



SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY

REGULAR MEETING AGENDA
MARCH 23, 2017 8:30 A.M.

Location: City Council Chamber, 15651 East Stafford Street, City of Industry, California

Addressing the Agency:

- ▶ **Agenda Items:** *Members of the public may address the Successor Agency on any matter listed on the Agenda. In order to conduct a timely meeting, there will be a three-minute time limit per person for any matter listed on the Agenda. Anyone wishing to speak to the Successor Agency is asked to complete a Speaker's Card which can be found at the back of the room and at each podium. The completed card should be submitted to the Secretary prior to the Agenda item being called and prior to the individual being heard by the Successor Agency.*
- ▶ **Public Comments (Non-Agenda Items):** *Anyone wishing to address the Successor Agency on an item not on the Agenda may do so during the "Public Comments" period. In order to conduct a timely meeting, there will be a three-minute time limit per person for the Public Comments portion of the Agenda. State law prohibits the Successor Agency from taking action on a specific item unless it appears on the posted Agenda. Anyone wishing to speak to the Successor Agency is asked to complete a Speaker's Card which can be found at the back of the room and at each podium. The completed card should be submitted to the Secretary prior to the Agenda item being called by the Secretary and prior to the individual being heard by the Successor Agency..*

Americans with Disabilities Act:

- ▶ *In compliance with the ADA, if you need special assistance to participate in any meeting (including assisted listening devices), please contact the Office of the Secretary to the Successor Agency (626) 333-2211. Notification of at least 72 hours prior to the meeting will assist staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting.*

Agendas and other writings:

- ▶ *In compliance with Government Code Section 54957.5(b), staff reports and other public records permissible for disclosure related to open session agenda items are available at City Hall, 15625 East Stafford Street, Suite 100, City of Industry, California, at the office of the Secretary of the Successor Agency during regular business hours, Monday through Friday, 9:00 a.m. to 5:00 p.m.*

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1. Call to Order
 2. Flag Salute
 3. Roll Call
 4. Public Comment
-

5. **BOARD MATTERS**

- 5.1 Consideration of Amendment No. 1 to the Agreement for Consulting Services with Thomsen Engineering, Inc., 14-THOMSEN 13-01 A MP 99-31 #26, for the Diamond Bar Creek Improvement Project, extending the term of the Agreement from April 24, 2017 to April 24, 2020.

RECOMMENDED ACTION: Approve the Amendment.

- 5.2 Consideration of Amendment No. 1 to the Agreement for Consulting Services with WKE, Inc., 14-WKE 13-01 A MP 99-31 #26, for the Diamond Bar Creek Improvement Project, extending the term of the Agreement from April 24, 2017 to April 24, 2020.

RECOMMENDED ACTION: Approve the Amendment.

- 5.3 Consideration of Amendment No. 2 to the Agreement for Consulting Services with Leighton Consulting, Inc., 14-LEIGHTON 13-01 B MP 99-31 #26 for the Diamond Bar Creek Improvement Project, extending the term of the Agreement from April 24, 2017 to April 24, 2020.

RECOMMENDED ACTION: Approve the Amendment.

- 5.4 Consideration of Amendment No. 2 to the Agreement for Consulting Services with Sage Environmental Group, 14-SAGE 13-01 B MP 99-31 #26, for the Diamond Bar Creek Improvement Project, extending the term of the Agreement from April 24, 2017 to April 24, 2020.

RECOMMENDED ACTION: Approve the Amendment.

6. **CLOSED SESSION**

- 6,1 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1)
Case: Successor Agency to the Industry Urban-Development Agency v. Grand Central Recycling & Transfer Station, Inc., et al.
Los Angeles Superior Court
Case No. BC550794

6. Adjournment. Next regular Successor Agency meeting will be on Thursday, April 27, 2017, at 8:30 a.m.

SUCCESSOR AGENCY

ITEM NO. 5.1



SUCCESSOR AGENCY TO THE
INDUSTRY URBAN - DEVELOPMENT AGENCY

MEMORANDUM

TO: Honorable Chairman and Members of the Successor Agency to the Industry Urban-Development Agency Board

FROM: Paul J. Philips, Executive Director

Paul J. Philips

STAFF: Clement N. Calvillo, Agency Engineer, CNC Engineering *CNC*
Joshua Nelson, Deputy Agency Engineer, CNC Engineering *JN*

DATE: March 23, 2017

SUBJECT: Consideration of Amendment No. 1 to the Agreement for Consulting Services with Thomsen Engineering, Inc., 14-THOMSEN 13-01 A MP 99-31 #26 for the Diamond Bar Creek Improvement Project, extending the term of the Agreement from April 24, 2017 to April 24, 2020 (MP 99-31 #26)

Discussion:

On April 24, 2013, the Successor Agency to the Industry Urban-Development Agency ("Agency") approved an Agreement for Consulting Services with Thomsen Engineering, Inc. ("Thomsen"). Thomsen was retained in 2013 to provide design and construction support services for the Diamond Bar Creek Restoration and Trapezoidal Channel Reconstruction project. The Grand Avenue Westbound On-Ramp to Route 57/60 project has to be completed before the Diamond Bar Creek Improvement project could proceed, therefore the Creek project has to be extended beyond the completion of the On-Ramp project. It is anticipated that it will take until April 2020 to complete the necessary work for the Diamond Bar Creek Improvement Project.

The original agreement terminates on April 24, 2017, therefore it is necessary to extend the terms of the agreement. Thomsen is listed in the Recognized Obligation Payment Schedule under Line Item No. 149.

Fiscal Impact:

None.

Recommendation:

It is recommended that the Successor Agency Board approve Amendment No. 1 to the Agreement for Consulting Services with Thomsen Engineering, Inc.

Exhibits:

A. Amendment No. 1 to Agreement for Consulting Services with Thomsen Engineering, Inc., dated March 23, 2017

PJP/CC/JN:af

EXHIBIT A

Amendment No. 1 to Agreement for Consulting Services with Thomsen Engineering,
Inc., dated March 23, 2017

[Attached]

**AMENDMENT NO. 1
TO AGREEMENT FOR CONSULTING SERVICES WITH
THOMSEN ENGINEERING, INC.**

This Amendment No. 1 to the Agreement for Consulting Services (“Agreement”), is made and entered into this 23rd day of March, 2017, by and between the Successor Agency to the Industry Urban-Development Agency, a public body, corporate and politic (“Agency”) and Thomsen Engineering, Inc., a California corporation (“Consultant”). The Agency and Consultant are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, on or about April of 2013, the Agreement was entered into and executed between the Agency and Consultant to provide design and construction support services for the Diamond Bar Creek Restoration and Trapezoidal Channel Reconstruction; and

WHEREAS, pursuant to Section 3 of the Agreement, the Agreement was to terminate on April 24, 2017, however, the project is still in progress and it is anticipated that it will take until April 24, 2020 to complete the work;

WHEREAS, given the project isn’t complete, it is necessary to amend the Section 3. Term of Agreement; and

WHEREAS, for the reasons set forth herein, the Agency and Consultant desire to enter into this Amendment No. 1, as set forth below.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, it is agreed the aforesaid Agreement, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference, shall remain in full force and effect except as otherwise hereinafter provided:

3. Term of Agreement.

This Agreement shall commence on the Effective Date and shall remain in full force and effect until April 24, 2020 unless sooner terminated as provided in Section 4 herein.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 to the Agreement as of the Effective Date.

“AGENCY”
SUCCESSOR AGENCY TO THE INDUSTRY
URBAN-DEVELOPMENT AGENCY

“CONSULTANT”
THOMSEN ENGINEERING, INC.

By: _____
Mark D. Radecki, Chairman

By: _____
Robert E. Sullivan, President

Attest:

By: _____
Diane M. Schlichting, Chief Deputy Agency Secretary

APPROVED AS TO FORM

By: _____
James M. Casso, Agency General Counsel

EXHIBIT A TO AMENDMENT NO. 1:

**AGREEMENT FOR CONSULTING SERVICES WITH THOMSEN ENGINEERING, INC.
(DATED APRIL 24, 2013)**

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES is entered into this 24th day of April 2013 (the "Effective Date") by and between the **SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY**, (the "Agency") and **THOMSEN ENGINEERING, INC**, a California Corporation ("Consultant").

RECITALS

A. Agency has determined that it requires design and construction support from a consultant for the Diamond Bar Creek Restoration and Trapezoidal Channel Reconstruction.

B. 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 of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Agency and Consultant agree, as follows:

1. Consultant's Services.

a. Scope of Services. Subject to the terms and conditions set forth in this Agreement, Consultant shall perform the services set forth in the Scope of Work attached hereto and incorporated herein as Exhibit "A" ("Scope of Work").

b. Project Manager. Consultant's Project Manager on this project will be Robert Sullivan, who will have the overall responsibility and will supervise the work performed by Consultant on this project.

c. Personnel. Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but Agency reserves the right, for good cause, to require Consultant to exclude any employee from performing services on Agency's premises.

d. Licenses. Consultant will obtain all necessary licenses, permits and other approvals to perform the work specified in this Agreement and will pay all fees or taxes required for the issuance of the same.

e. Changes to Scope and Cost of Work. Consultant may, from time to time, request changes in the scope of services and costs in this Agreement to be performed hereunder. Before any work is performed beyond the scope of services in this Agreement, such changes

must be mutually agreed upon between Consultant and Agency and incorporated in written amendments to this Agreement.

f. Time for Performance. Consultant shall commence the services on the Effective Date and perform all services in conformance with the project timeline established by the Executive Director, set forth as Exhibit "B."

2. City Representative.

The Executive Director or his designee shall represent the Agency in the implementation of this Agreement.

3. Term of Agreement.

This Agreement shall commence on the Effective Date and shall remain in full force and effect until April 24, 2017, unless sooner terminated as provided in Section 4 herein.

4. Termination.

The Agency may terminate this Agreement for any reason on ten (10) calendar days written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on sixty (60) calendar days written notice to Agency. The effective date of termination shall be upon the date specified in the notice of termination, or, in the event no date is specified, upon the thirtieth (30th) day following delivery of the notice. Consultant agrees to cease all work under this Agreement on or before the effective date of such notice. In the event of termination by Agency, due to no fault or failure of performance by Consultant, Consultant shall be paid based on the percentage of 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. Consultant shall have no other claim against Agency by reason of such termination.

5. Compensation.

a. Compensation [check applicable provision]

Agency will compensate Consultant for the services provided pursuant to this Agreement, to the reasonable satisfaction of Agency, in an amount not to exceed one hundred ninety five thousand dollars and no cents (\$195,000.00), based on the hourly rates set forth in Exhibit C attached hereto and incorporated herein by this reference. Such amount will only be exceeded by an express, supplemental, written authorization by the Agency.

Agency will compensate Consultant for the services provided pursuant to this Agreement, to the reasonable satisfaction of Agency, in an amount not to exceed _____ . Such amount will only be exceeded by an express, supplemental, written authorization by the Agency.

b. Expenses [check applicable provision]

The amount set forth in paragraph a shall include Consultant's fees for the services as well as the actual cost of any equipment, materials, and supplies incurred by consultant in performing the work contemplated by this Agreement (including, but not limited to, all labor, materials, delivery, tax, assembly, and installation, as applicable).

Consultant shall be entitled to reimbursement only for those expenses expressly set forth in Exhibit C. Any expenses incurred by Consultant which are not expressly authorized by this Agreement will not be reimbursed by City. In no event shall expenses exceed the sum of _____.

c. Additional Services. Agency shall make payments for any services requested by Agency not included in the Scope of Services to Consultant on a time and materials basis using Consultant's standard fee schedule.

6. Method of Payment

Consultant shall submit to Agency an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall describe in detail the services rendered during the period and shall show the days worked, number of hours worked and reimbursable expenses, if any, for each day in the period. Each invoice submitted shall include the appropriate documentation for any reimbursable expenses claim by Consultant. Within ten business days of receipt each invoice, Agency shall notify Consultant in writing of any disputed amounts included on the invoice. Within thirty calendar days of receipt of each invoice, Agency shall pay all undisputed amounts included on the invoice. Agency shall not withhold applicable taxes or other authorized deductions from payments made to Consultant. At any time during regular working hours, all records, invoices, time cards, cost control sheets and other records maintained by Consultant shall be available for review and audit by Agency.

7. Ownership of Work Product.

All reports, documents or other written material developed by Consultant in the performance of this Agreement shall be and remain the property of the Agency without restriction or limitation upon its use or dissemination by Agency. Such material shall not be the subject of a copyright application by Consultant. Any re-use by Agency of any such materials on any project other than the project for which they were prepared shall be at the sole risk of the Agency unless Agency compensates Consultant for such use.

8. Records Retention and Access to Records.

a. Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of 4 years. Agency shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all program data, documents, proceedings and activities. If applicable under this Agreement, all files, documents, samples, test results, chain of custody logs, and other records and other relevant data developed by Consultant in the course of performing this Agreement shall be maintained for a period of two (2) years after

completion of all work and after final payments have been made and shall be made available to Agency upon request.

9. Confidential Status; Disclosure of Information.

All data, reports, documents, materials or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by Agency. Agency shall grant such consent if disclosure is legally required. All Agency data shall be returned to Agency upon the termination of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement.

10. Qualifications; Standard of Performance.

a. Consultant's Qualifications. Consultant has represented to the Agency that the Consultant, its employees and its subcontractors are knowledgeable, skilled and experienced and fully qualified to provide the services described in this Agreement and to perform such assessment, investigation, and analysis contemplated by the Agreement in accordance with good industry practices of Consultant's profession performing similar services under similar circumstances at the time the services are performed.

b. Standard of Performance. Consultant, its employees and its subcontractors shall perform all work to the highest professional standards and in a manner reasonably satisfactory to Agency, and as described in the Scope of Work. All work performed by Consultant and its employees pursuant to this Agreement will be performed diligently and in a manner consistent with the standards of care, diligence and skill exercised by recognized consulting firms for similar services, and in accordance with all regulatory and good management standards, and in a good, safe and workmanlike manner. Consultant will be responsible to ensure that all work performed by its employees or any contractors is performed to the standards set forth in this Agreement and that such work complies with requirements of any governmental agency or entity and applicable law.

11. Independent Contractor.

a. Consultant is an independent contractor and shall have no power to incur any debt, obligation or liability on behalf of Agency. Consultant shall not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of Agency.

b. Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold the Agency harmless from any and all taxes, assessments, penalties, and interest asserted against the Agency by reason of the independent contractor relationship created by this Agreement. In the event that Agency is audited by any Federal or State agency regarding the independent contractor status of Consultant and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between Agency and Consultant, then Consultant agrees to reimburse Agency for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

c. Consultant shall fully comply with the workers' compensation laws regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold the Agency harmless from any failure of Consultant to comply with applicable worker's compensation laws.

d. The Agency shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to the Agency from Consultant as a result of Consultant's failure to promptly pay to the Agency any reimbursement or indemnification arising under this Section.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant hereby shall, at its sole cost and expense, to defend, protect, indemnify, and hold harmless the Agency, its respective officers, attorneys, agents, employees, designated volunteers, successors, and assigns (collectively, "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, expert witnesses, consultants, or other professionals and all costs associated therewith (collectively, "Claims"), resulting from any negligent act, error, omission or failure to act of Consultant or any of its subcontractors and their respective officers, agents, servants, employees, subcontractors, material men, suppliers or their respective officers, agents, servants or employees in connection with, resulting from, or related to this Agreement or for failure to perform or negligent performance of any term, provision, covenant, or condition of the Agreement, including this indemnity provision. This indemnity provision is effective regardless of any prior, concurrent, or subsequent passive negligence by Indemnitees and shall operate to fully indemnify Indemnitees against any such negligence. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies which Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against the Consultant shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision. Consultant shall pay Indemnitees for any attorneys fees and costs incurred in enforcing this indemnification provision. Notwithstanding the foregoing, nothing in this instrument shall be construed to encompass (a) Indemnitees' active negligence or willful misconduct to the limited extent that this Agreement is subject to Civil Code § 2782(a), or (b) the contracting public agency's active negligence to the limited extent that this Agreement is subject to Civil Code § 2782(b). This indemnity is effective without reference to the existence or applicability of any insurance coverages which may have been required under this Agreement or any additional insured endorsements which may extend to Indemnitees. This indemnity provision shall survive the termination of this Agreement and is in addition to any other rights or remedies which Indemnitees may have under the law.

b. Consultant, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against any Indemnitee with respect to those Claims.

c. Consultant agrees to obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations, Consultant agrees to be fully responsible and shall indemnify, hold harmless and defend the Idemnitees from and against any and all Claims resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement as set forth in this Section.

13. Insurance.

a. Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of commercial general liability insurance written on an occurrence basis with limits no less than \$2,000,000 per occurrence and for all covered losses and \$2,000,000 general aggregate against any injury, death, loss or damage as a result of wrongful or negligent acts by Consultant, its officers, employees, agents, and independent contractors in performance of services under this Agreement;

(2) Automotive liability insurance, with minimum combined single limits coverage of \$1,000,000 covering any vehicle utilized in the performance of services under this Agreement;

(3) Professional liability or Errors and Omissions Insurance as appropriate written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.

(4) Worker's compensation and employer's liability insurance on a state-approved policy form providing benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

(5) Pollution Liability Insurance. [check if applicable]

Pollution Liability Insurance written on a Contractor's Pollution Liability form or other form acceptable to Agency providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be not less than \$1,000,000 per claim and \$3,000,000 aggregate.

b. The policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.

c. Consultant agrees that if it does not keep the insurance in full force and effect, the Agency may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, the Agency may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Consultant and the cost of such insurance may be deducted, at the option of Agency, from payments due Consultant, along with a reasonable administrative handling charge.

d. Consultant shall submit to the Agency proof of compliance with these insurance requirements, consisting of a certificate or certificates of insurance and/or endorsements, not less than one (1) day prior to beginning of performance under this Agreement.

e. Consultant shall provide proof that policies of insurance expiring during the term of this Agreement 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.

f. The general liability, property damage and automobile policies of insurance shall contain an endorsement naming the Agency, its officers, employees, attorneys, agents and volunteers as additional insureds. All of the policies shall contain an endorsement providing that the policies cannot be modified, canceled or reduced except on thirty (30) days' prior written notice to the Agency. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

g. The insurance provided by Consultant shall be primary to any other coverage available to the Agency. Any insurance or self-insurance maintained by the Agency, its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

h. All insurance coverage provided pursuant to this Agreement should not prohibit Consultant, and Consultant's officers, employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the Agency, its officers, employees, agents and representatives.

i. Any deductibles or self-insured retentions must be approved by the Agency. At the option of the Agency, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to the Agency or Consultant shall procure a bond guaranteeing payment of losses and expenses.

j. If Consultant is a Limited Liability Company, the general liability coverage must be amended so that the Limited Liability Company and its managers, affiliates, employees, agents, and other persons necessary or incidental to its operation are insureds.

k. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this Agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to the Agency, its employees, officials and agents.

l. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

m. Consultant agrees to be responsible for ensuring that no contact used by any party involved in any way with the project reserves the right to charge Agency or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the Agency. It is not the intent of Agency to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Agency for payment of premiums or other amounts with respect thereto.

n. Consultant agrees to provide immediate notice to Agency of any claim or loss against Consultant arising out of the work performed under this Agreement. Agency assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the Agency.

o. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 12 of this Agreement.

p. Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.

14. Mutual Cooperation.

a. The Agency shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services.

b. In the event any claim or action is brought against the Agency relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that Agency may require.

15. Notices.

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (a) the day of delivery if delivered by hand or overnight courier service

during Agency's and Consultant's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing.

If to Agency:

Successor Agency to the Industry Urban-Development Agency
15625 East Stafford Street
City of Industry, California 91744
Attn: Executive Director

With a copy to:

Richards, Watson & Gershon
333 South Hope Street - 38th Floor
Los Angeles, CA 90071
Attn: William L. Strausz, Esq.
(213) 626-8484
Fax: (213) 626-0078

If to Consultant:

Thomsen Engineering
18611 E. Gale Avenue
City of Industry, CA 91748
Attn: Robert Sullivan

16. Representations and Warranties.

Consultant represents, warrants and covenants to the Agency:

a. Organization. Consultant is duly organized, validly existing and in good standing under the laws of the State of California and in each other state in which it conducts business.

b. Agency. Consultant has all requisite licenses, permits, certifications, power and authority to carry on its business as presently conducted, to enter into this Agreement, and to perform its obligations under this Agreement.

c. Approval. The execution, delivery and performance of this Agreement by Consultant and the consummation of the transactions contemplated by this Agreement have been duly and validly authorized by the Board of Directors and are not subject to ratification by the Shareholders of Consultant at a special meeting therefore.

d. Binding Obligation. This Agreement has been duly executed and delivered on behalf of Consultant, and all documents and instruments required hereunder to be executed and delivered by Consultant have likewise been duly executed and delivered. This Agreement does, and such documents and instruments will, constitute legal, valid and binding obligations of Consultant in accordance with their terms. The consummation of the transactions contemplated by this Agreement will not violate, nor be in conflict with, any provision of the partnership agreement, charter, bylaws or governing documents of Consultant (or any of corporations comprising Consultant), or any agreement or instrument to which Consultant is a party or by which Consultant is bound, or any judgment, decree, order statute, rule or regulation applicable to Consultant.

17. Conflicts of Interest

Consultant and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this Agreement, including, but not limited to, the Political Reform Act (Government Code Section 81000, et. seq.) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subcontractors shall not, without the prior written approval of the Executive Director, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant agrees that a clause substantially similar to this section shall be incorporated into any sub-agreement, which Consultant executes in connection with the performance of this Agreement.

18. Accounting Requirements.

Consultant shall maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project under the Scope of Work. The accounting system shall conform to the Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

19. Governing Law.

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California.

20. Compliance with Laws.

a. Consultant shall comply with all applicable federal, state and local laws, ordinances, codes and regulations.

b. Compliance with Environmental Laws. [check if applicable]

Consultant shall comply with § 306 of the Federal Clean Air Act (42 U.S.C. §1857(h)), § 508 of the Federal Water Pollution Prevention Act (33 U.S.C. § 368), and the laws implementing those acts, including Executive Order 11,738 and 40 C.F.R. pt. 15. Consultant shall comply with the provisions of the "Barry Keane Underground Storage Tank Cleanup Trust Fund Act of 1989 (Health & safety Code §§ 25299.10 et. seq. and the applicable regulations promulgated thereunder (California Code of Regulations, Title 23, § 2810 et. seq. Consultant shall also comply with mandatory standards and policies relating to energy efficiency, according the state energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act.

21. Reliance on Reports [check if applicable]

Consultant understands that Agency will rely upon its reports, analysis and related data. Consultant understands and agrees that the reports prepared by Consultant, and the information, data, test results and the conclusions and analyses contained therein regarding the geologic and environmental condition of a site, and/or the soils and groundwater beneath a site, may be relied upon by the Agency, its program managers, consultants, attorneys and appraisers of a site, any purchaser and developer of a site, (provided that the limitations and restrictions set forth herein shall apply to such purchaser and developer) and may be submitted and relied upon by any local, state or federal agencies and entities, as a part of the evaluation of the risk associated with the development or use of the site and the soils and groundwater beneath a site, and for the purpose of assessing the geotechnical, hydro- geological and/or environmental condition of a site and the ground and surface water on, under and in the area of a site, issuing closure letters, permits, licenses or authorizations to develop a site, and to determine whether further environmental investigation, assessment, review or study is necessary, and so that the Agency and any designated purchaser and developer of any site can conduct construction activities on and develop the site.

22. Discrimination and Equal Employment Opportunity:

In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation.

23. No Assignment.

Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, nor shall it subcontract any of the work described in this Agreement or the Scope of Work without the prior written consent of Agency, and any attempt by Consultant to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

24. Non-Waiver of Terms, Rights and Remedies.

Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by Agency of any payment to Consultant constitute or be construed as a waiver by Agency of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by Agency shall in no way impair or prejudice any right or remedy available to Agency with regard to such breach or default.

25. Attorneys' Fees.

If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of the services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs in addition to any other relief to which it may be entitled.

26. Time Is Of The Essence.

Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof; and each and every provision hereof is hereby declared to be and made a material, essential and necessary part of this Agreement.

27. Exhibits; Precedence.

All documents referenced as exhibits in this Agreement are hereby incorporated in 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.

28. Entire Agreement and Amendments.

This Agreement, and any other documents incorporated herein by specific reference, represent the entire and integrated agreement between Consultant and the Agency. This Agreement supercedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

29. Severability.

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement, is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

30. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

WHEREFORE, the parties hereto have executed this Agreement as of the date first above written.

SUCCESSOR AGENCY TO THE
INDUSTRY URBAN-DEVELOPMENT
AGENCY

By: _____

Kevin Radecki, Executive Director

CONSULTANT

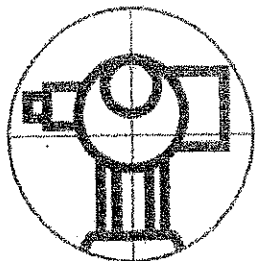
By: _____

By: _____

EXHIBIT A

Scope of Services

EXHIBIT "A"



**Thomsen
Engineering, inc.**

18611 E. Galb Ave.
Industry, CA 91743

Telephone
626-965-9350

- Civil Engineering
- Surveying
- Land Planning

E-mail
info@tel-civil.com

FAX
626-965-2379

December 12, 2012

Mr. Kevin Radecki
Successor Agency to Industry Urban-Development Agency
15625 E. Stafford Street
Industry, CA 91744

Re: Scope of services - Phase II and Phase III, Diamond Bar Creek Remediation and related Improvements. Provide Consultant Services for Design, Revisions and Construction Administration during the construction Phase on an as needed basis.
In: 6130-F & G

Dear Mr. Radecki:

We hereby request a service contract for miscellaneous engineering services for assistance in the preparation of various civil design and revisions to construction plans and bid packages for the remainder of the Phases of Diamond Bar Creek Improvements and the construction administration services to assist during the construction of the above referenced project.

CONSTRUCTION ADMINISTRATION (Phases II)

We will provide design engineering and revisions as directed by the Agency Engineer as well as construction administration assistance during the construction of the Phase II Project which includes the remediation of Diamond Bar Creek, construction of the access/maintenance road, replacement of the trapazoidal channel and the various storm drain extensions and outlets for the storm drain facilities from under the freeway on an as needed and hourly rate basis. This will include assistance in packaging and bidding, reviewing and answering questions, attending preconstruction meetings, site review, attend various onsite construction meetings and review of contractor submittals during construction for Phase II.

The above described services will be provided on an hourly rate basis with a not to exceed amount of \$125,000.00.

EXHIBIT "A"

Page 2 of 2

CONSTRUCTION ADMINISTRATION (Phases III)

We will provide design engineering and revisions as directed by the Agency Engineer as well as construction administration assistance during the construction of the Phase III Project which includes the grading of the bypass and detention basin facility including the outlet weir for the control and release of the detained runoff. This will complete the remediation of Diamond Bar Creek. Our services will include assistance in packaging and bidding, reviewing and answering questions, attending preconstruction meetings, site review, attend various onsite construction meetings and review of contractor submittals during construction for Phase III.

The above described services will be provided on an hourly rate basis with a not to exceed amount of \$70,000.00.

EXCLUSION

Soils and structural engineering is not provided by our company, therefore, it is excluded.

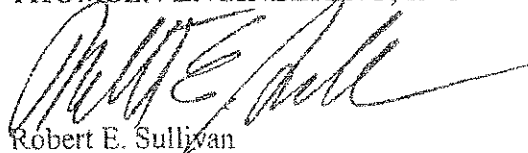
REIMBURSEMENT

All research materials, conferences with clients and attorneys, blueprints, computer plots, specialty computer software, messenger fees and governmental fees are reimbursable and are not included in the above estimates.

We appreciate the opportunity to assist the Agency and look forward to providing engineering services during the construction of this project.

Sincerely,

THOMSEN ENGINEERING, INC.



Robert E. Sullivan
President

res/hs

EXHIBIT "A"
DIAMOND BAR CREEK REMEDIATIONS

IN THE CITY OF INDUSTRY, CA

DATE: 12-12-2012

Provide Consultant Services for Design, Revisions and Construction Administrations

Description	PM	PE	Civil	Staff	Draft	Survey-2
Rate \$/hr	\$125	\$104	\$94	\$60	\$70	\$229
PHASE II - CONSTRUCTION ADMINISTRATION - Access/maintenance Road, Trapezoidal Channel, S.D. Facilities						
1A. - BID SET						
1. Package Preparation	1	8	32			
2. Reviewing and Answering Bidder Questions	4	16	44			
3. Bidder Meeting	4	4	8			
4. Site Visit and Review		8	8			
Sub-total	9	36	92	0	0	0
1B. - CONSTRUCTION						
1. Preconstruction meeting	4	4	8			
2. Submittal Review	5	16	180			
3. Review and Answer RFI	10	36	120			
4. Design Changes	28	80	180			40
5. Progress Meetings	4	120	80			
6. Site Visit and Review	4	40	16			
7. Review Change Orders	4	16	80			
Sub-total	59	312	664	0	0	40
TOTAL HOURS FOR PHASE II	68	348	756	0	0	40
ENGINEERING COST	\$8,500	\$36,192	\$71,064	\$0	\$0	\$9,160

TOTAL PHASE II COST \$124,916 1212 HOURS

PHASE III - CONSTRUCTION ADMINISTRATION - Bypass and Detention Basin Facility

2A. - BID SET						
1. Package Preparation	1	8	32			
2. Reviewing and Answering Bidder Questions	4	16	44			
3. Bidder Meeting	4	4	8			
4. Site Visit and Review		8	8			
Sub-total	9	36	92	0	0	0
2B. - CONSTRUCTION						
1. Preconstruction meeting	4	4	8			
2. Submittal Review	4	10	40			
3. Review and Answer RFI	10	40	160			
4. Design Changes	10	28	60			24
5. Progress Meetings	4	48	8			
6. Site Visit and Review	4	20	8			
7. Review Change Orders	2	8	32			
Sub-total	38	158	316	0	0	24
TOTAL HOURS FOR PHASE III	47	194	408	0	0	24
ENGINEERING COST	\$5,875	\$20,176	\$38,352	\$0	\$0	\$5,496

TOTAL PHASE III COST \$69,899 673 HOURS

S U M M A R Y

PHASE II	\$125,000
PHASE III	\$70,000
	<hr/>

CIVIL DESIGN FEE \$195,000

EXHIBIT B

Project Timeline

Start date: April 24, 2013

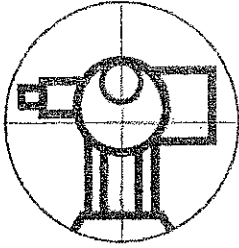
Estimated end of construction: June 30, 2017

Upon the start of construction a more detailed project schedule will be established.

EXHIBIT C

Professional Fee Schedule
Hourly Rates

EXHIBIT "C"



**Thomsen
Engineering, Inc.**

18611 E. Gale Ave
Industry, CA 91748

Telephone
626-965-9350

- Civil Engineering
- Surveying
- Land Planning

Email
info@ThomsenEngInc.com

FAX
626-965-2379

RATE SCHEDULE

10/01/2012

HOURLY RATES

<u>DESCRIPTION</u>	<u>REG.</u>	<u>O.T.</u>	<u>SUN.</u>
1. GPS CREW, 2 SURVEYORS	\$279.00	\$418.50	\$558.00
2. CREW, 3 SURVEYORS	\$262.00	\$393.00	\$524.00
3. CREW, 2 SURVEYORS	\$229.00	\$343.50	\$458.00
4. PRINCIPAL I	\$125.00		
5. PRINCIPAL, II, Supervision	\$125.00		
6. CIVIL ENGINEER IV	\$104.00		
7. CIVIL ENGINEER III	\$ 94.00		
8. CIVIL ENGINEER II	\$ 84.00		
9. CIVIL ENGINEER I	\$ 74.00		
10. SPECIAL SERVICES	\$ 72.00		
11. DRAFTSMAN	\$ 70.00		
12. CIVIL ENGINEER (Apprentice I)	\$ 54.00		
13. CLERICAL	\$ 48.00		

All blueprints, research material, conferences and discussions with our client and their attorneys or the attorneys of a lender, computer plots, specialized computer software, overnight shipping charges and governmental fees are reimbursable and not included in the above estimate. Rates subject to change annually per Union agreement anniversary on August 1st.

THOMSEN ENGINEERING, INC.


Robert E. Sullivan

Approved By: _____

SUCCESSOR AGENCY

ITEM NO. 5.2



SUCCESSOR AGENCY TO THE
INDUSTRY URBAN - DEVELOPMENT AGENCY

MEMORANDUM

TO: Honorable Chairman and Members of the Successor Agency to the Industry Urban-Development Agency Board

FROM: Paul J. Philips, Executive Director *Paul J. Philips*

STAFF: Clement N. Calvillo, Agency Engineer, CNC Engineering *CNC*
Joshua Nelson, Deputy Agency Engineer, CNC Engineering *JN*

DATE: March 23, 2017

SUBJECT: Consideration of Amendment No. 1 to the Agreement for Consulting Services with WKE, Inc., 14-WKE 13-01 A MP 99-31 #26 for the Diamond Bar Creek Improvement Project, extending the term of the Agreement from April 24, 2017 to April 24, 2020 (MP 99-31 #26)

Discussion:

On April 24, 2013, the Successor Agency to the Industry Urban-Development Agency ("Agency") approved an Agreement for Consulting Services with WKE, Inc. ("WKE"). WKE was retained in 2013 to provide final structural design and structural engineering services during construction for the Diamond Bar Creek Restoration and Trapezoidal Channel Reconstruction project. The Grand Avenue Westbound On-Ramp to Route 57/60 project has to be completed before the Diamond Bar Creek Improvement project could proceed, therefore the Creek project has to be extended beyond the completion of the On-Ramp project. It is anticipated that it will take until April 2020 to complete the necessary work for the Diamond Bar Creek Improvement Project.

The original agreement terminates on April 24, 2017, therefore it is necessary to extend the terms of the agreement. WKE is listed in the Recognized Obligation Payment Schedule under Line Item No. 167.

Fiscal Impact:

None.

Recommendation:

It is recommended that the Successor Agency Board approve Amendment No. 1 to the Agreement for Consulting Services with WKE, Inc.

Exhibits:

- A. Amendment No. 1 to Agreement for Consulting Services with WKE, Inc., dated March 23, 2017

PJP/CC/JN:af

EXHIBIT A

Amendment No. 1 to Agreement for Consulting Services with WKE, Inc., dated
March 23, 2017

[Attached]

**AMENDMENT NO. 1
TO AGREEMENT FOR CONSULTING SERVICES WITH
WKE, INC.**

This Amendment No. 1 to the Agreement for Consulting Services (“Agreement”), is made and entered into this 23rd day of March, 2017, by and between the Successor Agency to the Industry Urban-Development Agency, a public body, corporate and politic (“Agency”) and WKE, Inc., a California corporation (“Consultant”). The Agency and Consultant are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, on or about April of 2013, the Agreement was entered into and executed between the Agency and Consultant to provide final structural design and structural engineering services during construction for the Diamond Bar Creek Restoration and Trapezoidal Channel Reconstruction; and

WHEREAS, pursuant to Section 3 of the Agreement, the Agreement was to terminate on April 24, 2017, however, the project is still in progress and it is anticipated that it will take until April 24, 2020 to complete the work;

WHEREAS, given the project isn’t completed, it is necessary to amend the Section 3. Term of Agreement; and

WHEREAS, for the reasons set forth herein, the Agency and Consultant desire to enter into this Amendment No. 1, as set forth below.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, it is agreed the aforesaid Agreement, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference, shall remain in full force and effect except as otherwise hereinafter provided:

3. Term of Agreement.

This Agreement shall commence on the Effective Date and shall remain in full force and effect until April 24, 2020 unless sooner terminated as provided in Section 4 herein.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 to the Agreement as of the Effective Date.

“AGENCY”
SUCCESSOR AGENCY TO THE INDUSTRY
URBAN-DEVELOPMENT AGENCY

“CONSULTANT”
WKE, INC.

By: _____
Mark D. Radecki, Chairman

By: _____
Wei Koo, President

Attest:

By: _____
Diane M. Schlichting, Chief Deputy Agency Secretary

APPROVED AS TO FORM

By: _____
James M. Casso, Agency General Counsel

EXHIBIT A TO AMENDMENT NO. 1:

**AGREEMENT FOR CONSULTING SERVICES WITH WKE, INC. (DATED APRIL 24,
2013)**

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES is entered into this 24th day of April 2013 (the "Effective Date") by and between the **SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY**, (the "Agency") and **WKE, INC.**, a California Corporation ("Consultant").

RECITALS

A. Agency has determined that it requires the following professional services from a consultant to provide final structural design and structural engineering services during construction from a consultant for the Diamond Bar Creek Restoration and Trapezoidal Channel Reconstruction.

B. 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 of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Agency and Consultant agree, as follows:

I. Consultant's Services.

a. Scope of Services. Subject to the terms and conditions set forth in this Agreement, Consultant shall perform the services set forth in the Scope of Work attached hereto and incorporated herein as Exhibit "A" ("Scope of Work").

b. Project Manager. Consultant's Project Manager on this project will be Wei Koo, who will have the overall responsibility and will supervise the work performed by Consultant on this project.

c. Personnel. Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but Agency reserves the right, for good cause, to require Consultant to exclude any employee from performing services on Agency's premises.

d. Licenses. Consultant will obtain all necessary licenses, permits and other approvals to perform the work specified in this Agreement and will pay all fees or taxes required for the issuance of the same.

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e. Changes to Scope and Cost of Work. Consultant may, from time to time, request changes in the scope of services and costs in this Agreement to be performed hereunder. Before any work is performed beyond the scope of services in this Agreement, such changes must be mutually agreed upon between Consultant and Agency and incorporated in written amendments to this Agreement.

f. Time for Performance. Consultant shall commence the services on the Effective Date and perform all services in conformance with the project timeline established by the Executive Director, set forth as Exhibit "B."

2. City Representative.

The Executive Director or his designee shall represent the Agency in the implementation of this Agreement.

3. Term of Agreement.

This Agreement shall commence on the Effective Date and shall remain in full force and effect until April 24, 2017, unless sooner terminated as provided in Section 4 herein.

4. Termination.

The Agency may terminate this Agreement for any reason on ten (10) calendar days written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on sixty (60) calendar days written notice to Agency. The effective date of termination shall be upon the date specified in the notice of termination, or, in the event no date is specified, upon the thirtieth (30th) day following delivery of the notice. Consultant agrees to cease all work under this Agreement on or before the effective date of such notice. In the event of termination by Agency, due to no fault or failure of performance by Consultant, Consultant shall be paid based on the percentage of 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. Consultant shall have no other claim against Agency by reason of such termination.

5. Compensation.

a. Compensation [check applicable provision]

Agency will compensate Consultant for the services provided pursuant to this Agreement, to the reasonable satisfaction of Agency, in an amount not to exceed fifty six thousand dollars and no cents (\$56,000.00), based on the hourly rates set forth in Exhibit C attached hereto and incorporated herein by this reference. Such amount will only be exceeded by an express, supplemental, written authorization by the Agency.

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Agency will compensate Consultant for the services provided pursuant to this Agreement, to the reasonable satisfaction of Agency, in an amount not to exceed _____ . Such amount will only be exceeded by an express, supplemental, written authorization by the Agency.

b. Expenses [check applicable provision]

The amount set forth in paragraph a shall include Consultant's fees for the services as well as the actual cost of any equipment, materials, and supplies incurred by consultant in performing the work contemplated by this Agreement (including, but not limited to, all labor, materials, delivery, tax, assembly, and installation, as applicable).

Consultant shall be entitled to reimbursement only for those expenses expressly set forth in Exhibit C. Any expenses incurred by Consultant which are not expressly authorized by this Agreement will not be reimbursed by Agency. In no event shall expenses exceed the sum of \$ _____.

c. Additional Services. Agency shall make payments for any services requested by Agency not included in the Scope of Services to Consultant on a time and materials basis using Consultant's standard fee schedule.

6. Method of Payment

Consultant shall submit to Agency an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall describe in detail the services rendered during the period and shall show the days worked, number of hours worked and reimbursable expenses, if any, for each day in the period. Each invoice submitted shall include the appropriate documentation for any reimbursable expenses claim by Consultant. Within ten business days of receipt each invoice, Agency shall notify Consultant in writing of any disputed amounts included on the invoice. Within thirty calendar days of receipt of each invoice, Agency shall pay all undisputed amounts included on the invoice. Agency shall not withhold applicable taxes or other authorized deductions from payments made to Consultant. At any time during regular working hours, all records, invoices, time cards, cost control sheets and other records maintained by Consultant shall be available for review and audit by Agency.

7. Ownership of Work Product.

All reports, documents or other written material developed by Consultant in the performance of this Agreement shall be and remain the property of the Agency without restriction or limitation upon its use or dissemination by Agency. Such material shall not be the subject of a copyright application by Consultant. Any re-use by Agency of any such materials on any project other than the project for which they were prepared shall be at the sole risk of the Agency unless Agency compensates Consultant for such use.

8. Records Retention and Access to Records.

a. Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of two (2) years. Agency shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all program data, documents, proceedings and activities. If applicable under this Agreement, all files, documents, samples, test results, chain of custody logs, and other records and other relevant data developed by Consultant in the course of performing this Agreement shall be maintained for a period of two (2) years after completion of all work and after final payments have been made and shall be made available to Agency upon request.

9. Confidential Status; Disclosure of Information.

All data, reports, documents, materials or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by Agency. Agency shall grant such consent if disclosure is legally required. All Agency data shall be returned to Agency upon the termination of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement.

10. Qualifications; Standard of Performance.

a. Consultant's Qualifications. Consultant has represented to the Agency that the Consultant, its employees and its subcontractors are knowledgeable, skilled and experienced and fully qualified to provide the services described in this Agreement and to perform such assessment, investigation, and analysis contemplated by the Agreement in accordance with good industry practices of Consultant's profession performing similar services under similar circumstances at the time the services are performed.

b. Standard of Performance. Consultant, its employees and its subcontractors shall diligently perform all work pursuant to this Agreement in a manner that is both reasonably satisfactory to Agency and that is consistent with the standards of care, diligence and skill exercised by recognized consulting firms for similar services, and in accordance with all regulatory and good management standards, and in a good, safe and workmanlike manner. Consultant will be responsible to ensure that all work performed by its employees or any contractors is performed to the standards set forth in this Agreement and that such work complies with requirements of any governmental agency or entity and applicable law.

11. Independent Contractor.

a. Consultant is an independent contractor and shall have no power to incur any debt, obligation or liability on behalf of Agency. Consultant shall not, at any time or in any

manner, represent that it or any of its agents or employees are in any manner agents or employees of Agency.

b. Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold the Agency harmless from any and all taxes, assessments, penalties, and interest asserted against the Agency by reason of the independent contractor relationship created by this Agreement. In the event that Agency is audited by any Federal or State agency regarding the independent contractor status of Consultant and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between Agency and Consultant, then Consultant agrees to reimburse Agency for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

c. Consultant shall fully comply with the workers' compensation laws regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold the Agency harmless from any failure of Consultant to comply with applicable worker's compensation laws.

d. The Agency shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to the Agency from Consultant as a result of Consultant's failure to promptly pay to the Agency any reimbursement or indemnification arising under this Section.

12. Indemnification.

a. To the full extent permitted by law, Consultant shall indemnify, defend and hold harmless the IUDA, its officers, officials, employees, and agents from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or representatives, in the performance of professional services under this Agreement.

b. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless the IUDA, its officers, officials, employees, and agents from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the IUDA, its officers, employees and agents may sustain or incur or which may be imposed upon them for injury to or death of persons, or damages to property arising out of or in connection with the performance of this Agreement by Consultant, its agents, employees or representatives.

c. Consultant, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against any Indemnitee with respect to those Claims, except for any liability resulting from actions that are covered by the Professional Liability or Errors and Omissions Insurance policy.

d. Consultant agrees to obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations, Consultant agrees to be fully responsible and shall indemnify, hold harmless and defend the IUDA, its officers, officials, employees, and agents from and against any and all Claims resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement as set forth in this Section.

13. Insurance.

a. Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of commercial general liability insurance written on an occurrence basis with limits no less than \$1,000,000 per occurrence and for all covered losses and \$1,000,000 general aggregate against any injury, death, loss or damage as a result of wrongful or negligent acts by Consultant, its officers, employees, agents, and independent contractors in performance of services under this Agreement;

(2) Automotive liability insurance, with minimum combined single limits coverage of \$1,000,000 covering any vehicle utilized in the performance of services under this Agreement;

(3) Professional liability or Errors and Omissions Insurance as appropriate written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.

(4) Worker's compensation and employer's liability insurance on a state-approved policy form providing benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

(5) Pollution Liability Insurance. [check if applicable]

Pollution Liability Insurance written on a Contractor's Pollution Liability form or other form acceptable to Agency providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be not less than \$1,000,000 per claim and \$3,000,000 aggregate.

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b. The policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A: VII in the latest edition of Best's Insurance Guide.

c. Consultant agrees that if it does not keep the insurance in full force and effect, the Agency may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, the Agency may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Consultant and the cost of such insurance may be deducted, at the option of Agency, from payments due Consultant, along with a reasonable administrative handling charge.

d. Consultant shall submit to the Agency proof of compliance with these insurance requirements, consisting of a certificate or certificates of insurance and/or endorsements, not less than one (1) day prior to beginning of performance under this Agreement.

e. Consultant shall provide proof that policies of insurance expiring during the term of this Agreement 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.

f. The general liability, property damage and automobile policies of insurance shall contain an endorsement naming the Agency, its officers, employees, attorneys, agents and volunteers as additional insureds. All of the policies shall contain an endorsement providing that the policies cannot be modified, canceled or reduced except on thirty (30) days' prior written notice to the Agency. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

g. The insurance provided by Consultant shall be primary to any other coverage available to the Agency. Any insurance or self-insurance maintained by the Agency, its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

h. All insurance coverage provided pursuant to this Agreement, with the exception of the Professional Liability or Errors and Omissions Insurance, shall not prohibit Consultant, and Consultants officers, employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the Agency, its officers, employees, agents and representatives, except for any liability resulting from actions that are covered by the Professional Liability or Errors and Omissions Insurance policy.

i. Any deductibles or self-insured retentions must be approved by the Agency. At the option of the Agency, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to the Agency, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

j. If Consultant is a Limited Liability Company, the general liability coverage must be amended so that the Limited Liability Company and its managers, affiliates, employees, agents, and other persons necessary or incidental to its operation are insureds.

k. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this Agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to the Agency, its employees, officials and agents.

l. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

m. Consultant agrees to be responsible for ensuring that no contact used by any party involved in any way with the project reserves the right to charge Agency or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the Agency. It is not the intent of Agency to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Agency for payment of premiums or other amounts with respect thereto.

n. Consultant agrees to provide immediate notice to Agency of any claim or loss against Consultant arising out of the work performed under this Agreement. Agency assumes no obligation or liability by such notice, but has the right (but not his duty) to monitor the handling of any such claim or claims if they are likely to involve the Agency.

o. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 12 of this Agreement.

p. Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.

14. Mutual Cooperation.

a. The Agency shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services.

b. In the event any claim or action is brought against the Agency relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that Agency may require.

15. Notices.

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

If to Agency:

Successor Agency to the Industry Urban-Development Agency
15625 East Stafford Street
City of Industry, California 91744
Attn: Executive Director

With a copy to:

Richards, Watson & Gershon
333 South Hope Street - 38th Floor
Los Angeles, CA 90071
Attn: William L. Strausz, Esq.
(213) 626-8484
Fax: (213) 626-0078

If to Consultant:

WKE, Inc.
400 N. Tustin Avenue, Suite 275
Santa Ana, CA 92705
Attn: Wei T. Koo, President
(714) 953-2665
Fax: (714) 953-5408

16. Representations and Warranties.

Consultant represents, warrants and covenants to the Agency:

a. Organization. Consultant is duly organized, validly existing and in good standing under the laws of the State of California and in each other state in which it conducts business.

b. Agency. Consultant has all requisite licenses, permits, certifications, power and authority to carry on its business as presently conducted, to enter into this Agreement, and to perform its obligations under this Agreement.

c. Approval. The execution, delivery and performance of this Agreement by Consultant and the consummation of the transactions contemplated by this Agreement have been duly and validly authorized by the Board of Directors and are not subject to ratification by the Shareholders of Consultant at a special meeting therefore.

d. Binding Obligation. This Agreement has been duly executed and delivered on behalf of Consultant, and all documents and instruments required hereunder to be executed and delivered by Consultant have likewise been duly executed and delivered. This Agreement does, and such documents and instruments will, constitute legal, valid and binding obligations of Consultant in accordance with their terms. The consummation of the transactions contemplated by this Agreement will not violate, nor be in conflict with, any provision of the partnership agreement, charter, bylaws or governing documents of Consultant (or any of corporations comprising Consultant), or any agreement or instrument to which Consultant is a party or by which Consultant is bound, or any judgment, decree, order statute, rule or regulation applicable to Consultant.

17. Conflicts of Interest

Consultant and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this Agreement, including, but not limited to, the Political Reform Act (Government Code Section 81000, *et. seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subcontractors shall not, without the prior written approval of the Executive Director, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant agrees that a clause substantially similar to this section shall be incorporated into any sub-agreement, which Consultant executes in connection with the performance of this Agreement.

18. Accounting Requirements.

Consultant shall maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project under the Scope of Work. The accounting system shall conform to the Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

19. Governing Law.

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California.

20. Compliance with Laws.

a. Consultant shall comply with all applicable federal, state and local laws, ordinances, codes and regulations.

b. Compliance with Environmental Laws. [check if applicable]

Consultant shall comply with § 306 of the Federal Clean Air Act (42 U.S.C. § 1857(h)), § 508 of the Federal Water Pollution Prevention Act (33 U.S.C. § 1368), and the laws implementing those acts, including Executive Order 11,728 and 40 C.F.R. pt. 15. Consultant shall comply with the provisions of the "Barry Keane Underground Storage Tank Cleanup Trust Fund Act of 1989 (Health & safety Code §§ 25299.10 et. seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 23, § 2810 et. seq.). Consultant shall also comply with mandatory standards and policies relating to energy efficiency, according the state energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act.

21. Reliance on Reports [check if applicable]

Consultant understands that Agency will rely upon its reports, analysis and related data. Consultant understands and agrees that the reports prepared by Consultant, and the information, data, test results and the conclusions and analyses contained therein regarding the geologic and environmental condition of a site, and/or the soils and groundwater beneath a site, may be relied upon by the Agency, its program managers, consultants, attorneys and appraisers of a site, any purchaser and developer of a site, (provided that the limitations and restrictions set forth herein shall apply to such purchaser and developer) and may be submitted and relied upon by any local, state or federal agencies and entities, as a part of the evaluation of the risk associated with the development or use of the site and the soils and groundwater beneath a site, and for the purpose of assessing the geotechnical, hydro- geological and/or environmental condition of a site and the ground and surface water on, under and in the area of a site, issuing closure letters, permits, licenses or authorizations to develop a site, and to determine whether

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further environmental investigation, assessment, review or study is necessary, and so that the Agency and any designated purchaser and developer of any site can conduct construction activities on and develop the site.

22. Discrimination and Equal Employment Opportunity.

In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation.

23. No Assignment.

Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, nor shall it subcontract any of the work described in this Agreement or the Scope of Work without the prior written consent of Agency, and any attempt by Consultant to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

24. Non-Waiver of Terms, Rights and Remedies.

Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by Agency of any payment to Consultant constitute or be construed as a waiver by Agency of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by Agency shall in no way impair or prejudice any right or remedy available to Agency with regard to such breach or default.

25. Attorneys' Fees.

If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of the services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs in addition to any other relief to which it may be entitled.

26. Time Is Of The Essence.

Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof; and each and every provision hereof is hereby declared to be and made a material, essential and necessary part of this Agreement.

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27. Exhibits; Precedence.

All documents referenced as exhibits in this Agreement are hereby incorporated in 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.

28. Entire Agreement and Amendments.

This Agreement, and any other documents incorporated herein by specific reference, represent the entire and integrated agreement between Consultant and the Agency. This Agreement supercedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

29. Severability.

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement, is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

30. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

WHEREFORE, the parties hereto have executed this Agreement as of the date first above written.

SUCCESSOR AGENCY TO THE
INDUSTRY URBAN-DEVELOPMENT
AGENCY

CONSULTANT:
WKE, INC.

By: 
Kevin Radecki, Executive Director

By: 
Wei Koo, President

EXHIBIT A

Scope of Services



EXHIBIT "A"

December 05, 2012

Mr. Kevin Radecki
Executive Director
Successor Agency to the Industry Urban-Development Agency
15625 East Stafford Street, Suite 200
City of Industry, CA 91744

Attention: Mr. Joshua Nelson / C&C Engineering

RE: Engineering Proposal for
Diamond Bar Creek Restoration Phase II and III

Dear Mr. Radecki:

WKE is pleased to submit an engineering proposal to the Successor Agency to the Industry Urban-Development Agency (S-IUDA) for the Diamond Bar Creek Restoration project Phases II & III. The proposed scope of work and the maximum not-to-exceed fee proposal are described below. A detailed summary containing breakdown of man-hour by tasks is provided in Attachment A.

Phase II – Structural Engineering Services During Construction

WKE will provide structural engineering support services for the Diamond Bar Creek Phase II Construction. Our services include the following tasks:

- Attend preconstruction construction meetings;
- Review shop drawings and respond to Requests for Information (RFIs);
- Attend construction meetings/site visits at the request of the Construction Manager (CM);
- Prepare Contract Change Order (CCOs) as needed.

Total estimated man-hour for Phase II is 204 hours.
Total not-to-exceed engineering budget is \$ 26,000

Phase III – Final Design and Structural Engineering Service during Construction.

WKE will provide final structural design, plans, specifications, and estimates for the "high-flow" splitter structure and realigned maintenance access road around the splitter structure. The hydraulic analysis and the configuration of the flow-splitter structure will be prepared by Thompson Engineering. Following is a summary of the engineering tasks by WKE:

- Prepare structural engineering calculations;
- Prepare engineering plans for the flow splitter structure and the realignment of the DB Creek access road;
- Design quality check;
- Submit plans to the City and the County, and respond to comments ;
- Revise and submit final plans for approval

WKE will provide structural engineering support services for the Diamond Bar Creek Phase III Construction. Our services include the following tasks:

- Attend preconstruction construction meetings;
- Review shop drawings and respond to Requests for Information (RFIs);
- Attend construction meetings/site visits at the request of the Construction Manager (CM);
- Prepare Contract Change Order (CCOs) as needed.

Total estimated man-hour for Phase III is 266 hours.
Total not-to-exceed engineering budget is \$ 30,000

The proposed fee does not include other direct costs (ODC). ODCs are reimbursable by the S-IUDA at invoice time with supporting documents.

WKE appreciates the opportunity to continue servicing the Successor Agency to the Industry Urban-Development Agency on this important project. Please contact me should you have any questions on the proposal.

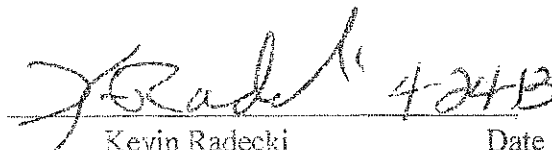
Respectfully Submitted

WKE, Inc.



Wei Koo, SE
President

Approved by



Kevin Radecki
City Manager

Date

Cc: contract file

WKE, Inc.

PROFESSIONAL FEE PROPOSAL.
FOR

PROJECT: Diamond Bar Creek Restoration Phase II and Phase III		CONTRACT NO.	
CLIENT: S-IUDA	OWNER: S-IUDA		
Prep. by : W. Koo	Date: 12/3/2012		
RFP No :	Date: 12/3/2012		
PROPOSED SERVICE:			
Diamond Bar Creek Restoration Project - Phase II and Phase III			
1. Phase II Construction Support			
<ul style="list-style-type: none"> - Attend preconstruction meeting - Review shop drawings and respond to RFIs - Attend construction meetings/site visits at the request of CM - Prepare CCOs as needed 			
2. Phase III Final Design and Construction Support			
<ul style="list-style-type: none"> - Final Design <ul style="list-style-type: none"> • Prepare structural engineering calcs • Prepare engineering plans • Design quality check • Submit plans to the City and the County for review and construction permit • Final plans - Construction Support <ul style="list-style-type: none"> • Attend preconstruction meeting • Review shop drawings and respond to RFIs • Attend construction meetings/site visits at the request of CM • Prepare CCOs as needed 			
MANHOURLY SUMMARY:			
No.	Classification	Manhours	Total Labor Cost
1	Project Manager	33	2,475
2	Senior Engineer	138	9,384
3	Project Engineer	101	4,545
4	Assistant Engineer	141	4,512
5	CAD	57	1,710
(1)	Labor Cost (unburdened)	470	22,626
(2)	Overhead + G&A	125%	28,283
(3)	Total Labor + OH+G&A		50,909
(4)	Fee @	10%	5,091
(5)	Total Burdened Labor + Fee		\$ 56,000
(6)	Escalation Factor (% per year)	5%	\$ -
OTHER DIRECT COST SUMMARY (a)			
	01 Reproductions		
	02 Xerox		
	03 Computer		
	04 Travel/Transportation		
	05 SubConsultants		
	06 Special Deliveries		
(7)	TOTAL ODC (Reimb)		\$ -
(8)	TOTAL PROPOSED AMOUNT		\$ 56,000

(a) Other direct costs are not included; they are direct reimbursable

WKE, Inc.

MANHOUR ESTIMATES BY CATEGORY

PROJECT		Diamond Bar Creek Restoration Phase II and Phase III				CONTRACT NO.		
CLIENT:		S-JUDA						
		Project Manager	Senior Engineer	Project Engineer	Assistant Engineer	CAD	TOTAL MANHOURS	TOTAL PROPOSED FEE
TOTAL MANHOUR SUM		33	133	101	141	57	470	56,000
Effective Hourly Rate		185.63	168.30	111.33	79.20	74.25		
TASK DESCRIPTION								
Task No.								
1 - Phase II - CONSTRUCTION SUPPORT								
Year	0	Escalation for this milestone						0
1.A	Preconstruction Meeting	4	4	-	-	-	8	1,416
1.B	Review Shop Drawings & Respond to RFIs	4	36	45	48	-	133	15,615
1.C	Construction Meetings/Site Visits	4	36	-	-	-	40	6,801
1.D	Prepare CCOs	2	2	-	10	9	23	2,168
Labor SubTotal		14	78	45	58	9	204	26,000
2 - PHASE III - DESIGN AND CONSTRUCTION SUPPORT								
Year	0	Escalation for this milestone						0
2.A.1	Prepare Structural Engineering Calcs	3	18	24	30	-	75	8,635
2.A.2	Prepare Engineering Plans	2	6	12	17	36	73	6,737
2.A.3	Design Quality Check	1	10	-	-	-	11	1,869
2.A.4	Submit Plans to the City/County	1	2	4	8	4	19	1,898
2.A.5	Final Plans	1	2	-	4	4	11	1,136
2.B.1	Preconstruction Meeting	4	4	-	-	-	8	1,416
2.B.2	Review Shop Drawings & Respond to RFIs	4	10	12	20	-	46	5,346
2.B.3	Construction Meetings/Site Visits	2	6	4	-	-	12	1,827
2.B.4	Prepare CCO	1	2	-	4	4	11	1,137
Labor Subtotal		19	60	66	83	48	266	30,000

EXHIBIT B

Project Timeline

Start date: April 24, 2013

Estimated end of construction: June 30, 2017

Upon the start of construction a more detailed project schedule will be established.

EXHIBIT C

Professional Fee Schedule
Hourly Rates

EXHIBIT "C"

RATE Sheet

12/3/2012

WKE, Inc.

Overhead Rate		125%
FEE		10%
Classification	Salary	Billing Rate
Project Manager	\$ 75.00	\$ 185.63
Senior Engineer	\$ 68.00	\$ 168.30
Project Engineer	\$ 45.00	\$ 111.38
Assistant Engineer	\$ 32.00	\$ 79.20
CAD	\$ 30.00	\$ 74.25

SUCCESSOR AGENCY

ITEM NO. 5.3



SUCCESSOR AGENCY TO THE
INDUSTRY URBAN - DEVELOPMENT AGENCY
MEMORANDUM

TO: Honorable Chairman and Members of the Successor Agency to the Industry Urban-Development Agency Board

FROM: Paul J. Philips, Executive Director *Paul J. Philips*

STAFF: Clement N. Calvillo, Agency Engineer, CNC Engineering *NC*
Joshua Nelson, Deputy Agency Engineer, CNC Engineering *JN*

DATE: March 23, 2017

SUBJECT: Consideration of Amendment No. 2 to the Agreement for Consulting Services with Leighton Consulting, Inc., 14-LEIGHTON 13-01 B MP 99-31 #26 for the Diamond Bar Creek Improvement Project, extending the term of the Agreements from April 24, 2017 to April 24, 2020 (MP 99-31 #26)

Discussion:

On April 24, 2013, the Successor Agency to the Industry Urban-Development Agency ("Agency") approved an Agreement for Consulting Services with Leighton Consulting, Inc. ("Leighton"). Leighton was retained in 2013 to provide geotechnical services and materials testing for the Diamond Bar Creek Restoration and Trapezoidal Channel Reconstruction project. The Grand Avenue Westbound On-Ramp to Route 57/60 project has to be completed before the Diamond Bar Creek Improvement project could proceed, therefore the Creek project has to be extended beyond the completion of the On-Ramp project. It is anticipated that it will take until April 2020 to complete the necessary work for the Diamond Bar Creek Improvement Project.

On January 25, 2016, the Agency approved a budget increase increasing the Agreement compensation by \$100,000.00 for continued geotechnical services and materials testing. The original agreement terminates on April 24, 2017, therefore it is necessary to extend the terms of the agreement. Leighton is listed in the Recognized Obligation Payment Schedule under Line Item No. 150.

Fiscal Impact:

None.

Recommendation:

It is recommended that the Successor Agency Board approve Amendment No. 2 to the Agreement for Consulting Services with Leighton Consulting, Inc.

Exhibits:

- A. Amendment No. 2 to Agreement for Consulting Services with Leighton Consulting, Inc., dated March 23, 2017

PJP/CC/JN:af

EXHIBIT A

Amendment No. 2 to Agreement for Consulting Services with Leighton Consulting, Inc.,
dated March 23, 2017

[Attached]

**AMENDMENT NO. 2
TO AGREEMENT FOR CONSULTING SERVICES WITH
LEIGHTON CONSULTING, INC.**

This Amendment No. 2 to the Agreement for Consulting Services (“Agreement”), is made and entered into this 23rd day of March, 2017, by and between the Successor Agency to the Industry Urban-Development Agency of Industry, a public body, corporate and politic (“Agency”) and Leighton Consulting, Inc., a California corporation (“Consultant”). The Agency and Consultant are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, on or about April of 2013, the Agreement was entered into and executed between the Agency and Consultant to provide geotechnical services and materials testing for the Diamond Bar Creek Restoration and Trapezoidal Channel Reconstruction; and

WHEREAS, on or about January 25, 2016, the Agency approved a budget increase increasing the Agreement compensation by \$100,000.00 for continued geotechnical services and materials testing for the Diamond Bar Creek Restoration and Trapezoidal Channel Reconstruction; and

WHEREAS, Section 5 (“Compensation”) of the Agreement stipulated a total compensation not to exceeded \$320,000.00, and through subsequent budget adjustments through January 25, 2016, the current not to exceed amount is \$420,000.00; and

WHEREAS, pursuant to Section 3 of the Agreement, the Agreement was to terminate on April 24, 2017, however, the project is still in progress and it is anticipated that it will take until April 24, 2020 to complete the work;

WHEREAS, given the project isn’t complete, it is necessary to amend the Section 3. Term of Agreement; and

WHEREAS, for the reasons set forth herein, the Agency and Consultant desire to enter into this Amendment No. 2, as set forth below.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, it is agreed the aforesaid Agreement, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference, shall remain in full force and effect except as otherwise hereinafter provided:

3. Term of Agreement.

This Agreement shall commence on the Effective Date and shall remain in full force and effect until April 24, 2020 unless sooner terminated as provided in Section 4 herein.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 2 to the Agreement as of the Effective Date.

**“AGENCY”
SUCCESSOR AGENCY TO THE INDUSTRY
URBAN-DEVELOPMENT AGENCY**

**“CONSULTANT”
LEIGHTON CONSULTING, INC.**

By: _____
Mark D. Radecki, Chairman

By: _____
Thomas C. Benson Jr., President & CEO

Attest:

By: _____
Diane M. Schlichting, Chief Deputy Agency Secretary

APPROVED AS TO FORM

By: _____
James M. Casso, Agency General Counsel

EXHIBIT A TO AMENDMENT NO. 2:

**AGREEMENT FOR CONSULTING SERVICES WITH LEIGHTON CONSULTING, INC.
(DATED APRIL 24, 2013)**

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES is entered into this 24th day of April 2013 (the "Effective Date") by and between the **SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY**, (the "Agency") and **LEIGHTON CONSULTING, INC.** ("Consultant").

RECITALS

A. Agency has determined that it requires geotechnical services and materials testing from a consultant for the Diamond Bar Creek Restoration and Trapezoidal Channel Reconstruction.

B. 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 of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Agency and Consultant agree, as follows:

1. Consultant's Services.

a. Scope of Services. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the general services set forth in Consultant's proposal, attached hereto and incorporated herein as Exhibit A. The specific tasks to be performed by Consultant pursuant to this Agreement, however, shall be set forth in subsequent proposals presented to and approved by the Agency Executive Director. Any such proposal shall be incorporated into this Agreement and be subject to all of this Agreement's terms and conditions as though fully set forth therein. Consultant shall complete the tasks in a timely manner to meet the schedule of performance established by the Executive Director.

b. Project Manager. Michael Grace shall be the Project Manager for this Agreement. The Project Manager will have the overall responsibility and will supervise the work performed by Consultant pursuant to this Agreement.

c. Personnel. Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but Agency reserves the right, for good cause, to require Consultant to exclude any employee from performing services on Agency's premises.

d. Licenses. Consultant will obtain all necessary licenses, permits and other approvals to perform the work specified in this Agreement and will pay all fees or taxes required for the issuance of the same.

e. Time for Performance. Consultant shall commence the services upon a written notice to proceed provided to Consultant by the Executive Director and shall perform all services in conformance with the project timeline established by the Executive Director, set forth as Exhibit "B".

2. Agency Representative.

The Executive Director or his designee shall represent the Agency in the implementation of this Agreement.

3. Term of Agreement.

This Agreement shall commence on the Effective Date and shall remain in full force and effect until April 24, 2017 unless sooner terminated as provided in Section 4 herein.

4. Termination.

The Agency may terminate this Agreement for any reason on ten (10) calendar days written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on sixty (60) calendar days written notice to Agency. The effective date of termination shall be upon the date specified in the notice of termination, or, in the event no date is specified, upon the thirtieth (30th) day following delivery of the notice. Consultant agrees to cease all work under this Agreement on or before the effective date of such notice. In the event of termination by Agency, due to no fault or failure of performance by Consultant, Consultant shall be paid based on the percentage of 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 or the proposal for individual projects. Consultant shall have no other claim against Agency by reason of such termination.

5. Compensation.

a. Agency will compensate Consultant for the services provided pursuant to this Agreement, to the reasonable satisfaction of Agency, on a time and materials basis using Consultant's standard fee schedule set forth in Exhibit C. In no event shall the total amount of compensation, including reimbursable expenses, exceed three hundred thousand dollars and twenty thousand no cents (\$320,000.00) during the term of this Agreement unless otherwise agreed upon in writing by the parties.

b. Additional Services. Agency shall make payments for any services requested by Agency not included in the Scope of Services to Consultant on a time and materials basis using Consultant's standard fee schedule.

6. Method of Payment

Consultant shall submit to Agency an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall describe in detail the services rendered during the period and shall show the days worked, number of hours worked and reimbursable expenses, if any, for each day in the period. Each invoice submitted shall include the appropriate documentation for any reimbursable expenses claim by Consultant. Within ten business days of receipt each invoice, Agency shall notify Consultant in writing of any disputed amounts included on the invoice. Within thirty days of receipt of each invoice, Agency shall pay all undisputed amounts included on the invoice. Agency shall not withhold applicable taxes or other authorized deductions from payments made to Consultant. At any time during regular working hours, all records, invoices, time cards, cost control sheets and other records maintained by Consultant shall be available for review and audit by Agency.

7. Ownership of Work Product.

All reports, documents or other written or electronic material developed by Consultant in the performance of this Agreement shall be the property of the Agency without restriction or limitation upon its use or dissemination by Agency and shall be delivered to the Agency upon request of the Executive Director or upon the termination of this Agreement. Such materials shall not be the subject of a copyright application by Consultant. Any re-use by Agency of any such materials on any project other than the project for which they were prepared shall be at the sole risk of the Agency unless Agency compensates Consultant for such use. Consultant shall have no claim for further compensation as a result of the exercise by Agency of its full right of ownership of the documents and materials hereunder.

8. Records Retention and Access to Records.

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of four years. Agency shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all program data, documents, proceedings and activities. If applicable under this Agreement, all files, documents, samples, test results, chain of custody logs, and other records and other relevant data developed by Consultant in the course of performing this Agreement shall be maintained for a period of two (2) years after completion of all work and after final payments have been made and shall be made available to Agency upon request.

9. Confidential Status; Disclosure of Information.

All data, reports, documents, materials or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed publicly by Consultant without prior written consent by Agency. Agency shall grant such consent if disclosure is legally required. All Agency data shall be returned to Agency upon the termination of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement.

10. Qualifications; Standard of Performance.

a. Consultant's Qualifications. Consultant has represented to the Agency that the Consultant, its employees and its subcontractors are knowledgeable, skilled and experienced and fully qualified to provide the services described in this Agreement and to perform such assessment, investigation, and analysis contemplated by the Agreement in accordance with good industry practices of Consultant's profession performing similar services under similar circumstances at the time the services are performed.

b. Standard of Performance. Consultant, its employees and its subcontractors shall perform all work to the highest professional standards and in a manner reasonably satisfactory to Agency, and as described in the Scope of Work. All work performed by Consultant and its employees pursuant to this Agreement will be performed diligently and in a manner consistent with the standards of care, diligence and skill exercised by recognized consulting firms for similar services, and in accordance with all regulatory and good management standards, and in a good, safe and workmanlike manner. Consultant will be responsible to ensure that all work performed by its employees or any contractors is performed to the standards set forth in this Agreement and that such work complies with requirements of any governmental agency or entity and applicable law.

11. Independent Contractor.

a. Consultant is an independent contractor and shall have no power to incur any debt, obligation or liability on behalf of Agency. Consultant shall not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of Agency.

b. Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and shall indemnify and hold the Agency harmless from any and all taxes, assessments, penalties, and interest asserted against the Agency by reason of the independent contractor relationship created by this Agreement. In the event that Agency is audited by any Federal or State agency regarding the independent contractor status of Consultant and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between Agency and Consultant, then Consultant agrees to reimburse Agency for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

c. Consultant shall fully comply with the workers' compensation laws regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold the Agency harmless from any failure of Consultant to comply with applicable worker's compensation laws.

d. The Agency shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to the Agency from Consultant as a result of Consultant's failure to promptly pay to the Agency any reimbursement or indemnification arising under this Section.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant hereby agrees to indemnify and hold harmless the Agency their respective officers, agents, representatives, consultants, shareholders, elected and appointed officials, employees, volunteers, successors, and assigns (individually as "Indemnitee" and collectively, "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, expert witnesses, consultants, or other professionals and all costs associated therewith (collectively, "Claims"), to the extent arising, in connection with, resulting from, or related to any negligent act, error, omission or failure to act of Consultant or any of its subcontractors and their respective officers, agents, servants, employees, subcontractors, material men, suppliers or their respective officers, agents, servants or employees or Consultant's failure to perform or negligent performance of any term, provision, covenant, or condition of the Agreement, including this indemnity provision, except to the extent such claim is based solely on the gross negligence or willful misconduct of the Indemnitees. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies which Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitees' right to recover under this indemnity provision, and an entry of judgment against an Indemnitee shall be conclusive in favor of the Indemnitees' right to recover under this indemnity provision. Consultant shall pay Indemnitees for any attorney's fees, consultant and expert witness fees and costs incurred in enforcing this indemnification provision.

b. Consultant agrees to obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations, Consultant agrees to be fully responsible and indemnify and hold harmless the Indemnitees from and against any and all Claims resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement, as set forth in this Section.

13. Insurance.

a. Consultant shall at all times during the term of this Agreement carry, maintain and keep in full force and effect, insurance as follows:

(1) A policy or policies of commercial general liability insurance written on an occurrence basis with limits no less than \$1,000,000 per occurrence and for all covered losses and \$2,000,000 general aggregate against any injury, death, loss or damage to property as a result of wrongful or negligent acts by Consultant, its officers, employees, agents, and independent contractors in performance of services under this Agreement;

(2) Automotive liability insurance, with minimum combined single limits coverage of \$1,000,000 covering any vehicle utilized in the performance of services under this Agreement;

(3) Professional liability insurance or errors and omissions liability insurance to cover or partially cover damages that may be the result of errors, omission, or negligent acts of the Consultant and "Covered Professional Services" as designated in policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and \$3,000,000 aggregate. The policy must "pay on behalf of" the insured.

(4) Worker's compensation and employer's liability insurance on a state-approved policy form providing benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

b. Consultant shall require each of its sub-consultants or sub-contractors to maintain insurance coverage that meets all of the requirements of this Agreement.

c. The policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.

d. Consultant agrees that if it does not keep the insurance in full force and effect, the Agency may immediately terminate this Agreement.

e. Consultant shall submit to the Agency proof of compliance with these insurance requirements, consisting of a certificate or certificates of insurance and/or endorsements, not less than one (1) day prior to beginning of performance under this Agreement.

f. Consultant shall provide proof that policies of insurance expiring during the term of this Agreement 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.

g. The general liability, property damage and automobile policies of insurance shall contain an endorsement naming the Agency, its officers, employees, agents and volunteers as additional insureds. All of the policies shall contain an endorsement providing that the policies cannot be modified, canceled or reduced except on thirty (30) days' prior written notice to the Agency. Consultant agrees to request its insurer that it modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

h. The insurance provided by Consultant shall be primary to any other coverage available to the Agency. Any insurance or self-insurance maintained by the Agency, its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

i. Any deductibles or self-insured retentions shall be subject to Agency approval.

j. If Consultant is a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its managers, affiliates, employees, agents, and other persons necessary or incidental to its operation are insureds.

14. Mutual Cooperation.

a. The Agency shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services.

b. In the event any claim or action is brought against the Agency relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that Agency may require.

15. Notices.

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

If to Agency:

Successor Agency to the Industry Urban-Development Agency
15625 East Stafford Street
City of Industry, California 91744
Attn: Executive Director

With a copy to:

Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071
Attn: William L. Strausz, Esq.
Fax: (213) 626-0078

If to Consultant:

Leighton Consulting, Inc.
10532 Acacia St., Suite B-6
Rancho Cucamonga, CA 91730
Attn: Michael Grace
Fax: (909) 484-2170

16. Representations and Warranties.

Consultant represents, warrants and covenants to the Agency:

a. Organization. Consultant is duly organized, validly existing and in good standing under the laws of the State of California and in each other state in which it conducts business.

b. Licences. Consultant has all requisite licenses, permits, certifications, power and authority to carry on its business as presently conducted, to enter into this Agreement, and to perform its obligations under this Agreement.

c. Binding Obligation. This Agreement has been duly executed and delivered on behalf of Consultant, and all documents and instruments required hereunder to be executed and delivered by Consultant have likewise been duly executed and delivered. This Agreement does, and such documents and instruments will, constitute legal, valid and binding obligations of Consultant in accordance with their terms. The consummation of the transactions contemplated by this Agreement will not violate, nor be in conflict with, any provision of the partnership agreement, charter, bylaws or governing documents of Consultant (or any of corporations comprising Consultant), or any agreement or instrument to which Consultant is a party or by which Consultant is bound, or any judgment, decree, order statute, rule or regulation applicable to Consultant.

17. Conflicts of Interest

Consultant and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this Agreement, including, but not limited to, the Political Reform Act (Government Code Section 81000, et. seq.) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subcontractors shall not, without the prior written approval of the Executive Director, perform work for another

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person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant agrees that a clause substantially similar to this section shall be incorporated into any sub-agreement, which Consultant executes in connection with the performance of this Agreement.

18. Accounting Requirements.

Consultant shall maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project under the Scope of Work. The accounting system shall conform to the Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

19. Governing Law.

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

20. Compliance with Laws.

Consultant shall comply with all applicable federal, state and local laws, ordinances, codes and regulations.

21. Reliance on Reports.

Consultant understands that the Agency will rely upon its reports, analysis and related data. Consultant understands and agrees that the reports prepared by Consultant, and the information, data, test results and the conclusions and analyses contained therein regarding the geologic condition of a site, and/or the soils beneath a site, may be relied upon by the Agency, its program managers, consultants, agents and appraisers of a site, any purchaser and developer of a site, (provided that the limitations and restrictions set forth herein shall apply to such purchaser and developer) and may be submitted and relied upon by any local, state or federal agencies and entities, as a part of the evaluation of the risk associated with the development or use of the site and the soils beneath a site, and for the purpose of assessing the geotechnical condition of a site, issuing closure letters, permits, licenses or authorizations to develop a site, and to determine whether further investigation, assessment, review or study is necessary, and so that Agency, and any designated purchaser and developer of any site can conduct construction activities on and develop the site.

22. Discrimination and Equal Employment Opportunity.

In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation. Consultant will take affirmative action to ensure that subcontractors and applicants that are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation.

23. No Assignment.

Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, nor shall it subcontract any of the work described in this Agreement or the Scope of Work without the prior written consent of Agency, and any attempt by Consultant to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

24. Non-Waiver of Terms, Rights and Remedies.

Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by Agency of any payment to Consultant constitute or be construed as a waiver by Agency of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by Agency shall in no way impair or prejudice any right or remedy available to Agency with regard to such breach or default.

25. Attorneys' Fees.

If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of the services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs in addition to any other relief to which it may be entitled.

26. Rights and Remedies are Cumulative.

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

27. Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to complete specified performance of this Agreement, to obtain injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

28. Time Is Of The Essence.

Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof; and each and every provision hereof is hereby declared to be and made a material, essential and necessary part of this Agreement.

29. Exhibits; Precedence.

All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of Exhibit A or any other proposal approved by the Executive Director, the provisions of this Agreement shall prevail.

30. Agency Not Obligated to Third Parties. The Agency shall not be obligated or liable under this Agreement to any party other than Consultant.

31. Entire Agreement and Amendments.

This Agreement, and any other documents incorporated herein by specific reference, represent the entire and integrated agreement between Consultant and the Agency. This Agreement supercedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

32. Severability.

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement, is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

33. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

WHEREFORE, the parties hereto have executed this Agreement as of the date first above written.

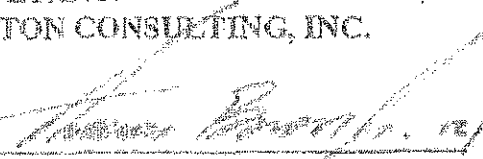
SUCCESSOR AGENCY TO THE
INDUSTRY URBAN-DEVELOPMENT
AGENCY

By:


Kevin Radecki, Executive Director

CONSULTANT:
LEIGHTON CONSULTING, INC.

By:


THOMAS C. BENSON, JR.
PRESIDENT & CEO

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EXHIBIT A

Scope of Services



EXHIBIT "A"

Leighton Consulting, Inc
A LEIGHTON GROUP COMPANY

December 3, 2012

Proposal No. RC12-052

To: Successor Agency to the Industry Urban-Development Agency
c/o CNC Engineering
255 North Hacienda Boulevard, Suite 222
City of Industry, California 91744

Attention: Mr. Josh Nelson

Subject: Proposal to Provide Geotechnical and Materials Testing Services During Grading and Construction of Diamond Bar Creek Restoration - Phase 2 and Trapezoidal Channel Reconstruction 2 and Future Phase 3 (Highwater Bypass Grading), Contract No. DBC-0375, City of Industry, California

Introduction

In response to your request, Leighton Consulting is pleased to present this proposal to provide geotechnical and materials testing services during construction of the subject project. This proposal is based in part on our review of the project specifications dated October 2012, the project plans prepared by CNC Engineering, titled Diamond Bar Creek Restoration Phase 2 and Trapezoidal Channel Reconstruction (105 sheets) dated September 13, 2012.

Proposed Scope of Work - Phase 2

Based on our conversations with the project team we understand the project duration is expected to be 130 days (6 months). We estimate that our services will be required during construction for a period of 24 weeks full time (40 hours per week) for our soil field technician and part time (6 hours per week) for our Senior Staff Geologist. We

EXHIBIT "A"

estimate that approximately 160 hours of field time, total, will be required for field special inspection of concrete.

We propose the following scope of work:

- Attendance by our Principal Geologist and Field Operations Manager at a preconstruction meeting and weekly site meetings, as needed.
- Field observation and testing services by our soil field technician and concrete inspector will be provided full- and part-time, on an as-needed, as-requested basis during:
 - Grading and fill placement.
 - Backfill of various utility trenches.
 - Subgrade preparation for pavement and flat work improvements.
 - Concrete placement for concrete structures.
 - Attendance at weekly site meetings as requested.
- Field geologic mapping during grading will be provided by our geologic staff.
- Laboratory testing will be conducted for:
 - Maximum dry density/optimum moisture
 - Sieve analysis
 - Sand equivalent
 - Concrete compressive strength
- Geotechnical engineering analysis, QA/QC supervision and project management of our services will be provided as needed by our Engineering Geologist and Field Operations Manager.
- Daily Field Reports summarizing the earthwork activities will be provided to your field representative.
- Preparation of one final report summarizing the construction activities and the results of our field and laboratory tests.



EXHIBIT "A"

Proposed Scope of Work - Phase 3

Based on our conversations with the project team, we estimate that an additional fee of \$100,000 will be required for future highwater bypass grading.

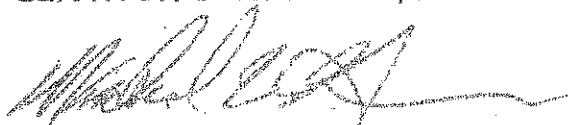
Fee Estimate

We estimate that the fee for the geotechnical and materials testing services for Phase 2 will be approximately Two Hundred Twenty Thousand Dollars (\$220,000) and (\$100,000) for future Phase 3 Highwater bypass grading for a total estimate of Three Hundred Twenty Thousand Dollars (\$320,000). A breakdown of the assumptions and the estimated fees for our services are provided in Table 1, attached. The actual fees for our services will be dependent upon the schedule, pace and efficiency of your various subcontractors working during the project. Our fees will be charged on a time-and-materials basis in accordance with the attached 2012 Professional Fee Schedule for Prevailing Wage Projects.

We look forward to working with the Agency on this project. If you have any questions regarding our proposal or information that would update our scope of work, please call us at your convenience.

Respectfully submitted,

LEIGHTON CONSULTING, INC.



Michael E. Grace
Field Operations Manager

MG/rsm

Attachments: Table 1 - Breakdown of Estimated Fee for Geotechnical and Materials Testing Services
2012 Professional Fee Schedule for Prevailing Wage Projects

Distribution: (2) Addressee

Accepted by: _____

Date: _____



EXHIBIT "A"

**Table 1
Breakdown of Estimated Fees
Geotechnical and Materials Testing Services**

Diamond Bar Creek Restoration Phase 2

Field Meetings

	<u>Hrs./Wk</u>	<u>Weeks</u>	<u>Rate</u>	<u>Amount</u>
Principal Geologist	1	24	\$215	\$5,160
Field Operations Manager	2	24	150	7680
Vehicle	3	24	15	<u>1080</u>
		Subtotal:		\$13,920

Field Services*

	<u>Hrs. Wk</u>	<u>Weeks</u>	<u>Rate</u>	<u>Amount</u>
Field Soil Technician	40	24	\$105	\$100,800
Staff Geologist	6	24	140	20,160
Field Operations Manager/Project Engineer	4	24	160	15,360
Principal	1	24	215	5,160
Vehicle	51	24	15	18,360
Deputy Inspector	20	10	95	19,000
Sample Pickup 10 Trips @ \$80/trip				<u>1,600</u>
		Subtotal:		\$180,440

Project Management & QA/QC

	<u>Hrs./Wk</u>	<u>Weeks</u>	<u>Rate</u>	<u>Amount</u>
Field Operations Manager	2	24	\$180	\$7,680
Associate Engineer	1	24	200	<u>4,800</u>
		Subtotal:		\$12,480

Laboratory Testing**

	<u>No. of Tests</u>	<u>Rate</u>	<u>Amount</u>
Maximum Density/Optimum Moisture Content	6	\$245	\$1,470
Sand Equivalent	4	105	420
Sieve Analysis	4	175	<u>700</u>
		Subtotal:	\$2,590

Laboratory Materials Testing**

	<u>No. of Tests</u>	<u>Rate</u>	<u>Amount</u>
Compressive Strength of Concrete Cylinders	60	\$25	<u>\$1,500</u>
		Subtotal:	\$1,500

Report Preparation

Preparation of One Final Report			<u>\$9,070</u>
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Total Estimated Fee Phase 2: \$220,000

Future Highwater Bypass Grading Phase 3 Estimated Fee Phase 3: \$100,000

Total Estimated Fee: \$320,000

* Actual field hours will depend on the contractor's schedule and efficiency.

** Actual number and type of tests will vary depending on field conditions.



EXHIBIT B

Project Timeline

Start date: April 24, 2013

Estimated end of construction: June 30, 2017

Upon the start of construction a more detailed project schedule will be established.

EXHIBIT C

Professional Fee Schedule
Hourly Rates



Leighton

EXHIBIT "C"

PROFESSIONAL FEE SCHEDULE 2012

CLASSIFICATION	\$/HR	CLASSIFICATION	\$/HR
Non-Destructive Testing (NDT) (ANSI)	95	Senior Staff Engineer/Geologist/Scientist	140
Prevailing Wage (Soil Field Technician)*	105	Operations/Laboratory Manager	160
Remediation System Operation & Maintenance Specialist	105	Project Engineer/Geologist/Scientist	160
Materials Inspection Manager/Deputy Grading Inspector	110	Senior Project Engineer/Geologist/Scientist Associate	180
Field/Laboratory Supervisor	125	Principal	200
Staff Engineer/Geologist/Scientist	125	Senior Principal	215
		Project Administrator /Word Processor	260
		Information Specialist	78
		CAD Operator	105
		GIS Specialist	110
		Vehicle usage	125
			15

GEOTECHNICAL LABORATORY TESTING

METHOD	\$/TEST	METHOD	\$/TEST
CLASSIFICATION & INDEX PROPERTIES		Modified Proctor Compaction (ASTM D 1557) 4 points	
Moisture Content (ASTM D 2216)	\$20	- 4 inch diameter mold (Methods A & B)	220
Moisture & Density (ASTM D 2937) ring samples	30	- 6 inch diameter mold (Method C)	245
Moisture & Density (ASTM D 2937) Shelby tube or cutting	40	Check Point (per point)	65
Atterberg Limits (ASTM D 4318) 3 points:	150	SOIL CHEMISTRY & CORROSIVITY	
- single point, non-plastic	65	pH Method A (ASTM 4972 or CTM 643)	45
- Atterberg Limits (Organic ASTM D 2487 / 4318)	180	Electrical Resistivity - single point - in-situ moisture	45
- Visual classification as non-plastic (ASTM D 2488)	10	Minimum Resistivity 3 moisture content points (CTM 643)	90
Particle Size		pH + Minimum Resistivity (CTM 643)	130
- sieve only 1/2" to #200, (ASTM D 6913/CTM 202)	110	Sulfate Content - Gravimetric (CTM 417 B (73) Part II)	70
- large sieve - 6" to #200 (ASTM D 6913/C136/CTM 202)	175	Sulfate Screen (HACH kit)	30
- hydrometer only (ASTM D 422)	110	Chloride Content (AASHTO T291/CTM 422 (78))	70
- sieve + hydrometer ($\leq 3"$ sieve, ASTM D 422)	185	Corrosion Suite: minimum resistivity, sulfate, chloride, pH (CTM 643)	245
Dispersive Characteristics of Clay Soil (double hydrometer, ASTM D 4221)	90	Organic Matter Content (ASTM 2974)	65
Specific Gravity-fine (passing #4, ASTM D 854/CTM 207)	125	SHEAR STRENGTH	
Specific Gravity-coarse (ASTM C 127/CTM 206) retained on #4	100	Pocket Penetrometer	15
- Total Porosity - on Shelby tube sample (calculated from density & specific gravity)	165	Direct Shear (ASTM D 3080, mod., 3 points)	
- Total Porosity - on other sample	155	- Consolidated Undrained - 0.05 inch/min	285
Photograph of sample	10	- Consolidated Drained - <0.05 inch/min	345
Shrinkage Limits (Wax Method, ASTM D 4943)	126	Residual Shear EM 1110-2-1906-IXA (price per each additional pass after shear)	50
Pinhole Dispersion (ASTM D 4647)	210	Remolding or hand trimming of specimens (3 points)	90
Percent Passing #200 Sieve, wash only (ASTM D 1140)	70	Oriented or block hand trimming (per hour)	65
As-Received Moisture & Density (chunk/carved samples)	60	Single Point Shear	105
Sand Equivalent (CTM 217)	105	Torsional Shear (ASTM D 6467 / ASTM D 7608)	820
COMPACTION & PAVEMENT SUBGRADE TESTS		CONSOLIDATION & EXPANSION/SWELL TESTS	
Relative Compaction of Untreated & Treated Soils & Aggregates (CTM 216)	250	Consolidation (ASTM D 2435)	195
Relative Density (0.1 ft ³ mold, ASTM D 4253, D 4254)	235	- Each additional time curve	45
California Bearing Ratio (ASTM D 1883)		- Each additional load/unload w/o Time Reading	40
- 3 point	500	Expansion Index (ASTM D 4829)	130
- 1 point	185	Swell/Collapse - Method A (ASTM D 4546-A, up to 10 load/unloads w/o time curves)	290
R-Value (CTM 301) Untreated	310	Single Load Swell/Collapse - Method B (ASTM D 4546-B, seat, load & inundate only)	105
R-Value (CTM 301) Lime or cement treated soils	340	Collapse Potential of Soils (ASTM D 5333)	220
Standard Proctor Compaction, (ASTM D 698) 4 points:			
- 4 inch diameter mold (Methods A & B)	180		
- 6 inch diameter mold (Method C)	215		

EXHIBIT "C"

METHOD	\$/TEST	METHOD	\$/TEST
TRIAxIAL TESTS		HYDRAULIC CONDUCTIVITY TESTS	
Unconfined Compression Strength of Cohesive Soil (with stress/strain plot, ASTM D 2166)	135	Triaxial Permeability in Flexible-Wall Permeameter with backpressure saturation at one effective stress (EPA 9100/ASTM D 5034, falling head Method C)	310
Unconsolidated Undrained Triaxial Compression Test on Cohesive Soils (USACE Q test, ASTM D 2850, per confining stress)	170	Each Additional Effective Stress	120
Consolidated Undrained Triaxial Compression Test for Cohesive Soils, (ASTM D 4767, CU, USACE R-bar test) with back pressure saturation & pore water pressure measurement (per confining stress)	375	Hand Trimming of Soil Samples for Horizontal K	60
Consolidated Drained Triaxial Compression Test (CD, USACE S test, with volume change measurement. Price per soil type below EM 1110-2-1906(X):		Remolding of Test Specimens	65
Sand or silty sand soils (per confining stress)	375	Permeability of Granular Soils (ASTM D 2434)	135
Silt or clayey sand soils (per confining stress)	500	SOIL-CEMENT	
Clay soils (per confining stress)	705	Moisture-Density curve for Soil-Cement Mixtures (ASTM D 558)	240
Three-stage Triaxial (sand or silty sand soils)	655	Wet-Dry Durability of Soil-Cement Mixtures (ASTM D 559) **	1,205
Three-stage Triaxial (silt or clayey sand soils)	875	Compressive Strength of Molded Soil-Cement Cylinders (ASTM D 1633) per cylinder **	60
Three-stage Triaxial (clay soils)	1,235	Soil-Cement Remolded Specimen (for shear strength, consolidation, etc) **	235
Remolding of Test Specimens	65	** Compaction (ASTM D 558 maximum density) should also be performed - not included in above price	

CONSTRUCTION MATERIALS LABORATORY TESTING

TECHNICIAN SERVICES	\$/UNIT	METHOD	\$/TEST
Pick-up & Delivery - (weekdays, per trip, <50 mile radius from Leighton office)	80	AGGREGATE PROPERTIES	
Coring & Sizing (at Leighton laboratory per core)	80	Sieve Analysis (fine & coarse aggregate ASTM C 136)	135
METHOD	\$/TEST	Sieve Analysis-finer than #200, Wash, ASTM C 117)	90
CONCRETE STRENGTH CHARACTERISTICS		LA Rattler-smaller coarse aggregate <1.5" (ASTM C 131)	165
Concrete Cylinders Compression (ASTM C 39) (6" x 12")	25	LA Rattler-larger coarse aggregate 1-3" (ASTM C 535)	190
Compression, Concrete or Masonry Cores (testing only) 5/8" diameter (ASTM C 42)	40	Durability Index (CTM 229)	200
Trimming concrete cores (per core)	20	Cleaness Value of Coarse Aggregate (CTM 227)	210
Flexural Strength of Concrete (Simple Beam with 3rd pt. Loading, ASTM C 78/CTM 523)	65	Unit Weight of Aggregate (CTM 212)	50
Flexural Strength of Concrete (simple beam w/ center point loading, ASTM 293/CTM 523)	65	Soundness Magnesium (ASTM C 88)	225
Mix Design, (review of existing data)	215	Soundness Sodium	650
Non Shrink Grout Cubes (2" ³ , ASTM C 109/C 1107)	25	Uncompacted Void Content -fine aggregate (CTM 234)	130
Drying Shrinkage (four readings, up to 90 days, 3 bars, ASTM C 157)	400	Flat & Elongated Particles in Coarse Aggregate (CTM 235)	215
ASPHALT CONCRETE, HMA, SPECIMEN TESTING		Percent of Crushed Particles (CTM 205)	135
Extraction by Ignition Oven (CTM 382)	150	Organic Impurities in Concrete Sand (CTM 213)	60
Extraction by Ignition Oven, percent asphalt & gradation (CTM 382/CTM 202)	195	Apparent Specific Gravity of Fine Aggregate (CTM 208)	130
Extraction, Percent Asphalt & Gradation, Centrifuge (ASTM D 2172/D 5444)	195	Moisture Content of Aggregates by Oven Drying (CTM 226)	40
Extraction & Percent Asphalt, centrifuge (ASTM D 2172)	155	Clay Lumps, Friable Particles (ASTM C 142)	175
Extraction & Gradation, centrifuge (ASTM D 2172 /C 136)	175	MASONRY	
Stabilometer Value (CTM 366)	265	Mortar Cylinders (2" by 4", ASTM C 780)	25
Bituminous Mixture Preparation (CTM 304)	80	Grout Prisms (3" by 6", ASTM C 1018)	25
Moisture Content of Asphalt (CTM 370)	60	Masonry Cores Compression, 5/8" diameter (testing only, ASTM C 42)	25
Bulk Specific Gravity - Molded Specimen or Cores (ASTM D 1188/CTM 308)	55	CMU Compression to size 8" x 8" x 16" (3 required, ASTM C 140)	40
Maximum Density - Hveem (CTM 308)	125	CMU Moisture Content, Absorption & Unit Weight (6 required, ASTM C 140)	45
Theoretical Maximum Density & Specific Gravity of HMA, (CTM 309)	130	CMU Linear Drying Shrinkage (ASTM C 426)	175
Ignition Oven Correction/Correlation Values	quote	CMU Grouted Prisms (compression test 5/8" x 8" x 16", ASTM E 447 C 1314)	180
Thickness or Height of Compacted Bituminous Paving Mixture Specimens (ASTM 3549)	40	CMU Grouted Prisms (compression test > 8" x 8" x 16", ASTM E 447 C 1314)	250
Rubberized Asphalt (add to above rates)	+ 25%	Masonry Core-Shear Title 24 (last only)	250
		BRICK	
		Compression (5 required, cost for each, ASTM C 67)	40

EXHIBIT "C"

METHOD	\$/TEST	METHOD	\$/TEST
SLAB-ON-GRADE MOISTURE EMISSION KIT		STEEL	
Moisture Test Kit (excludes labor to perform test, ASTM E 1907)	60	Tensile Strength, $\leq 100,000$ pounds axial load (ASTM A 370)	45
REINFORCING STEEL		Prestressing Wire, Tension (ASTM A 416) Sample Preparation (cutting)	150 50
Rebar Tensile Test, Up to No. 10 (ASTM A 370)	45	SPRAY APPLIED FIREPROOFING	
Rebar Tensile Test, No. 11 & over (ASTM A 370)	100	Unit Weight (Density, ASTM E 805)	60
Rebar Bend Test, Up to No. 11 (ASTM A 370)	45		

EQUIPMENT, SUPPLIES & MATERIALS

	\$/UNIT		\$/UNIT
1/4" Grab Plates	\$ 5 ea	Nitrile Gloves	20 pair
1/4" Tubing (bonded)	0.55 foot	Nuclear Moisture & Density Gauge (licensed, calibrated, swipe tested)	88 day
1/4" Tubing (single)	0.35 foot	Pachometer	25 day
3/8" Tubing, clear vinyl	0.55 foot	pH/Conductivity/Temperature Meter	55 day
Box of 10 soil drive-sample rings	25 day	Photo-Ionization Detector (PID)	110 day
Brass Sample Tubes	10 each	Pump, Typhoon 2 or 4 Stage	50 day
Caution Tape (1000-foot roll)	20 each	GED Bladder Pump w/QED control box	160 day
Combination Lock or Padlock	11 each	Resistivity Field Meter & Pins	50 day
Compressed Air tank & Regulator	50 day	Service Vehicle Usage	150 day
Consumables (gloves, rope, soap, tape, etc.)	35 day	Slip / Threaded Cap, 2" or 4" diameter, PVC Schedule 40	15 each
Core Sample Boxes	11 each	Slope Inclinometer	50 day
Crack monitor	25 each	Stainless Steel Boiler	40 day
Cutoff Saws, reciprocating, electric (Saws-All)	75 day	Submersible Pump, 10 gpm, high powered Grunfos 2" with controller	160 day
Disposable Balers	12 each	Submersible Sump/Transfer Pump, 10-25 gpm	50 day
Disposable Bladders	10 each	Survey/Fence Stakes	8 each
Dissolved Oxygen Meter	45 day	Tedlar® Bags	18 each
DOT 55-gallon Containment Drum with lid	65 each	Traffic Cones (\$25)/Barricades (single lane)	50 day
Double-ring Infiltrometer	125 day	Turbidity Meter	70 day
Generator, portable gasoline fueled, 3,500 watts	90 day	Tyvek® Sull	18 each
Global Positioning System (GPS)	80 day	Vapor Sampling Box	45 day
Hand Auger Set	90 day	Visqueen (20' x 100')	100 roll
HDPE Safety Fence (100')	40 roll	Water Level Indicator (electronic well sounder) <300 feet deep well	60 day
In-Situ Level Troll 500 (each)	90 day		
In-Situ Troll 9500 low flow water sampling equipment	150 day		
Lockable Equipment Box	15 day		
Magnahelic Gauge	15 day		
Manometer	25 day		
Mileage	IRS rate/mile		

Other specialized geotechnical and environmental testing & monitoring equipment are available, and priced per site

EXHIBIT "C"

TERMS & CONDITIONS

- * Our fees for prevailing wage work are subject to change at any time based upon the project advertised date & any changes in California prevailing laws or wage rates. Prevailing wage time accrued will include portal to portal travel time.
- For all classifications except those subject to prevailing wage, this fee schedule is effective through December 31, 2012 after which remaining work will be billed at then-current rates.
 - **Overtime:** Overtime for field personnel will be charged at 1.5 times basic hourly rates when exceeding 8 hours up to 12 hours per 24 hour interval, & 2 times basic hourly rates when exceeding 12 hours in 24 hours or on Sunday, & 3 times basic hourly rates on California official holidays.
 - **Expert Witness Time:** Expert witness deposition & testimony will be charged at 2 times hourly rates listed on the previous pages, with a minimum charge of four hours per day.
 - **Minimum Hourly Charges: Geotechnical & Environmental Technicians (field time only):**
 - 2 hours : Monday-Friday
 - 4 hours: Saturday & Sunday
 - **Minimum Hourly Charges: Special Inspectors or Material Testing Field Services (field time only):**
 - 2 hours: Cancellation of inspections not canceled by 4:00 p.m. on preceding day (No charge if cancellation is made before 4:00 p.m. of the preceding work day.)
 - 4 hours: One-half working day or less except as No. 3 (below) applies
 - 8 hours: Over one-half working day, or begins before noon & extends into afternoon
 - **Outside Direct Costs:** Heavy equipment, subcontractor fees & expenses, project-specific permits and/or licenses, project-specific supplemental insurance, travel, subsistence, project-specific parking charges, shipping, reproduction, & other reimbursable expenses will be invoiced at cost plus 20%, unless billed directly to & paid by client.
 - **Insurance & Limitation of Liability:** These rates are predicated on standard insurance coverage & a limit of Leighton's liability equal to our total fees for a given project.
 - **Invoicing:** Invoices are rendered monthly, payable upon receipt in United States dollars. A service charge of 1½-percent per month will be charged for late payment.
 - **Proposal Expiration:** Proposals are valid for at least 30 days, subject to change after 30 days; unless otherwise stated in the attached proposal.
 - **Client Disclosures:** Client agrees to provide all information in Client's possession about actual or possible presence of buried utilities & hazardous materials on the project site, prior to fieldwork, & agrees to reimburse Leighton for all costs related to unanticipated discovery of utilities and/or hazardous materials. Client is also responsible for providing safe & legal access to the project site for all Leighton field personnel.
 - **Earth Material Samples:** Quoted testing unit rates are for soil and/or rock (earth) samples free of hazardous materials. Additional costs will accrue beyond these standard testing unit rates for handling, testing and/or disposing of soil and/or rock containing hazardous materials. Hazardous materials will be returned to the site or the site owner's designated representative at additional cost not included in listed unit rates. Standard turn-around time for geotechnical-laboratory test results is 10 working days. Samples will be stored for 2 months, after which they will be discarded. Prior documented notification is required if samples need to be stored for a longer time. A monthly storage fee of \$10 per bag & \$5 per sleeve or tube will be applied. Quoted unit rates are only for earth materials sampled in the United States. There may be additional cost for handling imported samples.
 - **Construction Material Samples:** After all designated 28-day breaks for a given set meet specified compressive or other client-designated strength, all "hold" cylinders or specimens will be automatically disposed of, unless specified in writing prior to the 28-day break. All other construction materials will be disposed of after completion of testing & reporting.

SUCCESSOR AGENCY

ITEM NO. 5.4



SUCCESSOR AGENCY TO THE
INDUSTRY URBAN - DEVELOPMENT AGENCY
MEMORANDUM

TO: Honorable Chairman and Members of the Successor Agency to the Industry Urban-Development Agency Board

FROM: Paul J. Philips, Executive Director *Paul J. Philips*

STAFF: Clement N. Calvillo, Agency Engineer, CNC Engineering *CNC*
Joshua Nelson, Deputy Agency Engineer, CNC Engineering *JN*

DATE: March 23, 2017

SUBJECT: Consideration of Amendment No. 2 to the Agreement for Consulting Services with Sage Environmental Group, 14-SAGE 13-01 B MP 99-31 #26 for the Diamond Bar Creek Improvement Project, extending the term of the Agreement from April 24, 2017 to April 24, 2020 (MP 99-31 #26)

Discussion:

On April 24, 2013, the Successor Agency to the Industry Urban-Development Agency ("Agency") approved an Agreement for Consulting Services with Sage Environmental Group ("SAGE"). SAGE was retained in 2013 to provide biological and regulatory services for the Diamond Bar Creek Restoration and Trapezoidal Channel Reconstruction project. The Grand Avenue Westbound On-Ramp to Route 57/60 project has to be completed before the Diamond Bar Creek Improvement project could proceed, therefore the Creek project has to be extended beyond the completion of the On-Ramp project. It is anticipated that it will take until April 2020 to complete the necessary work for the Diamond Bar Creek Improvement Project.

On January 25, 2016, the Agency approved a budget increase increasing the Agreement compensation by \$25,000.00 for continued biological and regulatory services. The original agreement terminates on April 24, 2017, therefore it is necessary to extend the terms of the agreement. SAGE is listed in the Recognized Obligation Payment Schedule under Line Item No. 166.

Fiscal Impact:

None.

Recommendation:

It is recommended that the Successor Agency Board approve Amendment No. 2 to the Agreement for Consulting Services with Sage Environmental Group.

Exhibits:

- A. Amendment No. 2 to Agreement for Consulting Services with Sage Environmental Group, dated March 23, 2017

PJP/CC/JN:af

EXHIBIT A

Amendment No. 2 to Agreement for Consulting Services with Sage Environmental
Group, dated March 23, 2017

[Attached]

**AMENDMENT NO. 2
TO AGREEMENT FOR CONSULTING SERVICES WITH
SAGE ENVIRONMENTAL GROUP**

This Amendment No. 2 to the Agreement for Consulting Services (“Agreement”), is made and entered into this 23rd day of March, 2017, by and between the Successor Agency to the Industry Urban-Development Agency, a public body, corporate and politic (“Agency”) and Sage Environmental Group, a California Corporation (“Consultant”). The Agency and Consultant are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, on or about April of 2013, the Agreement was entered into and executed between the Agency and Consultant to provide biological and regulatory services for the Diamond Bar Creek Restoration and Trapezoidal Channel Reconstruction; and

WHEREAS, on or about January 25, 2016, the Agency approved Amendment No. 1, to permit a budget increase, increasing the Agreement compensation by \$25,000.00 for continued biological and regulatory services for the Diamond Bar Creek Restoration and Trapezoidal Channel Reconstruction; and

WHEREAS, Section 5 (“Compensation”) of the Agreement stipulated a total compensation not to exceed \$121,000.00, and through the increase provided in Amendment No. 1, the current not to exceed amount is \$146,000.00; and

WHEREAS, pursuant to Section 3 of the Agreement, the Agreement was to terminate on April 24, 2017, however, the project is still in progress and it is anticipated that it will take until April 24, 2020 to complete the work;

WHEREAS, given the project isn’t complete, it is necessary to amend the Section 3. Term of Agreement; and

WHEREAS, for the reasons set forth herein, the Agency and Consultant desire to enter into this Amendment No. 1, as set forth below.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, it is agreed the aforesaid Agreement, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference, shall remain in full force and effect except as otherwise hereinafter provided:

3. Term of Agreement.

This Agreement shall commence on the Effective Date and shall remain in full force and effect until April 24, 2020 unless sooner terminated as provided in Section 4 herein.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 2 to the Agreement as of the Effective Date.

“AGENCY”
SUCCESSOR AGENCY TO THE INDUSTRY
URBAN-DEVELOPMENT AGENCY

“CONSULTANT”
SAGE ENVIRONMENTAL GROUP

By: _____
Mark D. Radecki, Chairman

By: _____
Alissa Cope, Principal

Attest:

By: _____
Diane M. Schlichting, Chief Deputy Agency Secretary

APPROVED AS TO FORM

By: _____
James M. Casso, Agency General Counsel

EXHIBIT A TO AMENDMENT NO. 2:

**AGREEMENT FOR CONSULTING SERVICES WITH SAGE ENVIRONMENTAL
GROUP (DATED APRIL 24, 2013)**

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES is entered into this 24 day of April 2013 (the "Effective Date") by and between the **SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY**, (the "Agency") and **SAGE ENVIRONMENTAL GROUP**, a California Corporation ("Consultant").

RECITALS

A. Agency has determined that it requires the following professional services from a consultant to provide biological and regulatory services for the Diamond Bar Creek Restoration and Trapezoidal Channel Reconstruction.

B. 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 of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Agency and Consultant agree, as follows:

1. Consultant's Services.

a. Scope of Services. Subject to the terms and conditions set forth in this Agreement, Consultant shall perform the services set forth in the Scope of Work attached hereto and incorporated herein as Exhibit "A" ("Scope of Work").

b. Project Manager. Consultant's Project Manager on this project will be Alissa Cope, who will have the overall responsibility and will supervise the work performed by Consultant on this project.

c. Personnel. Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but Agency reserves the right, for good cause, to require Consultant to exclude any employee from performing services on Agency's premises.

d. Licenses. Consultant will obtain all necessary licenses, permits and other approvals to perform the work specified in this Agreement and will pay all fees or taxes required for the issuance of the same.

e. Changes to Scope and Cost of Work. Consultant may, from time to time, request changes in the scope of services and costs in this Agreement to be performed hereunder. Before any work is performed beyond the scope of services in this Agreement, such changes

must be mutually agreed upon between Consultant and Agency and incorporated in written amendments to this Agreement.

f. Time for Performance. Consultant shall commence the services on the Effective Date and perform all services in conformance with the project timeline established by the Executive Director, set forth as Exhibit "B."

2. City Representative.

The Executive Director or his designee shall represent the Agency in the implementation of this Agreement.

3. Term of Agreement.

This Agreement shall commence on the Effective Date and shall remain in full force and effect until April 24, 2017, unless sooner terminated as provided in Section 4 herein.

4. Termination.

The Agency may terminate this Agreement for any reason on ten (10) calendar days written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on sixty (60) calendar days written notice to Agency. The effective date of termination shall be upon the date specified in the notice of termination, or, in the event no date is specified, upon the thirtieth (30th) day following delivery of the notice. Consultant agrees to cease all work under this Agreement on or before the effective date of such notice. In the event of termination by Agency, due to no fault or failure of performance by Consultant, Consultant shall be paid based on the percentage of 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. Consultant shall have no other claim against Agency by reason of such termination.

5. Compensation.

a. Compensation [check applicable provision]

Agency will compensate Consultant for the services provided pursuant to this Agreement, to the reasonable satisfaction of Agency, in an amount not to exceed one hundred twenty one dollars and no cents (\$121,000.00), based on the hourly rates set forth in Exhibit C attached hereto and incorporated herein by this reference. Such amount will only be exceeded by an express, supplemental, written authorization by the Agency.

Agency will compensate Consultant for the services provided pursuant to this Agreement, to the reasonable satisfaction of Agency, in an amount not to exceed _____ . Such amount will only be exceeded by an express, supplemental, written authorization by the Agency.

b. Expenses [check applicable provision]

b. Expenses [check applicable provision]

The amount set forth in paragraph a shall include Consultant's fees for the services as well as the actual cost of any equipment, materials, and supplies incurred by consultant in performing the work contemplated by this Agreement (including, but not limited to, all labor, materials, delivery, tax, assembly, and installation, as applicable).

Consultant shall be entitled to reimbursement only for those expenses expressly set forth in Exhibit C. Any expenses incurred by Consultant which are not expressly authorized by this Agreement will not be reimbursed by City. In no event shall expenses exceed the sum of _____.

c. Additional Services. Agency shall make payments for any services requested by Agency not included in the Scope of Services to Consultant on a time and materials basis using Consultant's standard fee schedule.

6. Method of Payment

Consultant shall submit to Agency an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall describe in detail the services rendered during the period and shall show the days worked, number of hours worked and reimbursable expenses, if any, for each day in the period. Each invoice submitted shall include the appropriate documentation for any reimbursable expenses claim by Consultant. Within ten business days of receipt each invoice, Agency shall notify Consultant in writing of any disputed amounts included on the invoice. Within thirty calendar days of receipt of each invoice, Agency shall pay all undisputed amounts included on the invoice. Agency shall not withhold applicable taxes or other authorized deductions from payments made to Consultant. At any time during regular working hours, all records, invoices, time cards, cost control sheets and other records maintained by Consultant shall be available for review and audit by Agency.

7. Ownership of Work Product.

All reports, documents or other written material developed by Consultant in the performance of this Agreement shall be and remain the property of the Agency without restriction or limitation upon its use or dissemination by Agency. Such material shall not be the subject of a copyright application by Consultant. Any re-use by Agency of any such materials on any project other than the project for which they were prepared shall be at the sole risk of the Agency unless Agency compensates Consultant for such use.

8. Records Retention and Access to Records.

a. Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of 4 years. Agency shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all program data, documents, proceedings and activities. If applicable under this Agreement, all files, documents, samples, test results, chain of custody logs, and other records and other relevant data developed by Consultant in the course of performing this Agreement shall be maintained for a period of two (2) years after

completion of all work and after final payments have been made and shall be made available to Agency upon request.

9. Confidential Status; Disclosure of Information.

All data, reports, documents, materials or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by Agency. Agency shall grant such consent if disclosure is legally required. All Agency data shall be returned to Agency upon the termination of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement.

10. Qualifications; Standard of Performance.

a. Consultant's Qualifications. Consultant has represented to the Agency that the Consultant, its employees and its subcontractors are knowledgeable, skilled and experienced and fully qualified to provide the services described in this Agreement and to perform such assessment, investigation, and analysis contemplated by the Agreement in accordance with good industry practices of Consultant's profession performing similar services under similar circumstances at the time the services are performed.

b. Standard of Performance. Consultant, its employees and its subcontractors shall perform all work to the highest professional standards and in a manner reasonably satisfactory to Agency, and as described in the Scope of Work. All work performed by Consultant and its employees pursuant to this Agreement will be performed diligently and in a manner consistent with the standards of care, diligence and skill exercised by recognized consulting firms for similar services, and in accordance with all regulatory and good management standards, and in a good, safe and workmanlike manner. Consultant will be responsible to ensure that all work performed by its employees or any contractors is performed to the standards set forth in this Agreement and that such work complies with requirements of any governmental agency or entity and applicable law.

11. Independent Contractor.

a. Consultant is an independent contractor and shall have no power to incur any debt, obligation or liability on behalf of Agency. Consultant shall not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of Agency.

b. Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold the Agency harmless from any and all taxes, assessments, penalties, and interest asserted against the Agency by reason of the independent contractor relationship created by this Agreement. In the event that Agency is audited by any Federal or State agency regarding the independent contractor status of Consultant and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between Agency and Consultant, then Consultant agrees to reimburse Agency for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

c. Consultant shall fully comply with the workers' compensation laws regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold the Agency harmless from any failure of Consultant to comply with applicable worker's compensation laws.

d. The Agency shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to the Agency from Consultant as a result of Consultant's failure to promptly pay to the Agency any reimbursement or indemnification arising under this Section.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant hereby shall, at its sole cost and expense, to defend, protect, indemnify, and hold harmless the Agency, its respective officers, attorneys, agents, employees, designated volunteers, successors, and assigns (collectively, "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, expert witnesses, consultants, or other professionals and all costs associated therewith (collectively, "Claims"), resulting from any negligent act, error, omission or failure to act of Consultant or any of its subcontractors and their respective officers, agents, servants, employees, subcontractors, material men, suppliers or their respective officers, agents, servants or employees in connection with, resulting from, or related to this Agreement or for failure to perform or negligent performance of any term, provision, covenant, or condition of the Agreement, including this indemnity provision. This indemnity provision is effective regardless of any prior, concurrent, or subsequent passive negligence by Indemnitees and shall operate to fully indemnify Indemnitees against any such negligence. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies which Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against the Consultant shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision. Consultant shall pay Indemnitees for any attorneys fees and costs incurred in enforcing this indemnification provision. Notwithstanding the foregoing, nothing in this instrument shall be construed to encompass (a) Indemnitees' active negligence or willful misconduct to the limited extent that this Agreement is subject to Civil Code § 2782(a), or (b) the contracting public agency's active negligence to the limited extent that this Agreement is subject to Civil Code § 2782(b). This indemnity is effective without reference to the existence or applicability of any insurance coverages which may have been required under this Agreement or any additional insured endorsements which may extend to Indemnitees. This indemnity provision shall survive the termination of this Agreement and is in addition to any other rights or remedies which Indemnitees may have under the law.

b. Consultant, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against any Indemnitee with respect to those Claims.

c. Consultant agrees to obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations, Consultant agrees to be fully responsible and shall indemnify, hold harmless and defend the Idemnitees from and against any and all Claims resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement as set forth in this Section.

13. Insurance.

a. Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of commercial general liability insurance written on an occurrence basis with limits no less than \$2,000,000 per occurrence and for all covered losses and \$2,000,000 general aggregate against any injury, death, loss or damage as a result of wrongful or negligent acts by Consultant, its officers, employees, agents, and independent contractors in performance of services under this Agreement;

(2) Automotive liability insurance, with minimum combined single limits coverage of \$1,000,000 covering any vehicle utilized in the performance of services under this Agreement;

(3) Professional liability or Errors and Omissions Insurance as appropriate written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.

(4) Worker's compensation and employer's liability insurance on a state-approved policy form providing benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

(5) Pollution Liability Insurance. [check if applicable]

Pollution Liability Insurance written on a Contractor's Pollution Liability form or other form acceptable to Agency providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be not less than \$1,000,000 per claim and \$3,000,000 aggregate.

b. The policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.

c. Consultant agrees that if it does not keep the insurance in full force and effect, the Agency may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, the Agency may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Consultant and the cost of such insurance may be deducted, at the option of Agency, from payments due Consultant, along with a reasonable administrative handling charge.

d. Consultant shall submit to the Agency proof of compliance with these insurance requirements, consisting of a certificate or certificates of insurance and/or endorsements, not less than one (1) day prior to beginning of performance under this Agreement.

e. Consultant shall provide proof that policies of insurance expiring during the term of this Agreement 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.

f. The general liability, property damage and automobile policies of insurance shall contain an endorsement naming the Agency, its officers, employees, attorneys, agents and volunteers as additional insureds. All of the policies shall contain an endorsement providing that the policies cannot be modified, canceled or reduced except on thirty (30) days' prior written notice to the Agency. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

g. The insurance provided by Consultant shall be primary to any other coverage available to the Agency. Any insurance or self-insurance maintained by the Agency, its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

h. All insurance coverage provided pursuant to this Agreement should not prohibit Consultant, and Consultant's officers, employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the Agency, its officers, employees, agents and representatives.

i. Any deductibles or self-insured retentions must be approved by the Agency. At the option of the Agency, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to the Agency or Consultant shall procure a bond guaranteeing payment of losses and expenses.

j. If Consultant is a Limited Liability Company, the general liability coverage must be amended so that the Limited Liability Company and its managers, affiliates, employees, agents, and other persons necessary or incidental to its operation are insureds.

k. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this Agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to the Agency, its employees, officials and agents.

l. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

m. Consultant agrees to be responsible for ensuring that no contact used by any party involved in any way with the project reserves the right to charge Agency or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the Agency. It is not the intent of Agency to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Agency for payment of premiums or other amounts with respect thereto.

n. Consultant agrees to provide immediate notice to Agency of any claim or loss against Consultant arising out of the work performed under this Agreement. Agency assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the Agency.

o. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 12 of this Agreement.

p. Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.

14. Mutual Cooperation.

a. The Agency shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services.

b. In the event any claim or action is brought against the Agency relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that Agency may require.

15. Notices.

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (a) the day of delivery if delivered by hand or overnight courier service

during Agency's and Consultant's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing.

If to Agency:

Successor Agency to the Industry Urban-Development Agency
15625 East Stafford Street
City of Industry, California 91744
Attn: Executive Director

With a copy to:

Richards, Watson & Gershon
333 South Hope Street - 38th Floor
Los Angeles, CA 90071
Attn: William L. Strausz, Esq.
(213) 626-8484
Fax: (213) 626-0078

If to Consultant:

Sage Environmental
24040 Camino Del Avion, Suite A77
Monarch Beach, CA 92629
Attn: Alissa Cope

16. Representations and Warranties.

Consultant represents, warrants and covenants to the Agency:

a. Organization. Consultant is duly organized, validly existing and in good standing under the laws of the State of California and in each other state in which it conducts business.

b. Agency. Consultant has all requisite licenses, permits, certifications, power and authority to carry on its business as presently conducted, to enter into this Agreement, and to perform its obligations under this Agreement.

c. Approval. The execution, delivery and performance of this Agreement by Consultant and the consummation of the transactions contemplated by this Agreement have been duly and validly authorized by the Board of Directors and are not subject to ratification by the Shareholders of Consultant at a special meeting therefore.

d. Binding Obligation. This Agreement has been duly executed and delivered on behalf of Consultant, and all documents and instruments required hereunder to be executed and delivered by Consultant have likewise been duly executed and delivered. This Agreement does, and such documents and instruments will, constitute legal, valid and binding obligations of Consultant in accordance with their terms. The consummation of the transactions contemplated by this Agreement will not violate, nor be in conflict with, any provision of the partnership agreement, charter, bylaws or governing documents of Consultant (or any of corporations comprising Consultant), or any agreement or instrument to which Consultant is a party or by which Consultant is bound, or any judgment, decree, order statute, rule or regulation applicable to Consultant.

17. Conflicts of Interest

Consultant and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this Agreement, including, but not limited to, the Political Reform Act (Government Code Section 81000, et. seq.) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subcontractors shall not, without the prior written approval of the Executive Director, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant agrees that a clause substantially similar to this section shall be incorporated into any sub-agreement; which Consultant executes in connection with the performance of this Agreement.

18. Accounting Requirements.

Consultant shall maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project under the Scope of Work. The accounting system shall conform to the Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

19. Governing Law.

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California.

20. Compliance with Laws.

a. Consultant shall comply with all applicable federal, state and local laws, ordinances, codes and regulations.

b. Compliance with Environmental Laws. [check if applicable]

Consultant shall comply with § 306 of the Federal Clean Air Act (42 U.S.C. §1857(h)), § 508 of the Federal Water Pollution Prevention Act (33 U.S.C. § 368), and the laws implementing those acts, including Executive Order 11,738 and 40 C.F.R. pt. 15. Consultant shall comply with the provisions of the "Barry Keane Underground Storage Tank Cleanup Trust Fund Act of 1989 (Health & safety Code §§ 25299.10 et. seq. and the applicable regulations promulgated thereunder (California Code of Regulations, Title 23, § 2810 et. seq. Consultant shall also comply with mandatory standards and policies relating to energy efficiency, according the state energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act.

21. Reliance on Reports [check if applicable]

Consultant understands that Agency will rely upon its reports, analysis and related data. Consultant understands and agrees that the reports prepared by Consultant, and the information, data, test results and the conclusions and analyses contained therein regarding the geologic and environmental condition of a site, and/or the soils and groundwater beneath a site, may be relied upon by the Agency, its program managers, consultants, attorneys and appraisers of a site, any purchaser and developer of a site, (provided that the limitations and restrictions set forth herein shall apply to such purchaser and developer) and may be submitted and relied upon by any local, state or federal agencies and entities, as a part of the evaluation of the risk associated with the development or use of the site and the soils and groundwater beneath a site, and for the purpose of assessing the geotechnical, hydro- geological and/or environmental condition of a site and the ground and surface water on, under and in the area of a site, issuing closure letters, permits, licenses or authorizations to develop a site, and to determine whether further environmental investigation, assessment, review or study is necessary, and so that the Agency and any designated purchaser and developer of any site can conduct construction activities on and develop the site.

22. Discrimination and Equal Employment Opportunity.

In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation.

23. No Assignment.

Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, nor shall it subcontract any of the work described in this Agreement or the Scope of Work without the prior written consent of Agency, and any attempt by Consultant to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

24. Non-Waiver of Terms, Rights and Remedies.

Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by Agency of any payment to Consultant constitute or be construed as a waiver by Agency of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by Agency shall in no way impair or prejudice any right or remedy available to Agency with regard to such breach or default.

25. Attorneys' Fees.

If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of the services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs in addition to any other relief to which it may be entitled.

26. Time Is Of The Essence.

Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof; and each and every provision hereof is hereby declared to be and made a material, essential and necessary part of this Agreement.

27. Exhibits; Precedence.

All documents referenced as exhibits in this Agreement are hereby incorporated in 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.

28. Entire Agreement and Amendments.

This Agreement, and any other documents incorporated herein by specific reference, represent the entire and integrated agreement between Consultant and the Agency. This Agreement supercedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

29. Severability.

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement, is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

30. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

WHEREFORE, the parties hereto have executed this Agreement as of the date first above written.

SUCCESSOR AGENCY TO THE
INDUSTRY URBAN-DEVELOPMENT
AGENCY

By: 

Kevin Radecki, Executive Director

CONSULTANT

By: 

By: Alison Cope, Principal

EXHIBIT A

Scope of Services

SAGE ENVIRONMENTAL GROUP
Environmental • Biological • Habitat Restoration • Regulatory Compliance Services

December 3, 20122

Mr. Kevin Radecki
Successor Agency to the Industry Urban-Development Agency
P.O. Box 3366
15625 East Stafford Street
City of Industry, CA 91744-0366

Electronic Transmittal

Subject: Scope of Services – Consultant Services to provide Biological and Regulatory Compliance Services

Project: Diamond Bar Creek Habitat Restoration Project, City of Industry, Los Angeles County, CA

Dear Mr. Radecki,

Thank you for the opportunity to provide biological and regulatory compliance services for the continued implementation of the 26-acre Diamond Bar Creek Habitat Restoration Project (Project). The habitat restoration is based upon engineering plans developed by CNC Engineering and the resource agency-approved¹ *Final Industry Business Center Habitat Mitigation and Monitoring Plan* (HMMP), prepared by Sage Environmental Group (SAGE), as updated on June 16, 2009. The Project provides mitigation for several transportation projects, including the SR 60 Westbound On-ramp at the Grand Avenue Interchange Project, the SR 57/SR 60 Confluence at Grand Avenue Project, and the SR 60 Lemon Avenue Interchange Project.

Diamond Bar Creek, at this location is a perennial stream course which conveys nuisance, low and peak flows. The creek bed is deeply incised due to high velocity peak storm events that continue to remove sediment from the creek bottom and undercut the side slopes. The comprehensive mitigation program consists of stream course stabilization, non-native plant species eradication, and the preservation, expansion, and long-term management of native habitat. Upon project completion, the 26-acre habitat area will be placed into conservation. To date, non-native plant species eradication and initial grubbing within the construction zones has been completed.

Sage Environmental Group will provide biological and regulatory compliance services for the project in order to ensure the successful installation and maintenance of habitat within the 26-acre habitat area during the three-year establishment period. Principal compliance tasks include:

Task 1: Biological Monitoring – Construction Phase

Consistent with the requirements of the United States Fish and Wildlife Service (USFWS), all construction will be monitored utilizing a USFWS-approved biologist to ensure minimization of

¹ California Department of Fish and Game Streambed Alteration Unit; Regional Water Quality Control Board, Los Angeles Region, 401 Unit; United States Army Corps of Engineers, Los Angeles District, Regulatory Division, South Coast Section; United States Fish and Wildlife Service, Carlsbad Office.

EXHIBIT "A"

Mr. Kevin Radecki
Page 2
December 3, 2012

Act (ESA) and the federal Migratory Bird Treaty Act (MBTA). Biological monitoring will cover construction impacts to the extent feasible and compliance with the federal Endangered Species the area of direct impact and a 500-foot buffer area for associated riparian vegetation. Of special Project interest is the least Bell's vireo (*Vireo bellii pusillus*), a federal and state listed as endangered species, which was observed onsite in 2009 and 2010.

The proposed scope of work includes: 1) construction contractor education program; 2) oversight of the installation of construction fencing; 3) a pre-construction nesting bird survey of the Project site and adjacent 500 foot buffer area; 4) daily monitoring during site clearing; 5) weekly site monitoring after the initial site clearance is finished for the duration of construction work to ensure compliance with Resource Agency permit conditions, and project-specific biological resources mitigation and monitoring measures as defined in supporting documentation.

Task 2: HMMP Installation Management, Monitoring and Reporting – Year 1 through 3

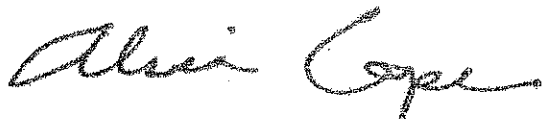
Consistent with the Resource Agency requirements, habitat mitigation will be implemented in accordance with the resource agency-approved HMMP. Sage Environmental Group will provide oversight and monitoring for the HMMP installation and maintenance to be done by a licensed Landscape Contractor. SAGE will be responsible for implementation management, including assisting CNC Engineering in the development of bid specifications, and construction-phase management and oversight for the 26-acre habitat area. The monitoring effort will include qualitative evaluations for a three year period, as defined in the HMMP. Annual success evaluations reports will be prepared following the completion of installation.

Fee Schedule

Tasks	
Task 1: Biological Monitoring – Construction Phase.....	45,000
Task 2: HMMP Installation Management, Monitoring and Reporting	76,000
Total Time and Materials Not-to-Exceed Fee	121,000

If you have any questions regarding this Scope of Services request, please feel free to call me at 949.243.2282. We look forward to continuing to work with you on this interesting project.

Sincerely,



Alissa Cope
Principal
Sage Environmental Group

Accepted By:
Successor Agency to the
Industry Urban-Development Agency

Kevin Radecki

EXHIBIT B

Project Timeline

Start date: April 24, 2013

Estimated end of construction: June 30, 2017

Upon the start of construction a more detailed project schedule will be established.

EXHIBIT C

Professional Fee Schedule
Hourly Rates

EXHIBIT "C"

SAGE ENVIRONMENTAL GROUP

Environmental • Biological • Habitat Restoration • Regulatory Compliance Services

2013 PROFESSIONAL SERVICES BILLING RATES SCHEDULE

Charges for professional services, including technical and administrative staff directly charging time to the project will be calculated and billed on the following hourly billing rates.

Principal in Charge \$ 140.00

Project Manager \$ 130.00

Senior Biologist/Botanist \$ 125.00

Senior Regulatory Specialist \$ 125.00

Associate Biologist/Botanist \$ 105.00

Senior Cultural Resources Specialist \$ 115.00

Assoc. Cultural Resources Specialist \$ 92.00

Principal Environmental Planner \$ 130.00

Assoc. Environmental Planner \$ 105.00

CADD/GIS Technician \$ 98.00

Word Processor \$ 68.00

Sage Environmental Group holds active California State Contractors License Number 947034 (C27-Landscaping) and utilizes highly trained landscape crews familiar with native flora within the southwestern region of the United States. Our crews are familiar with the identification, removal methods, and level of significance with over 200 exotic species likely to occur within the region, hold current California Department of Pesticide Regulation Qualified Applicators Licenses and are registered in Los Angeles, Orange, Riverside, San Bernardino and Ventura counties.

Field Crew Supervisor \$ 62.00

Field Crew Labor \$ 40.00

Expert witness testimony and participation in a judicial or administrative proceeding is available at two hundred percent (200%) of the Billing Rate. Preparation time shall be billed at the standard billing rate.

REIMBURSABLE COSTS

The following costs will be reimbursed at cost and are not included in the Fees for Professional Services. Reimbursable costs will not exceed ten percent (10%) of fees for Professional Services:

- A. Cost of copies of drawings, specifications, reports and cost estimates; xerography and photographic reproduction of drawings and other documents furnished or prepared in connection with the work of this contract.
- B. Cost of commercial carrier and public transportation, lodging, car rental and parking, subsistence and out-of-pocket expenses. Private automobile travel is currently at \$0.51 per mile and will fluctuate with the US Dept. of Labor Federal Travel Regulation rate.
- C. Cost of postage and shipping expenses.
- D. Long distance telephone and facsimile charges.
- E. Electronic data processing.
- F. Photographic services, film and processing.
- G. Cost of models, special renderings, promotional photography, special process printing, special equipment, special printed reports or publications, maps and documents approved in advance by the Client.
- H. Plotting and associated costs for drawings in CADD format.