

# CITY OF CARSON

## Request for Proposal (RFP No. P17-12)



*for*  
**Carson Stormwater and Runoff Capture Project  
Project No. 1515**

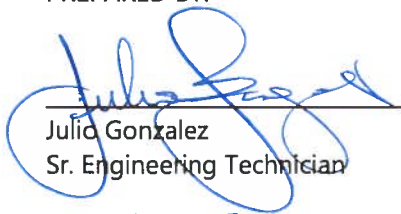
*June 2017*

# CITY OF CARSON

## REQUEST FOR PROPOSAL *for* Carson Stormwater and Runoff Capture Project Project No. 1515

*May 2017*

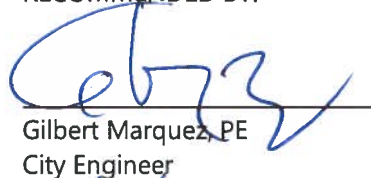
PREPARED BY:

  
Julio Gonzalez  
Sr. Engineering Technician

6.12.2017.

Date

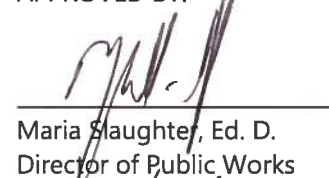
RECOMMENDED BY:

  
Gilbert Marquez, PE  
City Engineer

6/12/2017

Date

APPROVED BY:

  
Maria Slaughter, Ed. D.  
Director of Public Works

6/13/17

Date

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## Attachments:

Attachment A – Vicinity Map

Attachment B – Project Plan and Section

Attachment C – Specifications

Attachment D – Standard Contract Agreement

## 1. **INTRODUCTION**

The City of Carson (City) is a general law city and municipal corporation, having its principal office at 701 East Carson Street, Carson, CA 90745, and governed by five City Council members. The City is generally bounded by Highway 91, I-710 Freeway, Sepulveda Boulevard and the I-110 Freeway

The City is seeking proposals from experienced and qualified precast concrete modular unit manufacturers (Manufacturers) to review and comply with the plans (Attachment B) and specifications (Attachment C) prepared by Tetra Tech and to design, furnish, store and deliver the proposed precast watertight concrete modular units for Project No. 1515 – *Carson Stormwater and Runoff Capture Project*.

## 2. **PROJECT BACKGROUND**

- A. Project Description and Objectives: The Carson Stormwater and Runoff Capture Project site is located towards the south-westerly section of the City of Carson (Attachment A). The project is located within Carriage Crest Park (Park) located at 23800 Figueroa Street, in the City of Carson. Carriage Crest Park is bound by Figueroa Street to the west, houses along Carriagedale Drive to the north, Color Spot Nursery to the east, and Sepulveda Boulevard to the south. The project will involve the diversion and pretreatment of stormwater from an existing storm drain system at a rate of 30 cubic feet per second (cfs). The stormwater will then be diverted to a subsurface storage reservoir located under the Park and ultimately discharged to the sanitary sewer for treatment at the Joint Water Pollution Control Plant (JWPCP) or returned to the storm drain system on an as-needed basis. The selected Manufacturer will only be responsible for design, fabrication, storage, and delivery of the precast modular watertight storage system. The plans and specifications are provided in Attachments B and C respectively.
- B. Project Financing: The Enhanced Watershed Management Program (EWMP) called for the design and construction of Project No. 1515: *Carson Stormwater and Runoff Capture Project*. The duration of precast concrete modular unit production is estimated to be 140 working days. The California Department of Transportation (Caltrans) is providing funding for this project.

Requirements for the proposals are included herein. Interested Manufacturers are requested to review the Attachments A through D and submit responsive proposals to the City of Carson.

## 3. **QUALIFICATIONS**

The Manufacturers must be experienced and qualified precast concrete modular unit manufacturers that have past work experience on local projects in California. The Manufacturer will be required to provide all license and insurance coverages in

accordance with the Standard Contract Agreement (Agreement), located in Attachment D. The Manufacturer must have a current and valid business license in the State of California. The Manufacturer must be in good financial standing and provide financial records to confirm solvency. The third party storage property owner and any supporting firms, subcontractors, consultants, fabrication contractors, or anyone doing business for or on the behalf of the Manufacturer will also be expected to have the same qualifications and applicable licenses as the Manufacturer. All Engineers working for or on behalf of the Manufacturer must show proof of a current and valid Professional Engineer's License in the State of California. All contractors and fabricators working for the Manufacturer must show proof of a current and valid Contractor's License in the State of California.

#### **4. GENERAL INFORMATION**

- A. City refers to any City of Carson personnel, department, City Council or other authorized City staff. The City Engineer or his designee shall be the City's Project Manager.
- B. Manufacturer refers to any person, vendor, or firm selected by the City as the precast concrete modular unit manufacturer. Additionally, this will include all firms or organizations hired by a "prime" Manufacturer to assist. All outside Manufacturers shall be identified and their qualifications outlined within the proposal submitted. The cost of all specialized Manufacturer services shall be stipulated as a separate item, but shall be part of the overall cost of the proposal and shall be provided for in the Cost Proposal.
- C. Engineer refers to the person or firm that serves as the City's consultant. For this project, the Engineer is Tetra Tech, Inc.
- D. When referring to precast concrete modular unit production, a working day shall be defined by the Manufacturer. When referring to delivery and inspection, a working day shall be defined as Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding City-observed holidays. The Manufacturer will need to coordinate delivery, inspection, and approval of the units around the City's working schedule which is Monday through Thursday 8:00 a.m. to 5:00 p.m.
- E. All plans, specifications, studies, maps, ordinances, and other relevant information pertaining to the work involved, which are in the possession of the City, is available to the Manufacturer for inspection or reproduction at no cost to the City. All requests for information must be made in writing. The Manufacturer shall be responsible for reviewing available information and indicating what information is needed.
- F. Manufacturer shall designate a Registered Professional Engineer who shall represent them and be the primary contact person in all consultations. The Registered Professional Engineer shall have the responsibilities synonymous to a Construction Manager or Project Manager for this project. The Manufacturer shall also specify other principals and other key staff members assigned to the project. They must continue to provide the necessary services until project

completion unless a change is requested in writing and is approved by the City Engineer. A schedule of the Manufacturer's hourly fees for various services shall be provided in the Cost Proposal.

- G. The City reserves the right to withdraw this proposal without prior notice. Further, the City makes no representation that any agreement will be awarded to any Manufacturer responding to this proposal. The City expressly reserves the right to postpone the proposal opening for its own convenience and to reject any and all proposers responding to this Invitation to Proposal without indicating any reasons for such rejection(s).
- H. The Selection of the Manufacturer shall be based on the lowest price and most qualified proposer (covered in Section 10).
- I. The Manufacturer shall be responsible for all professional services needed for the completion of the project as described, in addition to all other services stipulated in this proposal.
- J. Personnel, indirect, and direct costs not associated with agreed-to Manufacturer services will be absorbed by the Manufacturer.
- K. Pre-contractual expenses are defined as expenses incurred by Manufacturer in: (1) preparing the proposal in response to this proposal document; (2) submitting that proposal to the City; (3) negotiating with the City any matter related to this proposal; (4) any other expenses incurred by Manufacturer prior to the date of the Notice to Proceed.
- L. The Manufacturer agrees that all original drawings, reports, both field and office survey notes, calculations, maps and other documents, shall become the property of the City and provided to the City upon completion of project.
- M. The Manufacturer agrees that no regular employee of the City will be employed by his firm during the time that this contract is in effect.
- N. The Manufacturer agrees not to discriminate against any employee or applicant for employment because of race, color, sex, religion, ancestry or national origin.
- O. Any reports, information, data, etc. given to, prepared, or assembled by the Manufacturer under this contract which the City requires to be kept confidential shall not be made available to an individual or organization by the Manufacturer without written permission of the City.
- P. At all times during the terms of this contract, the Manufacturer shall be an independent contractor and shall not be an employee of City. The City shall have the right to control the Manufacturer only in so far as determining the required results of the Manufacturer's services rendered pursuant to this contract.
- Q. The Manufacturer is not an Agent of the City. Except as the City may specify in writing, the Manufacturer shall have no authority, expressed or implied, to act on behalf of the City in any capacity whatsoever as an agent. The Manufacturer shall have no authority, expressed or implied, pursuant to this contract to bind the City to any obligation whatsoever.

- R. All products of Manufacturer, related to this contract, shall become the property of the City and shall be delivered to the City before the end of performance under, or upon termination of this contract. The Manufacturer may retain a copy of those products for professional use. The Manufacturer acknowledges and agrees that all such instruments of the work prepared by the Manufacturer pursuant to this contract shall be used exclusively on the project for which it is prepared and shall not be used for any other work without written consent of the City.

## **5. INSURANCE REQUIREMENTS**

The Manufacturer is required to submit the insurance requirements covered in the Standard Contract Agreement, located in Attachment D, along with the following minimum City insurance requirements as part of the proposal:

- A. **MINIMUM SCOPE INSURANCE:** Coverage shall be at least as broad as:
1. Commercial General Liability coverage (occurrence policy).
  2. Automobile Liability (any automobile).
  3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
  4. Course of Construction insurance covering for "all risks" of loss (if applicable).
  5. Errors and Omissions liability insurance appropriate to the Manufacturer's profession. Architects' and Engineers' coverage shall be endorsed to include contractual liability (if applicable).
- B. **MINIMUM LIMITS OF INSURANCE:** Manufacturer shall maintain limits no less than:
1. General Liability: \$4,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
  2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
  3. Employer's Liability: \$2,000,000 per accident for bodily injury or disease.
  4. Course of Construction: Completed value of the project (if applicable).
  5. Professional Liability Insurance: \$2,000,000 per occurrence.
- C. **Deductibles:** Any deductibles must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles as respects the City, its officers, officials, employees, agents and volunteers; or the Manufacturer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claims administration and defense expense.

- D. OTHER INSURANCE PROVISIONS: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
1. The City, its officers, officials, employees, agents and volunteers are to be covered as insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Manufacturer; and with respect to liability arising out of work or operations performed by or on behalf of the Manufacturer including materials, parts or equipment furnished in connection with such work or operations. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Civil Code Section 2782(b). General liability coverage can be provided in the form of an endorsement to the Manufacturer's insurance, or as a separate owner's policy.
  2. For any claims related to this project, the Manufacturer's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be in excess of the Manufacturer's insurance and shall not contribute to it.
  3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 calendar days prior written notice by certified mail, return receipt requested, has been given to the City.
- E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than "A".
- F. VERIFICATION OF COVERAGE: Manufacturer shall furnish the City with original certificates and amendatory endorsements effecting coverage required by the City. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
- G. SUBMANUFACTURERS, STORAGE PROVIDER(S) AND TRANSPORTERS: Manufacturer shall include all Sub Manufacturers, third party storage provider(s), transportation contractor(s), and any other parties the Manufacturer will contract for services under the Agreement as insured under its policies or shall furnish separate certificates and endorsements for each Sub Manufacturers, Third Party Storage Provider(s) and Transporter. All coverage for Sub Manufacturers, Third Party Storage Provider(s) and Transporters shall be subject to all of the requirements stated herein.
- H. INDEMNIFICATION AND HOLD HARMLESS: Manufacturer shall defend, indemnify, hold free and harmless the City, its officers, officials, employees,



agents and volunteers from and against any and all damages to property or injuries to or death of any person or persons, and shall defend, indemnify, save and hold harmless City, its officers, officials, employees, agents and volunteers from any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, and all other claims resulting from or arising out of the acts, errors or omissions of Manufacturer, its employees and/or authorized sub Manufacturers, whether intentional or negligent, in the performance of this Agreement.

## **6. SCOPE OF WORK**

The following is a general outline of the scope of work to be provided by the Manufacturer. Each Manufacturer submitting a proposal is advised to list any items they believe necessary to efficiently complete the project, as well as their specific approach to the general outline included below. Services required to complete this project by the Manufacturer include, but are not limited to:

### **A. Manufacturer's Primary Responsibilities**

1. It will be the responsibility of the Manufacturer to make a thorough and complete review of this Invitation to Propose, the project plans, and specifications prior to proposing on the project.
2. Attend a **mandatory pre-proposal meeting Thursday June 29, 2017 Carson City Hall located at 701 E. Carson St., Carson, CA 90745 – Executive Conference Room 2<sup>nd</sup> Floor** to introduce the project, project team, and clarify any questions or concerns for all parties.
3. Upon selection and award of the contract, the Manufacturer shall attend a predesign meeting (To be scheduled by the City) to verify limits of work, verify understanding of project intent, verify understanding of Manufacturer's responsibilities, and clarify any additional questions or concerns for all parties.
4. After the predesign meeting the Manufacturer shall develop structural calculations signed and stamped by the Manufacturer's Civil or Structural Engineer registered in the State of California, design plans signed and stamped by the Manufacturer's Civil or Structural Engineer registered in the State of California, and recommendations for installation means and methods for submittal and review by City's Engineer.
5. Upon approval of the design calculations and plans, the City will provide a Notice to Proceed (NTP) to begin precast modular unit production. Production must begin within 40 working days from the NTP.
6. Within 14 working days of the commencement date stated in the NTP, the Manufacturer shall submit required submittals (Per the Specifications located in Attachment C) and adhere to the following requirements:
  - a. Submittals shall be submitted to the City's Project Manager and the Engineer electronically.

- b. Submittals shall have a cover transmittal form.
  - c. If submittals are not received within 14 working days the Manufacturer will be subject to liquidated damages (Covered in Section 14) if the submittal schedule were to delay the schedule milestones. Subsequent resubmittals shall be resubmitted within 7 working days of the Engineer's response to the initial submittal and/or subsequent submittals.
7. Upon passing inspection of the units, the Manufacturer will be responsible for temporary storage of the units at an offsite third party location until the City is ready to accept delivery of the units to the project site. **The Manufacturer is required to deliver all of the precast concrete modular units to the third party storage location (As chosen and specified in the Manufacturer's Proposal and agreed upon by the City) by February 1, 2018. The Manufacturer is also required to invoice the City per Section 13, Progress Payments, for all said units by February 8, 2018.** The Manufacturer shall be responsible for the storage and delivery of the precast modular units to the third party storage location as well as delivery to the Park. The Manufacturer shall also provide supervision during the unloading and installation of the precast modular units.
- a. Storage of the units shall take place off-site at a third party location based on the Manufacturer's discretion and City's approval. The units shall be stored with adequate bracing. The units shall be protected to prevent contact with soil, staining, cracking, distortion, warping, or other physical damage.
  - b. It is anticipated that the delivery of the units to the Park will be between February 1, 2018 and June 1, 2018. If the City has not requested delivery of the units by June 1, 2018, the Manufacturer will be responsible for the continued storage of the units at the same third-party location until they are requested and delivered. The Manufacturer will be paid for this storage after June 1, 2018 in accordance with the agreed upon weekly price in the Proposal Estimate.

After receiving a request from the City to ship the units, the Manufacturer shall provide the City with at least 14 working days prior notice of the date and time of the arrival of the units at the project site for the City's concurrence.

- c. The Manufacturer will be required to repair or replace any damaged units to the satisfaction of the City Engineer, or party designated by the City, prior to delivering them to the Park.
- d. The Manufacturer shall support units during shipment on non-staining, shock-absorbing material in the same position as during storage.
- e. Units shall be handled and transported in a manner that avoids excessive stresses that cause cracking or damage.
- f. Scheduling coordination will need to take place with the City to determine an anticipated delivery timeline.

- g. Damaged units which are not rejected on-site will need to be repaired and left in good clean condition per the Project Specifications (Located in Attachment C), Exhibits (Located in Attachment B), and to the satisfaction of the City Engineer, or party designated by the City,.

B. Inspection Requirements:

1. The Manufacturer shall provide a QA/QC review of all concrete forms and any other equipment used to produce the precast modular units.
2. Before fabricating the precast modular units, the Manufacturer shall produce a minimum of four complete precast modular units for each module or unit type, for review by the Manufacturer's and City's Engineer. These four mock-up modules will need to be approved at the location of fabrication prior to fabricating any additional units. Incorporate full-scale details of finishes, textures, and transitions in precast units. The Manufacturer shall adhere to the following requirements:
  - a. After all submittals have been approved, the Manufacturer shall build mock-up samples as indicated on the Manufacturer's drawings including precast modular units complete with anchors, connections, and joint fillers.
  - b. Approval of mock-ups (approval by City or party designated by the City) does not constitute approval of deviations from the Contract Documents contained in mockups unless the Engineer specifically approves such deviations in writing.
  - c. Subject to compliance with requirements, approved mock-ups may become part of the completed work if undisturbed at time of Substantial Completion.
3. Upon completion of the mock-up units, the Engineer or designee will complete an on-site inspection to verify compliance with the specifications prior to the Manufacturer proceeding with further production.
4. The City will appoint, employ, pay and/or provide approval for services of an independent party to perform inspection and testing or will perform inspection and testing itself. The City or independent party will perform inspections, testing, and other services specified in the specifications and as required by the Engineer.
  - a. The City or independent party shall submit reports to the Engineer indicating observations, results of tests, and compliance or non-compliance with the Contract Documents.
  - b. The Manufacturer shall cooperate with the City or independent party and furnish samples of materials, design mix, equipment, tools, storage, and assistance as requested.
  - c. The Manufacturer shall notify the Engineer 48 hours prior to the expected time for operations requiring inspection and laboratory testing services.

- d. Retesting required because of non-compliance to specified requirements shall be performed by the same party (City or independent party) on instructions by the Engineer and/or City. The Manufacturer shall bear all costs from such retesting at no additional cost to the City.
    - e. Photographs shall be taken by both the Manufacturer and the Engineer and will be used as a right of material rejection at the time of delivery.
  5. The Manufacturer shall inspect the precast modular units immediately upon delivery prior to installation and shall reject damaged and defective items. The City reserves the right to inspect and/or have a designated inspector provide additional oversight during the installation process who may reject damaged items at their discretion. The Manufacturer is not responsible for the installation of the precast concrete units. The Manufacturer will not be held responsible for damage that occurs during installation by the contractor installing said modular units.
- C. City Responsibilities
- The City will:
1. Provide the available copies of plans and specifications at no additional cost to the selected Manufacturer for the manufacturing services.
  2. After the precast modular units have been delivered to the Contractor, placed in their final location, and inspected and approved by all parties, the City will accept ownership of the precast modular units and provide payment to the Manufacturer once all conditions listed in the Specifications (Attachment C), Standard Contract Agreement (Attachment D), and this Request For Proposal have been met. Payments will be subject to retainers per Section 13.

## **7. PROPOSAL SUBMITTAL REQUIREMENTS**

- A. Proposals must be submitted on 8 1/2" x 11" paper (foldouts acceptable) in one sealed envelope as follows:
  1. The proposal and Proposal Estimate should be limited to 15 pages (excluding resumes, past projects within Southern California, and abstract). Proposal must be submitted in a sealed envelope labeled on the outside with:  
**"Proposal for Precast Concrete Modular Units Manufacturing for Project No. 1515 – Carson Stormwater and Runoff Capture Project".**
- B. Submit eight (8) identical sets of the Precast Concrete Modular Units Manufacturing proposal and an electronic version of the proposal on a thumb drive or disc to:

City of Carson, **City Clerk's Office**  
701 E. Carson Street  
Carson, CA 90745  
Attention: Department of Public Works  
Gilbert M. Marquez, P.E.  
City Engineer

- C. **All proposals must be submitted to, received and date stamped by the City Clerk's Office, no later than 4:00 PM on Thursday July 13, 2017. No late proposals will be accepted.** Proposals received after the due date and time will not be considered for this project. It is the Manufacturer's sole responsibility to ensure that proposals are received by the City Clerk's office prior to the scheduled closing time specified in this document.
- D. The City reserves the right to reject any or all proposals and/or waive any informality therein. The City has designated Mr. Julio Gonzalez as primary City contact. Mr. Gonzalez can be reached by email at [JGonzale@carson.ca.us](mailto:JGonzale@carson.ca.us).

Clarifications and further information must be requested in writing no later than **4:00 pm Wednesday July 6, 2017. Initial inquiries must be submitted ONLY in writing via e-mail to both Julio Gonzalez and Kristen Ruffell at [JGonzale@carson.ca.us](mailto:JGonzale@carson.ca.us) and [KRuffell@lacsdsd.org](mailto:KRuffell@lacsdsd.org), respectively.** Inquiries through oral communications will not be considered. Subsequent response that may have significant impact to the understanding of the proposal document will be shared via written addendum with other interested Manufacturers. All other inquiries received after said date will not be considered.

**Pre-Contractual Expenses:**

The City shall not, in any event, be liable for any pre-contractual expenses incurred by Manufacturers in the preparation of their proposals. Manufacturers shall not include any such expenses as part of their proposal.

**8. RIGHTS RESERVED BY THE CITY OF CARSON**

- A. The City reserves the right to:
1. Reject any or all proposals,
  2. Verify all information submitted in the proposal,
  3. Select the proposal most advantageous to the City, and
  4. Negotiate the final contract with any Manufacturer(s) as necessary to serve the best interests of the City.
- B. The proposal shall be signed by an official authorized to bind the Manufacturer and shall contain a statement to the effect that the proposal is valid for 90 calendar days. The City intend to notify Manufacturers, before the end of the 90-day period, of the City's decision regarding their proposal.
- C. All reports, drawings and materials prepared for this project become the sole property of the City and may not be reproduced without the permission of the City.

## 9. PROPOSAL FORMAT AND CONTENTS

The Manufacturer's Proposal must be prepared to include **the Proposal Services and Proposal Estimate in ONE sealed envelope.**

A. The Precast Concrete Modular Units Manufacturing Proposal shall include the following contents:

1. Company Background
  - a. Cover Letter shall be no more than two pages that includes executive summary of the Manufacturer's background and related experience including the primary personnel's qualifications as a manufacturer of precast concrete modular units.
  - b. References from other municipalities and public agencies for similar projects
  - c. Acknowledgement on the validity of this proposal for a 90 day period and acceptance of the terms and conditions of this proposal document.
  - d. Acknowledgement of providing all required insurance coverage in accordance with the Standard Contract Agreement (Agreement).
  - e. The Manufacturer must review, understand and acknowledge the City's Agreement attached herein.
2. Project Understanding, Approach, and Practice
  - a. Clearly describe the work and specifically identify items that were not included in the proposal document. Present a well-conceived work plan which establishes the understanding of the City's objectives and work requirements and substantiates the Manufacturer's ability to satisfy those objectives and requirements including but not limited to the maximum proposed storage volume capacity and its associated footprint and waterproofing plan, approach, and specifications. Describe the proposed approach for addressing the required work outlining the activities that would be undertaken in completing the various tasks and specifying who would perform them. The Manufacturer may also suggest technical or procedural innovations that they have used successfully on other projects which may facilitate the completion of this project and possibly reduce the cost to the City.
  - b. Provide all information related to third party storage property including but not limited to the address, owner's information, proof of insurance, financial records, mortgage records, history of any liens, security information, property condition, and contact information.
  - c. Quality Control: Identify measures that the Manufacturer will employ to ensure quality control as well as budget and schedule control based on project requirements discussed hereon.
3. Baseline Schedule
  - a. Provide a detailed baseline schedule that identifies the number of working days required for each task listed. The Manufacturer's schedule is subject to the City's submittal review and approval process. All comments by the City shall be answered and addressed by the Manufacturer in revisions to

the detailed baseline schedule no later than 6 working days after the date of the City's comments.

- b. The following lists the key tasks for the project. However, the City will work with the Manufacturer to refine the time periods.

- i) Notice to Proceed
- ii) Submit Required Submittals
- iii) QA/QC of all Formwork
- iv) Production and Approval of Mock-ups
- v) Complete Production of Precast Modular Units
- vi) Inspection and Testing
- vii) Storage
- viii) Delivery

- c. The proposed time periods for each task will be included in the final Agreement and late completion of the milestones of each task will be subject to liquidated damages.

4. Project Team

- a. Discuss past projects completed in Southern California.
- b. State the names of the project team members, including the Submanufacturers (if any) that will be utilized.
- c. Specific references for the Resident Engineer and other team members of previous similar projects from other municipalities and public agencies.
- d. Team organization chart that will clearly delineates communication/reporting relationships of the project team.
- e. Provide qualifications and location(s) for the precast plant(s).
- f. Include the responsibilities of each team member for this project with their qualifications. Submit resume of each team member and briefly state their experience similar to this type of project. Emphasis should be placed on experience preparing similar projects for other municipalities and public agencies.
- g. *The City reserves the right to approve any team member changes.*

5. MBE/WBE/DBE Utilization

- a. Minority Business Enterprise (MBE), Women's Business Enterprise (WBE) and/or Disadvantaged Business Enterprise (DBE) participation for this service is encouraged.

B. The **Proposal Estimate** shall include:

- 1. Estimated **Project Cost:** The Manufacturer will be required to submit a cost break-down of the work on a spreadsheet.

The Manufacturer may add additional tasks and costs, if in his or her opinion such tasks will be necessary for the successful completion of the project. The additional tasks will be identified under optional tasks. The grand total cost of the services shall be based on a **"Not to exceed fee"**.



Payment items are described in detail in the Specifications Section 01025 – Measurement and Payment. The following items with their associated costs shall be included with the Proposal Estimate:

1. Cost for 11-acre-feet of storage (Includes delivery to third party storing location and delivery to Park).
2. Third party storing cost for 11-acre-feet of storage (Weekly).
3. Cost for additional storage in 0.5 acre-foot increments (Includes delivery to Park)\*.
4. Cost to deliver additional storage to third party location in 0.5 acre-foot Increments\*.
5. Cost to store additional storage in 0.5 acre-foot increments at third party location\*.

\*Proposal Items three, four, and five are additional tasks that may or may not be executed. If the City decides to increase the storage capacity of the project these Proposal Items will be executed under a separate Notice to Proceed (NTP). Although these will be executed under a separate NTP, the selected Manufacturer will be required to fabricate, deliver, and store the additional precast modular units at the agreed upon price in this Agreement. The agreed upon price will remain effective until April 1, 2018. The additional work done through this NTP will be subject to the same guidelines and meet the same requirements covered in the Agreement.

## **10. SELECTION SCHEDULE**

The tentative Invitation to Proposal schedule for the project is as follows:

- Mandatory Pre-Proposal Meeting June 29, 2017
- Final Questions by Manufacturers July 6, 2017
- Manufacturer's Proposal Due Date July 13, 2017
- Top Three Highest Ranked Manufacturers Selected August 3, 2017
- Finalize Negotiations, Schedule, and Contract August 17, 2017
- Award of Contract to Selected Manufacturer September 5, 2017

## **11. SELECTION PROCEDURE AND CRITERIA**

- A. Manufacturer selection will be based on the lowest price and most qualified proposer. The selection criteria are as follows:
  - I. Company's professional service experience, including subcontractors, with similar projects for other municipalities or public agencies. Past experience should focus on projects completed within the last five years and located within California (Preferably Southern California). Clear and organized



composition of the proposal. Project Team's experience and qualification and their responsibilities on managing this project (20%)

- II. Thoroughness of project understanding and description of scope of work. Ability of the Manufacturer to perform the specific tasks outlined in the proposal document. Degree of responsiveness with regard to the Manufacturer addressing the items listed in the proposal document and meeting the Proposal Requirements and schedule. (20%)
  - III. Proposal Cost Estimate: The City encourages competitive bidding and will incorporate the bidder's Proposal Estimate into the evaluation ( Items number one and two will be considered for the base bid as stated in the Proposal Format and Content section 9(B)(1)). (45%)
  - IV. Proposal Cost Estimate: The City encourages competitive bidding and will incorporate the bidder's Proposal Estimate into the evaluation ( Items number three, four and five will be considered for the base bid as stated in the Proposal Format and Content section 9(B)(1)). (10%)
  - V. MBE/WBE/DBE Utilization: MBE/WBE/DBE participation for this service is encouraged. (5%)
- B. Selection of the Manufacturer:
1. A selection committee will review and rate the submitted proposals. The committee will select and rank the top three Manufacturers for further consideration. Only the Proposal Estimates from the top three Manufacturers will be used for comparison. These three proposal estimates will be the basis for negotiating with the highest ranked Manufacturer. If unsuccessful, the City will negotiate with the second highest ranked Manufacturer, and if unsuccessful, will negotiate with the third highest ranked Manufacturer. The City reserves the right to negotiate a contract with the second ranked Manufacturer if a final fee cannot be agreed upon with the first Manufacturer selected and the right to negotiate with the third ranked Manufacturer if a final fee cannot be agreed upon with the second ranked Manufacturer.
  2. The City reserves the right to accept no proposals.

## **12. CONTRACT AGREEMENT**

The selected Manufacturer will be required to enter into a Standard Contract Agreement (Agreement), provided in Attachment D, with the City. The City will prepare an Agreement that incorporates requirements of the Invitation to Propose, any written addenda, and the Manufacturer's proposal. The Invitation to Propose, any written addenda, and the Manufacturer's proposal will be included in the Agreement as references. Upon execution of the Agreement by the City and the Manufacturer, the Agreement will be the main contract document for the completion of the project. The Manufacturer, by submitting a response to this Invitation to Propose, waives all right to protest or seek any legal remedies whatsoever regarding any aspect of this

document. A copy of the *City Standard Contract Agreement (Attachment D)* is attached and the Manufacturers submitting proposals must read the standard terms of the Agreement very carefully and state their full understanding and acceptance of the Agreement. The terms and conditions of the Agreement will be an integral part of this Invitation to Propose. Any deviation from the Agreement must be submitted in writing along with the proposal. No changes to the Agreement shall be allowed unless it is reviewed and approved prior to the selection of the Manufacturer.

### **13. COMPLETION AND ACCEPTANCE**

- A. The Manufacturer shall submit a written assertion that the work has been completed. If, in the Engineer's judgment, the work has been completed in accordance with the Agreement and Contract Documents, the Engineer will set forth in writing the date the work was completed. This will be the date when the Manufacturer is relieved from responsibility to protect and maintain the work and to which liquidated damages will be computed.
- B. Acceptance will occur after all of the requirements contained in the Agreement and Contract Documents have been fulfilled. If, in the Engineer's judgment, the Manufacturer has fully performed the Agreement, the Engineer will recommend to the City that the Manufacturer's performance of the Agreement be accepted.

### **14. PROGRESS PAYMENTS**

- A. The City will make payments to the Manufacturer based on the percentage of completed precast modular units inspected and delivered to the third party off-site storage. The Manufacturer shall send invoices to the City. Each monthly invoice must be on an Excel spreadsheet with the number of completed units inspected and delivered to the third party storage and all tasks shown. Payment may not exceed the budgeted amount and are subject to a 25% retainer by the City. Upon delivery to the Park and once acceptance by the City or designee has been made, the first 20% will be payable. The additional 5% payment retainer will be withheld until the conditions discussed in the subsequent section have been met. The City, at its own discretion, may modify, add, or delete any of the tasks thus increasing or lowering the task cost based on Manufacturer's hourly rate. The selected Manufacturer is required to submit time sheets for each personnel when sending invoices to the City for payment of the completed units.
- B. Payment Retention: A 5% retention will be withheld from all payments in accordance with the Standard Specifications for Public Works Construction 2015, as amended by the City, until 35 working days after the City's final acceptance of the precast concrete modular units and after all deliverables required in the Agreement have been received. Should the precast concrete modular units fail to meet the performance criteria specified in this proposal during the project period, a portion or all of the final two payment amounts may be withheld and may be used by the City to provide the necessary remedy.

**15. LIQUIDATED DAMAGES**

- A. Failure of the Manufacturer to complete the work within the time allowed will result in damages being sustained by the City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified for completion of the work, as adjusted with any approved extensions, the Manufacturer shall pay to the City, or have monies withheld from monies due to it, the sum of \$1,000 per day, unless otherwise noted in the Agreement.
- B. Execution of the Agreement shall constitute agreement by the Manufacturer and the City that \$1,000 per day is the minimum value of the costs and actual damage caused by the failure of the Manufacturer to complete the work within the allotted time. Such sum is liquidated damages and shall not be construed as a penalty, and may be deducted from payments due to the Manufacturer if such delay occurs.

**16. PREVAILING WAGES**

For all work performed and for each craft or type of worker needed to execute the work contemplated under the Agreement, the Manufacturer, pursuant to Section 1770, et seq. of the California Labor Code, shall not pay less than the general prevailing wage rates, as determined by the Director of the State of California Department of Industrial Relations for Los Angeles County. For all work performed, the Manufacturer shall also comply with Labor Code 1777.5 regarding the employment of indentured apprentices on public works projects during the production of the precast modular units. This obligation will extend to all apprenticeable occupations utilized for the project. The Manufacturer is directed to obtain the general prevailing wage rates directly from the State of California Department of Industrial Relations at its web site (<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>) or by requesting a CD from the State. The Manufacturer shall keep an up-to-date listing of the general prevailing wage rates posted at all times.

**17. PRICE ASSURANCE**

- A. The Manufacturer's Proposal Estimate will include all project costs as stated in this Invitation to Propose. This price, as quoted by the Manufacturer, will be the Manufacturer's price for the project.
- B. If for any reason the City is unable to execute an Agreement for the project with the Manufacturer within 90 calendar days after the Proposal due date, the Manufacturer will remain bound by its Proposal, subject to a monthly price change equal to the change in the Producers Price Index (PPI) for Finished Goods (<http://data.bls.gov/cgi-bin/surveymost?wp>) between the 90-day period and the Proposal due date. The PPI is published in the NEWS for the U.S. Department of Labor, Bureau of Labor Statistics.

## **18. CONFIDENTIALITY**

- A. "Confidential Information" means any or all materials, data, systems, computer code, documents, diagrams, charts, notes, correspondence, business plans, strategies, product ideas, facility plans, technology, techniques, trade secrets, processes, information, materials and ideas, customer lists, financial information of the Manufacturer, the Manufacturer's proposal, or the project that are disclosed or otherwise provided by the Manufacturer in writing that, except as otherwise provided in this section, constitute trade secrets pursuant to the provisions of California Civil Code Section 3426.1, Subdivision (d) that the Manufacturer identifies as Confidential Information. The Manufacturer shall identify, in writing in its Proposal, the specific information that the Manufacturer considers to be Confidential Information. Confidential Information excludes information and ideas that:
1. Are or become publicly known other than through a breach of this section;
  2. Were already known to the City and not subject to any obligation of confidentiality at the time of disclosure;
  3. Were lawfully received by the City from a third-party having full rights of disclosure without breach of this section;
  4. Were independently developed by the employees of the City who have not had access to or received any Confidential Information under this Invitation to Propose;
  5. Are subject to the Maintenance of Confidentiality, below; or
  6. Various written documents the City distributes to the public and regulators that will describe the Manufacturer's product, including supportive information such as photographs.
- B. Maintenance of Confidentiality
- The City shall keep strictly confidential, at all times during the Project, any and all Confidential Information, shall not directly or indirectly disclose or make accessible in any way to any Third Person (as defined below) whatsoever any Confidential Information, and shall not, at any time disclose Confidential Information to any Third Person during the Project without the prior written consent of the Manufacturer. The term "Third Person" shall mean any individual, unincorporated organization, governmental authority or agency, general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association or other entity that is not a director, officer, agent or employee of the City with a need to know the Confidential Information to enable the City to exercise its rights and perform its obligations pursuant the Invitation to Propose or the Manufacturer's proposal. Without limiting the generality of the foregoing, without the Manufacturer's prior written consent, the City shall not disclose Confidential Information of the Manufacturer to any Third Person, contractor or consultant that is not a director, officer, agent or employee of the City.
- C. Legally Required Disclosure

The City is subject to the provisions of the California Public Records Act, Government Code section 6250, et seq. (the "PRA"). In the event that the City is compelled, by deposition, interrogatory, subpoena, request under the PRA, civil investigative demand, or other governmental or regulatory requirement, to disclose information that the Manufacturer considers to be Confidential Information, the City shall furnish the Manufacturer prompt written notice of any such request or proceeding so that the Manufacturer may attempt to establish that the Confidential Information is exempt from public disclosure under applicable law, seek an appropriate protective order or other remedy or waive its claims of confidentiality. If the Manufacturer does not promptly move to establish an exemption from disclosure, obtain a protective order or other remedy, the City may disclose only that portion of the Confidential Information that the City determines is legally subject to disclosure. In the event of any demand, claim, or proceeding filed by a third party to seek disclosure or release from the City of Confidential Information, the City shall (a) notify the Manufacturer promptly upon receipt of such demand, claim, or proceeding and (b) allow the Manufacturer, at the Manufacturer's sole cost and expense, to control the defense or resolution of that claim or proceeding. If the Manufacturer elects to defend such a proceeding in accordance with this paragraph, the City will refrain, to the extent permitted by law, from disclosing any Confidential Information that is the subject of that proceeding until the entry of a final, non-appealable judgment requiring that disclosure or other final resolution of that proceeding. The Manufacturer shall pay any attorney's fees, costs, or sanctions awarded to the third party, and shall hold the City, its directors, officers, agents, employees, and all of them, harmless from same. The City provides no representations or warranties regarding the Manufacturer's ability to prevent the disclosure of the Confidential Information under the PRA or as otherwise required by law.

## **19. FEES AND ROYALTIES**

All fees or royalties required for payment regarding any patented invention, article, or arrangement must be included in the fixed price provided on the Proposal Estimate. The Manufacturer shall protect and hold the City harmless against any and all demands or claims for any such fees or royalties, whether the demands or claims are made during the project or after its completion.

## **20. EXTRA WORK**

- A. Work beyond the requirements of this Invitation to Propose can be authorized by the City only upon the prior written authorization of the City, or its designated representative. Such extra work will be performed through a Change Order.
- B. The written terms and provisions contained in this Invitation to Propose supersede all verbal statements and previous written documents made by or for

the City or the Engineer, and any other statements made by the Manufacturer or the City will not be included in the Agreement.

## **21. TERMINATION**

A. Termination Prior to Expiration of Term

- B. This Section shall govern any termination of the Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon 30 calendar days' written notice to Manufacturer, except that where termination is due to the fault of the Manufacturer, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Manufacturer reserves the right to terminate this Contract at any time, with or without cause, upon 60 calendar days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Manufacturer may determine. Upon receipt of any notice of termination, Manufacturer shall immediately cease all work hereunder except such as may be specifically approved by the Contract Officer. Except where the Manufacturer has initiated termination, the Manufacturer shall be entitled to compensation, with exception to withheld retainers as stated in Section 14 "Progress Payments," for all acceptable work rendered and delivered to the Project Site which meets the Project Specifications, prior to the effective date of the notice of termination and for any work authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3 of the Agreement. In the event the Manufacturer has initiated termination, the Manufacturer shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2 of the Agreement. Termination for Default of Manufacturer

If termination is due to the failure of the Manufacturer to fulfill its obligations under the Agreement, City may, after compliance with the provisions of Section 7.2 of the Agreement, take over the work and prosecute the same to completion by contract or otherwise, and the Manufacturer shall be liable to the extent that the total cost for completion of the work required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Manufacturer for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

C. Suspension of Work

1. The City may at any time, by notice in writing to the Manufacturer, suspend any part or all of the work for such period of time as may be deemed necessary either to prevent improper execution of work on the project, to prevent interference with other City work, or to comply with the orders of

another public agency having authority in the matter. Except as herein provided, the Manufacturer shall have no claim for damages or additional compensation, including the cost of equipment downtime, because any such suspension.

2. Upon receipt of notice of such suspension, the Manufacturer shall immediately discontinue all work so suspended, except for such operations necessary to prevent loss or damage to work already executed, as may be directed by the City.
3. Work shall be resumed by the Manufacturer upon 10 working days' written notice from the City, and if the suspension has caused the need for additions to the work, the Manufacturer will be paid for such additional work on the same basis as for extra work and for all costs of work performed in accordance with orders of the City during said suspension, provided that the Manufacturer shall not be paid as extra work for any work not suspended by said notice.
4. In the event of any suspension of the work in whole or in part, the Manufacturer will be entitled to an extension of time to complete the work to the extent that the suspension was not the fault of the Manufacturer. If such suspension is due to failure on the part of the Manufacturer to carry out orders given or to perform any provision of the Agreement, the days on which the suspension order is in effect will be considered working days.

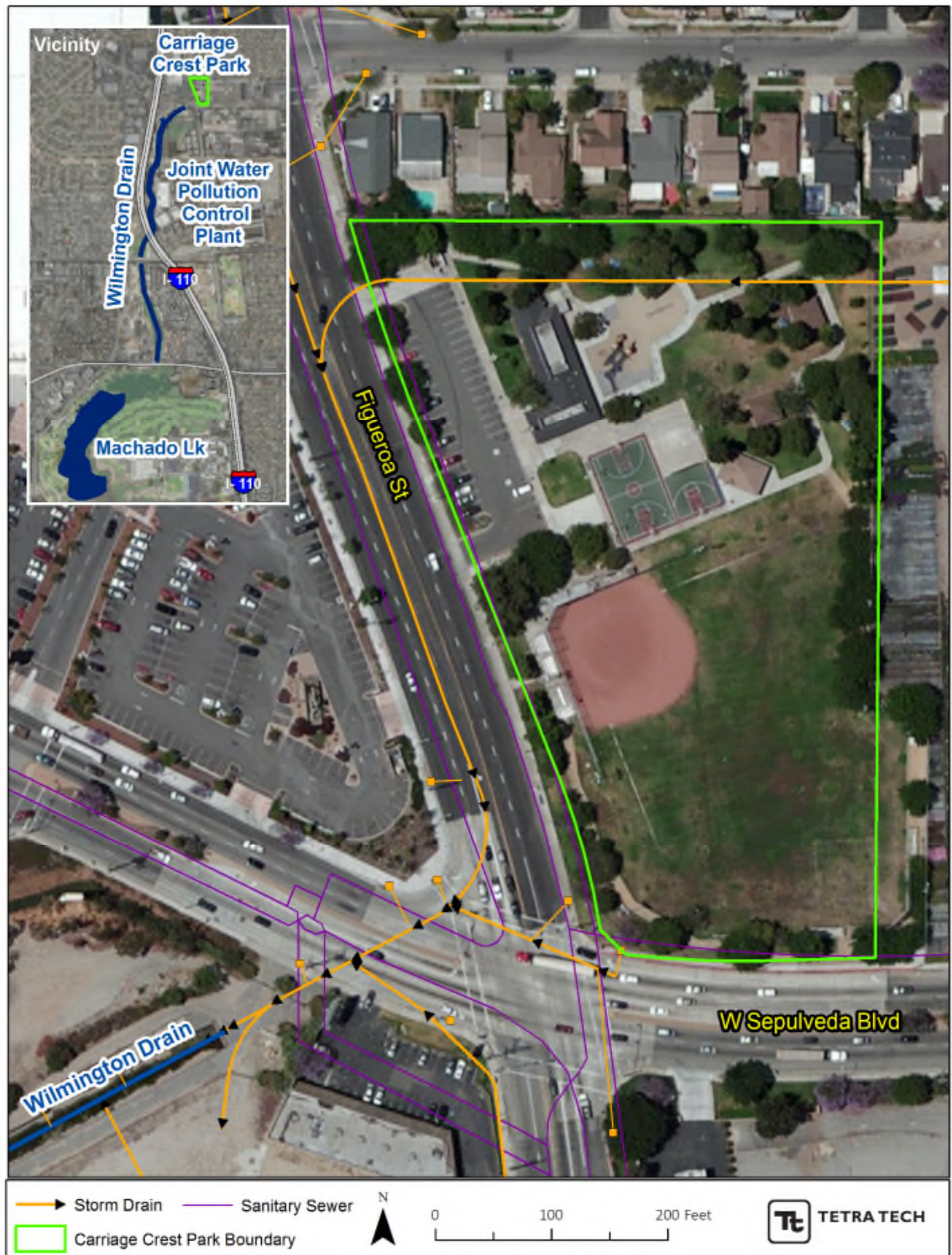
**D. Force Majeure**

Loss or damage arising out of the nature of the work, without fault or negligence of the Manufacturer, or from the action of the elements, or from floods or overflows, or from groundwater, or from any unusual obstruction or difficulty, or any other natural or existing circumstance whether known or unforeseen, which may be encountered in the execution of the work, shall be sustained and borne by the Manufacturer at his own cost and expense. The Manufacturer will not be responsible for damage to the work caused by an Act of God as described in Section 7105 of the Public Contract Code.

## **Attachment A – Vicinity Map**



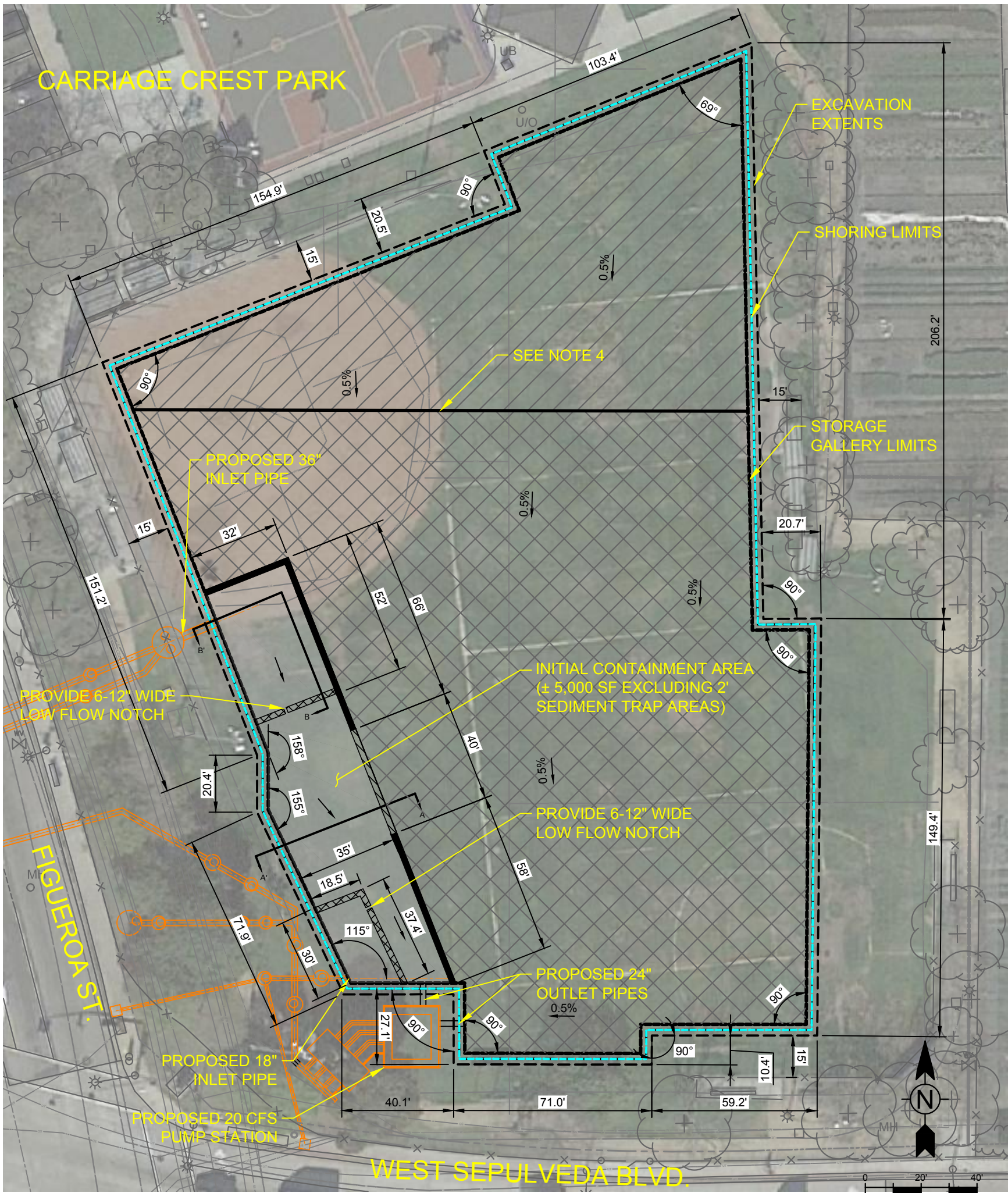
## Vicinity Map



## **Attachment B – Project Plan and Section**



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LEGEND:

- SUBGRADE SLOPE (0.5% MIN, 1% MAX)
- INITIAL CONTAINMENT/SETTLEMENT AREA
- STORAGE AREA (11 AC-FT MINIMUM) APPROXIMATE LIMITS (SEE NOTE 2)
- POTENTIAL STORAGE AREA EXPANSION (> 11 AC-FT) MAXIMUM FOOTPRINT
- FULL HEIGHT WALL (WATER-TIGHT)
- ± 4' WEIR WALL (WATER-TIGHT)
- ± 2' TALL BAFFLE WALL
- MAXIMUM EXCAVATION EXTENTS
- MAXIMUM SHORING LIMITS

GENERAL NOTES:

- PRE-CAST MANUFACTURER TO PROVIDE WATER-TIGHT DETAILS FOR EXTERIOR OF SYSTEM AS WELL AS ALL PIPE CONNECTIONS PER PROJECT SPECIFICATIONS.
- PRE-CAST MANUFACTURER SHALL PROVIDE A MINIMUM 11 AC-FT OF WATER STORAGE VOLUME WITH AN ADDITIONAL 1 FOOT OF FREEBOARD WITHIN THE STORAGE AREA SHOWN.
- MAXIMUM EXCAVATION AND SHORING LIMITS SHOWN. IF REDUCED STORAGE OPTION IS EXERCISED THEN LIMITS OF EXCAVATION AND SHORING SHALL BE REDUCED TO BE A MINIMUM 2' SETBACK FROM STORAGE LIMITS UNLESS OTHERWISE REQUIRED BY MANUFACTURER.
- PREFERRED METHOD OF STORAGE LAYOUT IS FROM SOUTH TO NORTH AS INDICATED.
- THE ALIGNMENT OF ALL INTERNAL WALLS ARE CONCEPTUALLY DRAWN TO SHOW THE INTENT OF THE SYSTEM. CONFIGURATION IS SUBJECT TO CHANGE DURING FINAL DESIGN.
- ALL PIPE CONNECTION WILL NEED TO BE EXTENDED/TRIMMED AS NEEDED DEPENDING ON PRODUCT SELECTION.
- ALL DIMENSIONS ARE APPROXIMATE AND ARE INTENDED TO SHOW MAXIMUM EXCAVATION LIMITS.
- VENTING SYSTEM NOT SHOWN.



**TETRA TECH**

www.tetrattech.com

3475 E. Foothill Blvd.  
Pasadena, CA

Phone: (626) 351-4664 Fax: (626) 351-5291

CITY OF CARSON

CARRIAGE CREST PARK

STORMWATER CAPTURE PROJECT -  
PRECAST UNDERGROUND STORAGE LIMITS

Project No.: 135-01297-16021

Date:

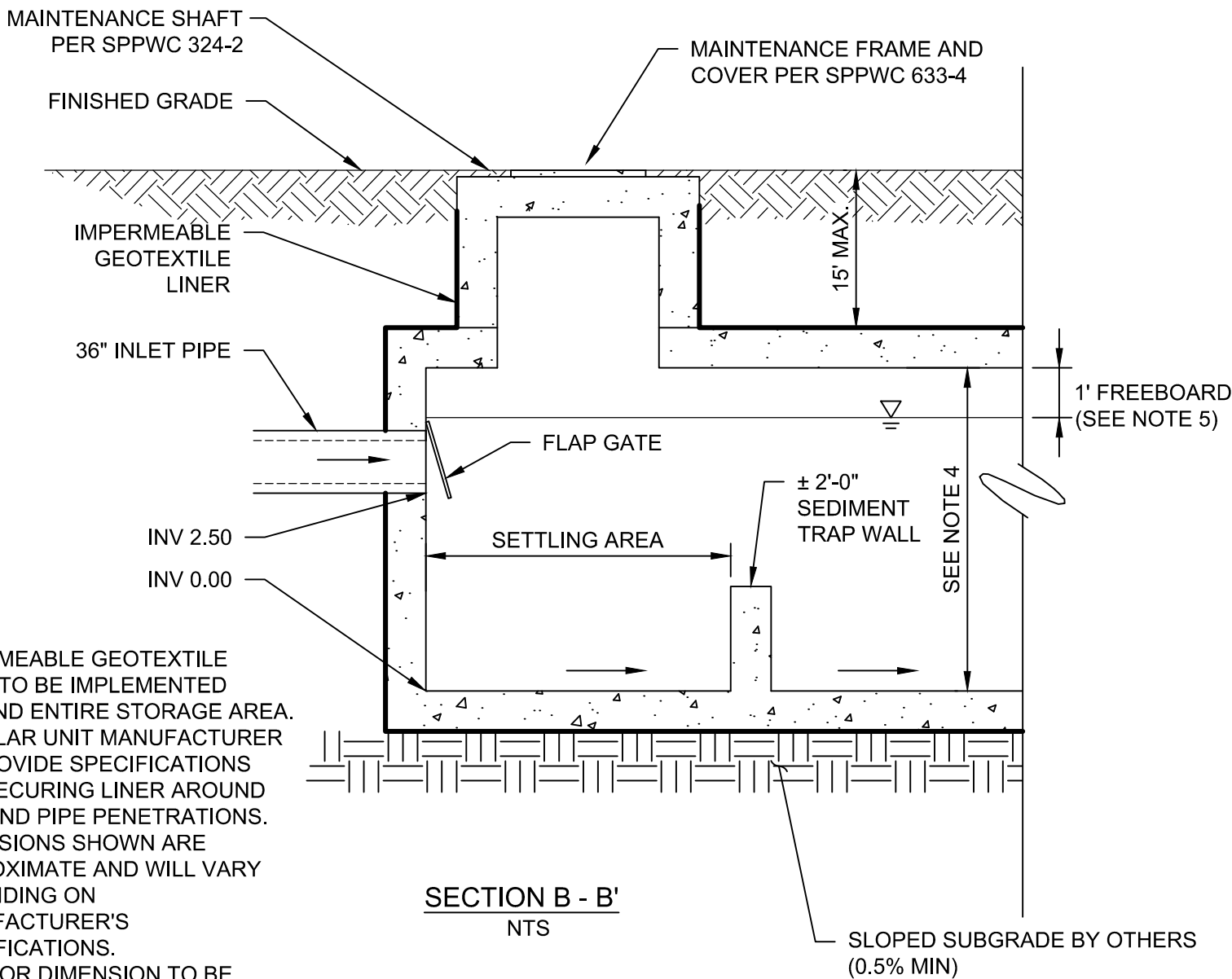
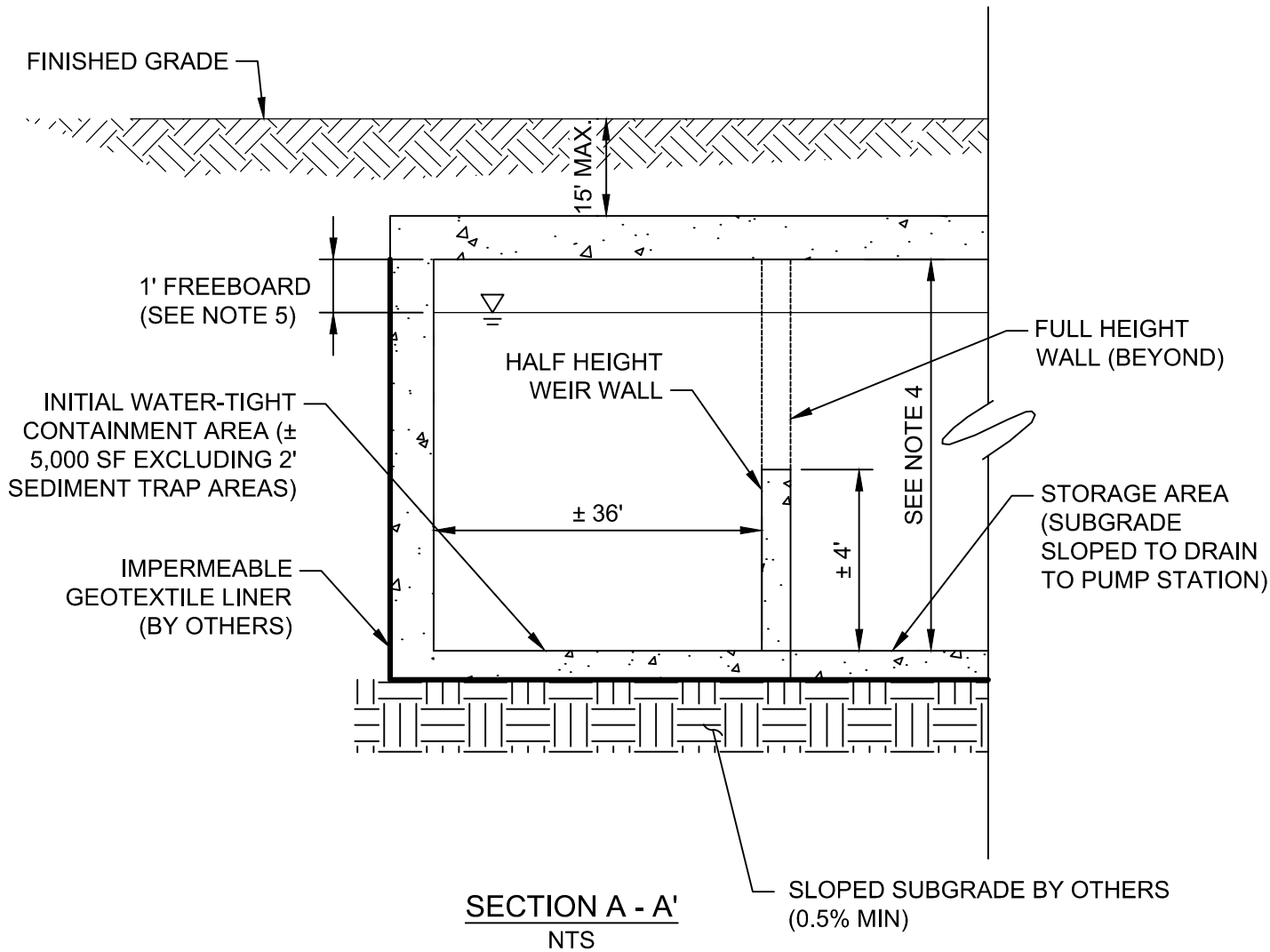
Designed By: JH

Supplemental

EH 1

Bar Measures 1 inch

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- NOTES:
1. IMPERMEABLE GEOTEXTILE LINER TO BE IMPLEMENTED AROUND ENTIRE STORAGE AREA.
  2. MODULAR UNIT MANUFACTURER TO PROVIDE SPECIFICATIONS FOR SECURING LINER AROUND UNIT AND PIPE PENETRATIONS.
  3. DIMENSIONS SHOWN ARE APPROXIMATE AND WILL VARY DEPENDING ON MANUFACTURER'S SPECIFICATIONS.
  4. INTERIOR DIMENSION TO BE DEPENDENT ON MANUFACTURER.
  5. VOLUME OF STORAGE SHALL ACCOUNT FOR FREEBOARD.



**TETRA TECH**

www.tetrattech.com

3475 E. Foothill Blvd.  
Pasadena, CA

Phone: (626) 351-4664 Fax: (626) 351-5291

CITY OF CARSON

CARRIAGE CREST PARK

STORMWATER CAPTURE PROJECT -  
UNDERGROUND STORAGE SECTIONS

Project No.: 135-01297-16021

Date:

Designed By: JH

Supplemental  
EH 2

Bar Measures 1 inch

## **Attachment C – Specifications**

## **Attachment D- Standard Contract Agreement**

**CONTRACT SERVICES AGREEMENT**

**By and Between**

**CITY OF CARSON**

**and**

---



**AGREEMENT FOR CONTRACT SERVICES  
BETWEEN THE CITY OF CARSON AND**

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THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 by and between the CITY OF CARSON, a California municipal corporation ("City") and \_\_\_\_\_, a \_\_\_\_\_ ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Carson's Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase "highest



professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

## 1.2 Consultant’s Proposal.

The Scope of Service shall include the Consultant’s scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

## 1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

## 1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

## 1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant’s risk until written instructions are received from the Contract Officer.

## 1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City’s own negligence.

### 1.7 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

### 1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

### 1.9 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

### 2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

### 2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less

contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

### 2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

### 2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and subcontractor contracts. Subcontractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

### 2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

## **ARTICLE 3. PERFORMANCE SCHEDULE**

### 3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

### 3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

### 3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

### 3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

## **ARTICLE 4. COORDINATION OF WORK**

### 4.1 Representatives and Personnel of Consultant.

The following principals of Consultant ("Principals") are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

_____ (Name)	_____ (Title)
_____ (Name)	_____ (Title)
_____ (Name)	_____ (Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore,

the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

#### 4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

#### 4.3 Contract Officer.

The Contract Officer shall be [\_\_\_\_\_ or] such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

### **ARTICLE 5. INSURANCE AND INDEMNIFICATION**

#### 5.1 Insurance Coverages.

The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years

following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(f) **Additional Insurance.** Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

## 5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.

All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

### CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

\_\_\_\_\_  
Consultant Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or any automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. 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.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3.

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

### 5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant



hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

#### 5.4 Sufficiency of Insurer.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the risk manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.

### **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

#### 6.1 Records.

Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts

from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

## 6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

## 6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

## 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such

information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant’s conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

### **7.2 Disputes; Default.**

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices

during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### 7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

### 7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

### 7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

### 7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 et. seq. and 910 et. seq., in order to pursue a legal action under this Agreement.

#### 7.7 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

#### 7.8 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

#### 7.9 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### 8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may

become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

## 8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

## 8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

## 8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

# ARTICLE 9. MISCELLANEOUS PROVISIONS

## 9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and

to the attention of the Contract Officer (with her/his name and City title), City of Carson, 701 East Carson, Carson, California 90745 and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

#### 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

#### 9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

#### 9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

#### 9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

#### 9.6 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be



“remote” or “non-interests” pursuant to Government Code Sections 1091 or 1091.5. Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant’s Authorized Initials \_\_\_\_\_

9.7 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF CARSON, a municipal corporation

\_\_\_\_\_  
Albert Robles, Mayor

**ATTEST:**

\_\_\_\_\_  
Donesia L. Gause, City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Sunny K. Soltani, City Attorney

**CONSULTANT:**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2017 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	_____
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL	TITLE OR TYPE OF DOCUMENT _____
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	NUMBER OF PAGES _____
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	DATE OF DOCUMENT _____
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____ _____		SIGNER(S) OTHER THAN NAMED ABOVE _____

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<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	DATE OF DOCUMENT _____
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____ _____		SIGNER(S) OTHER THAN NAMED ABOVE _____

**EXHIBIT “A”**  
**SCOPE OF SERVICES**

- I. Consultant will perform the following Services:**
  - A.**
  - B.**
  - C.**
- II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**
  - A.**
  - B.**
  - C.**
- III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City appraised of the status of performance by delivering the following status reports:**
  - A.**
  - B.**
  - C.**
- IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**
- V. Consultant will utilize the following personnel to accomplish the Services:**
  - A.**
  - B.**
  - C.**

**EXHIBIT “B”**  
**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

**EXHIBIT "C"**  
**SCHEDULE OF COMPENSATION**

**I. Consultant shall perform the following tasks at the following rates:**

	<b>RATE</b>	<b>TIME</b>	<b>SUB-BUDGET</b>
<b>A.</b>	_____	_____	_____
<b>B.</b>	_____	_____	_____
<b>C.</b>	_____	_____	_____
<b>D.</b>	_____	_____	_____

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.**

**IV. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**

- A.** Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B.** Line items for all materials and equipment properly charged to the Services.
- C.** Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D.** Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

**V. The total compensation for the Services shall not exceed \$\_\_\_\_\_ as provided in Section 2.1 of this Agreement.**

**VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.**



**EXHIBIT “D”**  
**SCHEDULE OF PERFORMANCE**

**I. Consultant shall perform all Services timely in accordance with the following schedule:**

	<b><u>Days to Perform</u></b>	<b><u>Deadline Date</u></b>
<b>A. Task A</b>	_____	_____
<b>B. Task B</b>	_____	_____
<b>C. Task C</b>	_____	_____

**II. Consultant shall deliver the following tangible work products to the City by the following dates.**

**A.**

**B.**

**C.**

**III. The Contract Officer may approve extensions for performance of the Services in accordance with Section 3.2.**