



**AZUSA LIGHT & WATER  
REQUEST FOR QUALIFICATIONS FOR  
ON-CALL PROFESSIONAL ENGINEERING SERVICES**

**RECEIPT OF QUALIFICATIONS.** Notice is hereby given that sealed qualifications will be received at the office of Azusa Light & Water, 729 North Azusa Avenue, Azusa, California, 91702, until 5:00 PM, on Thursday, July 6, 2017, for ON-CALL PROFESSIONAL ENGINEERING SERVICES.

**DESCRIPTION OF WORK.** The services required consist of providing engineering, project management, construction management, and inspection services for water related infrastructure and capital improvement projects. The project types include, but are not limited to, water main line new installation/replacement/lining, well, reservoir, pump/booster station upgrades/reconstruction, and filtration plant upgrades/reconstruction, and must include oversight of all work typically required for the successful delivery of these various project types.

**PROJECT DOCUMENTS.** Prospective bidders may obtain the RFQ documents free of charge from the City of Azusa website under Departments – City Clerk – Bid/Request for Proposals, or by following the link:

<http://www.ci.azusa.ca.us/749/BidRequest-For-Proposals>

**CITY'S RIGHTS RESERVED.** The City reserves the right to reject any or all bids, to waive any informality in a bid, and to make awards in the interest of the City. No bidder may withdraw his bid for a period of 60 days after the bid opening.

**REQUESTS FOR CLARIFICATION.** For inquiries, please contact Jared Macias at [jmacias@ci.azusa.ca.us](mailto:jmacias@ci.azusa.ca.us) or (626) 812-5209. All questions related to this RFQ shall be submitted in writing via email to Jared Macias at [jmacias@ci.azusa.ca.us](mailto:jmacias@ci.azusa.ca.us). The deadline to submit Requests for Clarifications is Thursday, June 29, 2017 at 5:00 PM.

Dated: June 12, 2017  
/s/Jeffrey Lawrence Cornejo, Jr. City Clerk

Published: San Gabriel Valley Tribune: June 14, 2017



## *City of Azusa*

# **REQUEST FOR QUALIFICATIONS (RFQ) TO PROVIDE ON-CALL PROFESSIONAL ENGINEERING SERVICES TO AZUSA LIGHT & WATER**

### **IMPORTANT DATES**

<b>RFQ ISSUED:</b>	<b>JUNE 12, 2017</b>
<b>REQUEST FOR CLARIFICATION DEADLINE:</b>	<b>JUNE 29, 2017</b>
<b>PROPOSAL DUE DATE:</b>	<b>JULY 6, 2017</b>
<b>AWARD DATE (TENTATIVE):</b>	<b>JULY 24, 2014</b>

**AZUSA LIGHT & WATER**  
**729 North Azusa Avenue, Azusa, CA 91702**  
**626-812-5208**

**REQUEST FOR QUALIFICATIONS**  
**FOR ON-CALL PROFESSIONAL ENGINEERING SERVICES**

***I. INTRODUCTION AND BACKGROUND***

Azusa Light & Water (ALW) is requesting interested consulting firms to submit qualifications for providing professional engineering, project management, construction management, and inspection services for Capital Improvement Projects and general civil engineering support services for private development project plan review/checking. ALW will establish pre-approved short lists of consultants from which ALW may request technical and price proposals for specific projects. The on-call contract will be for a minimum period of three (3) years with options to extend the contract for two (2) additional one year periods. It is anticipated ALW's Water capital projects for the next five years will have total project costs in the range of \$13 million.

This document outlines the requirements and minimum qualifications, selection process and documentation necessary to submit a statement of qualifications in response to this solicitation.

ALW requires services of a firm to provide engineering, project management, construction management, and inspection services for water related infrastructure and capital improvement projects. The project types include, but are not limited to, the items listed below and include oversight of all work typically required for the successful delivery of the various types of projects.

- a) Water main line new installation/replacement/lining
- b) Well, reservoir, pump/booster station upgrades/reconstruction
- c) Filtration Plant upgrades/reconstruction

**Water System Highlights**

Azusa Light & Water's Water System serves approximately 106,000 people in portions of five cities and portions of unincorporated Los Angeles County. It includes:

- 281 miles of distribution pipe (2 to 30 inches in size) with 64% constructed prior to 1960. 50% of pipe material is steel.
- 12MGD Joseph F. Hsu Membrane Filtration Plant
- 11 active wells
- 7 pressure zones
- 13 reservoirs
- 9 booster stations
- 15 pressure regulating stations
- Approximately 23,000 water meter services

The successful consultant may be awarded a contract to provide as-needed services with specific details to be contained in individual Task Orders. Task Orders may be issued by ALW based on qualifications of proposed staff and an evaluation of the Scope of Fee Proposal prepared for each specific Task Order and will depend on the availability of funds. ALW reserves the right to request a scope of work and fee proposal for each individual Task Order, at its sole discretion. Task Orders may be for a specific project for any period of time at the ALW's sole discretion.

ALW does not guarantee the award of any specific quantity of Task Orders or a total contract amount to the selected consultant.

## ***II. GENERAL TERMS AND CONDITIONS***

Accompanying this RFQ is Appendix A, which contains a copy of the standard City Professional Service Agreement the selected consultant will be required to sign for this project. Each prospective consultant is expected to review the general terms and conditions and acknowledge their acceptance of Appendix A in the Proposal Cover letter.

## ***III. SCOPE OF SERVICES***

All services performed by the consultant or any sub-consultant shall be provided in a manner consistent with the level of care and skill exercised by members of the consultant's or the respective sub-consultant's profession. Such services shall be performed under the direct supervision of qualified and experienced personnel. The specific types of services to be provided may include, but are not limited to, the services described herein.

- Preliminary design analysis/report
- Project engineering design
- Assist ALW in developing Design Standards, Standard Drawings, and Technical Specifications
- Engineer's estimates and value engineering
- Utility coordination
- Permitting and environmental clearance
- Preparation of construction bid documents and assistance during bidding
- Engineering support services during construction
- Related technical services including land surveying, materials testing, construction inspection, etc.

The consultant will be responsible for working with appropriate technical staff, consultants and utility personnel in overseeing, coordinating, administrating, and managing Azusa Light & Water's Water Division Capital Improvement Projects under the direction of the Assistant Director – Water Operations or his designee. The consultant shall provide necessary services to assist technical staff on capital improvement projects in various phases of design and construction.

The Consultant is expected to provide full engineering and support service as minimally described below.

## **A. Administration**

1. Participate in meeting(s) with City staff to discuss the project objectives. Participate and host public meetings if necessary to convey proposed project to interested citizens/stakeholders for public input to bring about a successful project.
2. Inform the City of the progress and viable engineering solutions. Consultant shall prepare graphics and PowerPoint presentations if necessary for public meetings.
3. Perform field reconnaissance to inspect, photograph, and make field notes to document existing site and surrounding environment and become familiar with project conditions, limitations, and possibilities.
4. Research and review existing plans. The City will provide existing plans if available to the selected consultant. Review existing plans and reports to familiarize with ALW's infrastructure.
5. Utility Research and Coordination. Consultant shall coordinate with utility companies and coordinate any utility relocation as necessary for successful construction of the project. Consultant shall keep a log of utility communication and utility relocation schedule/needs.

## **B. Preliminary Design Engineering**

1. Perform all necessary research to establish location of the utilities. Consultant shall coordinate with the utility companies to ensure accuracy and verify if there are any utility conflicts with the project. In addition to written notification, Consultant shall contact the utility companies to verify that they have received the written notification. If any relocation of utilities is required, these relocations will be performed by the respective utility companies. The consultant shall coordinate or assist Azusa Light & Water with the utility companies to ensure timely relocations of these facilities so as not to hinder or delay the project.
2. Perform topographic survey as necessary for precise engineering design. Survey shall:
  - a. Extend well beyond the work/construction limit for design of grading and drainage
  - b. Include landscape/hardscape and private improvements within the project limits and immediate surrounding areas
  - c. Include location of underground utilities as marked by U.S.A.
  - d. Include flowline elevation of surface drainage features
  - e. Include 50' cross sections of streets and frontage improvements
  - f. Include reference to known vertical datum, horizontal control, basis of bearing
3. Prepare base map for the project including but not limited to the following: project

- boundary, right-of-way, easements if necessary, existing structures, existing utilities, and existing private improvements of landscape/hardscape.
4. If needed, perform pothole investigation of Utility owned infrastructure to aid in design and to minimize utility conflicts during construction. Consultant shall request utility companies to pothole their facilities and provide them with a map showing the location of requested potholes. This shall be done early in the design.
  5. Perform hydrology/hydraulic analyses as needed for sound engineering solutions. Perform water system hydraulics/fire flow analysis.
  6. Perform soils investigation to determine suitability of soil for construction and competence of soil for construction, trench safety, and pavement structural section. Also, determine existence of groundwater and design to abate groundwater problems.
  7. Prepare preliminary engineering plans and layouts for discussions with the Utility staff.

### **C. Final Design and Construction Bid Documents**

1. Perform hydrology/hydraulics analyses as necessary.
2. Participate in meetings with Utility staff to discuss progress and value engineering solutions.
3. Prepare final engineering plans including profiles, details, and structural calculations if needed, and hydrology/hydraulic analysis report.
4. Prepare and submit plans, specifications, and cost estimate to approximately 60%, 90%, and 100% (Final) complete and submit to Azusa Light & Water four (4) sets for review.
5. Consultant shall meet with ALW to discuss and review comments before proceeding to prepare the next set of plans.
6. Plans are to be in AutoCAD format on 24"x36" standard engineering plan size paper. Specification are to be in MS Word format. The cost estimate is to be in MS Excel format.
7. Regarding specifications, Azusa Light & Water will provide the front-end documents with Invitation to Bid, Bonds, insurance requirements, and Bid Proposal forms. Consultant shall provide the technical specifications to match the plans. Each bid item shall have a technical specification section to identify what is included in that bid item, payment measurement, and the technical data and shop submittal information.
8. Final plans shall be plotted on 24"x36" size bond paper. The consultant shall submit electronic files in PDF and all AutoCAD files to ALW. Specifications shall be

submitted in hard copy format along with the electronic file in a Word Document format. The cost estimate shall be submitted in hard copy format along with the electronic file in Excel format.

#### **D. Engineering Services during Bidding and Construction**

1. Services during bidding may include issuing the invitation to bidders, advertising, distributing bid documents, conduct preconstruction conferences and site visits, respond to bidder inquiries, issuing addenda. Services during construction may include reviewing shop drawing submittals, preparation of change orders, designer services during construction, construction contract administration, construction inspection, preparation of record drawings, materials testing, relations with property owners and other stakeholders, utility coordination.

#### **E. Right of Way Acquisitions and Easements**

1. Prepare list of properties affected by the project and adjacent projects that may be impacted by construction activities.
2. Prepare map and legal descriptions for right-of-way acquisition, easements, and any temporary construction easements for each affected property.

### ***IV. CONTENT OF THE PROPOSAL***

At a minimum, include the following items in the proposal:

1. Introduction to the firm – size, office locations, service lines, ownership, etc.
2. Experience on similar projects, including the agency/company, contact person and telephone number
3. Resumes of the key personnel who may be assigned to a Project, including specifics of experience on similar projects
4. List of sub-consultants to be used and the items of work to be performed
5. Resume of key personnel and experience for each named sub-consultant.
6. Quality Assurance Program description
7. Rate schedule showing the fully loaded billing rates for all staff classifications proposed to provide services to the City through June 30, 2020
8. Requested exceptions or revisions to the sample Professional Services Agreement

### ***V. CONSULTANT SELECTION***

Selection will be based on a comparative evaluation of overall qualifications that is entirely at the discretion of ALW. Some criteria of particular interest are:

1. Understanding ALW's capital improvement program and larger context for asset management and system operations and maintenance
2. Consultant's past projects

3. Qualifications and location/availability of key personnel
4. Knowledge of the City, State, and Federal requirements
5. Quality Assurance Program and management approach
6. Rate Schedule
7. Any exceptions to the sample Professional Services Agreement

Azusa Light & Water reserves the right to interview the qualified firms before making final selections if need.

From the firms expressing interest, a selection committee will review the Statement of Qualifications and rank the firms. If interviews are required to assist in the selection process, the respondents will be provided with a minimum advanced notice of one (1) week. The selection committee is anticipated to include the Assistant Director of Utilities - Water Operations, the Water System Engineer, and the Water Engineering Associate.

#### ***VI. RIGHT TO REJECT ALL PROPOSALS***

The City reserves the right to reject any and/or all proposals submitted. No guarantee is made hereby that any contract will be awarded pursuant to this RFQ, or otherwise. All costs incurred in the preparation of the proposals, in the submission of additional information, and/or in any other aspect of a proposal prior to the award of a written contract will be borne by the respondent(s).

#### ***VII. PROPOSAL SUBMITTAL***

An original and three (3) copies of the proposal shall be presented in a sealed envelope/package bearing the name, address, and telephone number of the individual or entity submitting the proposal along with an electronic PDF of the proposal on CD or flash drive. Proposal shall be addressed as follows:

Jared Macias  
Assistant Director of Utilities - Water Operations  
729 North Azusa Avenue  
Azusa, CA 91702  
Subject: On-Call Profession Engineering Services RFQ

The proposal shall be delivered to the above address on or before 5:00 PM on July 6, 2017.

#### ***VIII. STAFF CONTACT***

For inquiries, please contact Jared Macias at [jmacias@ci.azusa.ca.us](mailto:jmacias@ci.azusa.ca.us) or (626) 812-5209. All questions related to this RFQ shall be submitted in writing via email to Jared Macias at [jmacias@ci.azusa.ca.us](mailto:jmacias@ci.azusa.ca.us). The deadline to submit Requests for Clarifications is Thursday, June 29, 2017 at 5:00 PM.



**APPENDIX "A"**

**SAMPLE PROFESSIONAL SERVICES AGREEMENT**

**CITY OF AZUSA  
PROFESSIONAL SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Azusa, a municipal corporation organized under the laws of the State of California with its principal place of business at 213 East Foothill Boulevard, Azusa, California 91702 (“City”) and [INSERT NAME OF COMPANY], a [INSERT TYPE OF BUSINESS: CORPORATION; LIMITED LIABILITY COMPANY; ETC.] with its principal place of business at [INSERT ADDRESS] (“Consultant”). City and Consultant are sometimes individually referred to herein as “Party” and collectively as “Parties.”

**2. RECITALS.**

**2.1 Consultant.**

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

**2.2 Project.**

City desires to engage Consultant to render such services for the [INSERT NAME OF PROJECT] project (“Project”) as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional [INSERT TYPE OF SERVICES] consulting services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

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

**3.2 Responsibilities of Consultant.**

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

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

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: [INSERT NAMES].

3.2.5 City's Representative. The City hereby designates [INSERT NAME OR TITLE], or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates [INSERT NAME OR TITLE], or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

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

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

3.2.9 Period of Performance and Liquidated Damages. Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Project Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. **[\*\*\*INCLUDE THE FOLLOWING SENTENCE ONLY IF YOU'RE INCLUDING LD'S – DELETE OTHERWISE – DON'T SIMPLY INSERT \$0; ALSO DELETE "AND LIQUIDATED DAMAGES" FROM TITLE OF SECTION\*\*\*]** Pursuant to Government Code Section 53069.85, Consultant shall pay to the City as fixed and liquidated damages the sum of **[\*\*\*INSERT WRITTEN DOLLAR AMOUNT\*\*\*]** Dollars (\$**[\*\*\*INSERT NUMERICAL DOLLAR**

AMOUNT\*\*\*) per day for each and every calendar day of delay beyond the Performance Time or beyond any Project Milestones established pursuant to this Agreement.

3.2.10 Laws and Regulations; Employee/Labor Certifications. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10.1 Employment Eligibility; Consultant. 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. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Consultant. Consultant also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Consultant shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Consultant shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Consultant's compliance with the requirements provided for in Section 3.2.10 or any of its subsections.

3.2.10.2 Employment Eligibility; Subcontractors, Consultants, Sub-subcontractors and Subconsultants. To the same extent and under the same conditions as Consultant, Consultant shall require all of its subcontractors, consultants, sub-subcontractors and subconsultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Consultant verifies that they are a duly authorized officer of Consultant, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Consultant or its subcontractors, consultants, sub-subcontractors or subconsultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2)

any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Consultant under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

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

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

3.2.10.6 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Consultant shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.7 Water Quality.

(A) Management and Compliance. To the extent applicable, Consultant's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency, the State Water Resources Control Board and the Santa Ana Regional Water Quality Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

(B) Liability for Non-compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Consultant or City to penalties, fines, or additional regulatory requirements. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Consultant's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Consultant further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, City will provide Consultant with a list of training programs that meet the requirements of this paragraph.

### 3.2.11 Insurance.

3.2.11.1 Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.11.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. The policy shall not contain any exclusion contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29);

or (2) cross liability for claims or suits by one insured against another.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) General Liability: [CONTACT RISK MANAGEMENT TO CONFIRM AMOUNT; TYPICAL MINIMUM IS \$1 MILLION, BUT AMOUNT OF INSURANCE REQUIRED DEPENDS ON NATURE OF CONTRACT AND RISK TO CITY]\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: [CONTACT RISK MANAGEMENT TO CONFIRM AMOUNT; TYPICAL MINIMUM IS \$1 MILLION, BUT AMOUNT OF INSURANCE REQUIRED DEPENDS ON NATURE OF CONTRACT AND RISK TO CITY]\$1,000,000 per accident for bodily injury and property damage; and (3) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of [CONTACT RISK MANAGEMENT TO CONFIRM AMOUNT; TYPICAL MINIMUM IS \$1 MILLION, BUT AMOUNT OF INSURANCE REQUIRED DEPENDS ON NATURE OF CONTRACT AND RISK TO CITY]\$1,000,000 per accident for bodily injury or disease. Defense costs shall be paid in addition to the limits.

(C) Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or materially reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Consultant or the City may withhold amounts sufficient to pay premium from Consultant payments. In the alternative, the City may suspend or terminate this Agreement.

3.2.11.3 Professional Liability. [INCLUDE THIS SUBSECTION ONLY IF APPLICABLE - DELETE OTHERWISE] Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than [CONTACT RISK MANAGEMENT TO CONFIRM AMOUNT; TYPICAL MINIMUM IS \$1 MILLION, BUT AMOUNT OF INSURANCE REQUIRED DEPENDS ON NATURE OF CONTRACT AND RISK TO CITY]\$1,000,000 per claim, and shall be endorsed to include contractual liability. Defense costs shall be paid in addition to limits.

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

(A) General Liability. The general liability policy shall include or



be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City of Azusa, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Services or ongoing and complete operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.2.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.2.11.4(A).

(B) Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.2.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.2.11.4(B).

(C) Workers' Compensation and Employers' Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officials, officers, employees, agents

and volunteers, or any other additional insureds.

3.2.11.5 Separation of Insureds; No Special Limitations; Waiver of Subrogation. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers. All policies shall waive any right of subrogation of the insurer against the City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow 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, its officials, officers, employees, agents, and volunteers, or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.2.11.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.11.7 Subconsultant Insurance Requirements. Consultant shall not allow any subconsultants to commence work on any subcontract relating to the work under the Agreement until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. If requested by Consultant, the City may approve different scopes or minimum limits of insurance for particular subconsultants. The Consultant and the City shall be named as additional insureds on all subconsultants' policies of Commercial General Liability using ISO form 20 38, or coverage at least as broad.

3.2.11.8 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.2.11.9 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11.9 Reporting of Claims. Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.12 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.13 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed [INSERT WRITTEN DOLLAR AMOUNT] (\$[INSERT NUMERICAL DOLLAR AMOUNT]) without written approval of the City Manager [REPLACE 'CITY MANAGER' WITH 'CITY COUNCIL' FOR AMOUNTS OVER \$10,000]. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant

shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **3.4 Termination of Agreement.**

3.4.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

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

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

### **3.5 Ownership of Materials and Confidentiality.**

3.5.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of

expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished.

The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

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

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

3.5.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright,

trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.5 Confidentiality. All Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

### 3.6 General Provisions.

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

**Consultant:**

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

**City:**

City of Azusa  
213 E. Foothill Blvd.  
Azusa, CA 91702  
Attn: [\*\*INSERT NAME & DEPARTMENT\*\*]

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

#### 3.6.2 Indemnification.

3.6.2.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts,

errors or omissions 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 consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.6.2.2 Additional Indemnity Obligations. Consultant shall defend, with legal counsel chosen by City, at Consultant's own cost, expense and risk, any and all claims, actions or other proceedings of every kind covered by Section 3.6.2.1 that may be brought or instituted against City or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, volunteers and agents as party of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents, or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorneys' fees and costs, including expert witness fees. Consultant shall reimburse City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

3.6.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Los Angeles County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 *et seq.* prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

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

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

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

3.6.7 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

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

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

3.6.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.6.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.6.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.6.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.13 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. 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. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material



benefit arising therefrom.

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

3.6.15 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

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

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

3.6.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.6.19 Federal Provisions. **[\*\*INCLUDE THIS SECTION ONLY IF APPLICABLE; DELETE OTHERWISE. IF APPLICABLE, YOU MAY ALSO NEED TO INCLUDE SOME INFORMATION IN THE RFP. CONSULT THE CITY ATTORNEY IF NECESSARY\*\*]** When funding for the Services is provided, in whole or in part, by an agency of the federal government, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (Federal Requirements) attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

[SIGNATURES ON NEXT PAGE]

CITY OF AZUSA

[INSERT NAME OF CONSULTANT]

By: \_\_\_\_\_  
City Manager [Up to \$10,000]  
OR Mayor [OVER \$10,000]

By: \_\_\_\_\_

Attest:

Name: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

Title: \_\_\_\_\_

[If Corporation, TWO SIGNATURES,  
President **OR** Vice President **AND** Secretary,  
**AND** CORPORATE SEAL OF  
CONTRACTOR REQUIRED]

Approved as to Form:

Best Best & Krieger LLP

By: \_\_\_\_\_

\_\_\_\_\_  
City Attorney

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SAMPLE

**EXHIBIT “A”**

**SCOPE OF SERVICES**

[INSERT SCOPE]

SAMPLE

**EXHIBIT “B”**

**SCHEDULE OF SERVICES**

[INSERT SCHEDULE]

SAMPLE

**EXHIBIT “C”**  
**COMPENSATION**

[INSERT RATES & AUTHORIZED REIMBURSABLE EXPENSES]

SAMPLE

**[\*\*INCLUDE THIS EXHIBIT (AND CORRESPONDING AGREEMENT PROVISION) ONLY IF APPLICABLE; DELETE OTHERWISE. IF APPLICABLE, YOU MAY ALSO NEED TO INCLUDE SOME INFORMATION IN THE RFP. CONSULT THE CITY ATTORNEY IF NECESSARY\*\*]**

**EXHIBIT "D"**

**FEDERAL REQUIREMENTS**

**[\*\*INSERT ALL FORMS, PROVISIONS AND OTHER REQUIREMENTS OF THE FEDERAL FUNDING SOURCE\*\*]**

**SAMPLE**