

CITY OF CALABASAS
REQUEST FOR PROPOSALS
FOR
PREPARATION OF OBJECTIVE DESIGN
STANDARDS FOR MULTIFAMILY RESIDENTIAL
DEVELOPMENT PROJECTS



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**CITY OF CALABASAS
REQUEST FOR PROPOSALS
PREPARATION OF OBJECTIVE DESIGN STANDARDS**

TABLE OF CONTENTS

I. INTRODUCTION	3
A. Background	
B. Overview	
B. Terms of Engagement	
II. NATURE OF SERVICES REQUIRED	5
A. Scope of the Work to be Performed	
III. TIME REQUIREMENTS	7
A. Proposal Calendar	
IV. PROPOSAL REQUIREMENTS	7
A. General Requirements	
B. Minimum Requirements	
C. Format for Proposals	
D. Contents of Proposal	
V. EVALUATION PROCEDURES	10
A. Review of Proposals	
B. Evaluation Criteria	
VI. TERMS AND CONDITIONS	11
A. Cost Responsibilities	
B. Proposal Errors	
C. Negotiation of Agreement	
D. Compliance with Minimum Standards	
E. Additions, Amendments, and Withdrawal/Cancellation of RFP	
F. Cancellation	
G. City Rights	
H. Contract Negotiation	
I. Awarding of Contract	
J. City not Liable	

City of Calabasas
RFP for Objective Design Standards

- K. Public Record/Confidentiality
- L. Independent Contractor
- M. Ownership of Materials Submitted
- N. Use of Proposal Ideas

**CITY OF CALABASAS
REQUEST FOR PROPOSALS (RFP)
PREPARATION OF OBJECTIVE DESIGN STANDARDS**

I. INTRODUCTION

A. Background

The City of Calabasas has a general population of roughly 24,500 people, with 8,600 occupied residential parcels located in a suburban, hillside environment. Covering more than 13 square miles, the City is located in northwest Los Angeles County along the 101 Freeway, approximately 30 miles northwest of downtown Los Angeles. The City provides a wide array of city services through three departments - Parks and Recreation, Community Development, and Public Works. Other services, such as fire protection, law enforcement, environmental and storm drains, are contracted through Los Angeles County.

City Demographic Information: <https://www.cityofcalabasas.com/our-city/about-us/demographic-information>

Map of the City:

<http://maps.digitalmapcentral.com/production/VECommunityView/cities/Calabasas/index.aspx>

Within the City's General Plan, the City's Housing Element was recently updated for the 6th Cycle Regional Housing Needs Allocation (RHNA), covering the years 2021-2029, and was certified by HCD as being compliant with state housing law on April 25, 2022.

The below-listed policies from the City's Housing Element apply to the task of preparing Objective Zoning and Design Standards:

Policy V-18: *Promote the timely processing and approval of residential projects that meet General Plan policies and City regulatory requirements.*

Policy V-9a: *Pursuant to AB 1397, allow housing developments with at least 20 percent affordable housing by-right, consistent with objective design standards, on lower-income housing sites that have been counted in previous housing element cycles.*

2021-2029 Objective: *“Amend the Development Code to facilitate housing for Calabasas’ special needs and extremely low income (ELI) populations. Amend the Zoning Code to remove subjective findings related to neighborhood character as necessary to ensure for reasonable accommodation for persons with disabilities and other protected classes.”*

Responsive to California law, and consistent with the above policies, the Community Development Department aims to create objective design standards for multifamily residential housing development projects. Objective standards are measurable and quantifiable; where it can be readily and conclusively determined that a feature of a development proposal falls above or below a specific allowable quantity, or can be measured with no independent judgement.

City of Calabasas
RFP for Objective Design Standards

The purpose of the City developing objective design standards is to:

- Implement streamlined and ministerial review processes for qualifying projects (consistent with State law and the City's Housing Element);
- Ensure that qualifying projects align with the City's expectations for maintaining the character of the City;
- Provide a set of clear criteria to guide building design; and,
- Establish an objective framework by which qualifying projects will be evaluated.

Creation of Objective Design Standards was discussed by the City's Planning Commission on April 18th, 2024 and May 2nd, 2024. Following discussion at the May 2nd meeting, the Commission found that the City of Los Gatos and the City of Agoura Hills have good examples for objective design standards. The City of Los Gatos' objective design standards can be found at:

<https://www.losgatosca.gov/DocumentCenter/View/32289/Objective-Design-Standards>

The City of Agoura Hills' objective design standards can be found at:

https://library.municode.com/ca/agoura_hills/codes/code_of_ordinances?nodeId=ARTIX_ZO_CH6REPR_PT2SPRE_DIV13OBDESTMUFADW.

The Commission also highlighted the below-listed design standards as important elements to be considered by the City in preparation of objective design standards:

- Building articulation
- Different standards for different zones in the City
- Massing and bulk
- Colors and materials
- Trees and landscaping
- Character and design of outdoor spaces
- Window styles for retail and other ground-level commercial
- Sustainable design
- Site design standards
- Additional design standards for mixed-use projects

The City's updated 2021-2029 Housing Element can be found at:

<https://www.cityofcalabasas.com/home/showpublisheddocument/23517/637830470053230000>

A recording of the April 18th, 2024 and May 2nd, 2024 Planning Commission meetings and meeting agenda can be found at:

https://calabasas.granicus.com/MediaPlayer.php?view_id=4&clip_id=7683 &

https://calabasas.granicus.com/MediaPlayer.php?view_id=4&clip_id=7696

B. Overview

The purpose of this Request for Proposal ("RFP") is to solicit respondents to enter into a Professional Service Agreement (PSA) for the preparation of Objective Design Standards

by one or more qualified Respondents that are either a design firm, architectural firm, or other qualified Respondent capable of preparing objective design standards for multifamily residential and mixed-use development.

Any service agreement will be subject to a formal agreement between the City and the Respondent.

C. Term of Engagement

Subject to the formal approval of the City of Calabasas City Council, the City is prepared to consider entering into a Professional Service Agreement (PSA) with the Proposer, outlining all of the Terms and Conditions of the agreement. A general schedule for preparation of design standards will be mutually agreed upon between the City and the selected vendor.

II. NATURE OF SERVICES REQUIRED

A. Scope of the Work to be Performed

Responsibilities/Services to be provided by the Respondent

1. Project Initiation:

- a. Document Review: Consultant will review key City of Calabasas documents including the City's General Plan, the 6th Cycle Housing Element Update, the City's Municipal Code, and examples of other Cities' objective design standards as preferred by the Planning Commission, such as the objective design standards adopted by the City of Agoura Hills and the City of Los Gatos.
- b. Kick-off Meeting: Following the review of existing documents, Consultant will meet with City staff, in-person or via video teleconference, to establish an understanding of key issues, expectations, timelines, meetings, public workshops, and deliverables.
- c. City Tour: Consultant will participate in an in-person City tour, to gain additional insight related to the character of the community and recently constructed/entitled projects.
- d. Sites Analysis: Consultant will identify key physical characteristics of different zoning districts and regions of the City, including the City's Scenic Corridor Overlay Zone and the City's Commercial Old Town zoning district. The sites analysis will also look at the 12 Opportunity Sites identified within Table V-3 of the 2021-2029 Housing Element, which identifies parcels suitable for residential development to comply with the City's RHNA goals.

2. Public Outreach:

- a. Consultant will facilitate and attend at least three public outreach events, which may include the following:
 - i. One community survey to receive public input early in the process, including design examples
 - ii. At least one stakeholder workshop which includes designers and community members, which may occur during development of the

development standards or after the standards have been drafted to obtain feedback.

- iii. At least one workshop with the Planning Commission, to obtain feedback from decision makers prior to the standards being considered for adoption.

3. **Objective Design Standards:**

- **Administrative Draft:** Prepare illustrated objective design standards for multi-family and mixed-use development. Standards shall reflect the variety of building types and architectural styles appropriate for the City of Calabasas, and shall address topics including building articulation, massing and bulk, colors and materials, trees and landscaping, character and design of outdoor spaces, window styles for retail and other ground-level commercial, sustainable design, etc. The draft standards will consist of objective design standards applicable to multi-family and mixed-use development, and standards applicable to specific typologies based on development type (apartment building, townhome, mixed-use building, etc), design type, lot size, or other organizing principle. The project team will test the standards on prototypical sites to ensure the standards enable the intended development. Images and exhibits representing a suggested design or standard will also be prepared. The project team will also identify necessary Calabasas Municipal Code (CMC) amendments to implement the objective design standards.

4. **Public Review and Adoption:**

- a. **Public Hearings:** Prepare all required visual aids, printed material, and make a formal public presentation at Architectural Review Panel, Planning Commission and City Council hearings to support adoption of the Objective Design standards. Attendance at public meetings will be required, but public hearings may be attended virtually.
- b. **Final Objective Design Standards:** Based on action by the City's Planning Commission and City Council, prepare the final objective design standards for reproduction and integration into the Calabasas Municipal Code.
- c. **User Guide:** Develop an illustrated user guide that outlines the objective design standards, to be utilized by future architects, designers, and the general public. The user guide will visually demonstrate how to use the objective design standards in designing of residential development projects. The guide will also be utilized by City staff during review of a project for conformance with the applicable design standards.
- d. **CMC required updates:** Prepare the necessary ordinance updates required to facilitate implementation of objective design standards.

City Responsibilities

1. City staff will provide the consultant with the required documents and materials, including copies of the City's General Plan, Housing Element, Municipal Code, etc.
2. Staff will participate in the relevant meetings and site visits to aid the consultant in gaining a better understanding of the City's architectural character and desired design themes.

3. Staff will coordinate with selected respondent on review of the administrative draft to ensure the proposed standards best reflect the architectural themes and desires of the City.
4. City staff will act as the liaison between the respondent and City commissions/meeting bodies, including the Planning Commission and the Architectural Review Panel.
5. Staff will prepare all public hearing notices, meeting agendas, etc. pertaining to adoption of the design standards at a public hearing.

III. TIME REQUIREMENTS

A. *Proposal Calendar*

The following is a list of key dates up to, and including, the date proposals are to be submitted:

<u>Date</u>	<u>Activity</u>
September 3, 2024	Request for Proposal Issued
September 23, 2024	Last day to submit questions
October 3, 2024	Due date for proposals (due by 4:00pm)
October 23, 2024 (est.)	City Council Review/Approval

The City reserves the right to extend or modify this schedule.

IV. PROPOSAL REQUIREMENTS

A. *General Requirements*

1. Inquiries concerning the Request for Proposals and the subject of the Request for Proposals must be made to:

Jaclyn Rackerby
Planner
100 Civic Center Way
Calabasas, CA 91302
(818) 224-1705
jrackerby@CityofCalabasas.com

CONTACT WITH PERSONNEL OF THE CITY OTHER THAN THE ABOVE REGARDING THIS REQUEST FOR PROPOSALS MAY BE GROUNDS FOR ELIMINATION FROM THE SELECTION PROCESS. IF INFORMATION FROM, OR COMMUNICATION WITH, OTHER CITY DEPARTMENTS OR PERSONNEL IS

NECESSARY, MS. RACKERBY WILL MAKE THE ARRANGEMENTS. COLLUSION WITH AND BETWEEN ANY TWO OR MORE PROPOSERS WILL BE GROUNDS FOR ELIMINATION FROM THE SELECTION PROCESS.

2. Submission of Proposal. Five (5) bound copies of the submittal and one flash drive (or another digital medium) containing an electronic PDF copy must be submitted. Pages should be formatted to 8 ½" x 11" size, with font no less than 12pt. All pages shall be numbered. Drawings provided with the submittal shall not exceed 11" x 17." The proposal shall be received in the office of the City Clerk of the City of Calabasas **NO LATER THAN 4:00 p.m. on October 3, 2024** for a proposal to be considered. For the purpose of inquiry or delivery of proposals, the Calabasas City Hall is open to the public from 7:30 am to 5:30 pm (Fridays until 4:30 pm) each weekday, excluding City recognized holidays.

The Proposal should be addressed as follows:

**City of Calabasas
Attn: City Clerk
100 Civic Center Way
Calabasas, CA 91302**

Proposals must be sealed and clearly state on the outside of the package or envelope: "Proposal for Preparation of Objective Design Standards".

B. Minimum Requirements

1. The Respondent shall have an assigned project manager to oversee this work and act as liaison to the City. The Respondent shall list all proposed staff. The Respondent shall submit detailed resumes/references for any proposed staff, in-house or subcontracted.
2. The Respondent shall demonstrate sufficient staff resources to perform the work.
3. The Respondent shall possess the necessary licenses or certifications to perform the services required, documentation of qualifications shall be submitted with the RFP response.
4. The Respondent shall have demonstrated experience with similar design standards preparation, including for government agencies, within the past five (5) years.

C. Format of Proposal

1. Title Page showing the request for proposals subject; the firm's name; the name, address and telephone number of the contact person; and the date of the proposal.
2. Table of Contents identifying the materials submitted by section and page number.
3. Signed Transmittal Letter briefly stating the Respondent's understanding of the City's request for proposal; the commitment to perform the work within the time period; and the name(s) of the person(s) authorized to represent the Respondent, title, address, and telephone number.
4. Detailed Proposal following the order set forth in Section D below.

D. Contents of Proposal

The purpose of the Proposal is to demonstrate the qualifications, competence and capacity of the Respondent seeking to prepare objective design standards to guide residential development in the City, in conformity with the requirements of this Request for Proposals. As such, the substance of proposals will carry more weight than the form or manner of presentation. The Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this contract. It should also specify the firm's approach that will meet the request for proposals' requirements and how the City's ultimate goal of compliance with state law and with the adopted 2021-2029 Housing Element's policies will be met.

The Proposal should address all points outlined in the Request for Proposals. The proposal should be prepared simply and economically, providing a straightforward, concise description of the Respondent's capabilities to satisfy the requirements of this request for proposals. While additional data may be presented, the following information must be included:

1. **Introduction/Cover Letter:**
 - a. Provide the name, email address and telephone number of key person(s) to be contacted for further information or clarification.
 - b. Provide a background statement including a description of relevant experience and qualifications of the firm/individual submitting the proposal and the number of years the firm has been in business.
 - c. Provide an affirmative statement should be included verifying the firm and all assigned key professional staff are properly licensed to conduct business in California.
2. **Project Approach/Scope of Work:**
 - a. Provide a high-level overview of the respondent's approach to implementation of the project described herein including the respondent's ability to provide all of the services identified in Section II.

- b. Include a detailed strategy for achieving the goals and deliverables of the project, as well as a general timeline for achieving these goals.
3. **Consultant Team:**
 - a. Provide the name, contact information, and title of members of the consultant team.
 - b. Identify team members, their roles, qualifications, and relevant experience.
 - c. Include resumes for each key staff member identified.
4. **Related Project Examples:**
 - a. Provide recent (within past 10 years) examples of relevant projects completed by the respondent, which demonstrate the team's ability to successfully complete the range of services described within Section II above. Visuals, architectural drawings, and example written objective standards are encouraged.
 - b. Include descriptive information such as location of the project, date, scope, scale, and clients' contact information.
5. **Fee Proposal:**
 - a. Provide an estimated cost to complete the project, and an itemized billing rate schedule that identifies hourly rates for each proposed team member/each proposed expense.
 - b. Include any charges for sub-consultant work, if any.
6. **Additional Requirements:**
 - a. Provide a copy of license or certification to perform the work required, as applicable.
 - b. The firm should provide an affirmative statement that it is independent of the City of Calabasas as defined by auditing standards generally accepted in the United States of America and the General Accounting Office's *Government Auditing Standards*.
7. **Conclusion:**
 - a. Provide a concluding statement as to why the respondent is best qualified to meet the needs of the City.

V. EVALUATION PROCEDURES

A. *Review of Proposals*

The following City Staff will evaluate submitted proposals:
Michael Klein, AICP, Community Development Director
Tom Bartlett, City Planner
Jaclyn Rackerby, Planner

Staff may be assisted by other members of staff and the City's consultants.

B. Evaluation Criteria

The City of Calabasas shall select the responsible and responsive proposal which is determined by the City to be the best suited, most advantageous, and provides the best value to the City on the basis of the criteria included in this Request for Proposal. The City shall not be obligated to accept any proposal and the City shall reserve the sole right to determine the appropriateness of any proposal for this work. The City expressly reserves the right to negotiate with the selected firm prior to an award of any contract pursuant to this RFP. Best value shall be determined by consideration of the following factors.

Rating and selection of the proposal shall be based upon, but not limited to, the following criteria:

1. Approach to the understanding of the Scope of Work (20%)
2. Experience with similar contracts and clients (30%)
3. Experience and qualifications of the proposed staff in providing services (10%)
4. Extent to which references have found the firm's services acceptable (10%)
5. Cost (30%)

VI. TERMS AND CONDITIONS

A. Cost Responsibilities:

Respondents shall bear all costs associated with the development and transmittal of their proposal, such as by not limited to the preparation, submission and attendance at presentation interviews, or any other activity associated with this RFP or otherwise. There is no expressed or implied obligation for the City of Calabasas to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

B. Proposal Errors:

Should the respondent believe that an error appears in the RFP documents, or wish to withdraw a submitted proposal prior to the closing date and time of the RFP, the respondent shall do so by notifying, in writing, the Project Information Contact noted in Section 3.

C. Negotiation of Agreement:

The RFP award is subject to successful negotiation of a Professional Service Agreement between the respondent(s) selected by the City. The City anticipates that only one respondent will be selected.

The contract will include terms as set forth in the RFP and respondent's proposal, as may be modified by further negotiation. The City may, in its sole discretion, renegotiate and/or award to another successful respondent. Submission of a proposal as provided herein shall neither obligate nor entitle a prospective Respondent to enter into a contract with the City of Calabasas.

D. Compliance with Minimum Standards:

The City reserves the right to determine, in its sole and absolute discretion, whether any aspect of any proposal satisfactorily meets the criteria established in this RFP. Before award, Respondents may be required to furnish evidence of adequate capability, expertise, and financial resources to implement the proposed project. Respondents found not qualified may have their bids considered unresponsive and the proposals rejected.

E. Additions, Amendments, and Withdrawal/Cancellation of RFP:

The City reserves the right to add to, amend, withdraw and/or cancel, in part or entirely, this RFP for any reason and at any time with no liability to any prospective respondent for any costs or expenses incurred in connection with the RFP or otherwise. If any part of the RFP is revised, addenda to the RFP will be provided to all Proposers who were provided a copy of the RFP.

F. Cancellation:

The City reserves the right, without any liability, to cancel the award of any proposals at any time before final City Council approval and execution of any subsequent contract or agreement documents by all parties.

G. City Rights:

The City reserves its full legislative and contractual powers and has broad rights with respect to the proposal detailed in this RFP. The City of Calabasas may decide to enter into agreements with more than one entity to achieve the scope of services contemplated herein, or to decline to enter into any agreements. The City also reserves the right to:

- a. Withdraw this Request for Proposal at any time.
- b. Accept any, all, or some proposal(s).
- c. Reject any or all proposals.

- d. Reject any proposal which, in its sole judgment, does not serve the City's best interests.
- e. Waive minor errors or irregularities in any proposal.
- f. Request additional information.
- g. Materials submitted by respondents become the property of the City of Calabasas upon receipt by the City.

H. Contract Negotiation:

It is understood that any proposal received and evaluated by the City can be used as a basis for direct negotiation of the cost and terms of a Professional Service Agreement (PSA) between the City and one or more particular individuals or entities submitting such a proposal. The City of Calabasas reserves the right to negotiate pertinent agreement terms concurrently with any number of individuals or entities as it deems in the City's best interests, whether or not such individuals or entities submitted a proposal. It is the intention of the City to subsequently enter into a contract with the individual or entity with which the City can make the most satisfactory arrangements for its needs.

I. Awarding of Contract:

The City reserves the right not to award a PSA to any Proposer(s) and to reject all proposals. If the City decides to award a PSA(s), the City will award a PSA(s) to the qualified Proposer(s) whose proposal the City determines best meets the needs of the City. The City reserves the right to award a PSA to more than one Proposer. The City's determination is in its sole, legislative discretion.

J. City Not Liable:

By responding to this RFP, the respondent firm agrees that in no event shall the City of Calabasas, nor any official, officer, employee, attorney, contractor, or agent of the City, in any way be personally liable or responsible for any covenant or agreement therein obtained, whether expressed or implied, nor for any statement, representation, or warranty made herein or in any connection with this RFP.

K. Public Record/Confidentiality:

Proposals submitted become a matter of public record. If the respondent believes any non-public information will be supplied in response to the RFP, the respondent must take reasonable steps to identify and provide reasonable justification to the City regarding which data, if any, falls within State of California exceptions, and to mark each such page, text, or exhibit as being non-public and non-disclosable. The respondent agrees as a condition of submitting a proposal that the City (as identified in Section J) will not be held liable or accountable for any loss or damage which may result from a breach of confidentiality as may be related to the responses submitted.

L. Independent Contractor:

It is expressly understood that each of the respondents are an “independent contractor” and not an employee of the City. Respondents shall have control over the manner in which the Services are performed under their Proposal and any subsequent Agreement. Respondents shall supply, at its own expense, all materials, supplies, equipment and tools required to accomplish the Services contemplated by this RFP. Respondents shall not be entitled to any benefits from the City, including, without limitation, insurance benefits, sick and vacation leave, workers’ compensation benefits, unemployment compensation, disability, severance pay, or retirement benefits. Nothing in this RFP or any subsequent Agreement shall be deemed to constitute a partnership, joint venture or agency relationship between the Parties.

M. Ownership of Materials Submitted:

All material submitted with, or as part of the response to this RFP, is the property of the City and will not be returned.

N. Use of Proposal Ideas:

The City reserves the right to use any or all respondent ideas presented. Selection or rejection of the proposal does not affect this right.

O. Selected Proposal.

A copy of the City’s draft Professional Services Agreement (PSA) is provided as an attachment to this RFP. The selected Proposer will be required to enter into a PSA with the City. The terms, provisions, and conditions specified in the PSA are not subject to change or negotiations; any changes or modifications to the PSA are at the City’s sole discretion. Submittal of a proposal in response to this RFP expressly implies that the respondent has read and understands the terms and provisions of the PSA.

Exhibit A – Draft PSA for Design Professionals

CITY OF CALABASAS

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

Use the following form agreement for contracts with Design Professionals. A Design Professional is an individual licensed or registered as one or more of the following:

1. an architect (Business and Professions Code (“B&P”) 5500 et seq.),
2. a landscape architect (B&P 5615 et seq.),
3. a professional land surveyor (B&P 8700 et seq.), or
4. a professional engineer (B&P 6700 et seq.).

This template does not include special funding requirements, as might be required for state grants or federally funded projects. If state or federal funding requirements are needed, such requirements can be added by exhibit(s).

“Yellow” highlights indicate internal notes to staff, or policy choices and inserts required by staff.

Insurance coverage and forms referenced in Section 12 should be verified by the City’s insurance carrier.

Add paragraphs 18.3, 18.3.1 and 18.3.2 for consulting contracts with multiple phases, or contracts that relate to, or are prior to, subsequent phases of a larger project. Delete if these do not apply.



CITY of CALABASAS

PROFESSIONAL SERVICES AGREEMENT

CONTRACT SUMMARY

Name of Contractor:	
City Department in charge of Contract:	
Contact Person for City Department:	
Period of Performance for Contract:	
Not to Exceed Amount of Contract:	
Scope of Work for Contract:	

Insurance Requirements for Contract:

yes no - Is General Liability insurance required in this contract?

If yes, please provide coverage amounts:

yes no - Is Auto insurance required in this contract?

If yes, please provide coverage amounts:

yes no - Is Professional insurance required in this contract?

If yes, please provide coverage amounts:

California requires Worker's Compensation insurance. If the vendor has no employees, a Worker's Compensation Affidavit is required.

Other:

Proper documentation is required and must be attached.

**PROFESSIONAL SERVICES AGREEMENT
FOR DESIGN PROFESSIONALS**

(City of Calabasas / [*Company or Individual*])

1. IDENTIFICATION

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Calabasas, a California municipal corporation (“City”), and _____, [*enter consultant’s (company’s) name*], a _____ [*insert consultant’s state of incorporation*] _____ [*insert consultant’s legal status e.g., individual, partnership, corporation, nonprofit public benefit corporation, limited liability company, etc.*] (“Consultant”).

2. RECITALS

- 2.1. City has determined that it requires the following professional services from a consultant: [*enter description of consultant’s services*], as more fully described on Exhibit A, attached hereto.
- 2.2. Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.
- 2.3. Consultant represents that it has no known relationships with third parties, City Council members, or employees of City which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.
- 2.4. Campaign Contributions - This Agreement is subject to Government Code Section 84308, as amended by SB 1439. That statute requires Consultant to disclose any campaign contribution by the Consultant or the Consultant’s agent to City Councilmembers or other City officials of more than \$250 in the aggregate in the preceding 12 months. Consultant shall provide a signed copy of the attached Campaign Contribution Disclosure Form with Consultant’s execution of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1. “Design Professional”: A Design Professional is any individual satisfying one or more of the following: (1) licensed as an architect pursuant to Business and Professions Code 5500 et seq., (2) licensed as a landscape architect pursuant to Business and Professions Code 5615 et seq., (3) licensed as a professional land surveyor pursuant to Business and Professions Code 8700 et seq., or (4) registered as a professional engineer pursuant to Business and Professions Code 6700 et seq.
- 3.2. “Scope of Services”: Such professional services as described in Exhibit A attached herewith and fully incorporated herein by this reference.

[CAUTION – avoid attaching Consultant’s written proposal for the Scope of Work, as it may include provisions that conflict with the terms and conditions of this Agreement. It is best to draft a separate scope as Exhibit A.]

- 3.3. “Agreement Administrator”: The Agreement Administrator for this project is _____ *[enter name of City’s contact for purposes of Agreement]*. The Agreement Administrator shall be the principal point of contact at the City for this project. All services under this Agreement shall be performed at the request of the Agreement Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. City reserves the right to change this designation upon written notice to Consultant
- 3.4. “Approved Fee Schedule”: Consultant’s compensation rates are set forth in the Consultant’s _____ *[insert date fee schedule submitted to City]* fee schedule attached hereto as Exhibit B and incorporated herein by this reference. This fee schedule shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.
- 3.5. “Maximum Amount”: The highest total compensation and costs payable to Consultant by City under this Agreement. The Maximum Amount under this Agreement is _____ Dollars (\$ _____).
- 3.6. “Commencement Date”: *[date]*.
- 3.7. “Termination Date”: *[date]*

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Termination Date unless extended by written agreement of the parties or terminated earlier under Section 18 (“Termination”) below. Consultant may request extensions of time to perform the services required hereunder. Such extensions shall be effective

if authorized in advance by City in writing and incorporated in written amendments to this Agreement.

5. CONSULTANT'S DUTIES

- 5.1. **Services.** Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.
- 5.2. **Coordination with City.** In performing services under this Agreement, Consultant shall coordinate all contact with City through its Agreement Administrator.
- 5.3. **Budgetary Notification.** Consultant shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the Maximum Amount. Consultant shall concurrently inform the Agreement Administrator, in writing, of Consultant's estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the Maximum Amount.
- 5.4. **Business License.** Consultant shall obtain and maintain in force a City business license for the duration of this Agreement.
- 5.5. **Professional Standards.** Consultant shall perform all work to the highest standards of Consultant's profession and in a manner reasonably satisfactory to City. 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 this Agreement, including all Cal/OSHA requirements, the conflict-of-interest provisions of Government Code § 1090 and the Political Reform Act (Government Code § 81000 et seq.).
- 5.6. **Avoid Conflicts.** During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if such work would present a conflict interfering with performance under this Agreement. However, City may consent in writing to Consultant's performance of such work.
- 5.7. **Appropriate Personnel.** Consultant has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. [Name of Consultant's Project Manager] shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No

change shall be made in Consultant's project administrator without City's prior written consent.

- 5.8. **Substitution of Personnel.** Any persons named in the proposal or Scope of Services constitutes a promise to the City that those persons will perform and coordinate their respective 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. If City and Consultant cannot agree as to the substitution of key personnel, City may terminate this Agreement for cause.
- 5.9. **Permits and Approvals.** Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.
- 5.10. **Notification of Organizational Changes.** Consultant shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subcontractor. Change of ownership or control of Consultant's firm may require an amendment to this Agreement.
- 5.11. **Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

6. SUBCONTRACTING

- 6.1. **General Prohibition.** This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 6.2. **Consultant Responsible.** Consultant shall be responsible to City for all services to be performed under this Agreement.
- 6.3. **Identification in Fee Schedule.** All subcontractors shall be specifically listed and their billing rates identified in the Approved Fee Schedule, Exhibit B. Any changes must be

approved by the Agreement Administrator in writing as an amendment to this Agreement.

7. COMPENSATION

- 7.1. **General.** City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Fee Schedule in full satisfaction for such services. Compensation shall not exceed the Maximum Amount. Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.
- 7.2. **Invoices.** Consultant shall submit to City an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. All labor charges shall be itemized by employee name and classification or position with the firm, the corresponding hourly rate, the hours worked, a description of each labor charge, and the total amount due for labor charges.
- 7.3. **Taxes.** City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall be solely responsible for calculating, withholding, and paying all taxes.
- 7.4. **Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 7.5. **Additional Work.** Consultant shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior written approval is given by the City through a fully executed written amendment. Consultant shall not undertake any such work without prior written approval of the City.
- 7.6. **City Satisfaction as Precondition to Payment.** Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until City is satisfied that the services are satisfactory.
- 7.7. **Right to Withhold Payments.** If Consultant fails to provide a deposit or promptly satisfy an indemnity obligation described in Section 11, City shall have the right to withhold payments under this Agreement to offset that amount.

8. 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 certain “public works” and “maintenance” projects

including the design and preconstruction phases of a covered public works project. 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 of Consultant to comply with the Prevailing Wage Laws.

9. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material (“written products” herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

10. RELATIONSHIP OF PARTIES

- 10.1. **General.** Consultant is, and shall at all times remain as to City, a wholly independent contractor.
- 10.2. **No Agent Authority.** Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant’s employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.
- 10.3. **Independent Contractor Status.** Under no circumstances shall Consultant or its employees look to the City as an employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant’s previously earned California Public Employees Retirement System (“CalPERS”) retirement benefits, if any, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation, and other applicable federal and state taxes.
- 10.4. **Indemnification of CalPERS Determination.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

11. INDEMNIFICATION

- 11.1 **Definitions.** For purposes of this Section 11, “Consultant” shall include Consultant, its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement. “City” shall include City, its officers, agents, employees and volunteers.
- 11.2 **Consultant to Indemnify City.** Where the services to be provided by Consultant under this Agreement are design professional services, as that term is defined under Civil Code Section 2782.8, Consultant agrees to indemnify, defend and hold harmless, the City, its officers, officials, employees and volunteers from any and all claims, demands, costs or liability that actually or allegedly arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant and its agents in the performance of services under this contract, but this indemnity does not apply to liability for damages for bodily injury, property damage or other loss, arising from the sole negligence, active negligence or willful misconduct by the City, its officers, official employees, and volunteers. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of the City, then Consultant’s indemnification and defense obligations shall be reduced in proportion to the established comparative liability of the City and shall not exceed the Consultant’s proportionate percentage of fault.

As respects all acts or omissions which do not arise directly out of the performance of design professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, and to the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, officials, agents, employees, and volunteers from and against any claims, demands, losses, liability of any kind or nature (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney’s fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are in connection with, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant, excepting those which arise out of the active negligence, sole negligence or willful misconduct of the City, its officers, officials, employees and volunteers.

- 11.3 **Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify City for such loss or damage as is caused by the sole active negligence or willful misconduct of the City. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of an indemnified party, then Consultant’s indemnification obligation shall be reduced in proportion to the established comparative liability.

- 11.4 **Attorneys Fees.** Such costs and expenses shall include reasonable attorneys' fees for counsel of City's choice, expert fees and all other costs and fees of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 11.5 **Defense Deposit.** The City may request a deposit for defense costs from Consultant with respect to a claim. If the City requests a defense deposit, Consultant shall provide it within 15 days of the request.
- 11.6 **Waiver of Statutory Immunity.** The obligations of Consultant under this Section 11 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City.
- 11.7 **Indemnification by Subcontractors.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor or any other person or entity involved in the performance of this Agreement on Consultant's behalf.
- 11.8 **Insurance Not a Substitute.** City does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Consultant's indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 11.9 **Civil Code.** The parties are aware of the provisions of Civil Code 2782.8 relating to the indemnification and the duty and the cost to defend a public agency by a Design Professional and agree that this Section 11 complies therewith.

12. INSURANCE

- 12.1. **Insurance Required.** Consultant shall maintain insurance as described in this section and shall require all of its subcontractors, consultants, and other agents to do the same. Approval of the insurance by the City shall not relieve or decrease any liability of Consultant Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.
- 12.2. **Documentation of Insurance.** City will not execute this agreement until it has received a complete set of all required documentation of insurance coverage. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. Consultant shall file with City:
- Certificate of Insurance, indicating companies acceptable to City, with a Best's Rating of no less than A:VII showing. The Certificate of Insurance must include the following reference:
 - project name

- additional Insured
- Documentation of Best’s rating acceptable to the City.
- Original endorsements effecting coverage for all policies required by this Agreement.
- Complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

12.3. **Coverage Amounts.** Insurance coverage shall be at least in the following minimum amounts:

- Professional Liability Insurance: \$1,000,000 per occurrence,
 \$2,000,000 aggregate
- General Liability:
 - General Aggregate: \$2,000,000
 - Products Comp/Op Aggregate \$2,000,000
 - Personal & Advertising Injury \$1,000,000
 - Each Occurrence \$1,000,000
 - Fire Damage (any one fire) \$ 50,000
 - Medical Expense (any 1 person) \$ 5,000
- Workers' Compensation:
 - Workers' Compensation Statutory Limits
 - EL Each Accident \$1,000,000
 - EL Disease - Policy Limit \$1,000,000
 - EL Disease - Each Employee \$1,000,000
- Automobile Liability
 - Any vehicle, combined single limit \$1,000,000

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements or limits shall be available to the City as additional insured. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured

12.4. **General Liability Insurance.** Commercial General Liability Insurance shall be no less broad than ISO form **CG 00 01**. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable.

12.5. **Worker’s Compensation Insurance.** Consultant is aware of the provisions of Section 3700 of the Labor Code which requires every employer to carry Workers' Compensation (or to undertake equivalent self-insurance), and Consultant will comply with such provisions before commencing the performance of the work of this

Agreement. If such insurance is underwritten by any agency other than the State Compensation Fund, such agency shall be a company authorized to do business in the State of California.

- 12.6. **Automobile Liability Insurance.** Covered vehicles shall include owned if any, non-owned, and hired automobiles and, trucks.
- 12.7. **Professional Liability Insurance or Errors & Omissions Coverage.** The deductible or self-insured retention may not exceed \$50,000. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage shall be continued for two years after the completion of the work by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- 12.8. **Claims-Made Policies.** If any of the required policies provide coverage on a claims-made basis the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Claims-Made Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
- 12.9. **Additional Insured Endorsements.** The City, its City Council, Commissions, officers, and employees of Calabasas must be endorsed as an additional insured for each policy required herein, other than Professional Errors and Omissions, for liability arising out of ongoing and completed operations by or on behalf of the Consultant. Consultant’s insurance policies shall be primary as respects any claims related to or as the result of the Consultant’s work. Any insurance, pooled coverage or self-insurance maintained by the City, its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants shall be non-contributory. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. General liability coverage can be provided using an endorsement to the Consultant’s insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37.
- 12.10. **Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of the project and the Consultant does not furnish a new certificate of insurance prior to cancellation, City has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due the Consultant under this Agreement. Failure of the Consultant to maintain the insurance required by this Agreement, or to comply with any of the requirements of this section, shall constitute a material breach of this Agreement.

- 12.11. **Notices.** Contractor shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. Consultant shall provide no less than 30 days' notice of any cancellation or material change to policies required by this Agreement. Consultant shall provide proof that cancelled or expired policies of insurance have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: City of Calabasas, Attn: insert department or individual, 100 Civic Center Way, Calabasas, California 91302.
- 12.12. **Consultant's Insurance Primary.** The insurance provided by Consultant, including all endorsements, shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 12.13. **Waiver of Subrogation.** Consultant hereby waives all rights of subrogation against the City. Consultant shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.
- 12.14. **Report of Claims to City.** Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under this Agreement.
- 12.15. **Premium Payments and Deductibles.** Consultant must disclose all deductibles and self-insured retention amounts to the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, City must approve all such amounts prior to execution of this Agreement.
- City has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. Consultant shall be responsible for all premiums and deductibles in all of Consultant's insurance policies. The amount of deductibles for insurance coverage required herein are subject to City's approval.
- 12.16. **Duty to Defend and Indemnify.** Consultant's duties to defend and indemnify City under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

13. MUTUAL COOPERATION

- 13.1. **City Cooperation in Performance.** City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 13.2. **Consultant Cooperation in Defense of Claims.** If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

14. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

[Name]
 City of Calabasas
 [Department/Division]
 100 Civic Center Way
 Calabasas, CA 91302
 Telephone: (818) 224-1600
 Facsimile: (818) 225-7308

If to Consultant

[Name]
 [Address]
 [Address]
 Telephone: (xxx) xxx-xxxx
 Facsimile: (xxx) xxx-xxxx

With courtesy copy to:

Matthew T. Summers, City Attorney
 Colantuono, Highsmith & Whatley, PC
 790 E. Colorado Blvd., Ste. 850
 Pasadena, CA 91101
 Telephone: (213) 542-5719
 Facsimile: (213) 542-5710
 Email: msummers@chwlaw.us

15. SURVIVING COVENANTS

The parties agree that the covenants contained in paragraph 5.11 (Records), paragraph 10.4 (Indemnification of CalPERS Determination), Section 11 (Indemnity), paragraph 12.8 (Claims-Made Policies), paragraph 13.2 (Consultant Cooperation in Defense of Claims), and paragraph

18.1 (Confidentiality) of this Agreement shall survive the expiration or termination of this Agreement, subject to the provisions and limitations of this Agreement and all otherwise applicable statutes of limitations and repose.

16. TERMINATION

- 16.1. **City Termination.** City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 16.2. **Consultant Termination.** Consultant may terminate this Agreement for a material breach of this Agreement upon 30 days' notice.
- 16.3. **Compensation Following Termination.** Upon termination, Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement. The City shall have the benefit of such work as may have been completed up to the time of such termination.
- 16.4. **Remedies.** City retains any and all available legal and equitable remedies for Consultant's breach of this Agreement.

17. INTERPRETATION OF AGREEMENT

- 17.1. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 17.2. **Integration of Exhibits.** All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on by City and Consultant.
- 17.3. **Headings.** The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the language of the section or paragraph shall control and govern in the construction of this Agreement.

- 17.4. **Pronouns.** Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 17.5. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 17.6. **No Presumption Against Drafter.** Each party had an opportunity to consult with an attorney in reviewing and drafting this agreement. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting to any party.

18. GENERAL PROVISIONS

- 18.1. **Confidentiality.** All data, documents, discussion, or other information developed or received by Consultant for performance of this Agreement are deemed confidential and Consultant shall not disclose it without prior written consent by City. City shall grant such consent if disclosure is legally required. All City data shall be returned to City upon the termination or expiration of this Agreement.
- 18.2. **Conflicts of Interest.** 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 subcontractor to file, a Statement of Economic Interest with the City's Filing Officer if 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.

[Add the following paragraph 18.3, 18.3.1 and/or 18.3.2, as applicable, for consulting contracts with multiple phases, or contracts that relate to, or are prior to, subsequent phases of a larger project.]

18.3. Conflict of Interest / Multiple Phase Projects – This Agreement is subject to the requirements of Government Code § 1097.6 relating to consultants entering into subsequent or multiple contracts for the same project..

18.3.1 Engaging or Advising on Public Contracting on behalf of the City.

A. The scope of Consultant’s work is limited to conceptual, preliminary, or initial plans or specifications for a prior stage of the project.

B. Consultant shall provide access to the work, such that all bidders or proposers for the subsequent stages shall have access to the same information as Consultant, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.

18.3.2 Multiple Project Phases.

A. Consultant’s duties and services under this Agreement shall not include preparing or assisting the City with any portion of the City’s preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City.

B. The City shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Consultant’s participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications.

C. Consultant shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.

18.4. **Non-assignment.** Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City’s prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.

18.5. **Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.

18.6. **No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.

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

- 18.8. **Non-Discrimination.** Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Employment actions to which this provision applies shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.
- 18.9. **Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by City or Consultant of any breach of any provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.
- 18.10. **Excused Failure to Perform.** Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.11. **Remedies Non-Exclusive.** Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies.
- 18.12. **Attorneys' Fees.** If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, each party shall pay its own costs, including any accountants' and attorneys' fees expended in the action.
- 18.13. **Venue.** The venue for any litigation shall be Los Angeles County, California and Consultant hereby consents to jurisdiction in Los Angeles County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.14. **Recitals.** The recitals are incorporated by this reference.

(Signature page follows)

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”
City of Calabasas

“Consultant”
[Name of Company or Individual]

By: _____
Signature

By: _____
Signature

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest:

By: _____
Maricela Hernandez, City Clerk

Date: _____

Approved as to form:

By: _____
Matthew T. Summers, City Attorney

Date: _____

“EXHIBIT A”
SCOPE OF WORK

[Insert Scope of Work text here]
[Do not attach vendor's proposal]

“EXHIBIT B”
APPROVED FEE SCHEDULE

[Insert Fee Schedule text here]
[Do not attach vendor's proposal]

CAMPAIGN CONTRIBUTION DISCLOSURE PROVISIONS

Cities are subject to the campaign disclosure provisions detailed in Government Code Section 84308.

Please carefully read the following information to determine if the provisions apply to you. If you determine that the provisions are applicable, the Campaign Disclosure Form must be completed and returned to the City with your application.

No City Councilmember or other City official shall accept, solicit, or direct a campaign contribution of more than \$250 from any party¹ or agent² for 12 months after the City approves a contract. This prohibition commences when an application is filed, or a proceeding is otherwise initiated.

A party to a City proceeding shall disclose on the record of the proceeding any campaign contribution of more than \$250 by a party or agent to any City Councilmember or other City official during the preceding 12 months. No party to a City proceeding, or agent, shall make a campaign contribution to a City Councilmember or other City official during a proceeding and for 12 months after the City approves a contract.

A City Councilmember or other City official who received a campaign contribution of more than \$250 within the preceding 12 months from any party, or agent, to a proceeding shall disclose that fact on the record of the proceeding, and shall abstain from participating in the proceeding. However, if he or she returns the portion of a campaign contribution in excess of \$250 within 30 days of knowing about the contribution and the relevant proceeding, he or she may participate in the proceeding.

¹ "Party" is defined as any person who files an application for, or is the subject of, a proceeding.

² "Agent" is defined as a person who represents a party in connection with a proceeding. If an individual acting as an agent also is acting as an employee or member of a law, architectural, engineering, or consulting firm, or a similar entity or corporation, both the individual and the entity or corporation are agents. When a closed corporation is a party to a proceeding, the majority shareholder is subject to these provisions.

To determine whether you or your agent made a campaign contribution of more than \$250 to a City Councilmember or other City official within the preceding 12 months, you must aggregate all such contributions.

Names of current City Councilmembers and other City officials are available on the City's website. If you have questions about Government Code Section 84308, FPPC regulations, or the Campaign Disclosure Form, please contact the City Clerk.

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

(a) Document:

- License
- Lease
- Permit
- Franchise
- Other Contract
- Other Entitlement

Name and address of any party, or agent, who has contributed more than \$250 to any City Councilmember or other City official within the preceding 12 months:

1. _____
2. _____
3. _____

(b) Date and amount of contribution:

Date _____ Amount \$ _____

Date _____ Amount \$ _____

(c) Name of City Councilmember or other City official to whom contribution was made:

1. _____
2. _____
3. _____

(d) Check here If no contributions have been made to any Councilmember or other City official in the preceding 12 months.

(e) I certify that the above information is provided to the best of my knowledge.

Printed Name _____

Signature _____

Date _____ Phone _____

Exhibit B – Draft PSA for General Consultant Services

CITY OF CALABASAS

PROFESSIONAL SERVICES AGREEMENT FOR CONSULTANT SERVICES

Use the following form agreement for contracts with consultants who are not Design Consultants (not licensed by the Business and Professions Code as architects, engineers, landscape architects, or land surveyors).

This template does not include special funding requirements, as might be required for state grants or federally funded projects. If state or federal funding requirements are needed, such requirements can be added by exhibit(s).

“Yellow” highlights indicate internal notes to staff, or policy choices and inserts required by staff. The yellow highlights can be removed when completed.

Also, insurance coverage and forms (Section 12) should be verified by the City’s insurance carrier.

Add paragraphs 19.11, 19.11.1 and 19.11.2 for consulting contracts with multiple phases, or contracts that relate to, or are prior to, subsequent phases of a larger project. Delete if these do not apply.

PROFESSIONAL SERVICES AGREEMENT

CONTRACT SUMMARY

Name of Contractor:	
City Department in charge of Contract:	
Contact Person for City Department:	
Period of Performance for Contract:	
Not to Exceed Amount of Contract:	
Scope of Work for Contract:	

Insurance Requirements for Contract:

yes no - Is General Liability insurance required in this contract?

yes no - Is Auto insurance required in this contract?

yes no - Is Professional insurance required in this contract?

California requires Worker's Compensation insurance. If the vendor has no employees, a Worker's Compensation Affidavit is required.

Other:

Proper documentation is required and must be attached.

PROFESSIONAL SERVICES AGREEMENT FOR CONSULTANT SERVICES
(City of Calabasas / [Company or Individual])

1. IDENTIFICATION

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into as of the last date indicated below by and between the City of Calabasas, a California municipal corporation (“City”), and _____ [enter consultant’s (company’s) name], a _____ [insert consultant’s state of incorporation] _____ [insert consultant’s legal status e.g., individual, partnership, corporation, nonprofit public benefit corporation, limited liability company, etc.] (“Consultant”) (collectively, “parties”).

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: _____ [insert description of consultant’s services], as more fully described on Exhibit B attached hereto.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.
- 2.3 Consultant represents that it has no known relationships with third parties, City Council members, or employees of City which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090, the Political Reform Act (Government Code Section 81000 et seq.), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant risk of the disclosure of confidential information.
- 2.4 Campaign Contributions - This Agreement is subject to Government Code Section 84308, as amended by SB 1439. That statute requires Consultant to disclose any campaign contribution by the Consultant or the Consultant’s agent to City Councilmembers or other City officials of more than \$250 in the aggregate in the preceding 12 months. Consultant shall provide a signed copy of the attached Campaign Contribution Disclosure Form with Consultant’s execution of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. **DEFINITIONS**

- 3.1 “Scope of Services” means such professional services as are set forth in Consultant’s _____ [insert consultant’s proposal date] proposal to City as described on “Exhibit A” and fully incorporated herein by this reference.

[CAUTION – avoid attaching Consultant’s written proposal for the Scope of Work, as it may include provisions that conflict with the terms and conditions of this Agreement. It is best to draft a separate scope as Exhibit A.]

- 3.2 “Approved Fee Schedule” means such compensation rates as are set forth in Consultant’s _____ [insert date fee schedule submitted to City] fee schedule to City attached hereto as “Exhibit B” and fully incorporated herein by this reference. This fee schedule shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.

- 3.3 “Commencement Date” means _____ [enter commencement date].

- 3.4 “Termination Date” means _____ [enter termination date].

- 3.5 “City Agreement Administrator” means _____ [enter name of City’s contact for purposes of Agreement].

- 3.6 “Consultant Project Administrator” means _____ [enter name of Consultant’s contact for purposes of Agreement].

4. **TERM**

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall terminate at 11:59 p.m. on the Termination Date unless extended in writing by mutual agreement of the parties or terminated earlier in accordance with Section 18 (“Termination”) below.

5. **CONSULTANT’S SERVICES**

- 5.1 Time is of the essence in Consultant’s performance of services under this Agreement.

- 5.2 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of _____ (\$_.) unless specifically approved in advance and in writing by City. Consultant shall notify the City Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the maximum

amount payable above. Consultant shall concurrently inform the City Agreement Administrator, in writing, of Consultant's estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the maximum amount payable above.

- 5.3 Consultant shall perform all work to the highest standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict-of-interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **[enter name of Consultant's contact for purposes of Agreement]** shall be the Consultant Project Administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No other person shall serve as Consultant Project Administrator without City's prior written consent.
- 5.6 This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 5.7 Consultant shall be responsible to City for all services to be performed under this Agreement. All subconsultants shall be approved by the City Agreement Administrator and their billing rates identified in the Approved Fee Schedule, Exhibit B. City shall pay Consultant for work performed by its subconsultants (including labor) only at Consultant's actual cost plus an approved mark-up as set forth in the Approved Fee Schedule, Exhibit B. Consultant shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subconsultants performing services under this Agreement. City shall not be liable for any payment, compensation, or federal and state taxes for any subconsultants.
- 5.8 Consultant shall notify the City Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subconsultant. Change

of ownership or control of Consultant's firm may require an amendment to the Agreement.

- 5.9 This Agreement is subject to prevailing wage law, for all work performed under the Agreement for which the payment of prevailing wages is required under the California Labor Code. In particular, Consultant acknowledges that prevailing wage determinations are available for the performance of inspection and survey work.
- 5.10 Pursuant to California Labor Code Sections 1773.2 and 1775, the Consultant shall forfeit as a penalty to City \$200.00 or any greater penalty provided in the Labor Code for each Calendar Day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done under the Contract employed in the execution of the work by Consultant or by any Subcontract under Consultant in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each Calendar Day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant.
- 5.11 Pursuant to Labor Code § 1776, each consultant and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
- (1) The information contained in the payroll record is true and correct.
 - (2) The employer has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

The payroll records enumerated under subdivision (a) shall be verified and shall be available for inspection at all reasonable hours as required by Labor Code § 1776.”

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Approved Fee Schedule in full satisfaction for such services.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for services performed pursuant to this Agreement. Each invoice shall identify the maximum amount payable above, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. All labor

charges shall be itemized by employee name and classification/position with the firm, the corresponding hourly rate, the hours worked, a description of each labor charge, and the total amount due for labor charges. City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall include a copy of each subconsultant invoice for which reimbursement is sought in the invoice.

- 6.3 The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 6.4 Payments for any services requested by City and not included in the Scope of Services may be made to Consultant by City on a time-and-materials basis pursuant to the Approved Fee Schedule and without amendment of this Agreement, so long as such payment does not cause the maximum amount payable above to be exceeded.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material, and all electronic files, including computer-aided design files, developed by Consultant in the performance of this Agreement (such written material and electronic files are collectively known as “written products”) shall be and remain the property of City without restriction or limitation upon its use or dissemination by City except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant’s employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

Under no circumstances shall Consultant look to the City as its employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant’s previously earned California Public Employees Retirement System (“CalPERS”) retirement benefits, if any, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers’ compensation, and other applicable federal and state taxes.

9. AGREEMENT ADMINISTRATOR

In performing services under this Agreement, Consultant shall coordinate all contact with City through its City Agreement Administrator. City reserves the right to change this designation upon written notice to Consultant. All services under this Agreement shall be performed at the request of the City Agreement Administrator, who will establish the timetable for completion of services and any interim milestones.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the parties intend the provisions of this indemnity provision to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other expenses of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 of this Agreement and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 of this Agreement are not limited by the provisions of any workers' compensation or similar statute.

Consultant expressly waives its statutory immunity under such statutes as to City, its officers, agents, employees and volunteers.

- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in Section 10 of this Agreement from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others, Consultant agrees to indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply whether or not any insurance policies apply to a claim, demand, damage, liability, loss, cost or expense.
- 10.7 In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.
- 10.8 Notwithstanding any federal, state, or local policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in CalPERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for CalPERS benefits.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement.

- 11.2 Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements or limits shall be available to City as an Additional Insured as provided below. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured.
- 11.3 Insurance required under this Agreement shall be of the types set forth below, with minimum coverage as described:
- 11.3.1 Comprehensive General Liability Insurance with coverage limits of not less than **One Million Dollars (\$1,000,000)** including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
- 11.3.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of **One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.**
- 11.3.3 Worker's Compensation insurance if and as required by the laws of the State of California.
- 11.3.4 Professional Errors and Omissions Insurance with coverage limits of not less than **One Million Dollars (\$1,000,000).**
- 11.4 Consultant shall require each of its subconsultants to maintain insurance coverage that meets all of the requirements of this Agreement provided however, that the City Agreement Administrator may waive the provision of Errors and Omissions Insurance by subconsultants in his or her sole discretion.
- 11.5 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.6 Consultant agrees that if it does not keep the insurance coverages required by this Agreement in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.
- 11.7 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the required coverages are in effect and naming City and its officers, employees, agents and volunteers as Additional Insureds. Prior to commencement of work under this Agreement, Consultant shall file with City's Risk Manager such certificate(s) and

Forms **CG 20 10 07 04** and **CG 20 37 07 04** or the substantial equivalent showing City as an Additional Insured.

- 11.8 Consultant shall provide proof that policies of insurance required by this Agreement expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.9 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as Additional Insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.10 The insurance provided by Consultant shall be primary to any other coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.11 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.12 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.13 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.
- 11.14 Consultant may be self-insured under the terms of this Agreement only with express written approval from the City.
 - 11.14.1 All self-insured retentions (SIR) must be disclosed to the City for approval and shall not reduce the limits of liability.

11.14.2 Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City.

11.15 City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

12. MUTUAL COOPERATION

12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

12.2 If any claim, action, or proceeding is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim, action, or proceeding.

13. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

14. RECORDS AND INSPECTIONS

Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. City shall further have the right to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

15. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant’s performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

16. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant’s and City’s regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

[Name]

[title]

[Address]

[Address]

Telephone: (xxx) xxx-xxxx

Facsimile: (xxx) xxx-xxxx

If to Consultant:

[Name]

[Company]

[Address]

[Address]

Telephone: (xxx) xxx-xxxx

Facsimile: (xxx) xxx-xxxx

With courtesy copy to:

Matthew T. Summers, City Attorney
Colantuono, Highsmith & Whatley, PC
790 E. Colorado Blvd, Suite 850
Pasadena, California 91101
Telephone: (213) 542-5719
Facsimile: (213) 542-5710
Email: msummers@chwlaw.us

17. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 10, Section 13, Paragraph 12.2 and Section 14 of this Agreement shall survive the expiration or termination of this Agreement.

18. TERMINATION

- 18.1 City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be promptly returned to City upon the termination or expiration of this Agreement.
- 18.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement as provided in Section 5.2 above and as otherwise provided in this Agreement.

19. GENERAL PROVISIONS

- 19.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 19.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 19.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 19.4 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall

be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party to be charged with the waiver.

- 19.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 19.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees expended in the action. The venue for any litigation shall be Los Angeles County, California and Consultant hereby consents to jurisdiction in Los Angeles County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 19.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 19.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 19.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the provisions of this Agreement and those of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on behalf of the City and Consultant.
- 19.10 Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law,

disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training, Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.

[Add the following paragraph 19.11, 19.11.1 and/or 19.11.2, as applicable, for consulting contracts with multiple phases, or contracts that relate to, or are prior to, subsequent phases of a larger project.]

19.11 Conflict of Interest / Multiple Phase Projects – This Agreement is subject to the requirements of Government Code § 1097.6 relating to consultants entering into subsequent or multiple contracts for the same project.

19.11.1 Engaging or Advising on Public Contracting on behalf of the City.

A. The scope of Consultant’s work is limited to conceptual, preliminary, or initial plans or specifications for a prior stage of the project.

B. Consultant shall provide access to the work, such that all bidders or proposers for the subsequent stages shall have access to the same information as Consultant, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.

19.11.2 Multiple Project Phases.

A. Consultant’s duties and services under this Agreement shall not include preparing or assisting the City with any portion of the City’s preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City.

B. The City shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Consultant’s participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications.

C. Consultant shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.

- 19.12 This Agreement shall be binding on successors and assigns of the parties.
- 19.13 Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 19.14 **Recitals.** The Recitals are incorporated herein by this reference.

(Signature page follows)

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement as of the last date indicated below:

“City”

“Consultant”

[insert name]

By _____

By: _____

[insert name], insert title]

Date: _____

Date: _____

Attest:

By _____

Analuz Mendoza, Interim City Clerk

Date: _____

Approved as to form:

By _____

Matthew T. Summers, City Attorney

Date: _____

“EXHIBIT A”
SCOPE OF WORK

[Insert Scope of Work text here]

[CAUTION – avoid attaching Consultant’s written proposal for the Scope of Work, as it may include provisions that conflict with the terms and conditions of this Agreement. It is best to draft a separate scope as Exhibit A.]

**“EXHIBIT B”
APPROVED FEE SCHEDULE**

[Insert Fee Schedule text here]

[CAUTION – avoid attaching Consultant’s written proposal for the Scope of Work, as it may include provisions that conflict with the terms and conditions of this Agreement. It is best to draft a separate fee schedule Exhibit B.]

NON-COLLUSION DECLARATION

TO BE EXECUTED BY
BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].”

Signature

Printed Name of Signatory

WORKERS' COMPENSATION
INSURANCE CERTIFICATE

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

DATE: _____

Contractor

By:

Signature

Title

Attest:

By:

Signature

Title

CAMPAIGN CONTRIBUTION DISCLOSURE PROVISIONS

Cities are subject to the campaign disclosure provisions detailed in Government Code Section 84308.

Please carefully read the following information to determine if the provisions apply to you. If you determine that the provisions are applicable, the Campaign Disclosure Form must be completed and returned to the City with your application.

No City Councilmember or other City official shall accept, solicit, or direct a campaign contribution of more than \$250 from any party¹ or agent² for 12 months after the City approves a contract. This prohibition commences when an application is filed, or a proceeding is otherwise initiated.

A party to a City proceeding shall disclose on the record of the proceeding any campaign contribution of more than \$250 by a party or agent to any City Councilmember or other City official during the preceding 12 months. No party to a City proceeding, or agent, shall make a campaign contribution to a City Councilmember or other City official during a proceeding and for 12 months after the City approves a contract.

A City Councilmember or other City official who received a campaign contribution of more than \$250 within the preceding 12 months from any party, or agent, to a proceeding shall disclose that fact on the record of the proceeding, and shall abstain from participating in the proceeding. However, if he or she returns the portion of a campaign contribution in excess of \$250 within 30 days of knowing about the contribution and the relevant proceeding, he or she may participate in the proceeding.

¹ "Party" is defined as any person who files an application for, or is the subject of, a proceeding.

² "Agent" is defined as a person who represents a party in connection with a proceeding. If an individual acting as an agent also is acting as an employee or member of a law, architectural, engineering, or consulting firm, or a similar entity or corporation, both the individual and the entity or corporation are agents. When a closed corporation is a party to a proceeding, the majority shareholder is subject to these provisions.

To determine whether you or your agent made a campaign contribution of more than \$250 to a City Councilmember or other City official within the preceding 12 months, you must aggregate all such contributions.

Names of current City Councilmembers and other City officials are available on the City's website. If you have questions about Government Code Section 84308, FPPC regulations, or the Campaign Disclosure Form, please contact the City Clerk.

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

(a) Document:

- License
- Lease
- Permit
- Franchise
- Other Contract
- Other Entitlement

Name and address of any party, or agent, who has contributed more than \$250 to any City Councilmember or other City official within the preceding 12 months:

1. _____
2. _____
3. _____

(b) Date and amount of contribution:

Date _____ Amount \$ _____

Date _____ Amount \$ _____

(c) Name of City Councilmember or other City official to whom contribution was made:

1. _____
2. _____
3. _____

(d) Check here If no contributions have been made to any Councilmember or other City official in the preceding 12 months.

(e) I certify that the above information is provided to the best of my knowledge.

Printed Name _____

Signature _____

Date _____ Phone _____