) Disregards or violates a law, ordinance, rule, procedure, regulation, directive, or order;
- (2) Refuses or fails to pay for, obtain, maintain, or renew requisite licenses;
- (3) Refuses or fails to observe, perform, or fulfill a covenant, condition, obligation, term, or provision of this Agreement;
- (4) Commits an unlawful, false, fraudulent, dishonest, deceptive, or dangerous act while performing the Services under this Agreement; or

(C) CONSULTANT:

- (1) Or another party for or on behalf of CONSULTANT: institutes proceedings under any bankruptcy, reorganization, receivership or other insolvency; or assigns or transfers assets to its creditors;
- (2) Delegates— whether in whole, in part, temporarily, or otherwise— its duties or obligations under this Agreement, without notifying CITY, or without CITY's written authorization;
- (3) Assigns, transfers, pledges, hypothecates, grants, or encumbers— whether in whole, in part, temporarily, or otherwise— this Agreement or any interest in it, without notifying CITY, or without CITY's written authorization;
- (4) Or one of its partners, directors, officers, or general managers, or a person who exercises managerial authority on CONSULTANT's behalf, is convicted under state or federal law, during this Agreement's Term, of embezzlement, theft, fraud, forgery, bribery, deceptive or unlawful business practices, perjury, falsifying or destroying records or evidence, receiving stolen property, or other offense indicating a lack of business integrity or business honesty; or

(D) Any other justifiable cause or reason, as reasonably determined by the City Manager, or a designee.

13.2. **Notice of Default.** If CITY deems that CONSULTANT is in Default, or that CONSULTANT has failed in any other respect to satisfactorily perform the Services specified in this Agreement, CITY may give written notice to CONSULTANT specifying the Default(s) that CONSULTANT shall remedy within [SELECT: 5/ 10/ 14/ 30] days after receiving the notice. The Notice of Default will set forth one or more bases for any dissatisfaction and may suggest corrective measures.

13.3. **Remedies upon Default.** Within [SELECT THE SAME NUMBER IN PARAGRAPH 13.2 ABOVE: 5/ 10/ 14/ 30] days after receiving CITY's Notice of Default, if CONSULTANT refuses or fails to remedy the Default(s), or if CONSULTANT does not commence steps to remedy the Default(s) to CITY's reasonable satisfaction, CITY may exercise any one or more of the following remedies:

(A) CITY may, in whole or in part and for any length of time, immediately suspend this Agreement until such time as CONSULTANT has corrected the Default;

(B) CITY may provide for the Services either through its own forces or from another consultant, and may withhold any money due (or may become owing to) CONSULTANT for a task related to the claimed Default;

(C) CITY may withhold all moneys, or a sum of money, due CONSULTANT under this Agreement, which in CITY's sole determination, are sufficient to secure CONSULTANT's performance of its duties and obligations under this Agreement;

(D) CITY may immediately terminate the Agreement;

(E) CITY may exercise any legal remedy, or equitable remedy, or both, including, but not limited to, filing and action in court:

- (1) Seeking CONSULTANT's specific performance of all or any part of this Agreement; or
- (2) Recovering damages for CONSULTANT's Default, breach, or violation of this Agreement; or

(F) CITY may pursue any other available, lawful right, remedy, or action.

13.4. **Termination for Convenience.** Independent of the remedies provided in Paragraph 13.3, CITY may elect to terminate this Agreement at any time upon [SELECT: 10/ 14/ 30] days' prior written notice. Upon termination, CONSULTANT shall receive compensation only for that work which CONSULTANT had satisfactorily completed to the termination date. CITY shall not pay CONSULTANT for de-mobilization, takedown, disengagement, wind-down, or other costs incurred arising out of this Agreement's termination.

14.0 **GENERAL PROVISIONS**

14.1. **Entire Agreement.** This Agreement represents the entire and integrated agreement between the PARTIES. This Agreement supersedes all prior and contemporaneous communications, negotiations, understandings, promises and agreements, either oral or written. Neither CONSULTANT nor CITY has made any promises or representations, other than those contained in this Agreement or those implied by law. The PARTIES may modify this Agreement, or any part of it, by a written amendment with CITY's and CONSULTANT's signature.

14.2. **Interpretation.** This Agreement is the product of negotiation and compromise by both PARTIES. Every provision in this Agreement must be interpreted as though the PARTIES equally participated in its drafting. Therefore, despite the provisions in California Civil Code Section 1654, if this Agreement's language is uncertain, the

Agreement must not be construed against the PARTY causing the uncertainty to exist. In interpreting this Agreement and resolving any ambiguities, this Agreement will take precedence over any cover page or attachments. If a conflict occurs between a provision in this Agreement and a provision in an attachment, the following order of precedence applies, with the terms and conditions in the document higher on the list governing over those lower on the list:

- (1) The Agreement.
- (2) Exhibit D.
- (3) Exhibit B.
- (4) Exhibit A.
- (5) Exhibit C.

14.3. **Headings.** All headings or captions in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any term, condition, or provision.

14.4. **Governing Law.** California's laws govern this Agreement's construction and interpretation. Unless this Agreement provides otherwise, any reference to laws, ordinances, rules, or regulations include their later amendments, modifications, and successor legislation.

14.5. **Waiver of Breach.** If a PARTY waives the other PARTY's breach of a term in this Agreement, that waiver is not treated as waiving a later breach of the term and does not prevent the PARTY from later enforcing that term, or any other term. A waiver of a term is valid only if it is in writing and signed by the PARTY waiving it. This Agreement's duties and obligations:

(A) Are cumulative (rather than alternative) and are in addition to (rather than a limitation on) any option, right, power, remedy, or privilege; and

(B) Are not exhausted by a PARTY's exercise of any one of them.

14.6. **Attorney's Fees.** If CITY or CONSULTANT brings an action at law or in equity to enforce or interpret one or more provisions of this Agreement, the "prevailing party" is entitled to "reasonable attorney's fees" in addition to any other relief to which the prevailing party may be entitled. A "prevailing party" has the same meaning as that term is defined in California Code of Civil Procedure Section 1032(a)(4). "Reasonable attorney's fees" of the City Attorney's office means the fees regularly charged by private attorneys who:

(A) Practice in a law firm located in Los Angeles County; and

(B) Have an equivalent number of years of professional experience in the subject matter area of the law for which the City Attorney's services were rendered.

14.7. **Further Assurances.** Upon CITY's request at any time, CONSULTANT shall promptly:

(A) Take further necessary action; and

(B) Sign, acknowledge, and deliver all additional documents as may be reasonable, necessary, or appropriate to carry out this Agreement's intent, purpose, and terms.

14.8. **Assignment.**

(A) This Agreement does not give any rights or benefits to anyone, other than to CITY and CONSULTANT. All duties, obligations, and responsibilities under this Agreement are for the sole and exclusive benefit of CITY and CONSULTANT, and are not for the benefit of another person, entity, or organization. Without CITY's prior written authorization, CONSULTANT shall not do any one or more of the following:

(1) Assign or transfer a right or interest— whether in whole, in part, temporarily, or otherwise— in this Agreement; or

(2) Delegate a duty or obligation owed— whether in whole, in part, temporarily, or otherwise— under this Agreement.

(B) Any actual or attempted assignment of rights or delegation of duties by CONSULTANT, without CITY's prior written authorization, is wholly void and totally ineffective for all purposes; and does not postpone, delay, alter, extinguish, or terminate CONSULTANT's duties, obligations, or responsibilities under this Agreement.

(C) If CITY consents to an assignment of rights, or a delegation of duties, or both, CONSULTANT's assignee or legal representative shall agree in writing to personally assume, perform, and to be bound unconditionally by the covenants, obligations, terms, and conditions in this Agreement.

14.9. **Successors and Assigns.** Subject to the provisions in Paragraph 14.8, this Agreement is binding on the heirs, executors, administrators, successors, and assigns of the respective PARTIES.

14.10. **Time is of the Essence.**

(A) Except when this Agreement states otherwise, time is of the essence in this Agreement. CONSULTANT acknowledges that this Agreement's time limits and deadlines are reasonable for CONSULTANT's performing the Services under this Agreement.

(B) Unless this Agreement specifies otherwise, any reference to “day” or “days” means calendar and not business days. If the last day for giving notice or performing an act under this Agreement falls on a weekend, a legal holiday listed in either Glendale Municipal Code Section 3.08.010 or California’s Government Code, or a day when City Hall is closed, the period is extended to and including the next day that CITY is open for business. A reference to the time of day refers to local time for Glendale, California.

14.11. **Recycled Paper.** CONSULTANT shall endeavor to submit all reports, correspondence, and documents related to this Agreement on recycled paper.

14.12. **Notices.**

(A) The PARTIES shall submit in writing all notices and correspondence that this Agreement requires or permits, and shall deliver the notices and correspondence to the places set forth below. The PARTIES may give notice by:

- (1) Personal delivery;
- (2) U.S. mail, first class postage prepaid;
- (3) “Certified” U.S. mail, postage prepaid, return receipt requested; or
- (4) Facsimile.

(B) All written notices or correspondence sent in the described manner will be presumed “given” to a PARTY on whichever date occurs earliest:

- (1) The date of personal delivery;
- (2) The third (3rd) business day following deposit in the U.S. mail, when sent by “first class” mail;
- (3) The date on which the PARTY or its agent either signed the return receipt or refused to accept delivery, as noted on the return receipt or other U.S. Postal Service form, when sent by “certified” mail; or
- (4) The date of transmission, when sent by facsimile.

(C) At any time, by providing written notice to the other PARTY, CITY or CONSULTANT may change the place, or facsimile number, for giving notice.

CITY:

City of Glendale

Dept.: _____

Glendale, CA 91206

Attn: _____

Tel. No. _____

Fax. No. _____

CONSULTANT:

Attn: _____

Tel. No. _____

Fax. No. _____

14.13. **Survival.** This Paragraph and the obligations set forth in Paragraphs 5.4, 5.6, 5.7, 5.8, 7.5, 8.1, 9.1, 9.2, 9.3, 9.4, 9.5, 11.1, 11.2, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 12.7, 13.3, 14.5, 14.6, 14.7, 14.8, 14.9, and 14.12 survive this Agreement's expiration, cancellation, or termination.

14.14. **Severability.** The invalidity, in whole or in part, of any term of this Agreement will not affect this Agreement's remaining terms.

14.15. **Counterparts.** This Agreement may be executed in counterparts, each of which is an original, but all of which constitutes one and the same document. The PARTIES shall sign a sufficient number of counterparts, so that each PARTY will receive a fully executed original of this Agreement.

14.16. **Representations – Authority.** The PARTIES represent that:

(A) They have read this Agreement, fully understand its contents, and have received a copy of it;

(B) Through their duly authorized representative, they are authorized to sign this Agreement, and they are bound by its terms; and

(C) They have executed this Agreement on the date opposite their signature.

Executed at Glendale, California.

CITY OF GLENDALE:

By _____ Date: _____,
20____
(Name) _____
(Title) _____

CONSULTANT:

By _____ Date: _____,
20____
(Name) _____
(Title) _____

APPROVED AS TO FORM:

City Attorney Date

EXHIBIT LIST

- “Exhibit A”: Scope of Work
 (__ pages)
- “Exhibit B”: Project Time Schedule
 (__ pages)
- “Exhibit C”: Fee Schedule
 (__ pages)
- “Exhibit D”: Insurance Requirements
 (__ pages)

EXHIBIT D-
INSURANCE REQUIREMENTS
PROFESSIONAL SERVICES AGREEMENT

“PROFESSIONAL LIABILITY” INSURANCE

1.1 Without limiting CONSULTANT’s liability and at its sole expense, CONSULTANT shall obtain, pay for, and maintain a Professional Liability insurance policy.

1.2 The Professional Liability policy must:

- (A) Include “**errors and omissions**” coverage or “**malpractice**” coverage;
- (B) Afford “**practice specific**” or “**project specific**” coverage;
- (C) Provide limits of liability in an amount not less than:
 - (1) ONE MILLION DOLLARS (\$1,000,000) per claim; and
 - (2) TWO MILLION DOLLARS (\$2,000,000) in the aggregate;
- (D) Cover a claim or claims arising out of the performance of professional services by:
 - (1) **CONSULTANT;**
 - (2) **CONSULTANT’s Subconsultant(s);**
 - (3) **Anyone whom CONSULTANT or its Subconsultant(s) directly or indirectly employs or uses; or**
 - (4) **Anyone whose acts CONSULTANT or its Subconsultant(s) may be**
- (E) Provide coverage for:
 - (1) **The duration of this Agreement; and**
 - (2) **At least three (3) years after the Project’s completion:**
 - (a) CONSULTANT shall obtain, pay for, and maintain an endorsement that adds an “extended reporting period” (“ERP”) or a “discovery” feature— to allow CITY to report a claim— for a period of not less than three (3) years following the initial policy’s expiration, or following CITY’s recordation of its “notice of completion” for the Project, whichever date is later. The endorsement for the ERP or discovery feature must provide identical policy limits, and meet the conditions, described in subparagraphs 1.2 (A) through (D) above; or

liable; and

- (b) CONSULTANT shall obtain, pay for, and maintain successive renewal or replacement policies (with “prior acts” coverage), for a period of three (3) years following the initial policy’s expiration, or following CITY’s recordation of its “notice of completion” for the Project, whichever date is later. Each policy must have a “retroactive date” that coincides with, or is earlier than, this Agreement’s Effective Date. Additionally, each policy must provide identical policy limits, and meet the conditions, described in subparagraphs 1.2 (A) through (D) above.

1.3 All ERP or discovery endorsements, renewal policies, and replacement coverage policies are subject to CITY’s review and approval, in its sole discretion.

1.4 CONSULTANT shall pay the full amount of all deductibles and any self-insured retention per claim for coverage under the Professional Liability insurance policy.

EXHIBIT D-
INSURANCE REQUIREMENTS
PROFESSIONAL SERVICES AGREEMENT

“WORKERS’ COMPENSATION” INSURANCE

1.1 At its own expense, CONSULTANT shall obtain, pay for, and maintain— and shall require each of its Subconsultants to obtain and maintain— for the duration of this Agreement:

- (A) Complete Workers’ Compensation insurance, meeting or exceeding the coverages and amounts that California law requires; and
- (B) Employer’s Liability insurance in an amount not less than:
 - (1) ONE MILLION DOLLARS (\$1,000,000) per accident for bodily injury or disease;
 - (2) ONE MILLION DOLLARS (\$1,000,000) per employee for bodily injury or disease; and
 - (3) ONE MILLION DOLLARS (\$1,000,000) policy limit.

1.2 CONSULTANT shall provide CITY with a “*certificate of insurance*” and a subrogation endorsement, “*Waiver of Our Right to Recover From Others*” — on forms satisfactory to the City Attorney or City’s Risk Manager, and signed by the insurance carrier or its authorized representative— which fully meet the requirements of, and contain provisions entirely consistent with, this Agreement’s workers’ compensation insurance requirements.

1.3 CITY shall not be liable to CONSULTANT’s personnel, or anyone CONSULTANT directly or indirectly employs or uses, for a claim at law or in equity arising out of CONSULTANT’s failure to comply with this Agreement’s workers’ compensation insurance requirements.

**EXHIBIT D-
INSURANCE REQUIREMENTS
PROFESSIONAL SERVICES AGREEMENT**

“COMMERCIAL GENERAL LIABILITY” OR “BUSINESSOWNERS LIABILITY” INSURANCE

1.1 At its own expense, CONSULTANT shall obtain, pay for, and maintain— and shall require each of its Subconsultants to obtain and maintain— a “Commercial General Liability” or a “Business Owners Liability” insurance policy on an *occurrence* basis to fully protect CONSULTANT and CITY from claims and suits for bodily injury, personal and advertising injury, property damage, and medical payments. The policy must add the City of Glendale and its officers, agents, employees, and representatives (collectively, “CITY AND ITS REPRESENTATIVES”) as *additional insureds*.

1.2 Coverage afforded to CITY AND ITS REPRESENTATIVES must be at least as broad as that afforded to CONSULTANT. If CONSULTANT has higher limits than the limits specified in these insurance requirements, or has additional broader coverage, or has both, the insurer shall make available the higher limits and broader coverage to CITY AND ITS REPRESENTATIVES. The insurance must be written for the limits of liability specified below:

- (A) ONE MILLION DOLLARS (\$1,000,000) per occurrence, or the full per occurrence limits of the policy— whichever limit is greater— for bodily injury (including accidental death) to any one person;
- (B) ONE MILLION DOLLARS (\$1,000,000) per occurrence, or the full per occurrence limits of the policy— whichever limit is greater— for personal and advertising injury to any one person;
- (C) ONE MILLION DOLLARS (\$1,000,000) per occurrence, or the full per occurrence limits of the policy— whichever limit is greater— for property damage; and
- (D) TWO MILLION DOLLARS (\$2,000,000) general aggregate limit, or the full aggregate limits of the policy— whichever limit is greater.

1.3 The liability insurance must include all major divisions of coverage and must cover:

- (A) Premises Operations (including Explosion, Collapse, and Underground [“X,C,U”] coverages as applicable);
- (B) Independent Contractors’ Protective Liability;

- (C) Products and Completed Operations (maintain same limits as above until five (5) years after: recordation of the Notice of Completion or final close-out of the Agreement);
- (D) Personal and Advertising Injury (with Employer's Liability Exclusion deleted);
- (E) Contractual Liability; and
- (F) Broad Form Property Damage.

1.4 CONSULTANT shall provide CITY with a *"certificate of insurance"* and an *"additional insured endorsement"*— on forms satisfactory to the City Attorney or City's Risk Manager, and signed by the insurance carrier or its authorized representative— which fully meet the requirements of, and contain provisions entirely consistent with, all of the Insurance Requirements.

1.5 The *"certificate of insurance"* and an *"additional insured endorsement"* must state:

"The City of Glendale, and its officers, agents, employees, and representatives are included as additional insureds under the policy(s). This insurance is primary to all other insurance of the City. The City's insurance, or self-insurance, or both, will apply in excess of— and will not contribute with— this insurance. This insurance applies separately to each insured or additional insured who is seeking coverage, or against whom a claim is made or a suit is brought. The issuing company shall mail thirty (30) days advance notice to the City for any policy cancellation, termination, non-renewal, or reduction in coverage."

**EXHIBIT D-
INSURANCE REQUIREMENTS
PROFESSIONAL SERVICES AGREEMENT**

“BUSINESS AUTOMOBILE” LIABILITY INSURANCE

1.1 At its own expense, CONSULTANT shall obtain, pay for, and maintain— and shall require each of its Subconsultants to obtain and maintain— a “Business Automobile” insurance policy on an occurrence basis to fully protect CONSULTANT and CITY from claims and suits for bodily injury, property damage, and medical payments. The policy must add the City of Glendale and its officers, agents, employees, and representatives as additional insureds.

1.2 The insurance must not be written for less than the limits of liability specified below or required by law, whichever coverage amount is greater:

- (A) ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury (including accidental death) to any one person; and
- (B) ONE MILLION DOLLARS (\$1,000,000) per occurrence for property damage; or
- (C) ONE MILLION DOLLARS (\$1,000,000) combined single limit (“CSL”).

1.3 The liability insurance must include all major divisions of coverage and must cover all vehicles, whether rented, leased, hired, scheduled, owned or non-owned.

1.4 CONSULTANT shall provide CITY with a “*certificate of insurance*” and an “*additional insured endorsement*”— on forms satisfactory to the City Attorney or City’s Risk Manager, and signed by the insurance carrier or its authorized representative— which fully meet the requirements of, and contain provisions entirely consistent with, all of the Insurance Requirements.

1.5 The “*certificate of insurance*” and an “*additional insured endorsement*” must state:

“The City of Glendale, and its officers, agents, employees, and representatives are included as additional insureds under the policy(s). This insurance is primary to all other insurance of the City. The City’s insurance, or self-insurance, or both, will apply in excess of— and will not contribute with— this insurance. This insurance applies separately to each insured or additional insured who is seeking coverage, or against whom a claim is made or a suit is brought. The issuing company shall

mail thirty (30) days advance notice to the City for any policy cancellation, termination, non-renewal, or reduction in coverage.”

EXHIBIT D-
INSURANCE REQUIREMENTS
PROFESSIONAL SERVICES AGREEMENT

GENERAL REQUIREMENTS

1.1 At all times, the insurance company issuing the policy must meet all three of these requirements:

- (A) It must be “admitted” insurer by the State of California Department of Insurance or must be listed on the California Department of Insurance’s “List of Approved Surplus Line Insurers” (“LASLI”);**
- (B) It must be domiciled within, and organized under the laws of, a State of the United States; and**
- (C) It must carry a minimum A.M. Best Company Financial Strength Rating of “A:VII,” or better.**

1.2 If the Agreement requires any of the foregoing insurance coverages to remain in force after the Final Payment, and if they are reasonably available, CONSULTANT shall submit to CITY— with the final Application for Payment— all certificates and additional insured endorsements evidencing the coverages’ continuation.

1.3 A deductible or self-insured retention is subject to CITY’s review and approval, in its sole discretion. The insurance company or its authorized representative must state either on the insurance certificate or in a separate correspondence:

- (A) The amount of the deductible, or self-insured retention, or both;**
- (B) Whether a limit of insurance has been lowered by any pending or paid claim; and**
- (C) The current limit amount, as lowered by the pending or paid claim.**

1.4 Despite any conflicting or contrary provision in CONSULTANT’s insurance policy:

- (A) If CONSULTANT’s insurance company adds CITY, and its officers, agents, employees, and representatives (collectively, “its representatives”) as additional insureds, then for all acts, errors, or omissions of CITY, or its representatives, or both, that insurer shall:
 - (1) Pay those sums that CITY, or its representatives, or both, become legally obligated to pay as damages; and****

(2) Defend— and pay the costs of defending— CITY, or its representatives, or both;

- (B) **CONSULTANT’s insurance is primary;**
- (C) Other insurance (whether primary, excess, contingent or self-insurance, or any other basis) available to CITY, or its representatives, or both, is excess over CONSULTANT’s insurance;
- (D) CITY’s insurance, or self-insurance, or both, will not contribute with CONSULTANT’s insurance policy;
- (E) CONSULTANT and CONSULTANT’s insurance company waive— and shall not exercise— any right of recovery or subrogation that CONSULTANT or the insurer may have against CITY, or its representatives, or both;
- (F) CONSULTANT’s insurance policy applies separately to each insured or additional insured who is seeking coverage, or against whom a claim is made or suit is brought, except that the naming of multiple insureds will not increase an insurance company’s limits of liability;
- (G) CONSULTANT’s insurance policy applies to a claim or suit brought by an additional insured against a Named Insured or other insured, arising out of bodily injury, personal injury, advertising injury, or property damage; and
- (H) CITY is not liable for a premium payment or another expense under CONSULTANT’s policy.

1.5 At any time during the duration of this Agreement, CITY may do any one or more of the following:

- (A) Review this Agreement’s insurance coverage requirements; or
- (B) Require that CONSULTANT:
 - (1) Obtain, pay for, and maintain more or less insurance depending on CITY’s assessment of any one or more of the following factors:
 - (a) CITY’s risk of liability or exposure arising out of, or in any way connected with, the services of CONSULTANT under this Agreement;

- (b) The nature or number of accidents, claims, or lawsuits arising out of, or in any way connected with, the services of CONSULTANT under this Agreement; or
 - (c) The availability, or affordability, or both, of increased liability insurance coverage;
- (2) Reduce or eliminate a deductible or self-insured retention as it applies to CITY; or
 - (3) Obtain, pay for, and maintain a bond (as a replacement for an insurance coverage) from a California corporate surety, guaranteeing payment to CITY for liability, or costs, or both, that CITY incurs during CITY's investigation, administration, or defense of a claim or a suit arising out of this Agreement.

1.6 CONSULTANT shall maintain the insurance policy without interruption, from the Project's commencement date to the Final Payment date, or until a date that CITY specifies for any coverage that CONSULTANT must maintain after the Final Payment.

1.7 CONSULTANT's insurance company or self-insurance administrator shall mail CITY written notice at least thirty (30) days in advance of the policy's or the self-insurance program's cancellation, termination, non-renewal, or reduction in coverage.

1.8 CONSULTANT shall not allow any insurance to expire, cancel, terminate, lapse, or non-renew. Twenty-one (21) days before its insurance policy's expiration, cancellation, termination, or non-renewal, CONSULTANT shall deliver to CITY evidence of the required coverage as proof that CONSULTANT's insurance policy has been renewed or replaced with another insurance policy which, during the duration of this Agreement, meets all of this Agreement's insurance requirements.

1.9 At any time, upon CITY's request, CONSULTANT shall furnish satisfactory proof of each type of insurance coverage required— including a certified copy of the insurance policy or policies; certificates, endorsements, renewals, or replacements; and documents comprising CONSULTANT's self-insurance program— all in a form and content acceptable to the City Attorney or City's Risk Manager.

1.10 If CONSULTANT hires, employs, or uses a Subconsultant to perform work, services, operations, or activities on CONSULTANT's behalf, CONSULTANT shall ensure that the Subconsultant:

- (A) Meets, and fully complies with, this Agreement's insurance requirements;
- (B) Delivers to CITY— for its review, or approval, or both— all insurance policies, certificates, and endorsements that this Agreement requires; and

- (C) Furnishes CITY, at any time upon its request, with a complete copy of the Subconsultant's insurance policy or policies for CITY's review, or approval, or both.

1.11 CONSULTANT's failure to comply with an insurance provision in this Agreement constitutes a breach upon which CITY may immediately terminate or suspend CONSULTANT's performance of this Agreement, or invoke another remedy that this Agreement or the law allows. At its discretion, CITY may obtain or renew the insurance, and CITY may pay all or part of the premiums. Upon demand, CONSULTANT shall repay CITY for all sums or monies that CITY paid to obtain, renew, or reinstate the insurance, or CITY may offset the cost of the premium against any sums or monies that CITY may owe CONSULTANT.

**INSURANCE REQUIREMENTS
PROFESSIONAL SERVICES AGREEMENT**

CONSULTANT’S SUBMITTAL OF CERTIFICATES AND ENDORSEMENTS

1.1 CONSULTANT shall have its insurance carrier(s) or self-insurance administrator(s) complete and execute the following insurance documents, unless an exception below applies. When CONSULTANT signs and delivers the Agreement to CITY, CONSULTANT also shall deliver:

- (A) A “certificate of insurance” for each required liability insurance coverage;
- (B) An additional insured endorsement for Commercial General Liability coverage or Business Owners Liability coverage and Automobile Liability coverage, unless this Agreement does not require CONSULTANT to obtain and maintain Commercial General Liability coverage, Business Owners Liability coverage, or Automobile Liability coverage;
- (C) A “certificate of insurance” for Workers’ Compensation insurance; or
If CONSULTANT is self-insured for workers’ compensation, a copy of the “Certificate of Consent to Self-insure” from the State of California;
or
If CONSULTANT is lawfully exempt from workers’ compensation laws, an “Affirmation of Exemption from Labor Code §3700” form;
- (D) A subrogation endorsement, “Waiver of Our Right to Recover From Others,” for Workers’ Compensation coverage; and
- (E) A complete copy of CONSULTANT’s Professional Liability insurance policy, including all forms and endorsements attached to it.

1.2 CITY will neither sign this Agreement nor issue a “Notice to Proceed” until the City Attorney or City’s Risk Manager has reviewed and approved the insurance documents. CITY’s decision as to the acceptability of all insurance documents is final. Unless CONSULTANT obtains CITY’s written approval, CITY will not permit or allow a substitution of an insurance policy, or a change in a certificate’s or an endorsement’s form and content, or both.

INSURANCE OBLIGATION IS SEPARATE FROM INDEMNITY OBLIGATION

2.1 This Agreement's insurance provisions:

- (A) Are separate and independent from the indemnification and defense provisions in Article 12 of the Agreement; and
- (B) Do not limit, in any way, the applicability, scope, or obligations of the indemnification and defense provisions in Article 12 of the Agreement.