



REQUEST FOR PROPOSALS

INFORMATION TECHNOLOGY SUPPORT SERVICES

**Due Date for Proposals:
5:30 p.m., Friday, January 14, 2022**

**CITY OF SAN GABRIEL
REQUEST FOR PROPOSALS
INFORMATION TECHNOLOGY SUPPORT SERVICES**

INTRODUCTION

Intent of the Request for Proposal (RFP)

It is the intent of the City of San Gabriel ("City") to receive proposals from qualified consultants to provide Information Technology (IT) support services for the City.

The City currently uses a hybrid in-house/outsourced approach to provide IT support services to all City departments. The City is looking to enter into a contract with a firm or firms to supplement its in-house IT Support Services.

The project scope of work requires professional support of IT services for the City using current technological expertise, including maintenance of the City's computer network, planning for short-term and long-term IT goals, and the provision of excellent customer service.

The City will select and negotiate with the qualified consultant(s) whose competitive proposals are responsive to this RFP and are in the best interest of the City. Any competitive proposal submitted in response to this RFP must provide sufficient detail and information to complete an evaluation of its merits. The instructions contained herein must be followed in order for competitive proposals to be considered responsive to this RFP. The City reserves the right to reject any or all proposals.

Proposals

Sealed proposal process:

1. All proposals must be received by **5:30 p.m. on Friday, January 14, 2022.**
2. All criteria for evaluation are set forth in this RFP. Only these criteria will be used by the City to determine, in its sole judgment, the proposal it deems to be in its best interest.
3. The City will invite the top ranked consultant(s) for interviews the week of **January 17 and/or January 24, 2022**, exact date to be determined.
4. The City reserves the right to reject any or all proposals with or without cause.

Proposal Submission

Three (3), unbound original along with one electronic copy of the proposal. The proposal package must be sealed and plainly labeled:

City of San Gabriel
Attn: William Kaholokula, Finance Director
RFP – Information Technology Support Services

425 South Mission Road
San Gabriel, CA 91776

Proposal Deadline

All proposals must be received by the City of San Gabriel located at 425 South Mission Road, San Gabriel, CA 91776 **NO LATER THAN 5:30 P.M., Friday, JANUARY 14, 2022**. Postmarks will not be accepted in lieu of this requirement. The consultant is solely responsible for reading and completely understanding the requirements of this RFP.

If the proposal is mailed, it is the sole responsibility of the consultant to have the proposal delivered to the City of San Gabriel by the date and time specified in this RFP. Any proposal received later than the specified date and time will not be accepted or considered. All responses will be retained as property of the City of San Gabriel.

All proposals shall be prepared and submitted in accordance with the provisions of this RFP. However, the City may waive any informalities, irregularities or variances, whether technical or substantial in nature, or reject any and all proposals at its sole discretion. Any competitive proposal may be withdrawn prior to the indicated time for receipt of proposals or authorized postponement thereof. No consultant may withdraw a proposal within ninety (90) days after the actual date of the receipt by the City of the proposal.

Clarification and Addenda

Each consultant shall examine all RFP documents and shall judge all matters relating to the adequacy and accuracy of such documents. Any inquiries, or requests concerning interpretation, clarification, or additional information pertaining to the RFP shall be made in writing to the City of San Gabriel, RFP – Information Technology Support Services, 425 South Mission Drive, San Gabriel CA 91776 or via email to wkaholokula@sgch.org later than **Tuesday, December 22, 2021**.

The City shall not be responsible for oral interpretations given by any City employee, representative, or others. The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to the RFP, the City will attempt to notify all prospective consultants. However, it shall be the responsibility of each consultant, prior to submitting the response, to contact the City of San Gabriel's Finance Department (626) 308-2812 to determine if addenda were issued and to make such addenda a part of the competitive proposal. Firms are encouraged to send contact information via email to William Kaholokula, Finance Director, at wkaholokula@sgch.org, so that notification regarding any addenda may be communicated. Official addenda, if necessary, shall be available no later than **Friday, January 7, 2022**.

Proposal Preparation Expenses

Each consultant preparing a response to the RFP shall bear all expenses associated with its preparation irrespective of the result.

Legal Name

Proposals shall clearly indicate the consultant's legal name, address, and phone number, and shall indicate whether the consultant is a corporation, general partnership, individual, or other business entity. In addition, the proposal must include the name, phone number, and email address of the person to whom correspondence should be directed. Proposals shall be signed above the typed or printed name and title of the signor. The signer must have the authority to bind the consultant to the submitted competitive proposal.

Openness of Procurement Process

Written proposals, other submissions, correspondence, and all other pertinent records shall be handled as public records. The City gives no assurance as to the confidentiality of any portion of any proposal once submitted.

Retention and Disposal of Proposals

The City reserves the right to retain all submitted proposals for public record purposes. The City also reserves the right to dispose of any or all copies of competitive proposals in whatever manner it deems appropriate. No copies of any proposal will be returned to the consultant.

Collusion

By offering a submission to this RFP, the consultant certifies that the consultant has not divulged to or discussed or compared its proposal with any competitors, and has not colluded with any other consultants or parties to this proposal whatsoever.

Conflict of Interest

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code sections 1090 et seq., or sections 87100 et seq., during the performance of services under any Agreement awarded. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision will result in any Agreement awarded being deemed void and unenforceable.

Professional Services Agreement

The selected consultant will be required to sign a Professional Services Agreement with the City (**Attachment A**).

Insurance Requirements

The successful firm shall submit appropriate evidence of required insurance coverage prior to finalizing the contract and commencing work. The City's standard contract terms and conditions are provided in the attached draft Professional Services Agreement (**Attachment A**).

Contacting City Staff

Prior to the award of the contract, Proposers are directed not to contact City staff regarding this RFP without prior consent of the Finance Director.

Payment

The selected consultant will be paid in accordance with negotiated payment terms plus other City contract terms and conditions as set forth in negotiated Professional Services Agreement.

INFORMATION FOR PREPARATION OF PROPOSAL

General

The City of San Gabriel is soliciting proposals for Information Technology (IT) Support Services. The City is looking to enter into a contract with a firm or firms to supplement its in-house IT Support Services. The supplemental services may be project based, consultation with in-house IT staff, or general IT support. The project scope of work requires professional support of IT services for the City using current technological expertise, including maintenance of the City's computer network, planning for short-term and long-term IT goals, and the provision of excellent customer service.

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.

Project Background

The City is interested in receiving responsive and competitive proposals from experienced and qualified firms to provide supplemental Information Technology Support Services to in-house IT staff. Specific areas include desktop technician support, network analysis and administration, software support, and computer/server operations. The City is interested in creative, cost-effective, and service-oriented proposals for the delivery of the described service. On-site support for PC/Network tasks and all Public Safety tasks is a requirement.

The IT Division for the City of San Gabriel supports a 24 hours a day/7 days a week operation that operates 365 days a year. Due to the need for Public Safety support, all staff involved with Police Department support must be DEPARTMENT OF JUSTICE/CLETS certified, and pass an extensive background check. *Due to the specialized nature of Public Safety software and systems, firms with experience in this area are highly desirable.* However, a firm may be approved to provide services to the non-public safety side of the City's IT environment.

Police Department Information Technology Environment

Sites: Police Station (625 S. Del Mar Ave.)

Number of Employees and Workstations: 70 Employees / 100+ Workstations

Software Systems and Applications: Zuercher CAD, Office365, Crossroads, JDIC, WatchGuard, VMware, CrimeView

Copiers/Printers: Canon

Phone System: Ring Central UCaaS (Unified Communications as a Service)

Other City Departments' Information Technology Environment

Sites:

- City Hall (425 South Mission Drive)
- McGroarty Office (410 McGroarty St.)
- Fire Station Headquarters (1303 S. Del Mar Ave.)
- Fire Station #2 (115 N. Del Mar Ave.)
- Parks and Recreation Office (250 S. Mission Dr.)
- Mission Playhouse (324 S. Mission Drive)
- Public Works Yard (917 E. Grand Ave.)

Number of Employees and Workstations: About 140 employees / 200+ Workstations

Software Systems and Applications: Office365/Exchange, EDEN, HdL, ArcGIS, RecPro, LaserFiche, TRAKiT, CAD, AutoDesk, SECURE, SoniClear, VMware, Innovyze, Fleet Maintenance Pro, SpiceWorks

Copiers/Printers: Xerox, Konica Minolta, Canon

Phone System: Ring Central UCaaS (Unified Communications as a Service)

**Software listing includes most commonly used but is not all inclusive*

Scope of Work

The City is looking to enter into a contract with a firm or firms to supplement its in-house IT Support Services. This may include general consultation or on a project by project basis. The project scope of work may consist of comprehensive services designed to strengthen the cost-effectiveness, quality, and productivity of the City of San Gabriel's IT services using current technological expertise, including maintenance of the City's computer network, planning for short-term and long-term IT goals, and the provision of excellent customer service. The following is a list of some of the services required but should not be seen as all inclusive.

- 1) Provide strategic planning for, and assessment of, the City's IT program.
- 2) Provide experienced project managers to provide management of projects on an as-needed basis from vendor selection to implementation.
- 3) Provide desktop and network support to City Staff.
- 4) Provide quotes for procurement of IT related equipment.
- 5) Provide installation and repair of all IT related equipment.
- 6) Provide reports within specified timeframes.
- 7) Develop mechanisms and recommendations to improve the City of San Gabriel's utilization of its current technological resources.

- 8) Improve the overall cost-effectiveness of City-wide operating expenses and capital outlays associated with technological services.

Required Information

Consultants must submit satisfactory evidence to the City supporting their ability to meet the scope of work within a prompt time frame. The proposals must conform to the following format:

1. Introduction of consulting firm, including experience and background;
2. Qualifications of personnel assigned to this project,
3. Other information deemed appropriate by bidder. If information is project specific, list the type of project, the manager of the project, and any additional services offered;
4. Contact information for five (5) relevant public agency references, including contact name, phone number, address, brief description of services performed, and date of service;
5. Proposed hourly rates for IT Support Services.

EVALUATION PROCEDURES

General

All proposals shall be evaluated utilizing the criteria specified. It is the objective of the City to select the consultant(s) through the outlined evaluation process. It will include interviews with the top-ranked firms. An Evaluation Committee will recommend to the City Manager and to the City Council, the consultant(s) who best illustrates its abilities to meet the City's needs. However, the recommendation of the committee shall not be binding, and the decision of the City Manager or City Council shall be final.

Evaluation Committee

All competitive proposals received by the City from the consultants as of the submission time and date set forth herein shall be cataloged and distributed to select City staff ("Evaluation Committee") for review and evaluation. The Evaluation Committee, comprised of key stakeholders, will review all competitive proposals. The names of the evaluation committee members and their evaluations are confidential. The Evaluation Committee shall evaluate all proposals received using a formalized evaluation process.

Each Evaluation Committee member will be governed by the following guidelines to ensure a thorough and unbiased assessment of each proposal:

1. Each member will evaluate materials of each proposal in its entirety, impartially, and without bias;
2. Members, if necessary to ensure full understanding of a proposal, may discuss with technical and legal staff, particular elements of the proposal;

3. Members will review only the consultant's written documents, not information which is inferred or interpreted by another person; and,
4. Members must use the prescribed evaluation criteria for each evaluation.

The results of the Evaluation Committee's review of proposals and interviews with the top-ranked firms shall be forwarded to the City Manager for consideration.

Completeness of Competitive Proposals

Following receipt of competitive proposals, the Evaluation Committee shall review all proposals with respect to the completeness and conformance with the instructions and requirements specifically indicated in this RFP.

Proposals, which are deemed incomplete or non-conforming with instructions and requirements of this RFP, may not be given further evaluation. The City reserves the right to reject any or all competitive proposals and to waive any irregularity, variance, or informality whether technical or substantial in nature, in keeping with the best interest of the City.

Evaluation Criteria

All proposals shall be evaluated with respect to the completeness of data provided, support for claims made, relevant experience, and the overall approach taken. The following list of evaluation criteria, which has in no manner been weighted or prioritized, shall be utilized in the technical evaluation of each consultant's competitive proposal:

- Experience with similar projects involving municipalities and/or other local government agencies.
- Knowledge of and hands-on experience with relevant government software applications, and with state-of-the-art information technology architecture.
- Responses from references.
- Cost effectiveness/Proposed hourly rates.
- Quality of firm and proposed staff.

Informality Waiver/Rejection of Proposals

The City will reject proposals if:

- The consultant misstates or conceals any material fact in the proposal;
- The proposal does not strictly conform to the law.

The City may reject all proposals whenever it is deemed in the best interest of the City to do so and may reject any part of a proposal. The City may also waive any minor informalities or irregularities in any proposal. Each consultant who submits a proposal shall be notified of the City's final selection.

Schedule

The tentative schedule for the evaluation of proposals is as follows:

Action	Time/Date
Advertisement of RFP	Wednesday, December 8, 2021
Request for Information Due Date	Tuesday, December 22, 2021
Addenda Available (If necessary)	Friday, January 7, 2022
Deadline to Submit Proposals	5:30 p.m., Friday, January 14, 2022
Interviews of Top Rated Consultants	Week of January 17 or January 24, 2022 Exact date to be determined.
Selection and Recommendation(s) to City Council	February 1, 2022 or February 15, 2022

The City shall not be held responsible for any changes in the schedule shown. Any schedule change affecting the RFP submittal will be distributed via addenda.

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 supplemental IT related services to in-house IT staff, 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) Cyber Security and Privacy Liability insurance with limits of \$1,000,000 per occurrence/loss, \$2,000,000 aggregate. If coverage is maintained on a claims-made basis, Consultant/Contractor shall maintain such coverage for an additional period of three (3) years following termination of the contract.

- (e) Cyber Technology Errors and Omissions insurance with limits of \$1,000,000 per occurrence/loss, \$2,000,000 aggregate which shall include the following coverage:
 - i. Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information, including credit monitoring and regulatory fines arising from such theft, dissemination or use of the confidential information.
 - ii. Network security liability arising from the unauthorized use of, access to, or tampering with computer systems.
 - iii. Liability arising from the failure of technology products (software) required under the contract for Consultant to properly perform the services intended.
 - iv. Claims alleging the failure of computer security that result in the transmission of malicious code, deletion, destruction or alteration of data, or the denial of service
 - v. Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights.
 - vi. Liability arising from the rendering, or failure to render, professional services

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

- (f) 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."
- (g) 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."
- (h) 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."

- (i) 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.
- (j) 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: _____

EXHIBIT A

CONSULTANT PROPOSAL

EXHIBIT B

CERTIFICATES OF INSURANCE