

# **CITY OF BARSTOW**



## **REQUEST FOR PROPOSALS**

**Professional Environmental Services**

**for**

**Brownfield Community-Wide**

**Assessment Grant**

**June 24, 2024**

**I. INTRODUCTION:**

The City of Barstow (“City”), through this Request for Proposals (RFP), is seeking a qualified environmental consulting firm to provide Phase I Environmental Site Assessments, investigation work plans and fieldwork, and investigation reports, related to the CalEPA Department of Toxic Substances Control (DTSC) Equitable Community Revitalization Grant awarded to the City in 2024. See the link: [Equitable Community Revitalization Grant | Department of Toxic Substances Control \(ca.gov\)](#).

The City received two Community Wide Assessment-Round 2 grants, \$350,000 each. The grant term starts on March 29, 2024, and ends on March 28, 2026.

One of the grants (ECRG-2023-01817) target the old golf course sites located off Main Street, surrounded to the east by Sun Valley Drive, to the west by Country Club Drive, and to the south by Gazana Street (APNs: 042128137, 042128136, 042128135, 042128133, 042108235, 042108234, 042108228).

The other grant (ECRG-2023-01820) targets two sites: one is the business park located at 2641 West Main Street (APNs: 042706243, 042706244, 042706245), and the other is the old hospital site located at East Mountain View Street (APNs: 018112218, 018112219, 018112220, 018112221, 018112207). For detailed site information, please see Attachment A.

Depending on the outcome of the initial investigation, and remaining budget, additional sites may be added in the future.

**II. GENERAL INFORMATION:**

The City, situated in San Bernardino County of Southern California, is a community of approximately 25,442 people. It serves as a crucial transportation gateway due to its proximity to two major interstates that connect California to Nevada, Arizona, and other states. The City is a general law city governed by a Mayor and four Council members.

The purpose of this grant is to conduct Phase I and Phase II Environmental Site Assessments (ESAs) at brownfield sites located within the City. The City’s objectives may expand later to include the actual cleanup of individual sites targeted for assessment, depending on future funding availability. The successful consultant will bring experience and insight to a partnership with the City to refine and implement these grants and explore other grants and brownfields initiatives as funds become available.

**III. CONTRACTOR SELECTION SCHEDULE:**

ISSUED: June 24, 2024

WRITTEN QUESTIONS DUE: July 2, 2024

PROPOSALS DUE: July 23, 2024 at 4pm

INTERVIEWS: August, 2024 (if required)

RECOMMENDATION TO CITY COUNCIL: September, 2024 (tentative)

NOTICE TO PROCEED – Determined based on Council Award

#### **IV. SCOPE OF SERVICES:**

The proposed scope of work under this RFP consists of working with the City's Project Manager to provide: Phase I Environmental Site Assessment, investigation workplan and fieldwork, and investigation report.

This grant is time sensitive and activities are expected to begin upon award to enable timely submission of final reports/documentation. Costs will need to be allocated among the various tasks as appropriate, and all assessment activities must meet federal and state requirements. The scope of work and approximate budget breakdown is as follows:

A. Phase I ESAs:

- Conduct Phase I ESAs for approved sites. The consultant will prepare draft Phase I ESA reports, prepare final Phase I ESA reports based on review comments, and complete All Appropriate Inquiry (AAI) Checklists.
- Cost range: Not to exceed \$225,000 for each grant. Depending on the outcome of initial investigation and the remaining budget, additional sites may be added in the future.

B. Investigation Workplan and Fieldwork:

- The consultant will prepare a preliminary Endangerment Assessment Work Plan, a Supplemental Site Investigation Work Plan, a Phase II Environmental Site Assessment Work Plan, and a Tech Memo/Letter Work Plan.

C. Investigation Report:

- The consultant will prepare reports associated with Investigation Work Plans and Fieldwork.

D. Performance Report:

- The consultant will submit monthly progress reports containing short summaries of progress for all phases of work, data, and findings along with any other required data for quarterly reporting to DTSC. The consultant will submit monthly billing with costs tracked by grant and task with backup documentation.

E. Schedule:

- The consultant should assume a notice to proceed by August 2024. The consultant will propose a schedule they feel best represents their level of effort available for this project.

F. Funding:

- This project will be funded using 100% DTSC grant funds. The consultant needs to follow ECRG Round 2 guidelines and the grant agreement (Attachment B) for eligible activities and cost reimbursement.

G. Community Benefit:

- The City promotes local enterprises through contracting practices that involve the development of partnerships with firms owned by, employing, and based in the local disadvantaged community. To execute this strategy, the City will actively engage with

local businesses, particularly those owned by underrepresented groups, and encourage their participation in the redevelopment project. The consultant is encouraged to provide the number of dollars allocated to contracts with diverse suppliers and firms or organizations owned by and based in the local disadvantaged community.

## **V. PROPOSAL FORM AND CONTENT**

Submissions are due on July 23, 2024 at 4pm. Late submissions will not be accepted.

Respondents must submit one completed electronic proposal via email to the following:

- 1) **One (1) electronic copy (PDF) of qualifications to [gcrank@barstowca.gov](mailto:gcrank@barstowca.gov), and**
- 2) **One (1) electronic copy (PDF) of a detailed cost proposal in a separate transmittal.**

**Genesis Crank  
City of Barstow  
220 E Mountain  
Ave, Barstow, CA  
92311  
[gcrank@barstowca.gov](mailto:gcrank@barstowca.gov)**

Any exceptions to the requirements stated herein shall be clearly stated in the submittal and may be grounds for being declared non-responsive.

All correspondence or communications in reference to this RFP shall be directed to the same contact above.

### A. General Requirements

The proposal should not contain non-applicable promotional material and should include only the information that addresses the information requested in this document.

Consultant/subconsultant information should not exceed **Twenty (20)** pages for each consultant and subconsultant.

### B. Proposal Requirements

1. Cover letter. Maximum of **Two (2)** pages serving as an executive summary that includes an understanding of the scope of services. The cover letter must be signed by an individual(s) authorized to bind the consultant contractually and include the name, title, address, email address, and telephone number of one or more individuals who can respond to requests for additional information.
2. Brief Company Profile. Provide general company information, including the number of employees, location of offices, number of years in the business and organization, disciplines offered, and commitment of key staff.
3. Organization and Staffing. Provide a list, including an organization chart, of your firm's employees and agents, whom the consultant anticipates assigning to the scope of services.
4. Resumes of Key Personnel. Include resumes of the person(s) with key responsibilities



who will be assigned to work for the City and describe their role/duties. If more than one person is to be assigned, identify the person who will have senior-level responsibility or manage the engagement. Resumes should list the qualifications and experience of the personnel, not to exceed **Two (2)** pages per resume.

5. Approach to Work. Provide a detailed description of the Company's approach to the scope of work and relevant experience, including:
  - a. Ability to meet all applicable state and federal regulations governing proposed work
  - b. Description of the history, experience, and qualifications of the Company including key personnel and their respective responsibilities
  - c. Proposed work plan, including hours and proposed personnel (do include cost breakdowns)
  - d. Methodologies to perform site assessments and confirmatory sampling
  - e. Technologies or testing methods utilized to assess specific types of contamination
  - f. Innovative ideas for maximizing the value and amount of work that can be completed within the budget available through the grant. Provide rationale and evidence of the value and effectiveness of the proposed approach to the scope of services
  - g. Strategy and timeline for completing the project including key milestones
  - h. Experience in tasks specified in the workplan
  - i. List of other projects along with references for up to **Three (3)** similar projects over the **last Three (3)** years. Include name, address and phone number of contact person.

C. Compensation and Fees

A signed itemized cost proposal by task with cost breakdowns/time and materials calculations, in a separate transmittal (not part of the page limit).

## **VI. SELECTION PROCESS**

- A. The City of Barstow reserves the right to reject any and all Proposals. The City may split these services into multiple contracts with multiple vendors depending on experience and in order to manage costs effectively.
- B. Selection shall be on the basis of demonstrated competence and on the qualifications necessary for satisfactory performance of the services required and scored as follows:
  - Scope understanding: 5 points
  - Approach to complete each scope of task: 25 points
  - Qualifications, experience, and demonstrated capability of project manager and key personnel for tasks: 25 points
  - Resources and key personnel available to perform work in a reasonable time frame: 25 points
  - Firm's references: 10 points
  - Cost approach: 10 points
- C. The City may determine that it is necessary to meet with the firms to discuss aspects of their proposal. Selection of the firms to be interviewed will be based upon but not limited to the following criteria:

- The firm's ability to provide optimal services while meeting the City's cost concerns;
- The firm's resources to conduct and complete projects in a satisfactory manner;
- The firm's approach to and understanding of the Scope of General Services and Duties;
- The firm's experience with similar contracts and clients;
- The experience and qualifications of the proposed staff in providing similar services;
- The firm's demonstrated ability to deliver work on time and within budget;
- The extent of involvement by key personnel;
- The firm's previous experience with cities that have or are currently experiencing similar environmental requirements as the City of Barstow;
- The firm's size, current workload, and ability and willingness to commit key personnel.

## **VII. NEGOTIATIONS PROCESS**

Upon completion of the consultant evaluation process, which includes interviews of top ranked firms, City staff will commence contract negotiations with the top-ranked firm for the desired consulting services. Compensation for the subject services will be negotiated based on what is fair and reasonable to both parties. Should City staff and the top-ranked consultant be unable to negotiate contract terms and fees reasonable to both parties, negotiations with that firm will be terminated. The City may initiate a new RFP process or commence negotiations with the second-ranked firm or next-ranked firm if negotiations with the second-ranked firm fail.

## **VIII. EQUAL EMPLOYMENT OPPORTUNITY**

The City is an equal opportunity employer and requires all consultants to comply with State and Federal Grant Compliance policies and regulations concerning equal employment opportunity.

## **IX. TERMS AND CONDITIONS**

- A. The City of Barstow reserves the right to cancel or amend the Request for Proposals at anytime. The City of Barstow also reserves the right to determine the successful respondent and further reserves the right to reject any or all proposals for any reason.
- B. All cost for preparation of the submittals shall be borne by the applicant, and submittals received shall become the property of the City, whether accepted or rejected. Incomplete submittals may be rejected as non-responsive.
- C. The firm shall not assign any interest in this proposal and shall not transfer any interest in the same without the prior written consent of the City of Barstow.
- D. For the purposes of this agreement, the consultant shall be deemed to be an independent contractor and not an employee of the City of Barstow. Any and all agents or employees of

the firm or other persons, while engaged in the performance of any work or services required to be performed by the City of Barstow under this agreement, shall not be considered employees of the City of Barstow and any and all actions which arise as a consequence of any act or omission on the part of the firm, its agents, servants, employees or other persons shall in no way be the obligation or responsibility of the City of Barstow.

- E. No official or employee of the City of Barstow who exercises any responsibilities in the review, approval or carrying out of the proposal shall participate in any decision which affects his or her direct or indirect personal or financial interest.
- F. Contract. The City's Professional Services Agreement and insurance requirements is attached and will be required to be executed with the selected consultant for any services.
- G. All proposals must be signed by a duly authorized individual. All proposals shall become property of the City of Barstow.

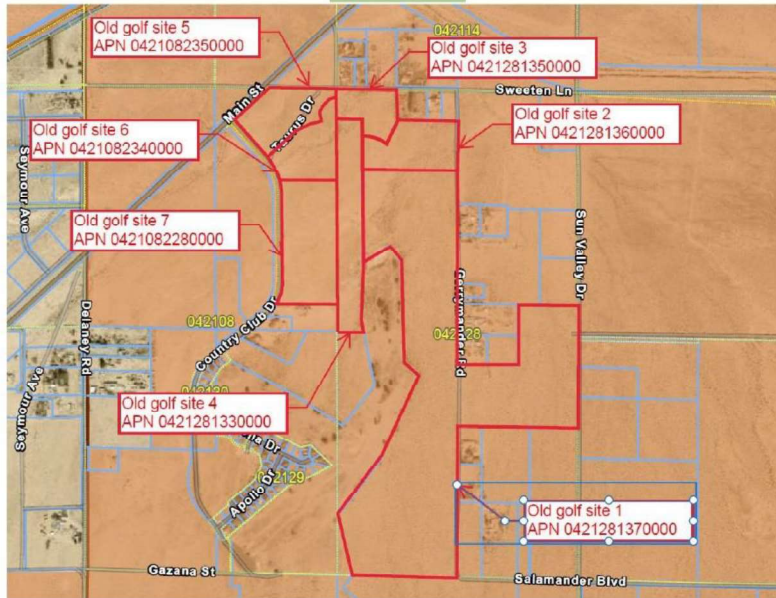
# ATTACHMENT A

## SITE DESCRIPTION

### ECRG-2023-01817 Site Information

#	Site Name	Street Address	City	CES 4.0 Score	CES 4.0 Poverty Percentile	Owner	Proposed Reuse
1	Old golf site 1	APN 0421281370000	Barstow	62	69	City of Barstow	Multi-functional green space combining parkland, recreational facilities, and open space
2	Old golf site 2	APN 0421281360000	Barstow	62	69	City of Barstow	
3	Old golf site 3	APN 0421281350000	Barstow	62	69	City of Barstow	
4	Old golf site 4	APN 0421281330000	Barstow	62	69	City of Barstow	
5	Old golf site 5	APN 0421082350000	Barstow	62	69	City of Barstow	
6	Old golf site 6	APN 0421082340000	Barstow	62	69	City of Barstow	
7	Old golf site 7	APN 0421082280000	Barstow	62	69	City of Barstow	

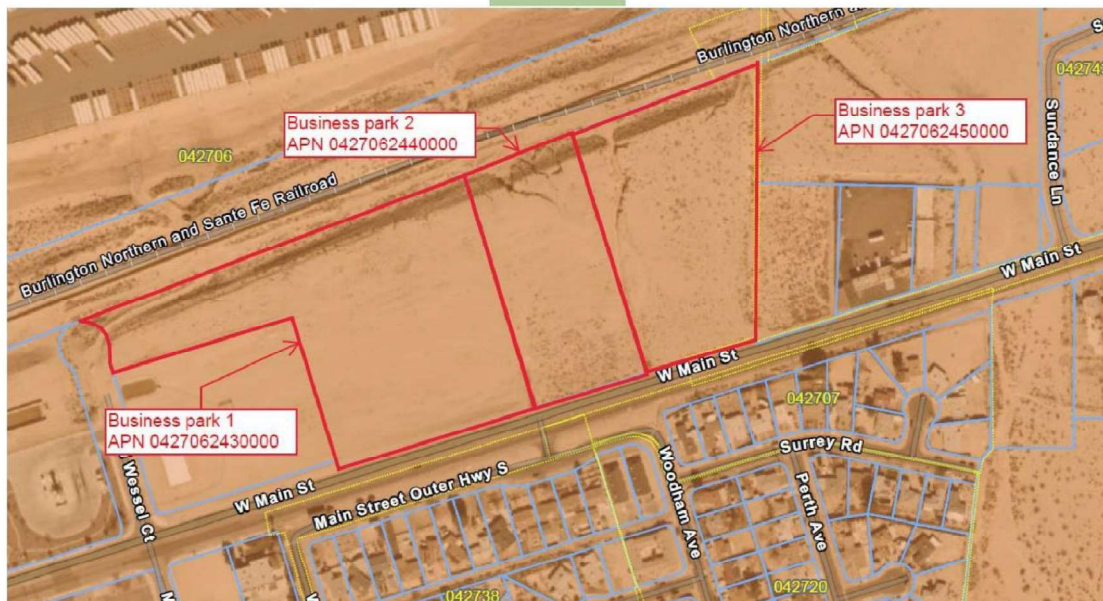
### Site Locations – Old Golf Site



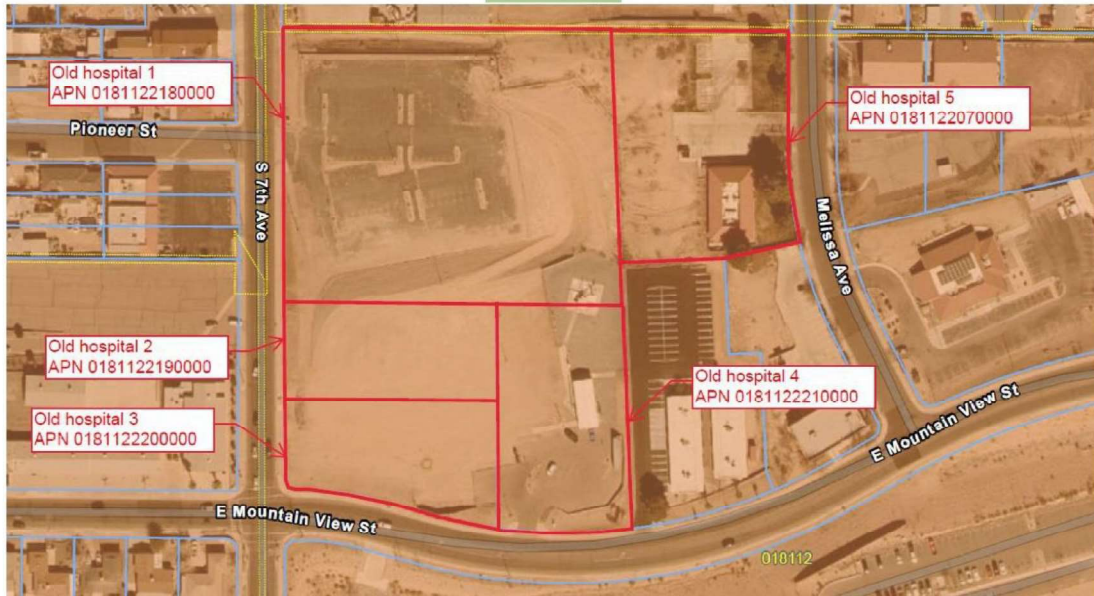
## ECRG-2023-01820 Site Information

#	Site Name	Street Address	City	CES 4.0 Score	CES 4.0 Poverty Percentile	Owner	Proposed Reuse
1	Business park 1	2641 W Main St APN 0427062430000	Barstow	85	99	City of Barstow	Affordable retail options and essential services, such as grocery stores, pharmacies, and community centers to enhance accessibility to daily necessities
2	Business park 2	APN 0427062440000	Barstow	85	99	City of Barstow	
3	Business park 3	APN 0427062450000	Barstow	85	99	City of Barstow	
4	Old hospital 1	S 7 <sup>th</sup> Ave APN 0181122180000	Barstow	87	90	City of Barstow	
5	Old hospital 2	S 7 <sup>th</sup> Ave APN 0181122190000	Barstow	87	90	City of Barstow	
6	Old hospital 3	E Mountain View St APN 0181122200000	Barstow	87	90	City of Barstow	
7	Old hospital 4	S 7 <sup>th</sup> Ave APN 0181122210000	Barstow	87	90	City of Barstow	
8	Old hospital 5	500 Melissa Ave APN 0181122070000	Barstow	87	90	City of Barstow	

### Site Locations – Business Park



## Site Locations – Old Hospital





# ATTACHMENT B

## GRANT AGREEMENT



**Yana Garcia**  
Secretary for  
Environmental Protection

### Department of Toxic Substances Control

Meredith Williams, Ph.D., Director  
5796 Corporate Avenue  
Cypress, California 90630



**Gavin Newsom**  
Governor

Site Name	Site Address

Grant No. **[Autogenerate "ECRG-2021-XXXX" when DTSC approves Grant Application]**

Grantee/Applicant:

The Equitable Community  
Revitalization Grant Agreement

Name:  
Organization:  
Address:

This Equitable Community Revitalization Grant Agreement (AGREEMENT) is entered into by and between **[grantee name]** (GRANTEE) and the Department of Toxic Substances Control (DTSC) (together the PARTIES).

### RECITALS

WHEREAS,

- A. Senate Bill 158 (2021) authorizes DTSC to implement a new grant program to investigate and clean up contaminated properties in communities overburdened by pollution.
- B. Pursuant to Senate Bill 158, DTSC established the Equitable Community Revitalization Grant (ECRG), which provides financial assistance to communities via reimbursable grants to investigate and clean up brownfields through a competitive process.

Equitable Community Revitalization Grant Agreement

[GRANTEE's Name]

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- C. GRANTEE has submitted the application (ECRG Application) to DTSC for an ECRG in connection with certain property, or group of properties, commonly known as [site name(s)], in [city/town], California (Site). The Site is [The Sites are (for CWA)] depicted in the Site Map [Site Maps (if needed for CWA)].
- D. The entirety of the completed and signed ECRG Application is incorporated by reference as if fully set forth herein.
- E. GRANTEE has provided documentation indicating that GRANTEE [is the owner of the Site] or [has written authorization from the Site owner for GRANTEE to access the Site for the purposes of conducting ECRG Tasks over the two-year funding period of the ECRG Agreement].
- F. GRANTEE is a local governmental agency, tribe, or 501(c)(3) non-profit organization under the rules of the U.S. Internal Revenue Service
- G. The CalEnviroScreen 4.0 Score for the Site is [insert]. GRANTEE proposes to [Proposed Reuse]. [Describe what will improve and future use and benefits to the vulnerable community].
- H. GRANTEE is willing to undertake the Proposed Reuse and requests DTSC provide ECRG funding for: [a Community-wide Assessment, Site-specific Investigation, or Site-specific Cleanup] activities up to [\$].
- I. GRANTEE has provided ECRG Tasks and Budget in the ECRG Application outlining the activities to be completed within two (2) years from execution date of this AGREEMENT.
- J. GRANTEE provided a link to the DTSC voluntary agreement or a "ECRG Project Suitability Letter".
- K. DTSC determined that the ECRG Application is complete and that GRANTEE and the Site meet the eligibility requirements to receive ECRG funding.



NOW, THEREFORE, in consideration of the terms, conditions, recitals, and covenants contained herein, the PARTIES agree as follows:

- I. The funding period of ECRG shall be twenty-four months (24) months from AGREEMENT execution date, unless DTSC extends this AGREEMENT in writing.
- II. DTSC will allocate up to [\$] to GRANTEE to complete the ECRG Tasks within the specified two-year funding period that begins from the execution date of this AGREEMENT.
- III. GRANTEE will carry out the ECRG Tasks in accordance with all applicable State and local laws.

#### 1. FUND CONDITIONS

- 1.1 GRANTEE understands and agrees that all ECRG funds DTSC provides via the reimbursement process, shall be used solely for the ECRG Tasks.
- 1.2 GRANTEE further understands and agrees that the receipt of any ECRG funds and all work performed on the Site using ECRG funds are conditioned upon GRANTEE's full compliance with this AGREEMENT and the regulatory oversight agency requirements.
- 1.3 GRANTEE agrees to document all expenditures of ECRG funds for the completion of approved ECRG Tasks as directed by DTSC. Any unused portions of the ECRG funds shall be promptly returned to DTSC.
- 1.4 GRANTEE is responsible for any cost of ECRG Tasks that exceeds the ECRG funding allocation.
- 1.5 DTSC will disburse the approved amount to GRANTEE, subject to the availability of funds through normal DTSC reimbursement processes. Notwithstanding any other provision of this AGREEMENT, no disbursement shall be required at any time or in any manner which is or likely to be in violation of, or in conflict with, federal or state laws, rules, or regulations.

- 1.6 In case of fraud, false or misleading statements in connection with the ECRG funding, DTSC's obligation to provide funding shall promptly cease and GRANTEE must repay all disbursed ECRG funding, in addition to any other remedies available to DTSC.
- 1.7 GRANTEE'S ECRG APPLICATION and the Regulatory Oversight Agreement are incorporated by reference as if fully set forth herein. GRANTEE agrees to conduct all work funded by the ECRG in accordance with these documents, including any future modifications, amendments, or addenda subsequently approved by DTSC or the Regulatory Oversight Agency.
- 1.8 In the event that information in the ECRG Application conflicts with the Round 2 ECRG Guidelines or the AGREEMENT, the Round 2 ECRG Guidelines and/or AGREEMENT will control.

## **2. CONTRACTING**

- 2.1 If GRANTEE contracts for services to be reimbursed by ECRG, those contracts shall generally be procured through a competitive process. GRANTEE shall make available to DTSC, upon request, records of procurement to demonstrate that contract pricing represents reasonable market rates.
- 2.2 GRANTEE will undertake good faith efforts to contract for services and supplies with qualified Small Business Enterprises (SBEs), Disabled Veteran Enterprises (DVEs), and other disadvantaged and underrepresented group owned business enterprises.

## **3. COMMUNITY BENEFIT COMMITMENTS**

- 3.1 GRANTEE agrees to promote equitable development through community benefit commitments.
- 3.2 GRANTEE shall implement, track, and report on the status of the following community benefit commitments: [response from Application Section 11].

#### 4. SITE ACCESS

- 4.1 GRANTEE shall ensure DTSC's employees, contractors, and consultants have access to the Site at all reasonable times for the duration of AGREEMENT.
- 4.2 Nothing in this AGREEMENT is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of law.
- 4.3 GRANTEE shall allow DTSC to take photographs of the Site, including activities at the Site, whenever DTSC accesses the Site pursuant to this AGREEMENT.
- 4.4 GRANTEE gives permission to DTSC to use the photos in DTSC's possession for outreach purposes.
- 4.5 If the Site is not OWNED by the GRANTEE, GRANTEE agrees to provide regular updates to the Site Owner about the activities occurring on the Site and any potential changes to the proposed reuse of the Site when the changes become known to GRANTEE as necessary for the Site.
  - a. GRANTEE confirms and certifies that GRANTEE has full legal rights from the Site Owner and other relevant parties to pursue the activities occurring on the Site.
  - b. GRANTEE shall hold harmless and indemnify the State and DTSC from any claims and demands arising therefrom pursuant to Section 20 (Indemnification).
  - c. GRANTEE certifies that GRANTEE provided the Site Owner with environmental oversight information and the proposed reuse information prior to application submittal and that all information provided to the Site Owner was accurate, not misleading, and consistent with the information provided to DTSC.
  - d. GRANTEE certifies that the Site Owner signed the access agreement voluntarily after receiving all necessary and relevant information regarding the activities to be performed pursuant to this AGREEMENT.

## 5. COMMUNITY ENGAGEMENT

- 5.1 GRANTEE will implement community engagement in a timely manner.  
[response from Application Section 9]
- 5.2 GRANTEE shall provide regular reporting updates on community engagement in the ECRG Quarterly Reports.
- 5.3 Upon request by DTSC, GRANTEE shall provide DTSC with copies of all community engagement activity related documents.

## 6. INVOICES

- 6.1 GRANTEE shall submit invoices (for completed eligible and approved ECRG Tasks) for reimbursement in batches through the DTSC's Application/Grant Portal (Fluxx).
- 6.2 GRANTEE may only submit invoices for ECRG Tasks that have been completed.
- 6.3 DTSC does not require that the GRANTEE pay the invoices in order to submit to DTSC for reimbursement.
- 6.4 Packages shall be submitted immediately whereupon the total \$15,000 minimum per package/batch is reached (unless otherwise directed by DTSC), with the exception of the Final Invoice.
- 6.5 The Final Invoice may be submitted upon completion of ECRG Tasks, when no more costs will be incurred, but no later than 30 months from the date of the AGREEMENT, or as otherwise directed by DTSC.
- 6.6 GRANTEE will follow the ECRG Reimbursement Request Checklist available on Fluxx.
- 6.7 GRANTEE's reimbursement requests for ECRG project management costs, if approved, should also be presented to DTSC as an invoice.
- 6.8 Reimbursement requests shall include invoices supporting ECRG Tasks specified in the ECRG Scope, Schedule, and Budget Table.



- 6.9 If the reimbursement request does not meet the specifications of the Round 2 ECRG Guidelines, the reimbursement request will not be approved for reimbursement.
- 6.10 DTSC retains all rights to determine whether any reimbursement request will be approved for reimbursement, including, but not limited to, whether reimbursement requests meet the requirements of the Round 2 ECRG Guidelines sections 2.7, 2.8, and Appendix G.
- 6.11 If GRANTEE does not request reimbursement within the initial six months of the AGREEMENT, the AGREEMENT may be subject to termination following the noncompliance requirements of this AGREEMENT.
- 6.12 GRANTEE must ensure that the costs DTSC reimburses through ECRG are not reimbursed by another source of public funding (e.g., DTSC's Revolving Loan Fund Program, Site Cleanup Subaccount Program, USEPA Brownfield Grants, etc.).

## 7. REPORTING

- 7.1 GRANTEE must submit ECRG Quarterly Reports on or before January 31, April 30, July 31, and October 31 within the two-year funding period of the AGREEMENT, unless otherwise directed by DTSC .
- 7.2 Quarterly Reports must follow the format DTSC provides, which may generally include ECRG Task status and progress toward the Proposed Reuse, any hurdles that may affect the ECRG Tasks or the Proposed Reuse, expended ECRG funds for the quarter, and amount of ECRG funds that are anticipated to be requested for reimbursement in the next quarter.
- 7.3 All ECRG Tasks performed pursuant to this AGREEMENT and with ECRG funds shall be performed in a manner that meets or exceeds industry standards.
- 7.4 GRANTEE shall provide regular reporting updates on community engagement in the ECRG Quarterly Reports.

- 7.5 GRANTEE shall provide regular reporting updates on community benefit commitments in the ECRG Quarterly Reports until the community benefit commitments are considered complete.

## **8. PERMITS AND LICENSES**

- 8.1 GRANTEE, at its sole cost and expense, and from sources other than the ECRG funds, shall be responsible for obtaining all professional, and equipment qualifications necessary to be qualified to perform this work under federal, state, and local law, including permits, licenses, approvals, certifications, and inspections.
- 8.2 GRANTEE shall ensure that all such qualifications are maintained in good standing during the two-year funding period of this AGREEMENT.
- 8.3 GRANTEE represents that none of the contractors or subcontractors undertaking the ECRG Tasks is currently suspended, debarred, or otherwise declared ineligible to receive proceeds of ECRG funds.

## **9. PREVAILING WAGES**

- 9.1 Grantee must carry out ECRG Activities in accordance with State public work project requirements, including prevailing wages, for all applicable contracts and subcontracts and costs pursuant to California Labor Code Section 1720 et seq.

## **10. EQUAL EMPLOYMENT**

- 10.1 GRANTEE shall comply with all State and Federal Equal Employment Opportunity laws.

## **11. ADA COMPLIANCE**

- 11.1 GRANTEE will assure the State that it complies with the American with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. § 12101 et seq.).

## 12. GRANT CLOSEOUT

- 12.1 GRANTEE shall provide DTSC with a Grant Closeout Notice to notify DTSC when the ECRG Tasks have been completed, and no later than the last day of the two-year funding period covered under this AGREEMENT.
- 12.2 Within 90 days of submitting the Grant Closeout Notice, GRANTEE shall submit a closeout report, in the format DTSC provides, to summarize all actions taken, the resources committed, and any significant problems completing the ECRG Tasks.
  - a. The closeout report shall document that the ECRG Tasks were performed in accordance with this AGREEMENT and regulatory agency oversight agreement.
  - b. Closeout report shall include "before" and "after" photos of the Site.
  - c. GRANTEE gives permission to DTSC to use the photos in DTSC's possession for outreach purposes.
- 12.3 GRANTEE shall submit a Reuse and Grant Commitments letter report within 60 days following the completion of the Proposed Reuse. The report shall describe the Site's new use, document performance of the community benefit commitments and include "before" and "after" photos of the Site.

## 13. CHANGE IN SITES

- 13.1 Site change requests are not allowable for Site-Specific Investigation or Site-Specific Cleanup Grants.
- 13.2 GRANTEE may request site change or site addition for Community-Wide Assessment Grants, subject to DTSC approval. Site change requests will only be considered for ECRG-eligible sites located in an area with similar or higher CES 4.0 scores.

#### 14. CHANGE IN OWNERSHIP

- 14.1 Any change in ownership of the Site for Site-specific Investigation or Site-specific Cleanup Grants will result in termination of the ECRG unless all of the following requirements are met:
- a. ECRG Tasks and commitments are substantively unchanged and GRANTEE obtains DTSC's prior written approval of any non-substantive changes.
  - b. GRANTEE notifies DTSC sixty (60) days prior to change in ownership and provides to DTSC all information regarding the potential new owner required in the Round 2 ECRG Guidelines and Application, including the Owner Attestation Form.
  - c. DTSC issues a conditional determination that the new owner (which may be the GRANTEE) meets all Grant eligibility criteria and requirements per the Round 2 ECRG Guidelines.
  - d. GRANTEE provides a change in ownership notification to DTSC within ten (10) days of new owner taking title along with:
    - i. a copy of the new Site Owner's CERCLA defense documentation
    - ii. a signed access agreement between GRANTEE and new Site Owner (if GRANTEE is not the new owner), as required by the Round 2 ECRG Guidelines.
  - e. DTSC issues a final written determination of continued eligibility and compliance to the GRANTEE verifying eligibility and Grant continuance.

#### 15. NOTIFICATIONS

- 15.1 All notices, requests, instructions, or other documents to be provided hereunder to either party by the other shall be in writing and addressed to the following contacts.



To DTSC:

DTSC ECRG Grant Contact

Title:

Address:

Email: [ecrg@dtsc.ca.gov](mailto:ecrg@dtsc.ca.gov)

To GRANTEE:

GRANTEE Organization Main Contact

Title:

Address:

Phone:

Email:

GRANTEE ECRG Project Manager

Title:

Organization:

Phone:

Email:

15.2 If GRANTEE changes the Project Manager or Signatory identified in the Application, it shall notify DTSC five (5) days prior to the change.

## 16. WAIVER

16.1 Any forbearance DTSC issues with respect to any provision in this AGREEMENT shall in no way constitute DTSC's waiver of any rights or privileges granted hereunder.

16.2 No failure to exercise any power or right provided hereunder, or to insist on strict compliance with its obligations hereunder, shall constitute a waiver of right to DTSC's demand, at any time, of exact compliance with the terms hereof.

## 17. NONCOMPLIANCE AND TERMINATION

- 17.1 In the event GRANTEE fails to comply with any term, condition, or obligation of this AGREEMENT, GRANTEE shall be deemed in noncompliance of this AGREEMENT. Events by which GRANTEE shall be deemed to be in noncompliance include, but are not limited to, the following:
- a. GRANTEE fails to timely respond, no later than sixty (60) days, to DTSC requests made in connection with this AGREEMENT or ECRG funding
  - b. GRANTEE fails to timely respond, no later than sixty (60) days, to regulatory entities providing oversight for the Site
  - c. GRANTEE makes or submits any fraudulent, false or misleading warranty, representation, statement or material in, or in connection with, this AGREEMENT or the ECRG Application
  - d. GRANTEE fails to provide complete or timely Quarterly Reports or related documentation
  - e. GRANTEE makes changes to the Proposed Reuse without prior review and written approval by DTSC or that cause the Site to no longer meet eligibility criteria for ECRG funding
  - f. GRANTEE fails to complete the ECRG Tasks within the two-year funding period required by this AGREEMENT
  - g. GRANTEE fails to provide notification of change in Site ownership without the required notification in Section 14, and fails to obtain advance written DTSC approval for continued ECRG eligibility
  - h. GRANTEE fails to inform DTSC of any current conflicts of interest or fails to inform DTSC that a conflict of interest has arisen within seven (7) calendar days of GRANTEE learning of the conflict of interest.

- i. GRANTEE fails to submit the first reimbursement request within one hundred and eighty (180) days of the date of this AGREEMENT
- j. GRANTEE is unable to meet and fully comply with the terms of this AGREEMENT and the ECRG Application
- k. GRANTEE fails to cooperate with DTSC requests in connection with ECRG funding

17.2 In the event that GRANTEE fails to comply with the terms of this AGREEMENT or the ECRG Application, DTSC shall provide written Notice of Noncompliance to GRANTEE.

- a. The Notice of Noncompliance shall provide a reasonable time for GRANTEE to respond, not less than ten (10) calendar days from the date of the notice. GRANTEE will cure or request an extension not less than sixty (60) days from Notice of Noncompliance.
- b. If GRANTEE fails to cure the noncompliance to the satisfaction of DTSC within the time period prescribed in the Notice of Noncompliance, DTSC may terminate the AGREEMENT and pursue any remedies available at law or in equity, including reimbursement of the funds DTSC has provided GRANTEE.

17.3 If GRANTEE is in noncompliance, DTSC may immediately withhold from GRANTEE all or any portion of ECRG funding until such time the noncompliance is cured pursuant to this AGREEMENT.

## **18. RECORD RETENTION, INSPECTION, AND DISCLOSURE**

- 18.1 Within ten (10) days of request by DTSC, GRANTEE shall provide DTSC with copies of Proposed Reuse plans to DTSC's ECRG Grant Contact.
- 18.2 Within ten (10) days of request by DTSC, GRANTEE shall provide DTSC with any documents or correspondence provided to the applicable regulatory oversight agency.

- 18.3 GRANTEE shall ensure regulatory oversight agency has the necessary documents to keep any applicable electronic data management system (e.g., EnviroStor or GeoTracker) up to date and in compliance with all electronic reporting requirements.
- 18.4 GRANTEE agrees to maintain financial and programmatic records pertaining to all matters relative to this AGREEMENT and in accordance with generally accepted accounting principles and procedures. All such records and supporting documents shall be made available, upon request, for inspection or audit by DTSC or its representatives.
- 18.5 GRANTEE shall retain all its records and supporting documentation applicable to this AGREEMENT for a period of five (5) years, after completion of ECRG Tasks, except records that are subject to audit findings, which shall be retained an additional three (3) years after such findings have been resolved, if three years would extend retention past the initial five-year period.
- 18.6 GRANTEE agrees to permit DTSC or its designated representative to inspect and/or audit its records and books relative to this ECRG at any time during normal business hours and under reasonable circumstances and to copy therefrom any information that DTSC deems relevant to this AGREEMENT. DTSC shall provide written notice to GRANTEE prior to implementing this provision (unless criminal activities are suspected). GRANTEE agrees to deliver the records or have the records delivered to DTSC or its designated representative at an address designated by such party.
- 18.7 Upon request by DTSC, GRANTEE shall provide DTSC, its contractors and consultants, with copies of photographs GRANTEE has in its possession of the Site and activities at the Site, as well as copies of drawings GRANTEE has in its possession in connection with the Proposed Reuse plans for the Site. GRANTEE grants DTSC the right to distribute, transmit, publish, or copy, in any medium, either in whole or in part, the photographs or drawings DTSC obtains pursuant to this AGREEMENT for any use, including, but not limited to, project documentation, public outreach, web and social media content, and marketing materials. This subsection does not apply to photos or drawings that contain confidential business information.



- 18.8 GRANTEE grants DTSC, its contractors and consultants, the right to distribute, transmit, publish, or copy, in any medium, either in whole or in part, narratives, descriptions, and any other information provided to DTSC by GRANTEE pursuant to or in connection with this AGREEMENT and/or ECRG Application for any use, including, but not limited to, public outreach, web and social media content, and marketing materials. This subsection does not apply to confidential business information.
- 18.9 To the extent GRANTEE submits information to DTSC, its contractors and consultants, under this AGREEMENT that it asserts is confidential business information, GRANTEE shall clearly mark the information and document as confidential business information.
- 18.10 GRANTEE agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this AGREEMENT and/or the ECRG Application shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act (Government Code section 6250 et seq.), the Information Practices Act (Civil Code section 1798 et seq.), and Government Code sections 11015.5 and 11019.9.

## **19. NON-DISCRIMINATION**

- 19.1 During the performance of ECRG, GRANTEE, its contractors, and subcontractors will comply with Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §11135-11139.5) prohibiting discrimination based on sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation.
- 19.2 In compliance with Government Code section 11135, and if GRANTEE is a public entity, in compliance with Government Code sections 7290 et seq., GRANTEE agrees to make language assistance available free of charge to individuals with communication disabilities or limited proficiency in English, including interpreter services and written information in the prevalent languages in the community, in

conducting public outreach and community engagement related to the ECRG Tasks.

19.3 GRANTEE shall comply with Title VI of the Civil Rights Act

## **20. INDEMNIFICATION**

20.1 GRANTEE agrees to protect, indemnify, defend and hold harmless, the State and DTSC, their officers, administrators, agents, contractors, consultants, and employees from, or against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all fees, expenses and charges of attorneys and other professionals, court costs, and other fees and expenses, arising out of or in connection with the performance of any work or any GRANTEE responsibility or obligation as provided herein and caused in whole or in part by any act, error, omission, or negligence of GRANTEE or its agents, servants, contractors, employees, assigns, or the Site owner.

## **21. ASSIGNMENT**

- 21.1 GRANTEE shall not assign or attempt to assign directly nor indirectly, any of its rights under this AGREEMENT (including the ECRG funds) or under any instrument referred to herein without DTSC's prior written consent.
- 21.2 Prior written consent will not be granted except in extremely limited circumstances to protect public health and the environment, at DTSC's sole discretion.

## **22. NO THIRD PARTY RIGHTS**

22.1 This AGREEMENT is not intended to create or vest any rights in any third party, nor to create any third-party beneficiaries.

## **23. NO ORAL MODIFICATION**

23.1 The terms of this AGREEMENT may not be amended except in writing, signed by all the parties hereto.

## 24. NONCOMPLIANCE STATUS

24.1 Under the laws of the State of California, GRANTEE shall not be:

- a. In violation of any order or resolution not subject to review promulgated by the California Air Resources Board or an air pollution control district;
- b. Subject to cease-and-desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
- c. Out of compliance with any applicable laws, ordinances, regulations, orders, and permits.

## 25. AFFIRMATION

25.1 The GRANTEE affirms that GRANTEE did not cause nor contribute to the release or threatened release of a hazardous substance at the Site and GRANTEE has a Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Code section 9601 *et. seq.*) defense against liability for any previous contamination at the Site(s).

## 26. SEVERABILITY

26.1 If any provision of this AGREEMENT shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired by such holding.

## 27. SURVIVABILITY

27.1 The obligations of GRANTEE under Sections 3, 6.5, 7.5, 12, 18, and 20, shall survive the expiration or termination of this AGREEMENT for any reason.

**28. COUNTERPARTS**

- 28.1 This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute the same instrument.

*Signatures on next page*

Round 2



IN THE WITNESS WHEREOF, THE PARTIES HERETO EXECUTE THIS AGREEMENT ON THE DATE SET FORTH BELOW AND GRANTEE ACCEPTS THE AFOREMENTIONED TERMS AND CONDITIONS ELECTRONICALLY.

[INSERT GRANTEE NAME]  
A [Insert Entity Type]

BY: \_\_\_\_\_

[Insert GRANTEE Signer's Name and Title]  
Authorized Signatory

Date: \_\_\_\_\_

Department of Toxic Substances Control  
Site Mitigation and Restoration Program

BY: \_\_\_\_\_

Date: \_\_\_\_\_

References:

All documents referred in this AGREEMENT are located in Fluxx.

**ATTACHMENT C**  
**PROFESSIONAL SERVICES AGREEMENT**  
**FOR CONSULTANT SERVICES**

(City of Barstow / [REDACTED])

**1. IDENTIFICATION**

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Barstow, a California municipal corporation (“City”), and [REDACTED], a \_\_\_\_\_ (“Consultant”).

**2. RECITALS**

- 2.1. City has determined that it requires the following professional services from a consultant:  
[REDACTED]
- 2.2. Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.
- 2.3. Consultant represents that it has no known relationships with third parties, City Council members, or employees of City which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.

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

**3. DEFINITIONS**

- 3.1. “Scope of Services”: Such professional services as are set forth in Consultant’s [REDACTED] proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2. “Agreement Administrator”: The Agreement Administrator for this project is Andrew F Espinoza, Jr. The Agreement Administrator shall be the principal point of contact at the City for this project. All services under this Agreement shall be performed at the request of the Agreement Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. City reserves the right to change this designation upon written notice to Consultant
- 3.3. “Approved Fee Schedule”: Consultant’s compensation rates are set forth in the fee schedule attached hereto as Exhibit B and incorporated herein by this reference. This fee schedule shall

remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.

- 3.4. "Maximum Amount": The highest total compensation and costs payable to Consultant by City under this Agreement. The Maximum Amount under this Agreement is [REDACTED] (\$ [REDACTED]).
- 3.5. "Commencement Date": [REDACTED]
- 3.6. "Termination Date": [REDACTED]

#### 4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Termination Date unless extended by written agreement of the parties or terminated earlier under Section 16 ("Termination") below. Consultant may request extensions of time to perform the services required hereunder. Such extensions shall be effective if authorized in advance by City in writing and incorporated in written amendments to this Agreement.

#### 5. CONSULTANT'S DUTIES

- 5.1. **Services.** Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.
- 5.2. **Coordination with City.** In performing services under this Agreement, Consultant shall coordinate all contact with City through its Agreement Administrator.
- 5.3. **Budgetary Notification.** Consultant shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the Maximum Amount. Consultant shall concurrently inform the Agreement Administrator, in writing, of Consultant's estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the Maximum Amount.
- 5.4. **Business License.** Consultant shall obtain and maintain in force a City business license for the duration of this Agreement.
- 5.5. **Professional Standards.** Consultant shall perform all work to the standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of this Agreement, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code § 1090 and the Political Reform Act (Government Code § 81000 et seq.).
- 5.6. **Avoid Conflicts.** During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if such

work would present a conflict interfering with performance under this Agreement. However, City may consent in writing to Consultant's performance of such work.

- 5.7. **Appropriate Personnel.** Consultant has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. [REDACTED] shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.
- 5.8. **Substitution of Personnel.** Any persons named in the proposal or Scope of Services constitutes a promise to the City that those persons will perform and coordinate their respective services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. If City and Consultant cannot agree as to the substitution of key personnel, City may terminate this Agreement for cause.
- 5.9. **Permits and Approvals.** Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.
- 5.10. **Notification of Organizational Changes.** Consultant shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subcontractor. Change of ownership or control of Consultant's firm may require an amendment to this Agreement.
- 5.11. **Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

## 6. SUBCONTRACTING

- 6.1. **General Prohibition.** This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 6.2. **Consultant Responsible.** Consultant shall be responsible to City for all services to be performed under this Agreement.

- 6.3. **Identification in Fee Schedule.** All subcontractors shall be specifically listed and their billing rates identified in the Approved Fee Schedule, Exhibit B. Any changes must be approved by the Agreement Administrator in writing as an amendment to this Agreement.
- 6.4. **Compensation for Subcontractors.** City shall pay Consultant for work performed by its subcontractors, if any, only at Consultant's actual cost plus an approved mark-up as set forth in the Approved Fee Schedule, Exhibit B. Consultant shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subcontractors performing services under this Agreement. City shall not be liable for any payment, compensation, or federal and state taxes for any subcontractors.

## 7. COMPENSATION

- 7.1. **General.** City agrees to compensate Consultant on a monthly basis for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Fee Schedule in full satisfaction for such services. Compensation shall not exceed the Maximum Amount. Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.
- 7.2. **Invoices.** Consultant shall submit to City an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. All labor charges shall be itemized by employee name and classification/position with the firm, the corresponding hourly rate, the hours worked, a description of each labor charge, and the total amount due for labor charges.
- 7.3. **Taxes.** City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall be solely responsible for calculating, withholding, and paying all taxes.
- 7.4. **Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 7.5. **Additional Work.** Consultant shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior written approval is given by the City through a fully executed written amendment. Consultant shall not undertake any such work without prior written approval of the City.
- 7.6. **City Satisfaction as Precondition to Payment.** Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until City is satisfied that the services are satisfactory.
- 7.7. **Right to Withhold Payments.** If Consultant fails to provide a deposit or promptly satisfy an indemnity obligation described in Section 11, City shall have the right to withhold payments under this Agreement to offset that amount.

## 8. PREVAILING WAGES

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. This Agreement is subject to Prevailing Wage Laws, for all work performed under this Agreement for which the payment of prevailing wage is required by those laws. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

## 9. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material, and all electronic files, including computer-aided design files, developed by Consultant in the performance of this Agreement (such written material and electronic files are collectively known as “written products”) shall be and remain the property of City without restriction or limitation upon its use or dissemination by City except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

## 10. RELATIONSHIP OF PARTIES

- 10.1. **General.** Consultant is, and shall at all times remain as to City, a wholly independent contractor.
- 10.2. **No Agent Authority.** Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to 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 represent that it is, or that any of its agents or employees are, in any manner employees of City.
- 10.3. **Independent Contractor Status.** In no situation shall Consultant or its employees look to the City as an employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant’s previously earned California Public Employees Retirement System (“CalPERS”) retirement benefits, if any, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation, and other applicable federal and state taxes.
- 10.4. **Indemnification of CalPERS Determination.** 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 CalPERS to be eligible for enrollment in CalPERS 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 CalPERS 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.

## 11. INDEMNIFICATION

- 11.1 **Definitions.** For purposes of this Section 11, “Consultant” shall include Consultant, its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement. “City” shall include City, its officers, agents, employees and volunteers.
- 11.2 **Consultant to Indemnify City.** To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and defend City from and against any and all claims, losses, costs or expenses for any personal injury or property damage arising out of or in connection with Consultant’s alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or failure to comply with any provision in this Agreement. Notwithstanding the foregoing, with respect to any professional liability claim or lawsuit only, this indemnity does not include providing the primary defense of City, provided, however, Consultant shall be responsible for City’s defense costs to the extent such costs are incurred as a result of Consultant’s negligence, recklessness or willful misconduct.
- 11.3 **Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify City for such loss or damage as is caused by the sole active negligence or willful misconduct of the City.
- 11.4 **Attorneys Fees.** Such costs and expenses shall include reasonable attorneys’ fees for counsel of City’s choice, expert fees and all other costs and fees of litigation. Consultant shall not be entitled to any refund of attorneys’ fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 11.5 **Defense Deposit.** The City may request a deposit for defense costs from Consultant with respect to a claim. If the City requests a defense deposit, Consultant shall provide it within 15 days of the request.
- 11.6 **Waiver of Statutory Immunity.** The obligations of Consultant under this Section 11 are not limited by the provisions of any workers’ compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City.
- 11.7 **Indemnification by Subcontractors.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor or any other person or entity involved in the performance of this Agreement on Consultant’s behalf.
- 11.8 **Insurance Not a Substitute.** City does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Consultant’s indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

## 12. INSURANCE

- 12.1. **Insurance Required.** Consultant shall maintain insurance as described in this section and shall require all of its subcontractors, consultants, and other agents to do the same. Approval of the

insurance by the City shall not relieve or decrease any liability of Consultant Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

12.2. **Documentation of Insurance.** City will not execute this agreement until it has received a complete set of all required documentation of insurance coverage. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant’s obligation to provide them. Consultant shall file with City:

- Certificate of Insurance, indicating companies acceptable to City, with a Best's Rating of no less than A:VII showing. The Certificate of Insurance must include the following reference: City of Barstow Housing Element Update Support
- Documentation of Best’s rating acceptable to the City.
- Original endorsements effecting coverage for all policies required by this Agreement.
- Complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

12.3. **Coverage Amounts.** Insurance coverage shall be at least in the following minimum amounts:

- Professional Liability Insurance: \$1,000,000 per occurrence,  
\$2,000,000 aggregate
- General Liability:
  - General Aggregate: \$2,000,000
  - Products Comp/Op Aggregate \$2,000,000
  - Personal & Advertising Injury \$1,000,000
  - Each Occurrence \$1,000,000
  - Fire Damage (any one fire) \$ 50,000
  - Medical Expense (any 1 person) \$ 5,000
- Workers' Compensation:
  - Workers' Compensation Statutory Limits
  - EL Each Accident \$1,000,000
  - EL Disease - Policy Limit \$1,000,000
  - EL Disease - Each Employee \$1,000,000
- Automobile Liability
  - Any vehicle, combined single limit \$1,000,000

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured

12.4. **General Liability Insurance.** Commercial General Liability Insurance shall be no less broad than ISO form CG 00 01. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable.



- 12.5. **Worker's Compensation Insurance.** Consultant is aware of the provisions of Section 3700 of the Labor Code which requires every employer to carry Workers' Compensation (or to undertake equivalent self-insurance), and Consultant will comply with such provisions before commencing the performance of the work of this Agreement. If such insurance is underwritten by any agency other than the State Compensation Fund, such agency shall be a company authorized to do business in the State of California.
- 12.6. **Automobile Liability Insurance.** Covered vehicles shall include owned if any, non-owned, and hired automobiles and, trucks.
- 12.7. **Professional Liability Insurance or Errors & Omissions Coverage.** The deductible or self-insured retention may not exceed \$50,000. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage shall be continued for two years after the completion of the work 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.
- 12.8. **Claims-Made Policies.** If any of the required policies provide coverage on a claims-made basis the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Claims-Made Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- 12.9. **Additional Insured Endorsements.** The City, its City Council, Commissions, officers, and employees of Barstow must be endorsed as an additional insured for each policy required herein, other than Professional Errors and Omissions and Worker's Compensation, for liability arising out of ongoing and completed operations by or on behalf of the Consultant. Consultant's insurance policies shall be primary as respects any claims related to or as the result of the Consultant's work. Any insurance, pooled coverage or self-insurance maintained by the City, its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants shall be non-contributory. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. General liability coverage can be provided using an endorsement to the Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37.
- 12.10. **Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of the project and the Consultant does not furnish a new certificate of insurance prior to cancellation, City has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due the Consultant under this Agreement. Failure of the Consultant to maintain the insurance required by this Agreement, or to comply with any of the requirements of this section, shall constitute a material breach of this Agreement.
- 12.11. **Notices.** Contractor shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the

deductible or self-insured retention is increased. Consultant shall provide no less than 30 days' notice of any cancellation or material change to policies required by this Agreement. Consultant shall provide proof that cancelled or expired policies of insurance have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: City of Barstow, Attn: Domingo D. Gonzales, 220 E. Mountain View St., Suite A, Barstow, CA 92311.

- 12.12. **Consultant's Insurance Primary.** The insurance provided by Consultant, including all endorsements, shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 12.13. **Waiver of Subrogation.** Consultant hereby waives all rights of subrogation against the City. Consultant shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.
- 12.14. **Report of Claims to City.** Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under this Agreement.
- 12.15. **Premium Payments and Deductibles.** Consultant must disclose all deductibles and self-insured retention amounts to the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, City must approve all such amounts prior to execution of this Agreement.

City has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. Consultant shall be responsible for all premiums and deductibles in all of Consultant's insurance policies. The amount of deductibles for insurance coverage required herein are subject to City's approval.

- 12.16. **Duty to Defend and Indemnify.** Consultant's duties to defend and indemnify City under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement as well as the early termination of this Agreement.

### 13. MUTUAL COOPERATION


- 13.1. **City Cooperation in Performance.** City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 13.2. **Consultant Cooperation in Defense of Claims.** If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

### 14. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

If to Consultant

 City of Barstow  
220 E. Mountain View St., Suite A  
Barstow, CA 92311  
Telephone: (760) 255-5156  
Facsimile: (760) 256-1750



With courtesy copy to:

Matthew T. Summers, Esq.  
Barstow City Attorney  
Colantuono, Highsmith & Whatley, PC  
790 E. Colorado Blvd., Ste. 850  
Pasadena, CA 91101-2109  
Telephone: (213) 542-5700  
Facsimile: (213) 542-5710

## 15. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 5.11 (Records), Section 10.4 (Indemnification of CalPERS Determination), Section 11 (Indemnification), Section 12.8 (Claims-Made Policies), Section 13.2 (Consultant Cooperation in Defense of Claims), and Section 18.1 (Confidentiality) of this Agreement shall survive the expiration or termination of this Agreement, subject to the provisions and limitations of this Agreement and all otherwise applicable statutes of limitations and repose.

## 16. TERMINATION

- 16.1. **City Termination.** City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 16.2. **Consultant Termination.** Consultant may terminate this Agreement for a material breach of this Agreement upon 30 days' notice.
- 16.3. **Compensation Following Termination.** Upon termination, Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement. The City shall have the benefit of such work as may have been completed up to the time of such termination.

- 16.4. **Remedies.** City retains any and all available legal and equitable remedies for Consultant's breach of this Agreement.

## 17. INTERPRETATION OF AGREEMENT

- 17.1. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 17.2. **Integration of Exhibits.** All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. In the event of any material discrepancy between the express provisions of this Agreement and the exhibits of this Agreement, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on by City and Consultant.
- 17.3. **Headings.** The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the language of the section or paragraph shall control and govern in the construction of this Agreement.
- 17.4. **Pronouns.** Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 17.5. **Severability.** If any term or provision of this Agreement or the application thereof to any person or situation shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or situations other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 17.6. **No Presumption Against Drafter.** Each party had an opportunity to consult with an attorney in reviewing and drafting this agreement. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting to any party.

## 18. GENERAL PROVISIONS

- 18.1. **Confidentiality.** All data, documents, discussion, or other information developed or received by Consultant for performance of this Agreement are deemed confidential and Consultant shall not disclose it without prior written consent by City. City shall grant such consent if disclosure is legally required. All City data shall be returned to City upon the termination or expiration of this Agreement.

- 18.2. **Conflicts of Interest.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subcontractor to file, a Statement of Economic Interest with the City's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 18.3. **Non-assignment.** Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.4. **Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 18.5. **No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 18.6. **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 18.7. **Non-Discrimination.** Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Employment actions to which this provision applies shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.
- 18.8. **Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by City or Consultant of any breach of any provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.
- 18.9. **Excused Failure to Perform.** Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.

18.10. **Remedies Non-Exclusive.** Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be additive and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies.

18.11. **Attorneys' Fees.** If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs expended in the action.

18.12. **Venue.** The venue for any litigation shall be San Bernardino County, California and Consultant hereby consents to sole jurisdiction in San Bernardino County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

**TO EFFECTUATE THIS AGREEMENT,** the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

**"City"**  
**City of Barstow**

**"Consultant"**

By: \_\_\_\_\_  
*Signature*

By: \_\_\_\_\_  
*Signature*

Printed: Andrew F Espinoza, Jr.

Printed: \_\_\_\_\_

Title: City Manager

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

**Approved as to form:**



By: \_\_\_\_\_  
Matthew T. Summers, City Attorney

Date: \_\_\_\_\_