



**Public Works Department**  
Arturo Cervantes, P.E., Assistant City Manager/Director of Public Works  
8650 CALIFORNIA AVE. SOUTH GATE, CA 90280-3004 Tel: (323) 357-9657. Fax: (323) 563-9572

October 26, 2020

**Subject: *Request for Proposals (RFP) for Professional Design Services for the SGPD Fueling Station & Air Compressor Replacement Project, City Project No. 663-GEN***

Dear Prospective Consultant:

The City of South Gate is requesting proposals from qualified consultants to provide professional design services for the SGPD Fueling Station & Air Compressor Replacement Project, City Project No. 663-GEN.

To be considered responsive, consultants must submit a proposal indicating their knowledge and experience related to the services being sought. The consultant must be able to provide design services, including but not limited to, preparation of plans, specifications and estimates (PS&E), assistance during construction bidding phase, provide construction support and assist in project closeout.

In order for your proposal to be considered, please email your proposal to [jrico@sogate.org](mailto:jrico@sogate.org) with email subject title "**Professional Design Services for the SGPD Fueling Station & Air Compressor Replacement Project, City Project No. 663-GEN**". The proposal shall be directed to:

Arturo Cervantes, P.E.,  
Assistant City Manager/Director of Public Works  
8650 California Avenue  
South Gate, CA 90280

**Submission Deadline: November 26, 2020 at 5:00 P.M.**

For questions, please contact John Rico, Assistant Engineer, at [jrico@sogate.org](mailto:jrico@sogate.org) or by phone at (323) 563-9594.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jose Loera'.

Jose Loera, T.E.  
Interim Assistant City Engineer/City Traffic Engineer

**CITY OF SOUTH GATE  
PUBLIC WORKS DEPARTMENT  
ENGINEERING DIVISION**



***PROJECT REQUEST FOR PROPOSAL (RFP) FOR***

**PROFESSIONAL DESIGN SERVICES FOR THE  
SGPD FUELING STATION & AIR COMPRESSOR  
REPLACEMENT PROJECT,  
CITY PROJECT NO. 663-GEN**

All questions regarding this project are to be directed to:

**John Rico**  
**Project Manager**  
**Office: (323) 563-9594**  
**Fax: (323) 563-5972**  
**Email: [jrico@sogate.org](mailto:jrico@sogate.org)**

**APPROVED** \_\_\_\_\_

Jose Loera, T.E.

Date

**October 2020**

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## **INTRODUCTION**

The City of South Gate (City) is requesting proposals from qualified consultants that can provide professional design services for SGPD Fueling Station and Air Compressor Replacement Project. Professional services are to include preparation of plans, specifications and estimates (PS&E), assistance during construction bidding phase, provide construction support and assist in project closeout for the SGPD Fueling Station and Air Compressor Replacement Project, City Project No. 663-GEN (Project). Existing As-Built plans to be provided by the City. However, City is not responsible for accuracy of plans.

## **PROJECT BUDGET**

The Project's budget is \$175,000. The budget includes design, construction and other incidentals. The Project is funded with Building and Infrastructure Maintenance funds.

## **PROJECT DESCRIPTION**

The proposed Project includes but not limited to replacement of old and outdated fueling station equipment, piping, seals, gasoline dispenser, nozzles, installation of new air compressor and other miscellaneous mechanical equipment.

### **Design Scope of Work**

1. Design and prepare plans for proposed work, including mechanical and electrical drawings. Plan submittals would be 50%, 90%, 100% complete.
2. Prepare project specifications. City to provide boiler plate spec's., consultant to revise spec's and provide technical provisions.
3. Prepare Engineer's Cost Estimate to construct improvements.
4. Apply on behalf of City for Los Angeles County Department of Public Works, Environmental Programs Division permit and final permit. City to pay permit fees.
5. Apply on behalf of City for AQMD permit and final permit. City to pay permit fees.
6. Apply on behalf of City for LA County Fire Dept. permit and final permit. City to pay permit fees.
7. Apply and obtain approval from City's NPDES consultant to comply with NPDES requirements.
8. Apply and obtain City of South Gate Building Dept. permit, final permit.
9. Provide engineering support during bidding and answer Requests for Information (RFI).
10. Review and approve "submittals", to include catalogue cuts for equipment to be installed.
11. Repair or Replace the failed equipment identified from the previous SB989 test results which includes, but not limited to, the following:
  - Damaged test boots on the east and west supply lines
  - Deteriorating Blue Line penetrations within the sumps
  - Leaking electrical fittings in the fill riser sumps
  - Under dispenser containment (UDC)
12. Inspect underground fuel tanks, equipment, electrical system, etc., to determine additional scope of work.
13. Inspect existing electrical system, conduits, wiring, electrical panels, etc., and design needed repairs and upgrades.

14. Specify and locate air compressor with enclosure for police car tire inflation. Inspect existing underground air lines and electrical conduits to include repairs and upgrades as necessary. Old air compressor was removed several years ago and condition of any existing underground air lines is unknown.
15. Specify new fuel dispensing unit and hose hanging hardware at existing Fuel Island. Coordinate with City to determine type of unit to be installed.
16. Provide soil sampling investigation per LA County DPW., to be done once concrete pad is removed. Coordinate any necessary soil remediation. Soils remediation coordination, if necessary, will be paid separate.
17. Consultant shall provide assistance with any issues on equipment, etc. coming from post SB989 testing.
18. Provide conduits and necessary hardware to allow future connection of dispensing unit and underground tanks to future program/system installation for fuel monitoring system.
19. Prepare As-built drawings based on mark up from contractor.

### **SCOPE OF SERVICES**

The selected consultant shall have a proven track record of providing similar professional services required for successful completion of the Project with a design team experienced of minimum 5 years. Consultants are encouraged to add in their proposal additional items that are not listed below, which are essential to deliver this project. The Scope of Services is defined by the tasks listed below.

### ***TASK 1 – PROJECT MANAGEMENT***

The Consultant shall be responsible for the following:

- Design Kick-off meeting with City representatives to review project in detail.
- Maintain continuous communication with the City Project Manager, including meetings to review the Initial Concept plan and project status at 50%, 90% and 100% completion. (3 meetings).
- Coordinate with the City's Police Department as necessary.
- Coordinate with the City's Public Work's, Field Operations, Facility, and Electrical Division as necessary.
- Coordinate with the City's Building & Safety Division, as needed.
- Ensure project documents are delivered on schedule and within budget.

Consultant shall determine requirements, coordination and procedures for design. In consultation with City representatives, the Consultant will determine relevant issues specific to the Project, design standards and funding limits.

### **Deliverables:**

- 4 Meetings Total (Kick-off, 50%, 90% and 100%)
- Two (2) full-size hard copies of the Plans and Specifications at 50% and 90%
- One (1) full-size Mylar set of approved 100% drawings and complete set of specifications.
- Electronic files at every stage in AutoCAD, PDF, and WORD format.

## ***TASK 2– PLAN PREPARATION***

Consultant shall prepare conceptual and final design plans. Conceptual plans shall be developed and reflect the input of City Departments. Draft conceptual plans shall be submitted for City review, comment and approval. Upon approval of the concept plans, the final design phase shall be initiated.

The Consultant will submit Plans, at levels of completion of 50%, 90% and 100%. City will provide review comments at all design stages. It is expected that 100% Plans will be complete and include comments and input from all stakeholders. Consultant shall submit 100% plans for Building and Safety Division plan check and approval. It shall be the responsibility of the consultant to undergo the number of plan checks necessary to achieve permit ready plan set. It is expected for final plans to include all comments/corrections from all project stakeholders, including City of South Gate Building & Safety Division.

Mylars shall be produced after 100% plans are approved by the City.

Plans will conform to City standard plans, CADD standards and be prepared utilizing AutoCAD software (latest version).

A project plan set is expected to include the following:

- **Title Sheet/Typical Sections/General Notes:** Title Sheet to include location map, sheet index, typical sections, general notes, abbreviations and master list of construction notes.
- **Site Plans**
- **Electrical Plan**
- **Construction Details (as needed)** - Enlarged details will be included for non-standard construction items.
- **Other sheets for successful delivery of this project (as needed)**

### **Deliverables:**

- Draft and Final Conceptual Plans (hard copies, electronic copy in AutoCAD format and PDF)
- 50%, 90%, and 100% Plans (hard copies, electronic copy in AutoCAD format and PDF)
- **Final Set of Plans shall be delivered and permit ready, per City of South Gate Public Works requirements by March 26<sup>th</sup> 2021.**

## ***TASK 3 – COST ESTIMATES***

Prepare construction cost estimates to be submitted at Conceptual, 50%, 90%, and 100%. Prepare quantity calculations and final construction cost estimates in accordance with City requirements to established Project budget. Designer is held responsible for probable costs.

### **Deliverables:**

- Cost Estimate at Conceptual, 50%, 90% and 100% completion milestones in electronic PDF format and Excel.

#### ***TASK 4 – SPECIFICATIONS***

Prepare full set of Specifications, Bid Schedule, and Technical Special Provisions per City requirements for bidding by the City. City will provide boilerplate front end specifications. Technical Specifications must comply and be submitted in Construction Specification Institute (CSI) format.

#### ***TASK 5 – RFI SUPPORT DURING BIDDING PHASE***

The Consultant will provide support and respond to RFIs during construction bidding phase and advertising period. Evaluate need for addendum to bid documents to answer questions raised and prepare addendums, if required. It is assumed that five (5) RFI's will need to be responded to.

#### ***TASK 6 – RESPOND TO REQUESTS FOR INFORMATION AND SUBMITTALS***

Provide response to contractor's requests for information (RFI) and submittals about the plans and specifications forwarded to the Consultant by the City. This task includes conferring with the City's Project Manager regarding the RFI's, as appropriate, to address unforeseen site conditions and/or provide field design modifications/recommendations. Regularly scheduled construction observation is specifically excluded from this scope of work. It is assumed that ten (10) RFI's and ten (10) submittals will need to be responded to.

##### **Deliverables:**

- Log request for information and respond to RFIs (Assume ten (10) RFIs and ten (10) submittals).
- Provide field design modifications/recommendations.
- Provide design details, as needed.

#### ***TASK 7 – PREPARE RECORD DRAWINGS (AS-BUILTS)***

Within 30 days following the completion and acceptance of the Project, furnish City a complete set of revised original tracings showing as-built conditions on Mylar. Revisions will be solely based on as-built information provided by the Contractor.

##### **Deliverables:**

- Furnish a complete set of original record drawings on Mylar with electronic copy in AutoCAD format and PDF.

### **PROPOSAL REQUIREMENTS**

To be considered, Consultants must submit a proposal (**under 5 pages**) in a concise, well organized manner and shall include (but not limited to) the following:

- Company Brief
- Qualification and Experience
- Description of Project Approach to the scope of work
- Provide a Schedule of Work
- Provide an Hourly Rate Schedule

The Consultant's Cover Letter/Letter of Interest will not count against the 5 page maximum. It is the responsibility of the Consultant to submit a Proposal that contains all of the services necessary for the successful delivery of the project.

**FEE PROPOSAL REQUIREMENTS**

**FEE PROPOSAL "A"** shall include the cost for professional design services for the SGPD Fueling Station and Air Compressor Replacement, as indicated in the Project Description. The proposal is to include hourly rates.

**CONSULTANT SELECTION PROCESS/SELECTION CRITERIA**

Proposals will be evaluated by a Selection Committee comprised of City of South Gate staff and will be evaluated based on the following:

**CONSULTANT EVALUATION SHEET**

<b>CRITERIA</b>	<b>MAXIMUM POINTS</b>
Project understanding, scope, and approach to deliver the Project.	20
Consultant's Qualifications	20
Experience in working on similar projects.	20
Experience with municipal projects.	20
Cost effectiveness of services.	20
<b>TOTAL</b>	<b>100</b>

The highest ranked consultant will be recommended for a contract. The City will negotiate the fees with the highest ranked consultant at the Director of Public Works' discretion. If an agreement cannot be reached, then negotiations will proceed to the next highest ranked consultant and so on and so forth, until a qualified consultant is selected.

One Consultant contract will be awarded. Late proposal submittals will be designated nonresponsive and returned to the prospective. City reserves the right to reject all proposals at any time.

	<b><u>Date</u></b>
Requests for Proposal Released	October 26, 2020
Deadline for Inquiries	November 19, 2020 (5:00 p.m.)
Proposals Due	November 26, 2020 (5:00 p.m.)
Consultant Selection Process	December 7 - 10, 2020
Contract Award	January 26, 2021



## **RIGHT TO REJECT ALL PROPOSALS**

The City of South Gate reserves the right to reject all proposals submitted and no representation is made hereby that any contract will be awarded pursuant to this RFP. All costs incurred in the preparation of the proposal and subsequent materials, including a proposal, in the submission of additional information, and/or in any other aspect of a proposal prior to the award of a written contract will be borne by the respondent. The City will provide only the staff assistance and documentation specifically referred to herein and will not be responsible for any cost or obligation of any kind, which may be incurred by a respondent. All proposals and other information submitted to the City of South Gate in response to this RFP shall become the property of the City.

## **DISCLOSURE**

Consultants shall disclose in their responses to any Request for Proposals whether they have been the subject of any legal investigations by County, State, and/or Federal agencies within the past 10 years. If so, each responding consultant shall identify the agency and contact person, the nature of the investigations, and any determination over outcome of said investigation. Non-compliance with this section shall result in rejection of the Proposals, but a consultant's disclosure of any such investigation (even one which resulted in a determination that was adverse to the consultant) will not automatically result in rejection of the Proposal. The occurrence, nature, underlying facts, and outcome of any such investigation are not by themselves determinative but are simply included among many factors that will be considered by the City in evaluating Proposals.

## **INSURANCE REQUIREMENTS**

Consultant shall provide insurance certificates naming the City of South Gate as an additional insured for Workers Compensation Insurance, General Liability and Automobile Liability in the amount of \$1,000,000; the proposer must provide Professional Liability Insurance coverage (Errors and Omissions in the amount of \$1,000,000 per occurrence). The insurance certificate shall contain a provision that the City shall be given thirty (30) days prior written notice in the event of cancellation or reduction in coverage. Consultant shall also execute a hold harmless statement on a form provided by the City.

## **AWARD OF CONTRACT**

The City reserves the rights to reject, modify or cancel, in part or in its entirety, this RFP. The City assumes no obligation and none is implied, to award a contract for any phase or services, specified in this RFP.

## **CONSULTANT AGREEMENT**

A sample of the City standard consultant agreement for projects is attached as Attachment A. It is expected the Agreement will be approved "as is" with no modifications. Your proposal shall contain a statement of the firm's willingness to execute the contract. Consultant shall notify the

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City of any contractual requirements for which the consultant takes exception at least 5 days prior to proposal due date.

**QUALITY ASSURANCE AND QUALITY CONTROL**

The Consultant shall follow industry standards of quality control practices. The Consultant project manager shall review all documentations before submittal to the City.

**AGREEMENT FOR PROFESSIONAL SERVICES FOR [INSERT DESCRIPTION OF TYPE OF SERVICE] FOR [INSERT PROJECT TITLE] PROJECT BETWEEN THE CITY OF SOUTH GATE AND [INSERT CONSULTANT [INSERT CONSULTANS NAME]**

This Agreement for Professional Services for [Insert Description of Type of Service] Services for the [Insert Project Title] ("Agreement") is made and entered into on [Insert Council Meeting Date], by and between the City of South Gate, a municipal corporation ("City"), and [Insert Consultant's Name], CALIFORNIA CORPORATE NUMBER [Insert Corporate number] ("Consultant"). The City and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively as "Parties."

**RECITALS**

**WHEREAS**, City desires to retain Consultant to perform [Insert Description of Type of Service], as provided herein, for the [Insert Project Title], City Project No. [Insert Project number] \_\_\_\_; and

**WHEREAS**, Consultant warrants to City that it has the requisite skills, knowledge, qualifications, manpower and expertise to perform properly and timely the Professional Services under this Agreement; and

**WHEREAS**, based on such representation, City desires to contract with Consultant to perform Professional Services described in the Proposal attached hereto as Exhibit "A."

**NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:**

**1. PARTIES TO THE AGREEMENT.**

The parties to the Agreement are:

- A. Owner: The City of South Gate, a municipal corporation, having its principal office at 8650 California Avenue, South Gate, California 90280.
- B. Consultant: [Insert Consultant's Information]

\_\_\_\_\_  
\_\_\_\_\_

**2. REPRESENTATIVES OF THE PARTIES AND SERVICE OF NOTICES.**

The representatives of the parties who are primarily responsible for the administration of this Agreement, and to whom formal notices, demands and communications shall be given, are as follows:

A. The principal representative of the City shall be:

Arturo Cervantes, P.E.  
Assistant City Manager / Director of Public Works  
Public Works Department  
City of South Gate  
8650 California Avenue  
South Gate, CA 90280

B. The principal representative of the Consultant shall be:

[Insert Contact Information]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Formal notices, demands and communications to be given hereunder by either party shall be made in writing and may be affected by personal delivery or by mail.

D. If the name of the principal representative designated to receive the notices, demands or communications, or the address of such person, is changed, written notice shall be given within five (5) working days of said change.

**3. SCOPE OF WORK.**

The City hereby engages Consultant, and the Consultant accepts such engagement, to perform the Professional Services ("Work") identified on Exhibit "A" hereto. The locations at which such Work is to be performed ("City Facilities") are also identified on Exhibit "A" hereto. The Work shall include all the terms and conditions of Consultant's proposal dated [Insert date of Proposal] ("Proposal"), which shall be attached as part of Exhibit "A" and which is incorporated herein by this reference; provided, however, that to the extent the Proposal conflicts with anything else in this Agreement, the terms of this Agreement shall control.

**4. DATA PROVIDED TO CONSULTANT.**

City shall provide to Consultant, without charge, all data, including reports, records, maps and other information, now in the City's possession, which may facilitate the timely performance of the work described in Exhibit "A".

**5. INDEPENDENT CONSULTANT.**

This Agreement is by and between City and Consultant and is not intended, nor shall it be construed, to create the relationship of agency, servant, employee, partnership, joint venture or association, as between City and Consultant.

A. Consultant shall be an independent contractor and shall have no power to incur any debt or obligation for or on behalf of City. Neither City nor any of its officers or employees shall have any control over the conduct of Consultant, or any of Consultant's employees, except as herein set forth, and Consultant expressly warrants not to, at any time or in any manner represent that it, or any of its agents, servants or employees, are in any manner employees of City, it being directly understood that Consultant is and shall at all times remain to City a wholly independent contractor and Consultant's obligations to City are solely such as are prescribed by this Agreement.

**6. INDEMNIFICATION OF CALPERS DETERMINATION.**

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under the 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.

**7. CONSULTANT'S PERSONNEL.**

A. All services required under this Agreement will be performed by Consultant, or

under Consultant's direct supervision, and all personnel shall possess the qualifications, permits and licenses required by State and local law to perform such services, including, without limitation, a City of South Gate business license as required by the South Gate Municipal Code.

- B. Consultant shall be solely responsible for the satisfactory work performance of all personnel engaged in performing services required by this Agreement, and compliance with all reasonable performance standards established by City.
- C. Consultant shall be responsible for payment of all employees' and subcontractor's wages and benefits, and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security.
- D. Consultant shall indemnify and hold harmless the City and all other-related entities, officers, employees, and representatives, from any liability, damages, claims, costs and expenses of any nature arising from alleged violations of personnel practices, or of any acts or omissions by Consultant in connection with the work performed arising from this Agreement.

## **8. COMPENSATION.**

- A. The total amount of this Agreement shall not exceed the sum of [Insert written dollar amount] Dollars (\$\_\_\_\_\_). City shall pay Consultant for its professional services rendered and reasonable costs incurred pursuant to this Agreement. No additional compensation shall be paid for any other expenses incurred unless first approved by the City Manager. Consultant's fees and charges for the work and services performed shall in no event exceed those set forth in Exhibit "A" attached hereto and made a part hereof. Notwithstanding anything to the contrary in the proposal, invoices will be processed for payment and paid subject to approval by Director of Public Works and City Council within forty-five (45) days from date of receipt by Director of Public Works.
- B. Consultant shall be required to attend meetings as necessary in the delivery of the projects. Travel time between the Consultant's office and the meeting location shall not be billable; however, mileage will be. Consultant may request an exemption on a case by case basis, which shall be subject to City approval.

## **9. INDEMNITY AND INSURANCE.**

A. Consultant agrees to indemnify, defend and hold harmless City and/or any other City agency, including other employees, officers and representatives, for/from any and all claims or actions of any kind asserted against City and/or any other City agency arising out of Consultant's (including Consultant's employees, representatives, products and subcontractors) negligent performance under this Agreement, excepting only such claims or actions which may arise out of sole or active negligence of City and/or any other City agency, or any third parties not acting on behalf of, at the direction of, or under the control of Consultant. Consultant will deliver to City a certificate of insurance evidencing professional liability insurance coverage in an amount not less than \$1,000,000.

B. (1) The Consultant, at its expense, shall maintain in effect at all times during the performance of work under this Agreement not less than the following coverage and limits of insurance, which shall be maintained with insurers listed "A" or better in the Best's Insurance Guide and authorized to do business in the State of California.

(a) Workers' Compensation and Employer's Liability

- Workers' Compensation-coverage as required by law.
- Employer's Liability-limits of at least \$1,000,000 per occurrence.

(b) Comprehensive General Liability

- Combined Single Limit-\$1,000,000.

The automobile and comprehensive general liability policies may be combined in a single policy with a combined single limit of \$1,000,000. All of the Consultant's policies shall contain an endorsement providing that written notice shall be given to City at least thirty (30) calendar days prior to termination, cancellation or reduction of coverage in the policy.

(2) Policies providing for bodily injury and property damage coverage shall contain the following:

- (a) An endorsement extending coverage to City as an additional insured, in the same manner as the named insured, as respects liability arising out of the performance of any work under the Agreement. Such insurance shall be primary insurance as respects

the interest of City, and any other insurance maintained by City shall be considered excess coverage and not contributing insurance with the insurance required hereunder.

- (b) "Severability of Interest" clause.
  - (c) Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by Consultant under the Agreement, including without limitation that set forth in Section 10.A.
- (3) Promptly on execution of this Agreement and prior to commencement of any work Consultant shall deliver to City copies of all required policies and endorsements to the required policies.
  - (4) The requirements as to the types and limits of insurance to be maintained by the Consultant are not intended to and shall not in any manner limit or qualify Consultant's liabilities and obligations under this Agreement.
  - (5) Any policy or policies of insurance that Consultant elects to carry as insurance against loss or damage to its equipment and tools or other personal property used in the performance of this Agreement shall include a provision waiving the insurer's right of subrogation against the City.

**10. TERMINATION FOR CONVENIENCE.**

The City may terminate this Agreement at any time without cause by giving fifteen (15) days written notice to Consultant of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall, at the option of City, become its property. If this Agreement is terminated by City as provided herein, Consultant will be paid a total amount equal to its costs as of the termination date, plus ten percent (10%) of that amount for profit. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this Agreement.

**11. TERMINATION FOR CAUSE.**

- A. The City may, by written notice to Consultant, terminate the whole or any part of this Agreement in any of the following circumstances:



- (1) If Consultant fails to perform the services required by this Agreement within the time specified herein or any authorized extension thereof; or
  - (2) If Consultant fails to perform the services called for by this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these circumstances does not correct such failure within a period of ten (10) days (or such longer period as City may authorize in writing) after receipt of notice from City specifying such failure.
- B. In the event City terminates this Agreement in whole or in part as provided above in paragraph A of this Section 10, City may procure, upon such terms and in such manner as it may deem appropriate, services similar to those terminated.
- C. If this Agreement is terminated as provided above in paragraph A, City may require Consultant to provide all finished or unfinished documents, data, studies, drawings, maps, photographs, reports, etc., prepared by Consultant. Upon such termination, Consultant shall be paid an amount equal to the value of the work performed. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents whether delivered to City or in possession of Consultant, and to authorized reimbursement expenses.
- D. If, after notice of termination of the Agreement under the provisions of this Section 10, it is determined, for any reason, that Consultant was not in default, or that the default was excusable, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 9.

## **12. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY.**

- A. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, creed, gender, gender identity (including gender expression), color, religion, ancestry, sexual orientation, national origin, disability, age, marital status, family/parental status, or veteran/military status, in the performance of its services and duties pursuant to this Agreement and will comply with all applicable laws, ordinances

and codes of the Federal, State, and County and City governments. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, sex, national origin, handicap or age. Consultant will take affirmative action to ensure that all employment practices, including those of any subcontractors retained by Consultant to perform services under this Agreement, are free from such discrimination. Such employment practices include but are not limited to hiring, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- B. The provisions of subsection A above shall be included in all solicitations or advertisements placed by or on behalf of Consultant for personnel to perform any services under this Agreement. City shall have access to all documents, data and records of Consultant and its subcontractors for purposes of determining compliance with the equal employment opportunity and non-discrimination provisions of this Section, and all applicable provisions of Executive Order No. 11246 which is incorporated herein by this reference. A copy of Executive Order No. 11246 is available for inspection and on file with the Public Works Department.

**13. CONSULTANT'S WARRANTIES AND REPRESENTATIONS.**

Consultant warrants and represents to the City as follows:

- A. Consultant has not employed or retained any person or entity, other than a bona fide employee working exclusively for Consultant, to solicit or obtain this Agreement.
- B. Consultant has not paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for Consultant, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the execution of this Agreement. Upon such breach or violation of this warranty, the City shall have the right, in its sole discretion, to terminate this Agreement without further liability, or, in the alternative, to deduct from any sums payable hereunder the full amount or value of any such fee, commission, percentage or gift.
- C. Consultant has no knowledge that any officer or employee of the City has any interest, whether contractual, non-contractual, financial, proprietary, or otherwise, in this transaction or in the business of Contractor, and that if any such interest comes to the knowledge of Consultant at any time, a complete written disclosure of such interest will be made to the City, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws.

- D. Upon execution of this Agreement, Consultant has no interest, direct or indirect, in any transaction or business entity which would conflict with or in any manner hinder the performance of Work required by this Agreement, nor shall any such interest be acquired during the Term of this Agreement.

**14. SUBCONTRACTING, DELEGATION AND ASSIGNMENT.**

- A. Consultant shall not delegate, subcontract or assign its duties or rights hereunder, either in whole or in part, without the prior written consent of the Director of Public Works; provided, however, that claims for money due or to become due to Consultant from City under this Agreement may be assigned to a bank, trust company or other financial institution without such approval. Any proposed delegation, assignment or subcontract shall provide a description of the services to be covered, identification of the proposed assignee, delegee or subcontractor, and an explanation of why and how the same was selected, including the degree of competition involved. Any proposed agreement with an assignee, delegee or subcontractor shall include the following:
  - (1) The amount involved, together with Consultant's analysis of such cost or price.
  - (2) A provision requiring that any subsequent modification or amendment shall be subject to the prior written consent of the City.
- B. Any assignment, delegation or subcontract shall be made in the name of the Consultant and shall not bind or purport to bind the City and shall not release the Consultant from any obligations under this Agreement including, but not limited to, the duty to properly supervise and coordinate the work of employees, assignees, delegee and subcontractors. No such assignment, delegation or subcontract shall result in any increase in the amount of total compensation payable to Consultant under this Agreement.

**15. OWNERSHIP OF DOCUMENTS.**

All plans, specifications, reports, studies, tracings, maps and other documents prepared or obtained by Consultant in the course of performing the work required by this Agreement shall be the property of the City. Basic survey notes, sketches, charts, computations and similar data prepared or obtained by Consultant under this Agreement shall, upon request, be made available to City without restriction or limitation on their use.

**16. ENTIRE AGREEMENT AND AMENDMENTS.**

- A. This Agreement supersedes all prior proposals, agreements, and understandings between the parties and may not be modified or terminated orally.
- B. No attempted waiver of any of the provisions hereof, nor any modification in the nature, extent or duration of the work to be performed by Consultant hereunder, shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.
- C. Consultant acknowledges and agrees that it has consulted with an attorney, or has knowingly foregone the opportunity to do so and executes this Agreement knowingly and voluntarily.

**17. RESOLUTION OF DISPUTES.**

Disputes regarding the interpretation or application of any provisions of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties. In the event that the parties cannot reach agreement, parties agree to submit their dispute to non-binding arbitration prior to the commencement of any legal action or suit. The parties are free to choose a mutually agreeable arbitrator; however, in the event of a lack of agreement between the parties, the matter shall be submitted to the American Arbitration Association and be subject to its Commercial Arbitration Rules. Each party shall bear its own costs and fees, and share equally in the cost of the arbitration fee.

**18. SEVERABILITY.**

If any provision of this agreement is held by court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions nevertheless will continue in full force and effect without being impaired or invalidated in any way.

**19. EXHIBIT.**

The following exhibit to which reference is made in this Agreement is deemed incorporated herein in their entirety:

Exhibit "A" Proposal dated [Insert Date].

**20. GOVERNING LAW.**

This Agreement shall be governed by the laws of the State of California, without regard to

conflict of law principles.

**21. EFFECTIVE DATE.**

The effective date of this Agreement is [Insert Date], and shall remain in effect through and including completion of project, unless terminated otherwise in accordance with the terms of this Agreement.

[Remainder of page left blank intentionally]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed and attested by their respective officers thereunto duly authorized.

**CITY OF SOUTH GATE:**

By: \_\_\_\_\_  
Maria David, Mayor

Dated: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Carmen Avalos, City Clerk  
(SEAL)

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Raul F. Salinas, City Attorney

**Insert Consultant's name:**

By: \_\_\_\_\_  
Name, Title

Dated: \_\_\_\_\_