

SAMPLE AGREEMENT FOR PROFESSIONAL SERVICES

Contract No. _____

This AGREEMENT FOR PROFESSIONAL SERVICES (“AGREEMENT”) is made and entered into effective as of the _____ day of _____, 20__, by and between the CITY OF ALHAMBRA, a charter law city, located at 111 South First Street, Alhambra, CA 91801, (“CITY”) and _____ [inset corporation, LLC, partnership etc.], located at _____ (“CONSULTANT”).

WITNESSETH:

For and in consideration of the promises and of the mutual covenants and agreements herein contained, said parties hereby agree as follows:

1. RECITALS. This AGREEMENT is made and entered into with respect to the following facts:

- A. CITY requires professional _____ services (“SERVICES”); and
- B. On _____, 200_, CITY issued a Request for Proposals #_____ (“RFP”) to obtain professional _____ services for the CITY’s and based on review and rating of RFPs received CONSULTANT was selected; and
- C. CONSULTANT is qualified to provide those certain services to the CITY necessary for said SERVICES; and, therefore, the Alhambra City Council has elected to engage the services of CONSULTANT upon the terms and conditions hereinafter set forth.

2. SCOPE OF SERVICES.

- A. CONSULTANT shall furnish to the City all labor, materials, tools, equipment, services, and incidental customary work necessary to fully and adequately perform those services described in CONSULTANT’s Proposal for Services dated _____, (“PROPOSAL”) consistent with the CITY’s Request for Proposals dated _____ (“RFP”) attached hereto as Exhibits “A” and “B” respectively and hereby incorporated by reference.
- B. Performance of the SERVICES specified herein is made an obligation of CONSULTANT under this AGREEMENT, subject to any changes made subsequently upon the mutual written agreement of the parties.

- C. The scope of services to be performed by CONSULTANT under this AGREEMENT shall include, but not be limited to, those services specified in Paragraph 2A hereof.

3. PERFORMANCE STANDARDS. While performing this AGREEMENT CONSULTANT will use the appropriate generally accepted professional standards of practice existing at the time of performance utilized by persons engaged in providing similar services. CONSULTANT shall cooperate with CITY if CITY opts to monitor CONSULTANT's services. CITY will notify CONSULTANT of any deficiencies and CONSULTANT will have fifteen (15) days after such notification to cure any shortcomings to CITY's satisfaction. Costs associated with curing the deficiencies will be borne by CONSULTANT.

4. FAMILIARITY WITH WORK.

- A. By executing this AGREEMENT, CONSULTANT agrees that, to the best of CONSULTANT's knowledge and belief, CONSULTANT has
 - (i) Carefully investigated and considered the scope of services to be performed;
 - (ii) Carefully considered how the services should be performed; and
 - (iii) Understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement.
- B. If services involve work upon any site, CONSULTANT agrees that CONSULTANT has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing the services hereunder. Should CONSULTANT discover any latent or unknown conditions that may materially affect the performance of the services, CONSULTANT will immediately inform CITY of such fact and will not proceed except at CONSULTANT's own risk until written instructions are received from CITY.

5. CITY SUPERVISION. The Director of the Department of _____ of CITY, or the Director's designee, shall have the right of general supervision of all work performed by CONSULTANT and shall be the CITY's agent with respect to obtaining CONSULTANT's compliance hereunder. No payment for any services rendered under this AGREEMENT shall be made without the prior approval of the Director of _____ or the Director's designee.

6. FEE. Compensation to CONSULTANT for the total services to be rendered pursuant to this AGREEMENT shall be in an amount not to exceed \$ _____ to be billed in a manner described in CONSULTANT's PROPOSAL, consistent with the CITY's RFP. If any discrepancies exist between the RFP and the CONSULTANT's PROPOSAL exist, then the terms of the RFP shall control.

7. EXTRA SERVICES. Notwithstanding any other provision herein, no extra services shall be rendered by CONSULTANT under this AGREEMENT unless such extra services first shall have been authorized in writing by the CITY. Any such services so authorized shall be paid by the CITY at rates approved of by the CITY.

8. PAYMENT BY CITY. CONSULTANT shall send invoices to the City on a monthly basis, based upon the services already rendered at the time of the submission. City shall pay all proper costs within thirty (30) days of receipt of such invoice(s).

9. TERM. The term of this AGREEMENT shall be as provided for in the RFP from after the date on which the CITY issues CONSULTANT a Notice to Commence Work. CONSULTANT shall complete all those services set forth in its PROPOSAL by that certain date set forth in said Notice to Commence Work or until such time as the services have been completed by the CONSULTANT and accepted by the CITY, whichever occurs first. The CITY may extend said time of completion for delays caused by circumstances beyond the control of either party to this AGREEMENT. Should the consulting contract extend beyond the estimated time for completion of said services, CITY hereby reserves the right to continue CONSULTANT's services hereunder with any and all fees for such additional services to be compensated by the CITY at rates approved by the CITY.

10. DISPUTES AND REMEDIES.

- A. Claims, disputes, and other matters in question between the Parties arising out of or relating to this AGREEMENT or the breach thereof, must be resolved by the following procedure:
- (i) CITY and CONSULTANT will exercise their best efforts to resolve disputes through the development of a consensus. A meeting may be requested by CITY or CONSULTANT at any time for the purpose of resolving a dispute. A determination by CITY'S Director of the Department of _____ will be made within two (2) weeks after a meeting to resolve the dispute;
 - (ii) If unresolved within thirty (30) days, then City Manager, or his designee, will make a final determination;
 - (iii) Following the City Manager's final determination, the Parties may submit any unresolved matters to non-binding mediation. The parties may, but are not required to be, represented by counsel in mediation;
 - (iv) If the Parties do not agree to mediation, or if mediation does not resolve the Parties' dispute, the matter may be pursued in Los Angeles County Superior Court, or the United States District Court, Central District of California, if federal jurisdiction exists.

- B. The Parties' rights and remedies under this Agreement are in addition to any other rights and remedies provided by law.

11. PREVAILING WAGE. 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 1600, *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. The 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.

12. TERMINATION OF AGREEMENT. The CITY may terminate this AGREEMENT upon giving a ten (10) day advance written notice of such termination to CONSULTANT. In that event, the City Manager, or his designee, based upon work accomplished by CONSULTANT prior to notice of such termination, shall determine the amount of fees to be paid to CONSULTANT for such services based upon accepted accounting practices. This finding by the City Manager, or his designee, shall be considered by the Alhambra City Council and the Council's determination shall be final and conclusive as to the amount of such fee.

13. INDEPENDENT CONTRACTOR. CONSULTANT shall act as an independent contractor in the performance of the services provided for in this AGREEMENT and shall furnish such services in CONSULTANT's own manner and method and in no respect shall CONSULTANT be considered an agent or employee of the CITY.

14. OWNERSHIP OF DOCUMENTS. All financial documents, data, studies, and reports prepared by CONSULTANT under this AGREEMENT are CITY's property. CONSULTANT may retain copies of said documents and materials as desired, but will deliver all original materials to CITY upon CITY's written notice. CITY agrees that use of CONSULTANT's completed work product, for purposes other than identified in this AGREEMENT, or use of incomplete work product, is at CITY's own risk. CITY will indemnify and hold CONSULTANT harmless for any use of the work product other than as contemplated by this AGREEMENT.

15. PUBLICATION OF DOCUMENTS. Except as necessary for performance of service under this AGREEMENT, no copies, sketches, or graphs of materials, including graphic art work, prepared pursuant to this Agreement, will be released by CONSULTANT to any other person or City without CITY's prior written approval. All

press releases, including graphic display information to be published in newspapers or magazines, will be approved and distributed solely by CITY, unless otherwise provided by written agreement between the parties.

16. NONASSIGNMENT. This AGREEMENT is not assignable either in whole or in part by CONSULTANT without the written consent of CITY.

17. TAXPAYER IDENTIFICATION NUMBER. CONSULTANT will provide CITY with a valid Taxpayer Identification Number.

18. PERMITS AND LICENSES. CONSULTANT, at its sole expense, will obtain and maintain during the term of this AGREEMENT, all necessary permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

19. INDEMNIFICATION.

A. CONSULTANT hereby agrees to the following:

(i) Indemnification for Professional Services. CONSULTANT will save harmless and indemnify CITY and, at CITY's request, reimburse defense costs for CITY and all its officers, volunteers, employees and representatives from and against any and all suits, actions, or claims, of any character whatever, brought for, or on account of, any injuries, including death or damages sustained by any person or property resulting or arising from any negligent or wrongful act, error or omission by CONSULTANT or any of CONSULTANT's officers, agents, employees, or representatives, in the performance of this Agreement.

(ii) Indemnification for other Damages. CONSULTANT indemnifies and holds CITY harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising out of this Agreement, or its performance. Should CITY be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, CONSULTANT will defend CITY (at CITY's request and with counsel satisfactory to CITY) and will indemnify CITY for any judgment rendered against it or any sums paid out in settlement or otherwise.

B. For purposes of this section "CITY" includes CITY's officers, officials, employees, agents, and representatives.

C. It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement.

- D. CITY does not, and shall not, waive any rights against CONSULTANT which it may have by reason of the aforesaid hold-harmless AGREEMENT because of the acceptance by CITY or the deposit with CITY by CONSULTANT, of any of the insurance policies hereinafter described in this AGREEMENT.
- E. The aforesaid hold-harmless AGREEMENT by CONSULTANT shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of CONSULTANT, or any subcontractor of CONSULTANT, regardless of whether such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.
- F. Notwithstanding any provision of this Agreement to the contrary, design professionals shall be required to defend and indemnify the City only to the extent allowed by Civil Code Section 2782.8, namely for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The term "design professional" includes licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors and the business entities which offer such services in accordance with the applicable provisions of the Business and Professions Code.
- G. The provisions of this section do not apply to Claims occurring as a result of the City's sole negligence or willful acts or omissions.

20. INSURANCE. CONSULTANT shall not commence work under this contract until CONSULTANT shall have obtained all insurance required by this AGREEMENT and such insurance shall have been approved by CITY as to form, amount and carrier, nor shall CONSULTANT allow any subcontractor of CONSULTANT to commence work on any subcontract until all similar insurance required of the subcontractor of CONSULTANT shall have been so obtained and approved.

- A. COMPENSATION INSURANCE. CONSULTANT shall take out and maintain, during the life of this contract, Worker's Compensation Insurance for all of CONSULTANT'S employees employed to perform the SERVICES as described section 2 of the AGREEMENT; and, if any work is sublet, CONSULTANT shall require the subcontractor of CONSULTANT similarly to provide Worker's Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by CONSULTANT. If any class of employees engaged in work under this AGREEMENT is not protected under any Workers' Compensation law, CONSULTANT shall provide and shall cause each subcontractor of CONSULTANT to provide adequate insurance for the protection of employees not otherwise protected. CONSULTANT shall indemnify CITY for any damage resulting to it from failure of either CONSULTANT or any subcontractor of CONSULTANT to take out or maintain such insurance.

B. COMPREHENSIVE GENERAL LIABILITY, PROFESSIONAL LIABILITY, COMPREHENSIVE AUTOMOBILE LIABILITY AND CONTRACTUAL GENERAL LIABILITY INSURANCE. CONSULTANT shall take out and maintain during the life of this contract comprehensive general liability, products/completed operations hazard, comprehensive automobile liability and contractual general liability insurance and shall protect CITY, its elective and appointive boards, officers, agents and employees, CONSULTANT, and any subcontractor of CONSULTANT performing work covered by this contract, from claims for damage for personal injury, including death, as well as from claims for property damage which may arise from CONSULTANT'S or any subcontractor of CONSULTANT'S operations under this contract, whether such operations be by CONSULTANT or by any subcontractor of CONSULTANT, or by anyone directly or indirectly employed by either CONSULTANT or any subcontractor of CONSULTANT, and the amounts of such insurance shall be as follows:

- (i) Commercial General Liability Insurance in an amount of not less than ONE MILLION DOLLARS (\$1,000,000);
- (ii) Professional Liability Insurance in an amount of not less than ONE MILLION DOLLARS (\$1,000,000);
- (iii) Comprehensive Automobile Liability Insurance in an amount of not less amount of not less than ONE MILLION DOLLARS (\$1,000,000).

A combined single limit policy with aggregate limits in an amount of not less than TWO MILLION DOLLARS (\$2,000,000) shall be considered equivalent to the said required minimum limits set forth in subsections (i),(ii), and (iii) above.

C. PROOF OF INSURANCE. The insurance required by this Agreement shall be with insurers which are Best A+ rated, and California-Admitted, or better. The CITY of Alhambra shall be named as "additional insured" on all policies required hereunder, except for Professional Liability Insurance, and CONSULTANT shall furnish the CITY Clerk, concurrently with the execution hereof, with satisfactory proof of carriage of the insurance required, and adequate legal assurance that each carrier will give CITY at least thirty (30) days' prior notice of the cancellation of any policy during the effective period of the contract.

D. NOTICE TO COMMENCE WORK. The CITY will not issue any notice authorizing CONSULTANT or any subcontractor to commence work under this AGREEMENT until CONSULTANT has provided to the CITY Clerk the proof of insurance as required by subparagraph (C) of this article.

21. NON-DISCRIMINATION. CONSULTANT shall not discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation in the performance of this AGREEMENT and shall comply with the provisions of the California Fair Employment and Housing Act as set forth in Part 2.8 of Division 3, Title 2 of the California Government Code; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations issued pursuant to such acts and order.

22. UNAUTHORIZED ALIENS. CONSULTANT hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 USCA 1101, *et seq.*), as amended; and, in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should the Federal Government impose sanctions against the CITY for such use of unauthorized aliens, CONSULTANT hereby agrees to, and shall, reimburse CITY for the cost of all such sanctions imposed, together with any and all costs, including attorney's fees, incurred by the CITY in connection therewith.

23. CONFLICT OF INTEREST. CONSULTANT will comply with all conflict of interest laws and regulations including, without limitation, CITY's conflict of interest regulations.

24. WAIVER. Waiver by any party hereto of any term, condition, or covenant of this AGREEMENT shall not constitute the waiver of any other term, condition or covenant hereof.

25. ATTORNEY'S FEES. If litigation is reasonably required to enforce or interpret the provisions of this AGREEMENT, the prevailing party in such litigation shall be entitled to an award of reasonable attorney's fees, in addition to any other relief to which it may be entitled.

26. BINDING EFFECT. This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

27. PROVISIONS, CUMULATIVE. The provisions of this AGREEMENT are cumulative and in addition to and not in limitation of any rights or remedies available to CITY.

28. NO PRESUMPTION RE: DRAFTER. The parties acknowledge and agree that the terms and provisions of this AGREEMENT have been negotiated and discussed between the parties and their attorneys, and this AGREEMENT reflects their mutual AGREEMENT regarding the same. Because of the nature of such negotiations and discussions it would be inappropriate to deem any party to be the drafter of this AGREEMENT; and, therefore, no presumption for or against validity or as to any

interpretation hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this AGREEMENT.

29. ASSISTANCE OF COUNSEL. Each party to this AGREEMENT warrants to each other party as follows:

- A. That each party either had the assistance of counsel or had counsel available to it, in the negotiation for, and execution of, this AGREEMENT, and all related documents; and,
- B. That each party has lawfully authorized the execution of this AGREEMENT.

30. MODIFICATION. This AGREEMENT shall not be modified except by written agreement of the parties.

31. GOVERNING LAW. This AGREEMENT shall be interpreted and construed according to the laws of the State of California.

32. NOTICE. Whenever it shall be necessary for either party to serve notice on the other regarding this AGREEMENT, such notice may be furnished in writing by either party to the other and shall be served by personal service as required in judicial proceedings or by certified mail, postage prepaid, return receipt requested, addressed to the parties as follows:

CITY: _____

City of Alhambra
111 South First Street
Alhambra, CA 91801

CONSULTANT: _____

Tel: _____
Fax: _____

33. FORCE MAJEURE. Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include, but not be limited to, acts of God, fire, flood, earthquake, or other natural disaster, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or government statutes or regulations superimposed after the fact.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed on its effective date by their respective officers duly authorized on their behalf.

“CITY”

CITY OF ALHAMBRA, a Charter Law City

ATTEST:

By _____,
_____, Mayor

Lauren Myles, Acting City Clerk

APPROVED AS TO FORM:
JOSEPH M. MONTES, CITY ATTORNEY

By _____

“CONSULTANT”

FULL NAME OF CONSULTANT

TAXPAYER ID # _____

By _____
Print Name: _____
Title: _____

By _____
Print Name: _____
Title: _____