



**City of Downey**

## **REQUEST FOR PROPOSALS**

*Imperial Highway – Economic Development  
Strategic Plan*

*February 2016*

The City of Downey ("City") is soliciting qualified firms to develop an **Economic Development Strategic Plan for the Imperial Highway Corridor**.

This Request for Proposal is set out in the following format:

- SECTION I - Introduction and Instructions to Proposers
- SECTION II - Scope of Work
- SECTION III - Proposal Response Requirements and Evaluation Process

**Proposals are due by March 31, 2016 at 3 P.M. PT:** See complete instruction in Section I, Instructions to Proposers and Procedures for Submittal.

All questions and inquiries related to this Request for Proposal ("RFP") must be directed to **Jessica Flores, Economic Development Manager** at [jflores@downeyca.org](mailto:jflores@downeyca.org). Proposers shall not contact other city personnel with any questions or clarifications concerning this RFP.

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## SECTION I: INTRODUCTION AND INSTRUCTIONS TO PROPOSERS

### Introduction

The City of Downey is home to where the Apollo Space Program began its journey to the moon. Historically, Downey has been known for its presence in the aerospace industry, while the current economy maintains a broad industrial and healthcare base. Downey has been a breeding hub for flourishing businesses and artists. Due to its commercially accessible location, Taco Bell placed its first eatery site here, while the oldest operating McDonald's still stands today. Downey is also the city that inspired many hit records for local pop recording artists "The Carpenters." Today, the city is admired for its strong retail base with quality housing that continues to inspire companies with its business-friendly approach. In 2013, Downey was recognized with an All-America City award.

The City of Downey was incorporated in 1956 and became a Charter City in 1965. The City encompasses an area of 12.5 square miles and is situated in southeast Los Angeles County, approximately 12 miles southeast of Downtown Los Angeles, 15 miles northwest of Disneyland, and 15 miles from the Pacific Ocean.

This is a place of pride, history, involvement and community. The City is highly recognized for its centralized location, top medical facilities, quality residential neighborhoods and schools, excellent golf courses, and an unmatched family lifestyle. In fact, *California Business Magazine* rated the City of Downey in the top 25 percent of "100 Best Cities To Do Business in California."

As of 2014, the population of the City is 113,363 with a small town atmosphere. According to the U.S. Census, the City's median household income is \$56,675. The homeownership rate for single-family residences in Downey is approximately 50 percent. Between the years 2000 and 2012, the City saw housing production of 443 new single family residences. The U.S. Department of Commerce, Bureau of Census, has projected Downey's annual population growth rate to be approximately 1.3 percent.

The City hereby invites qualified firms to submit a proposal to develop an **Economic Development Strategic Plan for the Imperial Highway Corridor.**

The City of Downey ("City") is issuing this Request for Proposals (RFP) to identify qualified economic development consultants for the preparation of an Economic Development Strategic Plan for its Imperial Highway Corridor, which traverses the City's southern section in an east / west direction. The City wishes to determine and understand future economic development opportunities, and, based on such findings in conjunction with the results of the Strategic Economic Development Plan, identify the direction the City should move toward the retail/commercial revitalization of the Imperial Highway Corridor.

The City seeks an economic development firm that has specific experience in the preparation and implementation of corridor specific economic development strategic plans or City-wide economic development strategic plans. It is expected that the selected firm will prepare a corridor specific strategic plan that contains specific economic development goals, strategies, and implementation measures. The City requires the Economic Development Strategic Plan to also contain an Implementation Plan, outlining the timing, anticipated cost and funding source of each Implementation Action.

This project is being led by the City Manager's Office with the Director of Community Development serving as the Project Manager.

The City is seeking qualified consultant team(s) to conduct the Economic Development Strategic Plan. The Proposer is expected to provide all the materials and services that will fulfill or exceed the requirements and conditions as set forth in this RFP.

Proposed Timeline

Activity	Date
Initial distribution of RFP	February 24, 2016
Proposal Submittal Deadline	March 31, 2016 – 3:00 P.M. PT
Interview(s) if necessary	April 18 – 22, 2016
Recommendation and selection of Firm	April 29, 2016
Execution of Agreement	May 13, 2016
Anticipated City Council Approval	May 24, 2016
Study Completion Date	August 31, 2016

Instructions to Proposers and Procedures for Submittal

It is the responsibility of the Proposer to ensure timely delivery is made to the City of Downey.

1. Proposals shall be submitted by **March 31, 2016 at 3:00 P.M. PT**. Submissions after this deadline will not be accepted.
2. Each Proposer must submit one (1) original and five (5) signed copies of its proposal to the City of Downey Contact. Submit proposals to:

City of Downey  
Community Development Department  
Attn: Jessica Flores, Economic Development Manager  
11111 Brookshire Avenue  
Downey, CA 90241

3. All Proposals shall be submitted on standard 8-1/2" x 11" paper, with an Arial font and point size of 11. All pages should be numbered and identified sequentially by section. Proposals must be tabbed and indexed in accordance with the information requested in Section III. *It is imperative that all Proposers responding to this RFP comply exactly and completely, with the instructions set forth herein.* All responses to this RFP shall be concise, straightforward and must fully address each requirement and question. Although not as a substitute for a complete written response, additional material, such as technical documents may be referenced in any response, and included as exhibits. Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective proposal are not desired.

4. The Proposer's Proposal must not be marked as confidential or proprietary. The City may refuse to consider a Proposal so marked. Information in Proposals shall become public property and subject to disclosure laws. All Proposals shall become the property of the City. The City reserves the right to make use of any information or ideas in the Proposals.
5. By submitting a Proposal, the Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP and that it is capable of providing and performing quality work to achieve the City's objectives.
6. Proposals must be valid for a period of 120 calendar days from the Closing Date and Time for Receipt of Proposals.
7. Pre-contractual expenses are defined as expenses incurred by the Proposer in: preparing its Proposal in response to this RFP; submitting that Proposal to the City; negotiating with the City any matter related to the Proposer's Proposal; and any other expenses incurred by the Proposer prior to the date of award and execution, if any, of the Agreement. The City shall not, in any event, be liable for any pre-contractual expenses incurred by Proposers in the preparation of their Proposal.
8. Each Proposer must submit its Proposal in strict accordance with all requirements of this RFP. Deviations, clarifications, and/or exceptions must be clearly identified and listed separately as alternative items for the City's consideration.
9. After the Closing Date and Time for Receipt of Proposals, evaluation and proposal clarification will commence, all of which will be conducted by City staff. City staff will make subsequent recommendations of approval to the City Council.
10. Proposers judged most responsive to the City's requirements may be asked to give a presentation of their Proposal to the City staff. Selected Proposers should be prepared to make their presentation within five (5) calendar days after notification and be prepared to discuss all aspects of their Proposal in detail, including technical questions regarding the Proposal. No Proposer shall be allowed to alter or amend its Proposal through the use of the presentation process.
11. In the event the City deems it necessary to clarify or make any changes to this RFP, these changes shall be made in the form of a written addendum authorized and issued only by the City Staff or authorized designee.
12. The City reserves the right to negotiate modifications with any Proposer as necessary to serve the best interest of the City. Any Proposal may be rejected if it is conditional, incomplete or deviates from specifications in this request. The City reserves the right to waive, at its discretion, any procedural irregularity, immaterial defects or other improprieties, which the City deems reasonably correctable or otherwise not warranting rejection of the Proposal. Any waiver will not excuse a proponent from full compliance.

13. Proposers shall utilize Section III to describe their approach to the Scope of Work and to indicate costs.

14. The City reserves the right to:

- a. reject any or all price quotes, to waive technicalities or formalities, and to accept any price quote deemed in the best interest of the City;
- b. negotiate the final Agreement with any Proposer(s) as necessary to serve the best interest of the City;
- c. withdraw this RFP at any time without prior notice and, furthermore, makes no representations that any contract will be awarded to any Proposer responding to this RFP; or,
- d. award its total requirements to one Proposer or to apportion those requirements among two or more Proposers as the City may deem to be in its best interest.

15. In addition, negotiations may or may not be conducted with Proposers; therefore, the Proposal submitted should contain the Proposer's most favorable terms and conditions, since the selection and award may be made without discussion with any Proposer.

16. Where two or more Proposers desire to submit a single proposal in response to this RFP, they should do so on a prime/sub-contractor basis rather than as a joint venture. The City intends to contract with a single firm and not with multiple firms doing business as a joint venture.

- a. Firms intending to pursue this proposal in a "prime/sub-contractor" basis must identify any portion of the scope of work that will be subcontracted. Include the subcontractor's qualifications and key personnel, telephone number and contact person. The City reserves the right to approve or reject all consultants or internal staff performing consulting services, proposed by the consultant during or after the consultant review and selection process.

## **SECTION II - SCOPE OF WORK**

### Project Overview

The City wishes to determine and understand future economic development opportunities, and, based on such findings in conjunction with the results of the Economic Development Strategic Plan, identify the direction the City should move toward the retail/commercial revitalization of the Imperial Highway Corridor.

The City seeks support of a team capable of developing an Economic Development Strategic Plan. The Consultant's overall responsibility and scope of work is to prepare an Economic Development Strategic Plan containing goals, objectives and implementation measures. The Consultant may also provide meeting facilitation services during a public outreach and stakeholder interview process if necessary. The Consultant shall provide professional services to support the following tasks:

- a. Review and analysis of existing demographic and socioeconomic data, labor force characteristics, real estate trends, sales tax revenue and other key economic data;

- b. Preparation of key demographic trends and forecasts, social factors, economic factors, real estate trends, and financial indicators for inclusion into the strategic plan. This task should include preparation of a market study of Imperial Highway and if cogent the over-all City's retail and commercial sectors;
- c. Identify the community's assets and competitive advantages, with proposed activities and programs to incorporate these assets and advantages into an overall economic development strategy. This task should include a Strength Weakness Opportunity and Threats (SWOT) analysis of the Imperial Highway Corridor and if necessary surrounding area;
- d. Review and analysis of local ordinances, zoning, policies, and rules, providing recommendations on making adjustments to favor economic growth;
- e. Preparation of a customized, locally based economic development strategy setting forth goals and objectives for taking advantage of the opportunities and solving the economic development challenges of the area, including suggested activities, projects and programs to implement objectives and goals set forth in the strategy;
- f. Implementation Plan that identifies issues which require action in the short and long-term. Specific issues to be studied include but are not limited to:
  1. Recommendations on business type and whether or not to preserve, increase or decrease existing square footage; and,
  2. Preparation of business attraction and retention strategies incorporating results from SWOT analysis.
- g. Preparation of performance measures with timelines that will be used to evaluate whether and to what extent plan goals and objectives have been or are being met.

### Deliverables

The selected consultant team, upon conclusion of their work, will mail an original signed copy of a written Economic Development Strategic Plan as a final product, with 5 copies. The documents will be single-spaced with an Arial font, 11 point size.

The consultant team should expect to present a draft report for review and comment prior to acceptance of the final plan by the City Manager, and subsequent presentation of the final plan to the City Council. In addition, the consultant team should be prepared to provide no more than two (2) oral presentations, with supporting materials, to the City Manager, Assistant City Manager, Director of Community Development, and Economic Development Manager; and a separate public presentation of the final plan to the Planning Commission at a Planning Commission meeting, and the City Council at a City Council meeting.

As such, the targeted completion date for the report is **August 31, 2016**. In the proposal, the consultant team should provide a project timeline and demonstrate the ability to meet the targeted completion date.

### Fee

Interested Proposers must submit a proposed fee with project budget a detailed schedule indicating tasks, personnel to be assigned to each task, estimated number of hours by assigned personnel for each identified task, and the identification of support related costs (if any). The proposed fee shall be submitted in a sealed envelope separate from the Proposal.

## **SECTION III: PROPOSAL RESPONSE REQUIREMENTS AND EVALUATION PROCESS**

### Response Items

Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content with sufficient detail to allow for accurate evaluation and comparative analysis. Responses must provide the required information in the following order for each underscored item. Proposers shall respond by repeating the section and sub-sections number(s) and statement/question and by providing the appropriate response hereunder.

#### 1. Cover Letter

The cover letter shall identify the Proposer and state other general information which the Proposer desires to include regarding the Proposer's business organization. Please include the point of contact and contact information (including email address) on the cover letter. The cover letter shall not exceed one (1) page.

**An unsigned Proposal submission is grounds for rejection.**

#### 2. Executive Summary

The executive summary will list important features of the Proposal and must include a statement certifying that the Proposer meets or exceeds the minimum requirements of this RFP and has the ability to carry out all of its required elements of the Economic Development Strategic Plan throughout the entire term of the Agreement. The executive summary shall not exceed two (2) pages.

#### 3. Work Plan

Each Proposer shall submit the following information:

- a. Methodology: Provide the Methodology/Approach proposed for the work as defined in the Scope of Work.
- b. Project Schedule: Propose a timeline for completion for the work including start date, milestones, and target date of completion. Any assumptions regarding turnaround time for staff review and City Council should be clearly noted.
- c. Qualifications and Prior Experience: The capabilities of the consultant's organization should be discussed. Minimum requirements for submittal of a proposal in response to this RFP include the following:
  - i. Demonstrated understanding of local municipal economic development theory and practice, research methods, group consensus building, implementation methods, real estate trends, and monitoring and updating processes;
  - ii. Demonstrated familiarity with development and implementation of municipal economic development programs and policies;

- iii. Demonstrated experience, competence, and qualifications of the consultant and the participating staff successfully providing similar services to municipalities; and,
  - iv. Ability to perform the work in a timely manner, availability of staff and contingency plans.
- d. **Work Samples:** Provide brief descriptions of two, preferably corridor specific or city-wide economic development strategic plans, or similar plans prepared by or under the direction of your firm for a municipality. Include in your description the goals, objectives and implementation measures prepared for those plans.
- e. **Personnel:** this section must delineate the experience and profession of appropriate licenses and certifications of personnel and an organization chart.
- f. **Conflict of Interest:** provide a brief summary on potential conflict of interest issues which is to be addressed by consultant.
- g. **Reference:** list at least three municipal clients for whom comparable services have been performed within the last five years. Include the name, job title, email address and telephone number of each client's principal representative.

This section shall not exceed seven (7) pages.

#### 4. Company Data

Each Proposer shall submit the following information:

- a. State the company's official name and address and the names and titles of its principal officers; indicate what type of entity, such as corporation, partnership, joint venture, sole proprietorship, etc., and indicate if the firm is incorporated;
- b. If the firm is a sole proprietorship doing business under a different name, indicate the sole proprietorship's name and the name(s) you are doing or *have* done business as (DBA) or also known as (AKA);
- c. Provide the firm's Federal Employer I.D. Number;
- d. Provide the name and address of the person to receive notices who is authorized to make decisions and represents the company. Specify in what capacity the person shall be representing the entity and any limitations to their authority;
- e. State any failures or refusals to complete any contracts and a complete explanation;
- f. Indicate the number of years in business under the present business name;
- g. Indicate the number of years of the firm's experience in providing required, equivalent or related products and services; and,
- h. Submit a detailed statement indicating whether the Proposer is totally or partially owned by another business organization or individual that will be providing the services to meet the requirements of the Proposal.

This section of the proposal shall not exceed one (1) page.

5. Resources to be provided by the City

The Proposer must list any resources, City assistance, or other items expected to be provided by the City. This section shall not exceed one (1) page.

Certificate of Insurance

The Proposer shall demonstrate the willingness and ability to provide the required insurance coverage as set forth in the by City requirements within ten (10) calendar days of notification of selection for award of this Agreement. The insurance requirements are detailed in the sample City Professional Services Agreement which is included with this RFP, as Attachment "A."

Project Understanding

The City assumes no responsibility for any understanding or representation made by any of its officers or agents during or prior to the execution of any Agreement resulting from this RFP unless:

- a. Such understanding or representations are expressly stated in the Agreement; and,
- b. The Agreement expressly provides that the responsibility therefore is assumed by the City. Representations made but not so expressly stated and for which liability is not expressly assumed by the City in the Agreement shall be deemed only for the information of the Proposer.

Evaluation Process

Each consultant responding to the RFP will be evaluated by City staff on each element of the work plan and general information described above in the following order:

- 1. Review of experience, qualifications and references of the consultant to determine their ability to provide the requested services;
- 2. Review of the methodology/approach proposed by the consultant;
- 3. Review of proposed project timeline; and,
- 4. Review of the estimated fees and costs.

Selection/Award Procedures

A Professional Services Agreement will be provided for execution. It may be modified to incorporate other pertinent Articles/Terms and Conditions set forth in this RFP, including those added by addendum, and to reflect the Proposer's offer or the outcome of contract negotiations, if any, conducted with the Proposer's.

A sample of the City's Professional Services Agreement is included with this RFP, as Attachment "A."

# ATTACHMENT "A"

## PROFESSIONAL SERVICES AGREEMENT

### CITY OF DOWNEY PROFESSIONAL SERVICES AGREEMENT

WITH \_\_\_\_\_  
FOR \_\_\_\_\_ SERVICES

#### 1. PARTIES AND DATE.

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the **City of Downey**, a California municipal corporation and charter city with its principal place of business at 11111 Brookshire Avenue, Downey California 90241 ("City") and \_\_\_\_\_, \_\_\_\_\_, a California [corporation LLC], with its principal place of business at \_\_\_\_\_, \_\_\_\_\_ ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

#### 2. RECITALS.

##### 2.1 Consultant.

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

##### 2.2 Project.

City desires to engage Consultant to render such services for the [\_\_\_ **INSERT TYPE OF PROJECT** \_\_\_] project ("Project") as set forth in this Agreement.

#### 3. TERMS.

##### 3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional [\_\_\_ **INSERT TYPE OF SERVICES** \_\_\_] services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All

Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from [\_\_\_ **INSERT START DATE** \_\_\_] to [\_\_\_ **INSERT ENDING DATE** \_\_\_], unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The term of this Agreement may be extended by a written amendment to this Agreement signed by the City Manager and Consultant.

### **3.2 Responsibilities of Consultant.**

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

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services. The parties acknowledge that the Schedule of Services may be amended by mutual agreement due to changes in circumstances, including changes in the performance schedules of other third parties performing work for the City on the Project, which affect the timing of Consultant's performance of the Services.

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

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

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

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

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

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary

to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner consistent with the standard of care set forth herein, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

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

#### 3.2.10 Insurance.

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

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

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*:

Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$2,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$2,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to its profession. Such insurance shall be in an amount not less than \$2,000,000 per claim, and shall be endorsed to include contractual liability.

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

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by

the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage.

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

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

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

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

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

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

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and

regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

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

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

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon.

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

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

**[INSERT THE FOLLOWING PARAGRAPH ONLY IF PREVAILING WAGES WILL APPLY TO THE PROJECT PURSUANT TO DOWNEY MUNICIPAL CODE SECTION 2935 – OTHERWISE, STRIKE THIS PARAGRAPH AND INSERT THE TERM [3.3.5 Reserved]]**

3.3.5 Prevailing Wages. Pursuant to Downey Municipal Code Section 2935, the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects, shall apply to the Project. Consultant agrees to fully comply with such Prevailing Wage Laws. Upon request, City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the Project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. If applicable, Consultant shall be registered at all times with the Department of Industrial Relations under the Public Works Contractor Registration Program for Labor Compliance.

### **3.4 Accounting Records.**

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

### **3.5 General Provisions.**

#### 3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time either for cause or for the City's convenience and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Consultant may only terminate this Agreement for cause upon giving the City not less than seven (7) calendar days' written notice.

Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. The City shall within fifteen (15) calendar days following termination pay the Consultant for all services adequately rendered and all reimbursable costs incurred by

Consultant up to the date of termination, in accordance with the payment provisions of this Agreement.

The following reasons shall constitute "cause" for which either party may terminate this Agreement as provided herein:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- Suspension of the Project or the Consultant's Services by the City for more than ninety (90) calendar days, consecutive or in the aggregate, without good cause;
- Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

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

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

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

**Consultant:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_-\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_-\_\_\_\_  
**Attn:** \_\_\_\_\_, \_\_\_\_\_

**City:**

City of Downey  
11111 Brookshire Avenue  
Downey, California 90241  
Phone: (562) 904-7286  
Fax: (562) \_\_\_\_\_ - \_\_\_\_\_  
**Attn:** City Manager

With a courtesy copy to:

City of Downey  
City Attorney's Office  
11111 Brookshire Avenue  
Downey, California 90241

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

**3.5.3 Ownership of Materials and Confidentiality.**

**3.5.3.1 Documents & Data; Licensing of Intellectual Property.** This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

**3.5.3.2 Confidentiality.** All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for

any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

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

3.5.5 Attorney's Fees. In the event of any litigation, whether in a court of law, administrative hearing, arbitration, or otherwise, arising from or related to this Agreement of the services provided under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorneys' fees and all other related expenses in such litigation.

3.5.6 Indemnification. Consultant shall defend (with counsel acceptable to City), indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, errors, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, and agents or volunteers. Consultant shall not be obligated to defend, indemnify or hold the City harmless in any manner whatsoever for any claims or liability arising solely out of the City's own negligent acts, errors or omissions or willful misconduct.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be the courts in Los Angeles County.

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

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

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

3.5.12 Assignment or Transfer. Neither party shall assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the other party. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

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

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

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

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

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

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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

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

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

3.5.22 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

3.5.23 Effect of Conflict.

In the event of any conflict, inconsistency, or incongruity between any provision of this Agreement, any of its exhibits, attachments, purchase order, or notice to proceed, the provisions of this Agreement will govern and control.

**3.6 Subcontracting.**

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

**CITY OF DOWNEY,  
a California municipal corporation  
and charter city**

\_\_\_\_\_,  
a \_\_\_\_\_

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

By: \_\_\_\_\_  
[INSERT NAME]

Its: \_\_\_\_\_  
[INSERT TITLE]

*Attest:*  
  
\_\_\_\_\_  
City Clerk

*Attest:*  
  
\_\_\_\_\_  
Secretary

*Approved as to Form:*  
  
\_\_\_\_\_  
City Attorney

*Approved as to Form:*  
  
\_\_\_\_\_  
Legal Counsel

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

[\_\_INSERT DESCRIPTION\_\_]

**EXHIBIT "B"**  
**SCHEDULE OF SERVICES**

[\_\_INSERT SCHEDULE\_\_]

**EXHIBIT "C"**  
**COMPENSATION**

[\_\_INSERT SCHEDULE\_\_]