



REQUEST FOR PROPOSALS

FINANCIAL ADVISORY SERVICES

PROPOSAL CLOSING DATE: WEDNESDAY, JANUARY 26, 2022

REQUEST FOR PROPOSALS

FINANCIAL ADVISORY SERVICES

INTRODUCTION

The City of San Gabriel desires to solicit qualified proposals for the provision of Financial Advisory Services. The primary role of the financial advisor under this contract is to support the debt issuance activity of the City. Other responsibilities include, but are not limited to: Providing advice on all aspects of any proposed capital financing; Developing innovative solutions to the City's funding requirements in order to achieve the most advantageous financing terms; Making recommendations on the timing, sizing, maturity schedules, call provisions and other details of bond issues; Reviewing and making appropriate recommendations on all ordinances, official statements and other documents necessary for debt issuance; as well as other responsibilities.

THE CITY OF SAN GABRIEL

San Gabriel is located approximately 10 miles northeast of the City of Los Angeles within the western San Gabriel Valley sub region of the greater Los Angeles metropolitan area and was incorporated in 1913 as a general law city which operates under the council-manager form of government. The City Council is comprised of five members who are elected at large serving a staggered term of four years. The City provides a full range of municipal services including police and fire protection, engineering and planning, street maintenance, traffic control, code enforcement, parks and recreation services, and general administrative activities. The City encompasses 4.1 square miles of predominately flat land area with a population of 40,353.

SCOPE OF WORK

The City of San Gabriel seeks the services of a Financial Advisor (FA) to assist the City with a range of services related to the City's debt management and capital needs. The FA will be expected to assist with the following activities:

- Assist in assembling the financing team.
- Develop RFPs for services and help evaluate proposals as required.
- Review the City's existing asset and financing plans, evaluate alternatives, and assist with the coordination of those plans or assist with the development of new, separate financing plans.
- Assist the City in reviewing opportunities to refinance and restructure its existing debt and evaluate its mix of fixed and variable rate debt to reduce costs or to otherwise implement its financial objectives.
- Assist with obtaining required authorizations, including referenda.
- Advice on method of bond sale (where appropriate).

- Recommend timing of bond sales.
- Identify tasks, responsibilities, and dates for completing activities leading up to bond sales.
- Design or actively participate in the design of debt structure.
- Provide advice on approach to ratings and assist with rating presentation.
- Evaluate use and obtain bids for credit enhancement (if appropriate).
- Assist in reviewing documents, including preliminary and final official statements.
- Conduct pre-marketing of issues (competitive sale).
- Evaluate bids, including accuracy of TIC calculation, and recommend award (competitive sale).
- Review pricing, underwriter roles, and allocation of bonds (negotiated sale).
- Assist with closing arrangements.
- Assist with investment of bond proceeds (if appropriate).
- Provide advice related to compliance with arbitrage regulations.
- Assist with the presentation of recommendations to City management and City Council.
- Prepare analytical data related to internal evaluations of capital projects and City liabilities including outstanding indebtedness.

During the period of its contract, the FA shall not be permitted to participate directly or indirectly in any manner in the purchase of any financing debt or bonds relating to any phase of the project for which the FA services are provided. The FA may not terminate the contract with the City prematurely for purposes of then serving as the underwriter of any City financing.

The City's preference is that the FA's fees will be contingent upon successful transaction and be paid for by proceeds of those transactions at the time of closing. The consultant fees will be negotiated on either an hourly or fixed fee, based on the project.

SUBMITTAL REQUIREMENTS

A. Qualifications of the firm

1. Describe your firm's experience in providing Financial Advisory services to public sector clients. Identify the percentage of your firm's business focused on public sector financial services and the number of staff in your firm assigned to public sector clients.
2. Identify those public sector entities for which your firm is currently under contract to serve as Financial Advisor.
3. Provide the number and volume of public sector debt issuance transactions.
4. Identify the location of your firm's office where individuals will be assigned to the City of San Gabriel are located.
5. Provide references of your firm who have similarities to the City of San Gabriel, whom the City may contact.

B. Qualifications of Individuals

1. Identify the individual who will serve as primary point of contact assigned to the City of San Gabriel as well as other individuals who would be expected to serve on the City's transactions. Describe the role of each individual and the approximate level of service for each in a typical transaction.

2. Provide a brief resume for each of these individuals that identifies their background, educational experience, work experience, and past responsibilities serving in a similar role.
3. Describe each individual's specific area of specialty and how they would provide services as described in this RFP.

C. Legal Issues/Conflicts of interest:

Proposals also will include for your firm:

- Violations of federal, state or local regulations/laws within the past 3 years
- Pending or current litigation
- Arrangements with other firms that could pose a conflict of interest.
- If none of the above apply, a statement to that affect.

D. Compensation

Provide a description of your firm's approach to establishing a fee proposal for the various types of financing and any contingencies that could be included in the proposal. Additionally, provide hourly rates for any staff person that could be assigned to the project.

TIME OF PERFORMANCE

City intends to offer a 3-year initial term with an option to extend the contract for two one (1) year periods. A copy of the City's sample professional services contract and insurance requirements are included as Exhibit A. Any contract or insurance modification request must be with the consultant's RFP submittal. Note the City may choose not to honor all request.

PROFESSIONAL SERVICES AGREEMENT

The selected consultant will be required to sign a Professional Services Agreement with the City (**Attachment A**). Proposals should include a statement indicating the firm's willingness and ability to sign the contract" as is", including proposed insurance requirements, or detailing the reasons why they are not willing or able to do so.

EVALUATION OF PROPOSALS AND NEGOTIATIONS

A staff panel will evaluate the proposals based on the written submittal and if necessary, interviews with a select group of respondents. The city reserves the right to conduct interviews as part of the selection process.

Proposals will be evaluated on the basis of:

- Firm's overall qualifications and experience in municipal finance.
- Firm's legal issues and conflicts of interest.

- Qualifications of the proposed primary financial advisor and other staff members, and experience providing financial advisory services to other public agencies.
- Responsiveness to the Request for Proposal process and general provisions, and understanding of the scope of work as evidenced by the services offered in the proposals, presentations, and ability/willingness to sign a City contract.
- References.
- Costs.

ESTIMATED SCHEDULE

Action	Time/Date
Advertisement of RFP	January 10, 2022
Request for Information Due Date	January 17, 2022
Addenda Available (If necessary)	January 19, 2022
Deadline to Submit Proposals	5:30 p.m., Wednesday, January 26, 2022
Interviews (tentative)	Week of January 31, 2022
Selection and Recommendation to City Council (tentative)	February 15, 2022

GENERAL PROVISIONS

Submission of Proposals: Three (3), unbound originals along with one electronic copy of the proposal emailed to wkaholokula@sgch.org. The proposal package must be sealed and plainly labeled:

City of San Gabriel

Attn: William Kaholokula, Finance Director

RFP – Financial Advisory Services

City Contacts: Question about this RFP can be directed in writing via email to:

William Kaholokula, Finance Director

wkaholokula@sgch.org

Firm's Investigation: Before submitting an RFP, each firm shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract and to verify any representations made by the City upon which the financial advisor will rely. If the firm receives an award as a result of its proposal submission, failure to have made such investigations and examinations will in no way relieve the firm from its obligation to comply in every detail with all provisions and requirements of the contract, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever by the firm for additional compensation.

Competency of Firms: No proposal will be accepted from or contract awarded to a firm who is not licensed in accordance with the law, who does not hold a license qualifying him to perform work under this contract, to whom a proposal form has not been provided and who has not successfully performed on projects of similar character and scope. The consultant may be required, before the award of any contract, to show, to the complete satisfaction of the City, that it has the necessary facilities, ability, experience, and financial resources to provide the services specified herein in a satisfactory manner. Generally, consultant history and references are required at a minimum. The City may make reasonable investigations deemed necessary and proper to determine the ability of a consultant to perform the work, and the consultant shall furnish the City all information requested for this purpose.

Award: The City of San Gabriel reserves the right to reject any and all proposals; to waive any informality in the proposals; and to accept the proposal that appears to be in the best interest of the City.

In determining and evaluating the best proposal, the prices will not necessarily be controlling, but quality, equality, efficiency, utility, general terms, delivery, suitability of the service offered, and the reputation of the service in general use will also be considered with any other relevant factors.

Notice of contract award, if contract be awarded, will be made within ninety (90) days of opening of proposals to the consultant, whose proposal complies with all the requirements in the Request for Proposals and is found to be the best value to the City.

The consultant shall submit to the City, for approval, within ten (10) days from notice of contract award, all Certificates of Insurance evidencing the required coverage as described under Insurance in the City of San Gabriel sample contract.

The consultant shall not commence work under the terms and conditions of the contract until all Certificates of Insurance have been approved by the City and the consultant has received notice to proceed in writing and an executed copy of the contract from the City of San Gabriel.

Retention of Records: The consultant shall be required to retain any records necessary to document the charges for goods to be provided or services to be performed and make such records available to the City for inspection at the City's request for a period of four (4) years.

Non-Collusion Affidavit: The consultant declares, by signing and submitting a proposal, that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the consultant has not directly or indirectly induced or solicited any other consultant to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any revenue audit consultant or anyone else to put in a sham proposal, or that anyone shall refrain from bidding; that the auditor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the financial advisor or any other bidder, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other revenue audit consultant, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and, further, that the consultant has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

PROFESSIONAL SERVICES AGREEMENT

BETWEEN THE CITY OF SAN GABRIEL

and

TBD

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this XXth day of XX, 20XX (“Effective Date”), by and between the CITY OF SAN GABRIEL, a municipal corporation (“City”), and TBD, (“Consultant”).

RECITALS:

A. WHEREAS, the City proposes to utilize the services of Consultant as an independent contractor to provide financial advisory related services to the City, as more fully described in the submitted proposal attached to this Agreement; and

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

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

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

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the services described in the attached Exhibit “A,” (“Consultant Proposal”) incorporated herein by reference. The services may be amended, at the City’s discretion, by way of a written directive from City.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement, or be applicable to any of the tasks completed by the Consultant.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City. Evaluations of the work will be done by the City Manager, or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

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

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

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, or any other protected classification except as permitted pursuant to Section 12940 of the Government Code.

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

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

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. City agrees to compensate Consultant for the services rendered provided under this Agreement and Consultant agrees to accept payment in full satisfaction for such services. The Consultant's standard rate shall be in accordance with the attached Exhibit A ("Consultant Proposal") but in no event will the total compensation exceed \$_____.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be unenforceable.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to Section 2.2 of this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices, or be accompanied by a copy of the written authorization from the City.

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

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall be completed in accordance with the Consultant Proposal (Exhibit A). The Scope of Work may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or pandemics.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and shall continue in effect for a period not to exceed three (3) years from the Effective Date, unless terminated as provided herein.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

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

5.0. INSURANCE

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

- (a) General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.
- (b) Automobile liability insurance. Consultant shall maintain automobile

insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than 1,000,000 combined single limit for each accident.

- (c) Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Consultant shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees and volunteers.
- (d) Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

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

- (e) Additional insureds: "The City of San Gabriel and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (f) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (g) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of San Gabriel, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of San Gabriel shall be excess and not contributing with the insurance provided by this policy."
- (h) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of San Gabriel, its officers, officials, agents, employees, and volunteers.
- (i) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

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

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

6.0. GENERAL PROVISIONS

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

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

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

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by email; and c) 48 hours after deposit in

the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

TBD

IF TO CITY:

City of San Gabriel
425 S. Mission Drive
San Gabriel, CA 91776
Tel: (626) 308-2800
Fax: (626) 458-2830
Attn: William Kaholokula,
Finance Director
wkaholokula@sgch.org

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

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

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement.

6.8. Indemnification and Hold Harmless. Consultant shall defend, indemnify, and hold harmless City, its officers, employees and agents, from and against loss, injury, liability, or damages arising from any act or omission to act, including any negligent act or omission to act by Consultant or Consultant's officers, employees, or agents. Consultant's duty to indemnify and defend does not extend to the damages or liability caused by City's sole negligence or willful misconduct.

Should conflict of interest principles preclude a single legal counsel from representing both City and Consultant, or should City otherwise find Consultant's legal counsel unacceptable, then Consultant shall reimburse City its costs of defense, including without limitation reasonable legal counsel's fees, expert fees, and all other costs and fees of litigation. Consultant shall promptly pay any final judgement rendered against City (and its officers, officials, employees, and

volunteers) with respect to claims determined by a trier of fact to have been the result of Consultant's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Consultant's obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgement, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this agreement, Consultant shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Consultant will be for that entire portion or percentage of liability not attributable to the active negligence of City.

City and Consultant mutually waive any and all consequential, special, indirect and punitive damages against each other whether in contract, tort or any other legal theory.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

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

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

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

6.14. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would

require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

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

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

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

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

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

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

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

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

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in

respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

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

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

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

6.27. Arbitration and Waiver of Jury Trial. The Parties further agree as follows: In the event any dispute shall arise between the Parties to this Agreement, the same shall be resolved by arbitration conducted by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as then in effect. Such arbitration shall be conducted at a location within Los Angeles County, California agreeable to both Parties before three (3) arbitrators who shall be selected by mutual agreement of the Parties; if agreement is not reached on the selection of arbitrators within fifteen (15) days, then each of the Parties shall select an arbitrator and the two (2) arbitrators so selected shall select a third. The provisions of the Commercial Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration except that the prevailing party shall be entitled to recover from the other party its attorney's fees and costs actually incurred in such amount as may be determined by the arbitrators.

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

CITY OF SAN GABRIEL,
A municipal corporation

City Manager

Date: _____

CONSULTANT

Signature

Date: _____

Name and Title

APPROVED AS TO FORM:

City Attorney

Date: _____

DEPARTMENTAL APPROVAL:

William Kaholokula, Finance Director

Date: _____