



City of California City

**Building Department
21000 Hacienda Blvd
California City, CA 93505**

REQUEST FOR PROPOSAL (RFP)

To provide Engineering and Architectural Services for Building and Safety Plan Check Services.

DUEAugust 15, 2017

TIMEBefore 10:00 am

**JOE BARRAGAN, BUILDING OFFICIAL
21000 HACIENDA BLVD
CALIFORNIA CITY, CA 93505
(760) 559-6567**

EMAIL ADDRESS: JBARRAGAN@CALIFORNIACITY-CA.GOV

CITY OF CALIFORNIA CITY

Proposers are not allowed to use any California City Logos without the written permission of the City Council. Proposers are specifically directed not to contact any City personnel, other than the Contact Person indicated below, for any purpose related to this RFP. **Unauthorized contact of any City personnel may be cause for rejection of a vendor’s proposal.**

All inquiries concerning this RFP should be directed to the following Contact Person:

Joe Barragan
Building Official
Building Department
21000 Hacienda Blvd
California City, CA 93505

Envelopes/packages containing the proposals are to be marked:

PROPOSAL: “Building & Safety Plan Check Services” and **delivered to:**
City of California City
Attn: Joe Barragan
21000 Hacienda Blvd
California City, CA 93505
Telephone: (760) 373-7162

Projected Timetable

The following dates are set forth for information and planning purposes only.
These dates may be changed by the City upon notice to prospective proposers:

Issuance Date August 1, 2017
Proposal Due Date August 15, 2017
Proposal Due Time Before 10:00 a.m.

Postmark date will not constitute timely delivery. Responses received after the above time **will not** be considered. Proposers are solely responsible for ensuring timely receipt of their proposals.

GENERAL INFORMATION

A. Project Description

The City of California City ("City") Building Department requests written responses to a Request for Proposal (RFP) for selection of a qualified firm ("Consultant") to provide Building & Safety Plan Check Services on behalf of the City's Building & Safety Department.

The Consultant will be responsible for Building Plan review of structural, electrical, plumbing, mechanical, and disabled access. The City adopted and enforces the current California Building Codes with additional Municipal Code requirements for plan review of permitted residential and non-residential projects. The City is seeking qualified firms for enforcement of said codes.

The successful Consultant will have demonstrated expertise in plan review, turnaround time, and accurate corrections based on the current adopted codes.

B. PURPOSE

The purpose of this RFP is to reach an agreement with a Consultant who will produce for the City complete, timely and accurate plan reviews. Under the direction of the City's Building Official, the Consultant will serve as a coordinator and will provide the range of expertise necessary to carry out the normal functions of plan check services.

All services provided by the Consultant shall be performed by individuals who meet the qualifications, education, and certification/licensing requirements for the position. The successful Consultant shall also have the resources to provide cost effective and timely services, including providing customer service, to the City.

C. SCOPE OF SERVICES

The City has described the proposed scope of services in Exhibit A attached to this RFP which is incorporated herein by reference

D. ADDITIONAL CONSULTANT RESPONSIBILITIES

The Consultant shall be responsible for completing the specified services in accordance with the City's Professional Services Agreement (Exhibit B).

E. TERM

The term of the agreement shall be determined upon need of services and consistent with the City's policies.

F. PROPOSAL REQUIREMENTS

The proposal shall clearly address all of the information requested herein. To achieve a uniform review process and obtain the maximum degree of comparability, it is required that proposals be organized and contain all information as specified below:

- i. Cover Letter: Maximum of two pages serving as an Executive Summary which shall include an understanding of the scope of services. The RFP shall be transmitted with a cover letter that must be signed by an official authorized to bind the consultant contractually. That letter accompanying the RFP shall also provide the name, title, address, and telephone number of individuals with the authority to negotiate and contractually bind the consultant. The cover letter constitutes certification by the consultant, under penalty of perjury, that the consultant complies with nondiscrimination requirements of the State and Federal Government. An unsigned proposal or one signed by an individual unauthorized to bind the consultant may be rejected
- ii. Introduction/Information: Introduction of the service proposal, including a statement of understanding for the types of services contemplated. Provide a discussion on how the objectives of the scope of services will be accomplished. Provide the name of the firm submitting the proposal, its mailing address, telephone number, and the name of the individual to contact if further information is required. Any participating firms and proposed sub-consultants shall be identified and included in the proposal (all sub-consultants must be approved by City prior to signing the agreement with City).
- iii. The firm's approach to delivering the scope of services. Provide a description of the firm's approach to communicating effectively with City staff and officials, other jurisdictional stakeholders, and the public, to facilitate successful delivery of assigned tasks. Include a copy of firm's residential and non-residential plan check correction lists.
- iv. Firm Profile: Provide a description of the firm, including number of

professional personnel, years in business, office location(s), organizational structure (e.g., corporation, partnership, sole practitioner, etc.), areas of particular expertise, etc.

- v. Location of principal office that will be responsible for the implementation of this contract.
- vi. Resume of the Lead Consultant.
- vii. Key Personnel: Provide a summary description of the key personnel who will be involved in this project, their roles and responsibilities, and their experience in similar past projects. The proposal must name a project manager. In addition to this summary, full resumes should be provided.
- viii. Three references to include: name, address, contact person and phone number of the company, length of time services were provided, and a description of the services provided.
- ix. Cost Proposal (including hourly rate) for services. Include any sub-consultant's fee schedule, if applicable. This should include a fee schedule for services and hourly billable costs. The City adopted valuation based fee schedule which is June 2016 ICC Building Valuation Data. As part of your proposal, provide both a percentage of the plan check fee collected and an hourly rate for all other plan checks.
- x. Any other information which should be considered, such as any special services or customer service philosophy which define your firm's practices.
- xi. The firm will be required to have professional liability insurance including liability at a minimum of one million per occurrence, worker's compensation, and vehicle coverage including comprehensive and collision insurance naming the City of California City as additional insured. The proposal shall state whether such insurances will be in force at time of contract execution.

G. Submittal

Three (3) bound copies, one (1) color digital Microsoft word copy, and one (1) color digital pdf copy of the proposal must be submitted no later than 10:00 am, Tuesday, August 15, 2017. Postmarks and faxes are not

acceptable. Proposals must be titled "RFP Building & Safety Plan Check Services." All proposals and questions regarding this RFP shall be directed in writing to:

City of California City
Attn: Joe Barragan
21000 Hacienda Blvd
California City, CA 93505

No postmarked proposals will be accepted. Once submitted, proposals, including the composition of the consulting staff, cannot be altered without prior written consent of the City.

All costs associated with preparation of any proposal shall be the sole responsibility of the proposer. Each proposal shall be limited to a maximum of 6 pages, using minimum 12 point font size. Both sides of the sheet may be used. The cover letter, table of contents, resumes, and references do not count toward the 6 sheet minimum. Electronic copies of the proposal will be accepted.

*DUE DATE FOR QUESTIONS IS AUGUST 14, 2017 AT 5:00 pm.

H. Confidentiality

Prior to proposal submittal deadline, all proposals will be designated confidential to the extent permitted by the California Public Records Act. After proposal submittal deadline all responses will be regarded as public record and will be subject to review by the public. Any language purported to render confidential all or portions of the proposals will be regarded as non-effective and will be disregarded.

I. Amendments to Requests for Proposals

The City reserves the right to amend the RFP by addendum prior to the final proposal submittal date.

J. Non commitment of City

The City reserves the right to reject any and all proposals and to waive informalities and minor irregularities in any proposal reviewed. The City may reject any proposal that does not conform to the instructions provided in this RFP. Additionally, the City reserves the right to negotiate all final terms and conditions of any proposal received before entering into a final contract.

K. Conflict of Interest

The consultant shall disclose any financial, business, or other relationships with City that may have an impact on the outcome of this contract or any resulting project. The consultant shall also list current clients who may have a financial interest in the outcome of this contract.

L. Proposal Evaluation/Selection

The City intends to engage the most qualified consultant available that demonstrates a thorough understanding of the City's needs. City staff will use the following criteria to evaluate the proposals:

1.	Understanding the scope of services	Available Points =10
2.	Demonstrated professional skill and credentials	Available Points =15
3.	Related experience	Available Points =15
4.	Quality of proposal	Available Points =10
5.	Approach to performing this type of service	Available Points =10
6.	Approach to communicating	Available Points =10
7.	Familiarity with City, County, and State procedures	Available Points =20
8.	References/satisfaction of previous clients	Available Points =10

Total Points Available = 100

The City may request a qualification interview with the highest ranked consultant(s) prior to determining the final ranking. This selection will be conducted according to the City's adopted procedures. The City reserves the right to reject any and all proposals.

EXHIBIT A - SCOPE OF WORK BUILDING & SAFETY PLAN **CHECK SERVICES**

Consultant shall provide services as described in this Scope of Services and the manner in which they are performed will be in accordance with specific requirements of the City's Building Official.

1. Review Plans for compliance with applicable model codes.
2. Review plans for compliance with any state or locally mandated regulations for energy conservation and disabled access.
3. Preparation of written corrections submitted to the City's Building Department.
4. Recheck and approval of the final plans with an "APPROVED" Stamp; after all corrections have been incorporated in the plans.
5. Submittal of approved plans and supporting documents to the City.
6. Additional related services when so assigned or requested by the City's Building Official.

Building Plan Review

Perform both structural and non-structural plan review of residential, industrial, and commercial buildings for compliance to all local ordinances and state code amendments that pertain to local enforcement of building and safety, and for compliance to the adopted California Building Code, Plumbing and Mechanical Code, and Electrical Code. The scope of review may be subject to the direction of the City's Building Official.

State Energy Regulations

Provide energy calculation review in accordance with the energy law requirements. Consultant will incorporate the proper documents in the plans for use by both the inspector and the builder, facilitating improved field regulations and quality of end product.

State Noise Ordinance

Provide checking to see that both interior (and exterior, when so directed by the City) noise intrusion are properly addressed by the designer and that the necessary assemblies provide the required degree of sound attenuation in accordance with State law. If noise contour maps are submitted, plan check as to whether or not the buildings are subject to such regulations.

Federal Flood Plain Regulations

The applicability of federal flood plain regulations shall be checked and addressed during the plan review stage. This alerts the developer at the earliest possible time in order for advance planning.

Soils Engineering

Respond to the critical nature of proper building pad and site design as they apply to proposed structures by anticipating potential problems and addressing them at the plan review stage. Consultant will review soils reports and verify implementation of their design recommendations and parameters into structural design of the building as part of the building plan review. When subject to Flood Plain or Liquefaction Zone criteria, consultant will review for such compliance when so directed by the City's Building Official.

Certified Access Specialist

Consultant shall provide CASP certified plan check services including Disabled Access Regulations in Chapter 11-B and Multi-Family Disabled Access Regulations in Chapter 11-A as required under Senate Bill 1608. Consultant must have a CASP certified staff member to perform these portions of the plan checks. Consultant will be required to interpret and enforce state law and review requests for "Unreasonable Hardship" applications and recommend action should the City so desire.

General Assistance

Consultant will aid the City with general information and departmental assistance when needed in addition to providing plan check review services.

The selected consulting firm must be prepared to effectively address the following:

- A. Assist City staff in managing the plan check services for residential and non-residential projects, regular interface with City staff and other City consultants, and attendance at meetings as necessary when work is in progress
- B. Communicate, cooperate and team with City staff and other City consultants as necessary.
- C. Demonstrate the depth and breadth of the firm to provide a full range of plan check services capable of meeting the needs of any given private development or City initiated project.
- D. Provide strong emphasis on the management of multiple projects and competing priorities while maintaining quality, meeting schedules and staying within budget.
- E. Sub-consultants may be utilized for various technical reports. The City reserves the right to require the use of approved sub-consultants, particularly with respect to traffic reports, and not permit the use of sub-consultants that have not been approved.

Exhibit B
PROFESSIONAL SERVICES AGREEMENT
CITY OF CALIFORNIA CITY

THIS AGREEMENT is made and entered into this __ day of _____, 20__ (“Effective Date”), by and between the CITY OF CALIFORNIA CITY, a municipal corporation (“City”), and _____, a California _____ (“Consultant”).

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to _____ as more fully described in Consultant’s Proposal attached as Exhibit “A”; and

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

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit “A” (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

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

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

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in Consultant’s Proposal, a copy of which is attached hereto as Exhibit “A” and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. It is understood that in the exercise of every aspect of its role, within the scope of work, consultant will be representing the City of California City, and all of its actions, communications, or other work, during its employment, under this contract is under the direction of the department. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement.

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

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

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

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

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

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

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement

are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. As compensation for the provision of services outlined in Exhibit "A" and in accordance with this agreement, Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "B," attached hereto and incorporated by reference. Consultant's total compensation shall not exceed _____ Dollars (\$ _____.00). Consultant shall devote xxx hours of staff time to complete the Project.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal or in an amount exceeding \$____.00 unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

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

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

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit "C," attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

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

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of _____ months ending on _____, 20__, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. At the end of the term period, Consultant and City may mutually agree, in writing, to renew the contract for up to four (4) term periods of one (1) year each.

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

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

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

5.0. INSURANCE

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

approved by City:

Commercial general liability no less broad than ISO GC 00 01, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit. If Consultant maintains higher limits than the specified minimum limits, **(Entity)** requires and shall be entitled to coverage for the higher limits maintained by Consultant.

- (a)
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00) per claim or per occurrence and \$1,000,000 annual aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Coverage applicable to the work performed under this agreement shall be continued for three (3) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

5.2. Endorsements. The commercial general liability insurance policy and business

automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of California City and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant.."
- (b) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of California City, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of California City shall be excess and not contributing with the insurance provided by this policy."
- (c) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of California City, its officers, officials, agents, employees, and volunteers.
- (d) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

5.4. Certificates of Insurance: Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

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

6.0. GENERAL PROVISIONS

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

exhibits to this Agreement.

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

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

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

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

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

IF TO CONSULTANT:

Tel: _____
Fax: _____
Attn: _____

IF TO CITY:

City of California City
21000 Hacienda Blvd.
California City, CA 93505
Tel: 760-373-8661
Fax: _____
Attn: _____

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City’s Drug-Free Workplace Policy, attached hereto as Exhibit “D” and incorporated herein by reference. Consultant’s failure to conform to the requirements set forth in The City’s Drug-Free Workplace Policy shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys’ Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all

costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

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

6.8. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and affect.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all

payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

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

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

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

6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs,

files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

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

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

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

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

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

6.19. Costs. Each party shall bear its own costs and fees incurred in the preparation and

negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

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

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

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

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

6.24. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

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

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

6.27. Corporate Authority. The persons executing this Agreement on behalf of the

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

7. SUMMARY OF PUBLIC CONTRACT CODE § 9204

- a. General Information
 - i. A “claim” is a separate demand on the City by a contractor on a public works project and sent by registered mail or certified mail with return receipt requested, for one or more of the following:
 - A time extension, including relief from penalties for delay;
 - Payment by the City of money damages under the terms of the contract;
 - Payment of an amount that is disputed by the City.
- b. Initial Review
 - i. The claim must be supported by appropriate documentation. The City has 45 days within which to review the claim and provide the contractor with a written statement identifying the disputed and undisputed portions of the claim. If the City does not issue a written statement, the claim is deemed rejected in its entirety. The City will pay any undisputed portion of the claim within 60 days of issuing the statement.
- c. Meet & Confer
 - i. If the contractor disputes the City’s written response, or if the City does not issue one, the contractor may request in writing an informal conference to meet and confer for possible settlement of the claim. The City will schedule the meet and confer conference within 30 days of this request and provide a written statement identifying the remaining disputed and undisputed portions of the claim within 10 business days of the meet and confer. The City will pay the undisputed portion within 60 days of issuing this statement.
- d. Mediation
 - i. With respect to any disputed portion remaining after the meet and confer, the City and contractor must submit the matter to nonbinding mediation, agree to a mediator within 10 business days after issuing the written statement, and share mediation costs equally. If mediation is unsuccessful, then the terms of the public works agreement and applicable law will govern resolution of the dispute.
- e. Miscellaneous Provisions
 - i. Amounts not paid by the City in a timely manner bear interest at 7% per annum. Subcontractors may submit claims via this procedure through the general contractor. The City and contractor may waive the requirement to mediate, but cannot otherwise waive these claim procedures.

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

CITY OF CALIFORNIA CITY,
A municipal corporation

City Manager of California City

Date: _____

Department Director

Date: _____

CONSULTANT

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

ATTEST:

City Clerk and ex-officio Clerk
of the City of California City

APPROVED AS TO FORM:

City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Risk Management

Date: _____

APPROVED AS TO CONTENT:

Project Manager

Date: _____