

Amended.



City of Whittier

13230 Penn Street, Whittier, California 90602-1772
(562) 567 - 9302 Fax (562) 567 - 2872

REQUEST FOR QUALIFICATIONS (RFQ)

Homeless Navigation Center Operator

Due Date: 4:00 P.M. on March 31, 2020

The City of Whittier invites qualified nonprofit social Service Providers to submit qualifications and a concept proposal for operation and staffing for a city homeless Navigation Center.

Please submit three (3) hard copies and one (1) digital copy of your response **by 4:00 P.M. on March 31, 2020. Proposals received after this deadline shall not be considered. Proposals shall be submitted to:**

City Clerk
City of Whittier
13230 Penn Street
Whittier, California 90602

For additional information with regard to this Request for Qualifications, please contact Shannon DeLong, Assistant City Manager, at (562) 567-9301 or by email at admin@cityofwhittier.org.

KEY RFQ DATES (Subject to change at discretion of City):

Issue Date:	February 25, 2020
Deadline for Requests for Information:	March 13, 2020
Proposal Due Date:	March 31, 2020
Projected Award of Contract Date:	April 10, 2020

I. SCOPE OF WORK, BACKGROUND & OBJECTIVE

The City of Whittier is committed to upholding the highest standards for quality of life, safety and security in the community. The City of Whittier invites qualified Service Providers to submit qualifications and a concept proposal for operation and staffing for a Homeless Navigation Center.

A. Background

Our community is facing considerable challenges with assisting our local homeless residents. Throughout Los Angeles County, there are insufficient shelter beds for the number of individuals experiencing homelessness. As a result, individuals experiencing homelessness have few options for sleeping other than public spaces. A Navigation Center is a 24-hour per day, 365-day per year emergency shelter with supportive services, which can meet the needs of individuals experiencing homelessness and ensure that City facilities are clean, well-maintained, and available for everyone to use.

B. Objective

The City of Whittier is seeking qualifications and a concept proposal from experienced professional Service Providers to run a proposed Navigation Center. The selected Service Provider will be part of the City team to facilitate the successful siting, design and construction of the facility. The selected provider will also be part of the community engagement and informational process with regard to site selection, construction and operation of the Navigation Center. Once constructed, the Service Provider shall operate a year-round emergency shelter Navigation Center for up to 150 adults, providing services and shelter 24 hours a day, 365 days a year. The Center will also provide, under coordination and supervision of the Service Provider, a range of on-site programs and services from a variety of community partners, government and nonprofit health and social services agencies and coordinated entry system services. The Navigation Center is envisioned as a closed campus with clients arriving and departing via pre-arranged transportation. All work shall be performed in accordance with applicable codes, standards and regulations.

II. EXPECTATIONS OF SERVICE PROVIDER

The selected Service Provider must work with the City of Whittier to develop an Operating Plan that will be approved by the City. A sample Operating Plan, either from a facility under operation by the Service Provider or a draft plan for a Whittier Navigation Center, must be submitted with the proposal. The Service Provider shall submit its policies and procedures for community engagement, shelter program services, management plan, staff responsibilities, and staff coordination.

If selected by the City and if requested by the City, the Service Provider will cooperate with the City to secure approval of these policies and procedures by Los Angeles Homeless Services Authority (LAHSA) as appropriate in its role as the Lead Agency for the Continuum of Care serving Whittier. This will include the Service Provider making any revisions to the policies and procedure documents as necessary to address requests by the City or LAHSA.

The Operating Plan should include, but is not limited to: appropriate protocol for medical/mental health emergencies of clients, the use of the Homeless Management Information System (HMIS) (or another equivalent system if determined to be acceptable by the City) to track occupancy and adhere to all implementation guidelines developed under the Continuum of Care standards, and engagement with Health Care and Social Services Agencies, Community Resources, local agencies and social services programs, and volunteers to assist with the Navigation Center services and program.

The City is open to consideration of additional services, such as Recuperative Care programs, which offer a safe and restful place for homeless high-utilizers of local emergency rooms to recover after illness. Navigation Centers offer supportive service programs designed to provide a safe environment for those experiencing homelessness on the streets, and a pathway to transition into permanent housing. By combining these shelter services, not only is the level of services offered increased, but costs are reduced by leveraging recuperative care funding from local hospitals, stimulating effective outcomes. This hybrid model represents best practices in exceptional trauma-informed care for all shelter participants.

A. Reports

Service Provider shall submit reports on a monthly basis to the City of Whittier and, if requested by City, directly to LAHSA. Data and due dates for the monthly reports will be items mutually agreed upon with the City and data collected through HMIS (or equivalent system as authorized by the City). At least once per year, to be completed contemporaneously with the Annual Audit, the Parties shall cause a third-party to review and audit the day-to-day operational affairs of the Navigation Center, and prepare an Annual Report.

B. Visitors/Tours

Visits by members of the community and tours of the Navigation Center should be made available to interested public agencies, and will be coordinated by and through the City of Whittier and the Service Provider. All potential Service Providers are required to submit qualifications and proposal including a proposed program description and a proposed Operation Plan (including Management and Public Safety components).

C. Site Selection and Construction of Year-Round Navigation Center

The selected Service Provider will provide input to the City's Project Manager and design team as the City develops plans and specifications, incorporating all required design standards which conform to applicable local, state and federal public building code requirements utilizing emergency shelter design standards (Center Management, Operations, and Public Safety Requirements). The City intends to facilitate construction of the facility and intends for the Service Provider to assist the City's design team in ensuring that the Navigation Center is constructed and equipped with the facilities and amenities appropriate and necessary to serve the client capacity.

D. Repairs, Maintenance, Additions and Reconstruction

Throughout the term of the agreement, Service Provider will be required to keep and maintain the Facility and any and all improvements. It is anticipated that Service Provider will provide for this maintenance at Provider's sole cost and expense and will keep the Facility in good order, condition and repair and in a safe and sanitary condition and in compliance with all applicable laws in all material respects including, but not limited to, the landscaping, hardscaping, plumbing systems, ceiling-mounted electric light fixtures; bulbs and switches; windows; doors and locks, interior/non-structural/above-slab elements of the Facility and all furnishings and equipment thereon, if applicable, and improvements constructed thereon in good order and repair (reasonable wear and tear excepted), and to keep said Facility in a neat, clean, orderly, safe, and sanitary condition. Said maintenance includes, but is not limited to, janitorial services, flooring care and the prevention of accumulation of any refuse or waste materials that might constitute a fire hazard or a public or private nuisance.

E. Security

Service Provider will work with the City's team to ensure that adequate security measures and policies are incorporated into the Navigation Center construction and operation, including but not limited to security plans, secured entrances, on-site security personnel, video recording equipment, adequate lighting, patrols, and neighborhood safety controls. Detailed security procedures and protocols will be included in the Operating Plan developed by the Service Provider and approved by the City of Whittier. A sample operating plan should be provided (either from a facility under operation by the Service Provider or a realistic draft plan for a Whittier Navigation Center). At all times during the term of the agreement, the Service Provider, at Service Provider's sole cost and expense, will be required to:

- Observe and comply in all material respects with all Laws now or hereafter made or issued respecting the Facility and/or the Improvements that are applicable to the Service Provider.
- the Service Provider shall provide the City with the copies of all approvals, permits, and licenses within 14 days of a written request by the City.

F. Compliance with LAHSA Core Principles and Facility Standards

The Los Angeles Homeless Services Authority (LAHSA) has issued facility standards that are available on their website (<https://www.lahsa.org/documents?id=2767-2018-2019-facility-standards-RFQ>) and has issued the following principles are required for activities funded through their agency. The City of Whittier may choose to partner with LAHSA for funding. Proposers should explain in statement of qualifications whether and how they can comply with the LAHSA facility standards and following principles, summarized below.

Housing First

According to the webinar Core Principles of Housing First and Rapid Re-Housing issued by HUD and the United States Interagency Council on Homelessness (USICH), the Housing First approach is based on the following principles:

- *Housing is safe and affordable;*
- *All people can achieve housing stability in permanent housing; supports may look different;*
- *Everyone is “housing ready”;*
- *Improved quality of life, health, mental health, and employment can be achieved through housing;*
- *Right to determination, dignity and respect;*
- *Configuration of housing and services based on household’s needs and preferences.*

For more information, please review the USICH resource at the link below:https://www.usich.gov/resources/uploads/asset_library/PRS_Housing_First_and_RRH_Webinar_07_22_14.pdf

Harm Reduction

Harm reduction policies, procedures, and practices aim to reduce the negative consequences of behaviors that are detrimental to the participant’s health and well-being (i.e. abuse of drugs and/or alcohol, failure to be medication compliant, engaging in criminal activity, prostitution, choosing to sleep outside, etc.). In housing settings, harm reduction is intended to prevent a participant’s loss of housing and/or termination from the program based solely on his or her inability to stop engaging in harmful behaviors. Programs incorporating a harm reduction model must utilize all interventions possible, short of termination from the program, to enable the participant to reduce or minimize their risky behaviors, while at the same time assisting them to move into and become stabilized in permanent housing. Harm reduction is not intended to prevent the termination of a participant whose actions or behavior constitute a threat to the safety of other participants and staff. Organizations must develop a set of policies and procedures to be implemented in the event of such behavior on the part of a participant.

Trauma-Informed Care

Trauma-informed care requires that every part of the program's design and operation be approached with an understanding of trauma and the impact it has on those receiving services. Traumatic experiences can impact how clients receive services provided and the environment in which those services are delivered. Establishing a safe and supportive environment are principal aspects of trauma-informed care. To do so, a program must ensure that all staff receive training on traumatic stress and its impact, as well as the relationship between trauma and mental health, substance use, and homelessness. Training should detail how working with trauma survivors can impact staff, and how these issues can impact their work. Staff training in crisis management may include learning how to help clients identify triggers, express their feelings safely, use healthy coping skills, in addition to helping clients develop safety and self-care plans prior to a crisis.

Cultural Competency

Programs must consider cultural and linguistic factors in addressing the needs of populations to be served. Subpopulation identities may include, but are not limited to, race and ethnicity, gender and gender identity, sexual orientation, economic class, age, family status, language spoken and understood, physical and mental disabilities, living situation, etc. Proposers must demonstrate the capacity to accommodate special populations within the proposer's general population (i.e. youth, LGBTQ, disabled clients, veterans, victims of domestic violence) throughout all levels of the organization, from organizational vision and mission statement, to policy implementation, and to service delivery procedures and philosophies. Effective communication requires, at a minimum, the provision of service and information in appropriate language, at appropriate educational and literacy levels, and in the context of the individual's cultural identity.

III. PROPOSAL

The proposal shall be concise and shall not include unnecessary promotional material. A responsive proposal shall contain the following documentation as set forth in this RFQ. Omission of any of the requested information, or misleading and incomplete information may be grounds for rejection.

A. Please submit a cover page as follows:

Name of Service Provider/Organization:

Address:

Phone:

Organization Website:

Organization Email:

Name, title, phone and email address of person submitting request

Certification page (see Section IV, p. 12 of this RFQ for language to be included).

B. Please submit qualifications, including:

- Summary of Organizational Capacity:
 - A narrative that describes the organization, mission, history, objectives, programs and services, and any other pertinent information that the Service Provider feels is important.
 - An organizational chart, including key staffing for the Proposed Project.
 - Description of appropriate training, education, certifications or other evidence of experience and capacity to operate facilities providing services to individuals experiencing homelessness
 - Ability to comply with best practices and appropriate standards of care as adopted by the Los Angeles Homeless Services Authority (LAHSA)
 - Current access to, or ability to obtain access within 90 days of an award of contract, the Los Angeles County Homeless Information Management System (HMIS) that serves as the database for the coordinated entry system (CES), or access to a database system that can accomplish the same goals for Whittier-specific clients.
 - Status as a qualified private or public nonprofit organization currently engaged in providing homeless services and successfully managing homeless service center
 - A minimum of three consecutive years of successful managing and operating homeless programs and delivering relevant services of a similar type and scope as described in the Scope of Work.
 - The current organizational experience and staff capacity necessary to undertake a new Navigation Center Program.
 - Experience in the design and construction of shelters or participation in such a process
 - As applicable, organization and/or its key personnel, shall hold an appropriate licenses prior to signing any contract for the operation of the City of Whittier Navigation Center
 - Please note whether the organization or its principals have filed for bankruptcy under any business name over the past five (5) years.
 - Include as an addendum the organization's existing strategic plan or business plan, if available.
 - Describe the organization's experience providing social service programs to individuals experiencing homelessness and operating year-round emergency shelter/multiservice centers and/or similar programs similar to the proposed Navigation Center. Attach list of Navigation Centers/Year-Round Emergency Shelters currently operated by Service Provider (include name of shelter, location and # of beds). Include relevant experience in Southern California, particularly within the LAHSA Los Angeles County Continuum of Care, if applicable.
 - Explain how the City of Whittier Navigation Center will be integrated into the larger Continuum of Care system as well as the Service Provider's existing mission, business, budget, funding commitments and capacity

of agency to maintain and operate the Navigation Center as a year-round emergency shelter with services.

- Describe Service Provider's experience utilizing Rapid Rehousing Funding. List funds received and describe the type of homeless rapid rehousing programs administered by your organization.

C. Proposed Program Description:

- Describe whether and how the project is a collaboration
- If a collaboration, identify lead agency and list collaborative partners, denoting nonprofit, government agency and other partners (additional consideration may be given for partnerships with services already working in the City of Whittier, and/or for Service Providers able to provide services for unmet needs, including veterinary/pet services, etc.)
- Provide a high-level summary of Service Provider's methodology for operation of the City of Whittier Navigation Center (1-2 paragraphs, to be illustrated in more detailed in the Sample Operating Plan).
- Describe Service Provider's experience working with local government, business, other local providers and neighborhood residents in developing a good neighbor policy and in implementing that policy through property management and operations.
- Explain what, if any, experience Service Provider has in participating as a team member during the construction phase.
- Please provide a brief summary of the type of services which will be available for clients including:
 - Type of Services to be provided and expected outcomes to be achieved
 - Indicate the level and type of supportive services, both on and off-site
 - Location of services (on or off-site, and if off-site, location)
 - Proposed source of funding for services not funded by general operating funds for the shelter facility (i.e. mobile medical clinic, etc.)
 - Describe level and frequency of case management
 - Describe the Coordinated Service Delivery Plan including overflow management.
- Describe Service Provider policies regarding personal and database confidentiality; Please explain any exceptions to these policies.
- Describe client selection and service delivery, including Non-Discrimination Policies (Compliance with Americans with Disabilities Act, LAHSA's Equal Access Policy, Gender-Specific Programming Policy, Sexual Harassment Policy and Policy Regarding Sex Offenders)
- Describe how clients will be connected to permanent affordable housing through the use of rapid rehousing or other systems such as diversion.
- Noting the City's intent to prioritize service to Whittier residents experiencing homelessness, describe the client referral process, including how clients are referred to the program and program linkages with other organizations

and Service Providers in compliance with the proposed management and operation plan and its use of the Coordinated Entry System.

- Describe admission criteria and procedures including client rules and guidelines; identification requirements; screening requirements (to be performed and enforced by Service Provider); bed reservation system; admission for new clients; day leave and returning clients; anticipated hours of access; describe exit and re-admission policies and procedures; and the case management plan and how Service Provider will encourage exit from the emergency shelter into transitional and permanent housing.
- Describe overall program goals and expected outcomes on an annual basis (i.e. bed nights/persons served) including length of stay.
- Describe Service Provider's participation and experience working in Homeless Management Information System (HMIS) and plan to comply with HMIS requirements, or Service Provider's alternative to HMIS.

D. Operating Plan

- Provide a Sample Operating Plan, including:
 - Staffing and management (hiring policy, screening and acceptance procedures, staffing policies for safe and humane environment, policies for staff training, communication, resources and referrals, mental health and addiction skills, self-care, emergency procedures [evacuation, first aid, CPR, 911 reporting], safety conduct [prevention of abuse, crisis intervention, conflict resolutions], and appropriate behavior for dignity and respect.
 - Volunteer Management Plan including a plan for the recruitment, training and management of volunteers for the program. Please describe the role of volunteers and volunteer policies including a description of volunteer tasks, selection, screening, and background checks, orientation and training, and lines of authority.
 - Administration and support of a Community Advisory Board.
 - Description of shelter client rules.
 - Describe Financial Policies (please consolidate information as much as possible to reduce number of pages for attachment) including:
 - Financial Requests from Clients
 - Client Possessions and Funds
 - Annual Outside Audit
 - Financial Reports Review
 - Describe the Safety Policy, including facility maintenance and fire and earthquake safety (including fire prevention procedures, drills, documentation, inspections and extinguishers)
 - Describe the Security Plan for the Facility including eligibility screening; securing of entrances as well as entrance and exit procedures; role of on-site security personnel, security alarms and cameras; policies on loitering de-escalation of conflicts, possession

- of weapons and storage of client possessions; procedure for contacting police.
- Describe Health Policies related to possession of controlled substances and policy for drug possession; the security, use, and access of prescription medications; the client use of over-the-counter medications as well as access to emergency and medical care; facility policies regarding first aid equipment, supplies, and procedures; and policies and procedures for disease prevention.
- Describe Food Policies related to provision of nutritional needs of clients; meeting health department standards; provision for sanitary storage and preparation of food;
- Describe Transportation Policies including the following:
 - Transportation Flow On and Off Property
 - Pedestrian Traffic
 - Bicycle Traffic and Parking
 - Bus and Shuttle Transportation Services
 - Personal Vehicle Transportation and Parking
 - Staff Transportation of Clients
 - Transportation Policies for Navigation Center Clients
 - Delivery of Shelter Goods and Community Donations
- Describe the accommodation of pet and service animals and policies pertaining to the shelter of animals on-site or off-site.
- Provide grievance policies and procedures related to receiving and posting the policy, process to make a complaint, resolving a grievance, meeting with staff, and whistleblower policy.
- Provide an example of a Good Neighbor that includes policies for community involvement, policies for neighborhood patrol, informing the public about the positive aspects of the program and generating educational or outreach materials, being responsive to community concerns, communication and coordination with neighborhood, business and public, local police and fire departments, city, county and Service Providers, and working closely with city/local government to minimize the impact of the program on the surrounding neighborhood. (Note that any printed or published materials relating to the City of Whittier Navigation Center shall be subject to approval by the City.)

E. Proposed Budget

- Please provide a budget for annual operating costs associated with the City of Whittier Navigation Center, or a representative sample budget from a similar facility under operation by Service Provider, including:
 - Staffing and administrative salaries
 - Professional services fees
 - Other operating costs
 - Facility expenses (including insurance, office supplies, telephone and network, janitorial services, utilities, etc.)
 - Security

- Maintenance (refuse disposal, cleaning supplies, landscaping, etc.)
- Client services (storage, pet services, etc.)
- Transportation
- Meals and kitchen supplies
- Client supportive services
- Laundry
- Coordinated entry system
- Equipment and furnishings
- Replacement reserves
- Contingency

F. Prior to Award of Contract, Service Provider will be expected to submit:

- A copy of Internal Revenue Service letter granting exemption under section 501 (c) (3) of the Internal Revenue Code.
- Federal Form 990
- Copy of insurance policy
- Letters of endorsement from Service Provider partners

IV. CERTIFICATION

[the following should be included in the proposal, signed and dated]

A. Non-Discrimination: This agency will, through all possible means, ensure equal opportunity for all persons to receive services, to participate in the volunteer structure, and to be employed regardless of age, handicap, national background, race, religion, sex, or sexual orientation. An existing sectarian nature of the agency shall not suffer impairment under this agreement, but participation in religious observances, rituals or services will not be required as a condition of receiving food, services, or shelter paid for by this grant.

B. The undersigned [authorized officer or official of the Service Provider] hereby certifies that all information given by the Service Provider in this Proposal is true and correct as of the date hereof. Non-collusion: This proposal is genuine, and not sham or collusive, nor made in the interest or on behalf of any person not herein named; the proposer has not directly induced or solicited any other proposer to put in a sham proposal, or any other person, firm or corporation to refrain from submitting a proposal; the proposer has not in any manner sought by collusion to secure for him/herself an advantage over any other proposer.

C. The undersigned hereby certifies that the Service Provider has read this Proposal and agrees that, should the project be approved, the organization will abide by the covenants contained herein.

D. The undersigned is duly authorized to execute this document on behalf of the Service Provider as of the date written below.

E. The undersigned proposer acknowledges that he/she has thoroughly reviewed all pages for this RFQ. Proposer further acknowledges that he/she is aware of all the requirements of these documents and agrees to same. The proposer shall be bound to furnish the services specified according to requirements herein, upon acceptance by City of Whittier.

The Proposal must be signed by a board officer and the staff officer to whom future questions and correspondence may be addressed. Signatories attest to the accuracy of the information. Any figures that are estimated should be marked (e).

V. PROPOSAL REVIEW

- A. Service Providers that submit a summary of qualifications and concept proposals for Navigation Center operation will be reviewed based upon the following criteria:
- Applicant has demonstrated organization's experience to serve persons experiencing homelessness and to manage an emergency shelter program
 - Demonstrated experience in providing services and operating a shelter program similar in nature to the proposed Navigation Center in the City of Whittier.
 - Service Providers will also be evaluated based on the following details:
 - Ability to comply with LAHSA facility standards and Core Principles
 - Organizational experience, readiness, and program description
 - General program overview
 - Level and types of services
 - Service partners
 - Client selection and service delivery
 - Participation in coordinating entry and performance measures
 - Annual operating budget
 - Connection to and knowledge of the local community
- B. Selection will occur based upon the above review and may also involve an interview by a City selection team. The Service Provider's Project Manager and key team members are required to attend the interview. The City will recommend to Council the Service Provider who will provide the best quality and value to the City. The City reserves the right to begin negotiations and enter into an agreement without interview or further discussions.
- C. The City and the selected Service Provider will enter into an Agreement similar to that as shown in Exhibit A. Standard Agreement for Professional Services. Insurance terms and conditions of the Agreement are non-negotiable. Organizations must possess valid City of Whittier Business License throughout the term of the contract. If a Service Provider is unwilling or unable to execute an Agreement within ten (10) days after being notified of selection under this RFQ, the City reserves the right to select the next most qualified Provider or to create a new call for new Qualifications or Proposals, whichever the City deems most appropriate.

VI. NOTICE REGARDING DISCLOSURE OF CONTENTS OF DOCUMENT

All responses to this Request for Qualifications (RFQ) accepted by the City of Whittier (City) shall become the exclusive property of the City. At such time as the City Manager recommends an operator to the City Council, all proposals accepted by the City shall become a matter of public record and shall be regarded as public, with the exception of those elements of each proposal marked as "Trade Secret", "Confidential", or "Proprietary". Each element of a proposal which a contractor desires not to be considered

a public record must be clearly marked as set forth above, and any blanket statement, (i.e. regarding entire pages, documents, or other non-specific designations) shall not be sufficient and shall not bind the City in any way whatsoever. If disclosure is required or permitted under the California Public Records Act or otherwise by law, the City shall not in any way be liable or responsible for the disclosure of any such records or part thereof.

VII. GENERAL TERMS AND CONDITIONS

The Service Provider shall be able to perform all the requirements as outlined in their statement of qualifications and Sample Operations Plan.

By submitting a Proposal, the Proposer acknowledges that it has thoroughly examined and accepts the Terms and Conditions of this RFQ as described below

- Proposer represents that it has thoroughly examined and become familiar with the services and responsibilities required in this RFQ and that it is capable of effectively and efficiently performing quality work to achieve the City's objectives. Any attachments referenced herein or any interpretations, clarifications or amendments subsequently posted in the relation to this RFQ are fully incorporated.
- Availability of Service: Services and warranties indicated in a respondent's Proposal must be valid for a period of one (1) year after the submission of the Proposal unless stated differently in the executed agreement.
- Pre-Contractual Expenses: The City shall not, in any event, be liable for costs for travel expenses to attend the interview or any pre-contractual expenses incurred by Proposers in the preparation of its proposal.

EXHIBIT A: Standard Professional Services Agreement

**PROFESSIONAL SERVICES AGREEMENT
WITH**

THIS AGREEMENT is made and entered into this ___ day of _____, 20__ (“Effective Date”), by and between the CITY OF WHITTIER, a municipal corporation (“CITY”), and _____, a [state] [type of corporation] (“CONSULTANT”).

WITNESSETH:

A. WHEREAS, CITY proposes to utilize the services of CONSULTANT as an independent contractor to _____, as more fully described herein; and

B. WHEREAS, CONSULTANT represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, CITY and CONSULTANT desire to contract for the specific services described in Exhibit “A” (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of CITY has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. CONSULTANT shall provide the professional services described in the CONSULTANT’s Proposal (“Proposal”), attached hereto as Exhibit “A” and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by CONSULTANT pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. CONSULTANT also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise CITY of any changes in any laws that may affect CONSULTANT’s performance of this Agreement. CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The CONSULTANT shall at all times observe and comply with all such laws and regulations. Officers and employees shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this section.

1.3. Performance to Satisfaction of City. CONSULTANT agrees to perform all the work to the complete satisfaction of the CITY and within the hereinafter specified. Evaluations of the work will be done by the Director or his or her designee. If the quality of work is not satisfactory,

EXHIBIT A: Standard Professional Services Agreement

CITY in its discretion has the right to:

- (a) Meet with CONSULTANT to review the quality of the work and resolve the matters of concern;
- (b) Require CONSULTANT to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. CONSULTANT warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. CONSULTANT shall indemnify and hold harmless CITY from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against CITY for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of CONSULTANT's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, CONSULTANT shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Such actions 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 and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

CONSULTANT shall, in all solicitations and advertisements for employees placed by, or on behalf of CONSULTANT shall state that all qualified applicants will receive consideration for employment without regard to age, race, color, religion, sex, marital status, national origin, or mental or physical disability. CONSULTANT shall cause the paragraphs contained in this Section to be inserted in all subcontracts for any work covered by the Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

1.6. Non-Exclusive Agreement. CONSULTANT acknowledges that CITY may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of CITY. CONSULTANT may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at CONSULTANT's sole cost and expense.

EXHIBIT A: Standard Professional Services Agreement

1.8. Confidentiality. Employees of CONSULTANT in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of CITY. CONSULTANT covenants that 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 written authorization by CITY. CITY shall grant such authorization if disclosure is required by law. All CITY data shall be returned to CITY upon the termination of this Agreement. CONSULTANT's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. CONSULTANT shall be paid in accordance with the fee schedule set forth in Exhibit "A". CONSULTANT's total compensation shall not exceed _____ Dollars (\$ _____.00), unless CITY has given specific advance approval in writing.

2.2. Additional Services. CONSULTANT shall not receive compensation for any services provided outside the scope of services specified in the CONSULTANT's Proposal or which is inconsistent with or in violation of the provisions of this Agreement unless the CITY or the Project Manager for this Project, prior to CONSULTANT performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the CITY request in writing additional services that increase the hereinabove described "SCOPE OF SERVICES", an additional fee based upon the CONSULTANT's standard hourly rates shall be paid to the CONSULTANT for such additional services. Such increase in additional fees shall be limited to 25% of the total contract sum or \$25,000 whichever is more. The CITY Engineer is authorized to approve a Change Order for such additional services.

2.3. Method of Billing. CONSULTANT may submit invoices to the CITY for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all CONSULTANT's services which have been completed to CITY's sole satisfaction. CITY shall pay CONSULTANT's invoice within forty-five (45) days from the date CITY receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of CONSULTANT's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to CITY or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by CITY as set forth in Exhibit "A."

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts

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shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the CONSULTANT is encountered, a time extension may be mutually agreed upon in writing by the CITY and the CONSULTANT. The CONSULTANT shall present documentation satisfactory to the CITY to substantiate any request for a time extension.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of _____ months, ending on _____, 20__, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The CITY reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing at least fifteen (15) days prior written notice to CONSULTANT. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, CONSULTANT shall immediately stop rendering services under this Agreement unless directed otherwise by the CITY. If the CITY suspends, terminates or abandons a portion of this Agreement such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the CONSULTANT defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the CONSULTANT fails to cure its default within such period of time, the CITY shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

CITY shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement, immediately upon service of written notice of termination on the CONSULTANT, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;
- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.

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4.3. Compensation. In the event of termination, CITY shall pay CONSULTANT for reasonable costs incurred and professional services satisfactorily performed up to and including the date of CITY's written notice of termination within thirty-five (35) days after service of the notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the CITY or in the possession of the CONSULTANT. CITY shall not be liable for any claim of lost profits.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by CONSULTANT in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the CITY within ten (10) days of delivery of termination notice to CONSULTANT, at no cost to CITY. Any use of uncompleted documents without specific written authorization from CONSULTANT shall be at CITY's sole risk and without liability or legal expense to CONSULTANT.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. CONSULTANT shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by CITY:

- (a) Broad-form commercial general liability, in a form at least as broad as ISO from #CG 00 01 11 88, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California and Employers Liability Insurance with a minimum limit of \$1,000,000 per accident. CONSULTANT agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the CITY, its officers, agents, employees, and volunteers for losses arising from work performed by CONSULTANT for the CITY and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

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Before execution of this Agreement by the CITY, the CONSULTANT shall file with the Public Works Director/City Engineer the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The CONSULTANT shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the Public Works Director/City Engineer before execution of this Agreement by the CITY. CITY, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the CONSULTANT to comply with this section.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. CONSULTANT shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

Neither CITY nor any of its elected or appointed officials, officers, agents, employees, or volunteers makes any representation that the types of insurance and the limits specified to be carried by CONSULTANT under this Agreement are adequate to protect CONSULTANT. If CONSULTANT believes that any such insurance coverage is insufficient, CONSULTANT shall provide, at its own expense, such additional insurance as CONSULTANT deems adequate.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The CITY and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the CONSULTANT pursuant to its contract with the CITY; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; automobiles owned, leased, hired, or borrowed by the CONSULTANT."
- (b) Notice: "CONSULTANT 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. In the event of any cancellation or reduction in coverage or limits of any insurance, CONSULTANT shall forthwith obtain and submit proof of substitute insurance. Should CONSULTANT fail to immediately procure other insurance, as specified, to substitute for any canceled policy, CITY may procure such insurance at CONSULTANT's sole cost and

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expense.”

- (c) Other insurance: "The CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the CITY shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to CITY, its officers, officials, agents, employees, and volunteers.
- (e) The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by CITY. No policy of insurance issued as to which CITY is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. CONSULTANT shall provide to CITY certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by CITY, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which CONSULTANT may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The Executive Director or his or her designee shall be the representative of CITY for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of CITY, called for by this Agreement, except as otherwise expressly provided in this Agreement.

CONSULTANT shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of CONSULTANT called for by this Agreement, except as otherwise expressly provided in this Agreement.

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6.3. Project Managers. CITY shall designate a Project Manager to work directly with CONSULTANT in the performance of this Agreement. It shall be the CONSULTANT's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the CONSULTANT shall refer any decision, which must be made by CITY, to the Project Manager. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the Project Manager.

CONSULTANT shall designate a Project Manager who shall represent it and be its agent in all consultations with CITY during the term of this Agreement and who shall not be changed by CONSULTANT without the express written approval by the CITY. CONSULTANT or its Project Manager shall attend and assist in all coordination meetings called by CITY.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or if mailed, shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Tel: _____
Fax: _____
Attn: _____

IF TO CITY:

City of Whittier
13230 Penn Street
Whittier, CA 90602

Tel: _____
Fax: _____
Attn: _____

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California. CONSULTANT agrees to submit to the personal jurisdiction of such court in the event of such action.

6.7. Assignment. CONSULTANT shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of CONSULTANT's interest in this Agreement without CITY's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of CITY's consent, no subletting or assignment shall release CONSULTANT of CONSULTANT's obligation to perform all other obligations to be performed by CONSULTANT hereunder for the term of this Agreement.

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6.8. Indemnification and Hold Harmless. To the fullest extent of the law, and consistent with Civil Code section 2782.8, CONSULTANT agrees to defend, indemnify, hold free and harmless the CITY, its elected and appointed officials, officers, agents and employees, at CONSULTANT's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against CITY, its elected and appointed officials, officers, agents, and employees to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, its employees, and/or authorized subcontractors, in performing design professional services pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence, recklessness or willful misconduct of the CONSULTANT, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the CITY, its elected and appointed officials, officers, agents, and employees based upon such negligence, recklessness, or willful misconduct, whether or not the CONSULTANT, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the CONSULTANT shall not be liable for the defense or indemnification of the CITY for claims, actions, complaints or suits arising out of the sole or active negligence or willful misconduct of the CITY. Further, in no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault, unless otherwise specified in Civil Code section 2782.8. This provision shall supersede and replace all other indemnity provisions contained either in the CITY's specifications or CONSULTANT's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. CONSULTANT is and shall be acting at all times as an independent contractor and not as an employee of CITY or the CITY. CONSULTANT shall have no power to incur any debt, obligation, or liability on behalf of CITY or the CITY or otherwise act on behalf of CITY or the CITY as an agent. Neither CITY or the 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, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of CITY. CONSULTANT shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for CONSULTANT and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. CONSULTANT shall indemnify and hold CITY harmless from any and all taxes, assessments, penalties, fines and interest asserted against CITY and any legal fee incurred by the City by reason of any challenge/claim made against CITY regarding the independent contractor relationship created by this Agreement. CONSULTANT further agrees to indemnify and hold CITY harmless from any failure of CONSULTANT to comply with the applicable worker's compensation laws. CITY shall have the right to offset against the amount of any fees due to CONSULTANT under this Agreement any amount due to CITY from CONSULTANT as a result of CONSULTANT's failure to promptly pay to CITY any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. 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 the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the CITY, CONSULTANT shall indemnify, defend, and hold harmless CITY for the payment of any employee

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and/or employer contributions for PERS 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.

Notwithstanding any other agency, state or federal 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 PERS as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against CITY relating to CONSULTANT's performance or services rendered under this Agreement, CONSULTANT shall render any reasonable assistance and cooperation which CITY might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by CONSULTANT or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of CITY. CONSULTANT agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of CITY. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of CITY and without liability or legal exposure to CONSULTANT. CITY shall indemnify and hold harmless CONSULTANT from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from CITY's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by CONSULTANT. CONSULTANT shall deliver to CITY any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by CITY or its authorized representative, at no additional cost to the CITY. CONSULTANT or CONSULTANT's agents shall execute such documents as may be necessary from time to time to confirm CITY's ownership of the copyright in such documents.

6.13. Public Records Act Disclosure. CONSULTANT has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by CONSULTANT, or any of its subcontractors, pursuant to this Agreement and provided to CITY may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which CONSULTANT informs CITY of such trade secret. The CITY will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. CITY shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. CONSULTANT and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to CONSULTANT's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, CONSULTANT and its officers, employees, associates

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and subconsultants shall not, without the prior written approval of the CITY Representative, perform work for another person or entity for whom CONSULTANT is not currently performing work that would require CONSULTANT or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.15. Responsibility for Errors. CONSULTANT shall be responsible for its work and results under this Agreement. CONSULTANT, when requested, shall furnish clarification and/or explanation as may be required by the CITY's representative, regarding any services rendered under this Agreement at no additional cost to CITY. In the event that an error or omission attributable to CONSULTANT occurs, then CONSULTANT shall, at no cost to CITY, provide all necessary design drawings, estimates and other CONSULTANT professional services necessary to rectify and correct the matter to the sole satisfaction of CITY and to participate in any meeting required with regard to the correction.

6.16. Prohibited Employment. CONSULTANT will not employ any regular employee of CITY while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of CITY and CONSULTANT and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.22. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of

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this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.26. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF WHITTIER,
A municipal corporation

City Manager

Date: _____

ATTEST:

City Clerk

CONSULTANT

Signature

Date: _____

Name and Title

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APPROVED AS TO FORM:

City Attorney

Date: _____