

## CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008 ("Effective Date"), by and between the CITY OF SAN BERNARDINO, a charter city ("CITY"), and \_\_\_\_\_ ("CONSULTANT").

### WITNESSETH:

- A. WHEREAS, CITY proposes to have CONSULTANT perform the services described herein below; and
- B. WHEREAS, CONSULTANT represents that he 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 has need for qualified consultants to provide traffic engineering services related to various development and capital improvement projects.
- D. WHEREAS, no official or employee of the 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. For the remuneration stipulated, CONSULTANT shall provide the project services described in the request for qualifications/proposals. If a conflict arises between the request for qualifications/proposals and this Consultant Services Agreement (hereinafter "Agreement"), the terms of this Agreement shall govern.

1.2. Professional Practices. All professional services to be provided by CONSULTANT pursuant to this Agreement shall be provided in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. CONSULTANT also warrants that he is familiar with all laws that may affect his performance of this Agreement and shall advise CITY of any changes in any laws that may affect CONSULTANT's performance of this Agreement. CONSULTANT further represents that no CITY employee will provide any services under this Agreement.

1.3. Warranty. CONSULTANT warrants that he 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, arising from or related to CONSULTANT's performance under this Agreement.

1.4. Non-discrimination. In performing this Agreement, CONSULTANT shall not engage in, nor permit his officers, employees or agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, mental or physical disability, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

1.5. 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 and will have CITY's employees perform services similar to those services contemplated by this Agreement.

1.6. 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.

1.7. Conflicts of Interest. During the term of the Agreement, CONSULTANT shall at all times maintain a duty of loyalty and a fiduciary duty as to the CITY and shall not accept payment from or employment with any person or entity which will constitute a conflict of interest with the CITY.

1.8. CITY Business Certificate. CONSULTANT shall obtain and maintain during the term of this Agreement, a valid CITY Business Registration Certificate pursuant to Title 5 of the City of San Bernardino Municipal Code and any and all other licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required of CONSULTANT to practice his profession, skill or business.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Except as provided herein, CONSULTANT shall be paid compensation as stated in the request for qualifications/proposal.

2.2. Additional Services. CONSULTANT shall not receive compensation for any services provided outside the scope of services specified in this Agreement unless the CITY, prior to CONSULTANT performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. CONSULTANT may submit invoices to CITY for approval. Said invoices shall be based on the total of all of CONSULTANT's services and realized benefits which have been completed to CITY's sole satisfaction. Upon its approval, CITY shall pay CONSULTANT's invoices. The invoices shall describe in detail the services performed and any realized benefits. 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 for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

## **3.0. TERM AND NOTIFICATION**

3.1. Term. This Agreement shall commence on the Effective Date and continue through the completion of services unless the Agreement is previously terminated as provided for herein.

3.2. Termination. CITY or CONSULTANT may terminate this Agreement upon two (2) weeks written notice to the other party. In the event of termination, CONSULTANT shall be paid the reasonable value of services rendered to the date of termination.

3.3 Documents. In the event of termination of this Agreement, all documents prepared by CONSULTANT in his performance of this Agreement including, but not limited to, finished or unfinished work, 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.

#### 4.0. INSURANCE

4.1. Minimum Scope and Limits of Insurance. CONSULTANT shall obtain and maintain during the term of this Agreement all of the following insurance coverages:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (b) 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 and aggregate.
- (c) Workers' compensation insurance as required by the State of California.

4.2. Endorsements. The commercial general liability insurance policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of San Bernardino and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."
- (b) Notice: "Said policy shall not terminate, nor shall it be materially changed or cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City, ten (10) days notice if cancellation is for non-payment of premium."
- (c) Other insurance: "Any other insurance maintained by the City of San Bernardino shall be excess and not contributing with the insurance provided by this policy."

4.3. 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.

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

## 5.0. GENERAL PROVISIONS

5.1. 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.

5.2. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile, mail or electronic transmittal 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:

Jeffrey D. Anderson  
30644 Kristin Court  
Redlands, CA 92373  
<jda565@yahoo.com>

IF TO CITY:

Valerie C. Ross  
Director of Development Services  
300 North "D" Street  
San Bernardino, CA 92418  
Fax: 909-384-5080  
Tel: 909-384-5357  
<Ross\_Va@ci.san-bernardino.ca.us>

5.3. 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. The costs, salary and expenses of the City Attorney and members of his office on behalf of the CITY related to said litigation shall be considered as "attorneys' fees" for the purposes of this Agreement.

5.4. 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 San Bernardino County, California.

5.5. 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.

5.6. Indemnification and Hold Harmless. CONSULTANT shall protect, defend, indemnify, and hold harmless CITY and its elected and appointed officials, boards, commissions, officers, attorneys, agents and employees from any and all claims, losses, demands, suits, administrative actions, penalties, and liabilities, including reasonable attorney fees, damage to property or injuries to or death of any person or persons or damages of any nature including, but not limited to, all civil claims or workers' compensation claims arising from or in any way related to CONSULTANT's performance under this Agreement, except when caused solely by the CITY's negligence.

CITY agrees to indemnify and hold harmless CONSULTANT, his officers, agents and employees from any and all claims, actions, losses, damages and/or liability resulting from CITY's negligent acts or omissions arising from the CITY's performance of its obligations under the Agreement, except when caused by CONSULTANT's negligence.

5.7. Independent Contractor. CONSULTANT, at all times while performing under this Agreement, is and shall be acting at all times as an independent contractor and not as an agent or employee of CITY. CONSULTANT shall secure, at his expense, and be responsible for any and all payment of wages, benefits and taxes including, but not limited to, Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for CONSULTANT and his officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Neither CONSULTANT nor his officers, agents and employees shall be entitled to receive any benefits which employees of CITY are entitled to receive and shall not be entitled to workers' compensation, insurance, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing or social security on account of CONSULTANT and his officers', agents' and employees' work for the CITY. This Agreement does not create the relationship of agent, servant, employee, partnership or joint venture between the CITY and CONSULTANT.

5.8 Conflict of Interest Disclosure. CONSULTANT or his employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose financial interests that may be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will have a foreseeable financial affect on such interest.

CONSULTANT shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for termination of the Agreement by CITY.

5.9. Responsibility for Errors. CONSULTANT shall be responsible for his 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 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.

5.10. Prohibited Employment. CONSULTANT shall not employ any current employee of CITY to perform the work under this Agreement while this Agreement is in effect.

5.11. 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.

5.12. 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.

5.13. 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.

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

5.15. 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 with respect to any occurrence or event shall not be deemed a waiver of any right or remedy with respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

5.16. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, 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, and the remaining provisions of this Agreement shall remain in full force and effect.

5.17. 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.

5.18 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.

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

**CITY OF SAN BERNARDINO,**  
A Municipal Corporation,

**CONSULTANT**

\_\_\_\_\_  
Fred Wilson, City Manager

Approved as to form:

James F. Penman  
City Attorney

By \_\_\_\_\_