



SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY

REGULAR MEETING AGENDA
MARCH 22, 2018 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 a Professional Services Agreement between the Successor Agency to the Industry Urban-Development Agency and Leighton Consulting, Inc., for geotechnical engineering and testing services for various traffic mitigation projects, in the amount of \$315,504.00 for the Industry Business Center Improvements

RECOMMENDED ACTION: Approve the Agreement.

- 5.2 Consideration of a Professional Services Agreement by and between the City of Industry, the Successor Agency to the Industry Urban-Development Agency, and the Industry Public Utilities Commission, and C & C Engineering, Inc., for engineering services, from March 22, 2018 to March 21, 2021, with two one-year extensions to the Agreement.

RECOMMENDED ACTION: Approve the Agreement.

- 5.3 Consideration of Amendment No. 1 to Cooperative Agreement 07-5033 between the Successor Agency to the Industry Urban-Development Agency, the City of Industry, and Caltrans for the SR-60 to SR-57 Confluence at Grand Avenue westbound Off-ramp Project

RECOMMENDED ACTION: Approve the Amendment.

- 5.4 Consideration of Amendment No. 3 to the Agreement for Consulting Services with Casey O'Callaghan Golf Course Design, Inc., 5-CALLAGHAN 10-01 C MP 99-31 #22, for the Freeway Confluence Project extending the term of the Agreement from May 25, 2018 to May 25, 2019

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: City of Diamond Bar v. Oversight Board of the Successor Agency to the Industry Urban-Development Agency; Successor Agency to the Industry Urban-Development Agency; et al.
Superior Court of California, County of Sacramento
Case No. 34-2017-80002718-CU-WM-GDS

- 6.2 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1)
Case: City of Chino Hills v. Oversight Board of the Successor Agency to the Industry Urban-Development Agency; Successor Agency to the Industry Urban-Development Agency; et al.
Superior Court of California, County of Sacramento

Case No. 34-2017-80002719-CU-WM-GDS

6.3 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(d)(1)

Case: City of Diamond Bar v. City of Industry; City of Industry City Council; Successor Agency to the Industry Urban-Development Agency; Board of Directors of the Successor Agency to the Industry Urban-Development Agency; Oversight Board of the Successor Agency to the Industry Urban-Development Agency; et al

Superior Court of California, County of Los Angeles

Case No. BS171295

6.4 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(d)(1)

Case: City of Chino Hills v. City of Industry; City of Industry City Council; Successor Agency to the Industry Urban-Development Agency; Board of Directors of the Successor Agency to the Industry Urban-Development Agency; Oversight Board of the Successor Agency to the Industry Urban-Development Agency; et al.

Superior Court of California Superior Court, County of Los Angeles

Case No. BS171398

6. Adjournment. Next regular Successor Agency meeting will be on Thursday, April 26, 2018, 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

STAFF: Clement N. Calvillo, Agency Engineer, CNC Engineering *CNC*
Joshua Nelson, Senior Project Manager, CNC Engineering *JN*

DATE: March 22, 2018

SUBJECT: Consideration of a Professional Services Agreement between the Successor Agency to the Industry Urban-Development Agency and Leighton Consulting, Inc. for geotechnical engineering and testing services for various traffic mitigation projects, in the amount of \$315,504.00 for the Industry Business Center Improvements (MP 99-31 #16)

Background:

In conjunction with the Industry Business Center project, it is necessary for the Successor Agency to the Industry Urban-Development Agency ("Agency") to enter into agreements with various consultants to complete this project. This project is being constructed in multiple phases to align with the availability of funds. Agency has various traffic mitigation obligations under the EIR for the Industry Business Center. Some of these projects are within the City of Industry limits and some are within the surrounding jurisdictions.

Discussion:

Attached for your consideration is an Agreement for Consulting Services with Leighton Consulting, Inc., ("Leighton") to provide geotechnical services for various traffic mitigation improvements for a budget amount of \$315,504.

Fiscal Impact:

The budget amount of \$315,504 will be billed based on time and materials. The Agreement has been modified to address the 6-month ROPS approval cycle. Leighton is listed in the Recognized Obligation Payment Schedule under line item 195.

Recommendation:

- 1) Staff recommends that the Board approve the Professional Services Agreement for geotechnical engineering and testing services for various traffic mitigation projects, for the Industry Business Center Improvements with Leighton Consulting, Inc.

Exhibits:

- A. Professional Services Agreement for geotechnical engineering and testing services for various traffic mitigation projects for the Industry Business Center Improvements with Leighton Consulting, Inc. dated March 22, 2018
-

CC/JN:jv

EXHIBIT A

Professional Services Agreement for geotechnical engineering and testing services for various traffic mitigation projects for the Industry Business Center Improvements with Leighton Consulting, Inc. dated March 22, 2018

[Attached]

SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY
PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of March 22, 2018 ("Effective Date"), between the Successor Agency to the Industry Urban-Development Agency, 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, Agency desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

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

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2021, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

(a) Consultant shall perform the tasks ("Services") described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. ("Scope of Services"). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the Agency. The Services shall be performed by Consultant, unless prior written approval is first obtained from the Agency. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) Agency shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the Agency and in a first-class manner in conformance with the standards of quality normally observed by an entity providing environmental engineering and consulting services, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*). During the term of this Agreement, Consultant shall not perform

any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) Agency has not consented in writing to Consultant's performance of such work. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the Agency. If Consultant was an employee, agent, appointee, or official of the Agency in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the Agency for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Services. All Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Services shall be qualified and licensed to perform such services.

3. MANAGEMENT

The Executive Director or his designee shall represent the Agency in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

4. PAYMENT

(a) The Agency agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Three Hundred Fifteen Thousand, Five Hundred and Four Dollars (\$315,504.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement. However pursuant to California Assembly Bill No. 1484, the Agency is required to prepare Recognized Obligation Payment Schedules or "ROPs" on a 6 month basis. The ROPs are reviewed for approval by the Oversight Board of the Agency and the State of California Department of Finance. This Agreement and Consultant will be listed in each ROPs for the estimated amount of the services to be provided by Consultant and the compensation projected to be required under this Agreement for each appropriate ROPs period. If the applicable line item in the ROPs is approved by the Agency, Oversight Board and Department of Finance, the Consultant will be notified of the approved amount. The Consultant shall not, during the 6 month period which is the subject of the approved ROPS, provide any services that requires compensation under this Agreement in an amount which

exceeds the amount approved under the applicable line item, based on the hourly rates set forth in Exhibit B attached hereto and incorporated herein by this reference. The initial budget amount for the ROPs 18-19A period (July 1, 2018 through June 30, 2019) for \$200,000 has been submitted for approval. At the end of each 6 month period, the amount that was approved for that period will be reduced to zero and the amount approved in the next ROPs will become the new amount which shall not be exceeded during the next applicable 6 month period. Actual payments made to the Consultant will be continuously deducted from the total budgeted amount of \$315,504 until that amount has been fully exhausted or the project which is the subject to this Agreement has been completed. No amounts described above shall be exceeded except upon and pursuant to the prior written authorization by the Agency.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the Agency. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by Agency and Consultant at the time Agency's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the Agency disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

5. SUSPENSION OR TERMINATION OF AGREEMENT

(a) The Agency may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the Agency suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the Agency shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the Agency. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the Agency pursuant to Section 5 of this Agreement.

6. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by Agency that relate to the performance of services under this Agreement. Consultant shall maintain adequate records

of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of Agency or its designees at reasonable times to review such books and records; shall give Agency the right to examine and audit said books and records; shall permit Agency to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the Agency and may be used, reused, or otherwise disposed of by the Agency without the permission of the Consultant. With respect to computer files, Consultant shall make available to the Agency, at the Consultant's office, and upon reasonable written request by the Agency, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to Agency all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the Agency.

7. INDEMNIFICATION

(a) Indemnity for professional liability

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the Agency and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnity for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless Agency, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for

which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) Duty to Defend

In the event the Agency, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by Agency, Consultant shall have an immediate duty to defend the Agency at Consultant's cost or at Agency's option, to reimburse the Agency for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by Agency is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and Agency, as to whether liability arises from the sole negligence of the Agency or its officers, employees, or agents, Consultant will be obligated to pay for Agency's defense until such time as a final judgment has been entered adjudicating the Agency as solely negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

8. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

9. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the Agency a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither Agency nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the Agency. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the Agency, or bind the Agency in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, Agency shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for Agency. Agency shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

10. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The Agency, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

11. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the Agency in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the Agency has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the Agency to any and all remedies at law or in equity.

12. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES

No member, officer, or employee of Agency, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

13. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without Agency's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the Agency, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the Agency, unless otherwise required by law or court order.

(b) Consultant shall promptly notify Agency should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the Agency, unless Consultant is prohibited by law from informing the Agency of such Discovery, court order or subpoena. Agency retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless Agency is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant

agrees to cooperate fully with the Agency and to provide the opportunity to review any response to discovery requests provided by Consultant. However, Agency's right to review any such response does not imply or mean the right by Agency to control, direct, or rewrite said response.

14. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To Agency: Successor Agency to the
Industry Urban-Development Agency
15625 E. Stafford, Suite 100
City of Industry, CA 91744
Attention: Executive Director

With a Copy To: James M. Casso, General Counsel
P.O. Box 4131
West Covina, CA 91791

To Consultant: Leighton Consulting, Inc.
17781 Cowan
Irvine, CA 92614
Attn: Mr. Philip Buchiarelli

15. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the Agency.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide Agency with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include an indemnity provision similar to the one provided herein and identifying Agency as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the Agency for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the Agency for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the Agency and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified

Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

16. GOVERNING LAW/ATTORNEYS' FEES

The Agency and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Los Angeles County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

17. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

18. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. COUNTERPARTS

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

20. CAPTIONS

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this

Agreement.

21. WAIVER

The waiver by Agency or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by Agency or Consultant unless in writing.

22. REMEDIES

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

23. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

“AGENCY”

“CONSULTANT”

**Successor Agency to the Industry
Urban-Development Agency**

By: _____
Mark D. Radecki, Chairman

By: _____

Attest:

By: _____

By: _____
Diane M. Schlichting, Agency Secretary

Approved as to form:

By: _____
James M. Casso, Agency Attorney

- | | | |
|--------------|-----------|------------------------|
| Attachments: | Exhibit A | Scope of Services |
| | Exhibit B | Rate Schedule |
| | Exhibit C | Insurance Requirements |

EXHIBIT A

SCOPE OF SERVICES

The Successor Agency to the Industry Urban-Development Agency (SA-IUDA) has various traffic mitigations required in the EIRs for Industry East and Industry Business Center in the jurisdictions surrounding and within the City of Industry. These are primarily intersection and roadway widenings. The scope includes all geotechnical services that may be required for those purposes including, but not limited to:

- Geotechnical exploration and investigation for design of new streets and other improvements
- Geotechnical review of plans and pavement design reports and plans
- Development of pavement design recommendations and recommendations for other improvements.
- Review condition of existing pavement, provide recommendations for pavement improvement
- Geotechnical services during grading and construction including observation and testing during overexcavation, subgrade preparation, placement of aggregate base and placement of asphaltic concrete, and during construction of other structures and improvements
- Materials testing of asphalt, concrete, and other materials used in construction

EXHIBIT B
RATE SCHEDULE



Leighton

2017 PROFESSIONAL FEE SCHEDULE

CLASSIFICATION	\$/HR	CLASSIFICATION	\$/HR
Technician I	81	Project Administrator/Word Processor/Dispatcher	76
Technician II / Special Inspector	90	Information Specialist	105
Senior Technician / Senior Special Inspector	100	CAD Operator	114
Prevailing Wage (field soils / materials tester) *	115	GIS Specialist	133
Prevailing Wage (Special Inspector) *	125	Staff Engineer / Geologist / Scientist	138
Prevailing Wage (Source Inspector, NDT, and Soil Remediation O&M) *	138	Senior Staff Engineer / Geologist / Scientist / ASMR	147
System Operation & Maintenance (O&M) Specialist	133	Operations / Laboratory Manager	166
Non Destructive Testing (NDT)	138	Project Engineer / Geologist / Scientist	166
Deputy Inspector	135	Senior Project Engineer / Geologist / Scientist / SMR	185
Field / Laboratory Supervisor	133	Associate	204
Source Inspector I	128	Principal	223
Source Inspector II	133	Senior Principal	261
Source Inspector III	138		

* See Prevailing Wages in Terms and Conditions

GEOTECHNICAL LABORATORY TESTING

METHOD	\$/TEST	METHOD	\$/TEST
CLASSIFICATION & INDEX PROPERTIES		California Bearing Ratio (CBR, ASTM D1883):	
Photograph of sample	10	- 3 point	500
Moisture content (ASTM D2216)	20	- 1 point	185
Moisture & density (ASTM D2937) ring samples	30	R-Value (CTM 301) untreated	310
Moisture & density (ASTM D2937) Shelby tube or cutting	40	R-Value (CTM 301) lime or cement treated soils	340
Atterberg limits (ASTM D4318) 3 points:	150	SOIL CHEMISTRY & CORROSIVITY	
- Single point, non-plastic	85	pH Method A (ASTM 4972 or CTM 643)	45
- Atterberg limits (organic ASTM D2487 / 4318)	180	Electrical resistivity – single point – as received moisture	45
- Visual classification as non-plastic (ASTMD 2488)	10	Minimum resistivity 3 moisture content points (ASTM G187/CTM 643)	90
Particle size:		pH + minimum resistivity (CTM 643)	130
- Sieve only 1½ inch to #200, (ASTM D6913/CTM 202)	135	Sulfate content - gravimetric (CTM 417 B Part II)	70
- Large sieve – 6 inch to #200 (ASTM D6913/CTM 202)	175	Sulfate screen (Hach®)	30
- Hydrometer only (ASTM D422)	110	Chloride content (AASHTO T291/CTM 422)	70
- Sieve + hydrometer (≤3" sieve, ASTM D422)	185	Corrosion suite: minimum resistivity, sulfate, chloride, pH (CTM 643)	245
- Percent passing #200 sieve, wash only (ASTM D1140)	70	Organic matter content (ASTM 2974)	65
Specific gravity-fine (passing #4, ASTM D854/CTM 207)	125	SHEAR STRENGTH	
Specific gravity-coarse (ASTM C127/CTM 206) > #4 retained:	100	Pocket penetrometer	15
- Total porosity - on Shelby tube sample (calculated from density & specific gravity)	165	Direct shear (ASTM D3080, mod., 3 points):	
- Total porosity - on other sample	155	- Consolidated undrained - 0.05 inch/min (CU)	285
Shrinkage limits (wax method, ASTM D4943)	126	- Consolidated drained - <0.05 inch/min (CD)	345
Pinhole dispersion (ASTM D4647)	210	- Residual shear EM 1110-2-1906-IXA	50
Dispersive characteristics (double hydrometer ASTM D4221)	90	(price per each additional pass after shear)	
As-received moisture & density (chunk/carved samples)	60	Remolding or hand trimming of specimens (3 points)	90
Sand Equivalent (SE, ASTM D2419/CTM 217)	105	Oriented or block hand trimming (per hour)	65
COMPACTION & PAVEMENT SUBGRADE TESTS		Single point shear	105
Standard Proctor compaction, (ASTM D698) 4 points:		Torsional shear (ASTM D6467 / ASTM D7608)	820
- 4 inch diameter mold (Methods A & B)	160	CONSOLIDATION & EXPANSION/SWELL TESTS	
- 6 inch diameter mold (Method C)	215	Consolidation (ASTM D2435):	195
Modified Proctor compaction (ASTM D1557) 4 points:		- Each additional time curve	45
- 4 inch diameter mold (Methods A & B)	220	- Each additional load/unload w/o time reading	40
- 6 inch diameter mold (Method C)	245	Expansion Index (EI, ASTM D4829)	130
Check point (per point)	65	Swell/collapse – Method A (ASTM D4546-A, up to 10 load/unloads w/o time curves)	290
Relative compaction of untreated/treated soils/aggregates (CTM 216)	250	Single load swell/collapse - Method B (ASTM D4546-B, seat, load & inundate only)	105
Relative density (0.1 ft mold, ASTM D4253, D4254)	235		

METHOD	\$/TEST	METHOD	\$/TEST
TRIAxIAL TESTS		HYDRAULIC CONDUCTIVITY TESTS	
Unconfined compression strength of cohesive soil (with stress/strain plot, ASTM D2166)	135	Triaxial permeability in flexible-wall permeameter with backpressure saturation at one effective stress (EPA 9100/ASTM D 5084, falling head Method C):	310
Unconsolidated undrained triaxial compression test on cohesive soils (USACE Q test, ASTM D2850, per confining stress)	170	- Each additional effective stress	120
Consolidated undrained triaxial compression test for cohesive soils, (ASTM D4767, 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 D2434)	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 D558)	240
- Three-stage triaxial (sand or silty sand soils)	655	Wet-dry durability of soil-cement mixtures (ASTM D559) ¹	1,205
- Three-stage triaxial (silt or clayey sand soils)	875	Compressive strength of molded soil-cement cylinders (ASTM D1633) per cylinder ¹	60
- Three-stage triaxial (clay soils)	1,235	Soil-cement remolded specimen (for shear strength, consolidation, etc.) ¹	235
Remolding of test specimens	65	¹ Compaction (ASTM D558 maximum density) should also be performed – not included in above price	

CONSTRUCTION MATERIALS LABORATORY TESTING

METHOD	\$/TRIP	METHOD	\$/TEST
SAMPLE TRANSPORT		CONCRETE STRENGTH CHARACTERISTICS	
Pick-up & delivery (weekdays, per trip, <50 mile radius from Leighton office)	90	Concrete cylinders compression (ASTM C39) (6" x 12")	25
METHOD		\$/TEST	
		Concrete cylinders compression (ASTM C39) (4" x 8")	22
		Compression, concrete or masonry cores (testing only) ≤6 inch (ASTM C42)	40
		Trimming concrete cores (per core)	20
		Flexural strength of concrete (simple beam with 3rd pt. loading, ASTM C78/CTM 523)	85
		Flexural strength of concrete (simple beam with center pt. loading, ASTM 293/CTM 523)	85
		Non shrink grout cubes (2 inch, ASTM C109/C1107)	25
		Drying shrinkage (four readings, up to 90 days, 3 bars, ASTM C157)	400
		HOT MIX ASPHALT (HMA)	
		Compacted AC Resistance to Moist Damage (AASHTO T283)	2,100
		Hamburg Wheel, 4 briquettes (modified) (AASHTO T324)	900
		Gyratory Compaction (AASHTO T312)	350
		Extraction by ignition oven, percent asphalt (ASTM D6307/CTM 382/AASHTO T308)	150
		Ignition oven correction/correlation values	quote
		Extraction by centrifuge, percent asphalt (ASTM D2172)	150
		Gradation of extracted aggregate (ASTM D5444/CTM 202)	135
		Stabilometer value (CTM 366)	265
		Bituminous mixture preparation (CTM 304)	80
		Moisture content of asphalt (CTM 370)	60
		Bulk specific gravity – molded specimen or cores (ASTM D1188/CTM 308/AASHTO T275)	55
		AGGREGATE PROPERTIES	
		Thickness or height of compacted bituminous paving mixture specimens (ASTM 3549)	40
		Rubberized asphalt (add to above rates)	+ 25%
		Sieve analysis (fine & coarse aggregate, ASTM C136/CTM 202) with finer than #200 wash (ASTM C117)	135
		LA Rattler-smaller coarse aggregate <1.5" (ASTM C131/AASHTO T96)	200
		LA Rattler-larger coarse aggregate 1-3" (ASTM C535)	250
		Durability Index (DI, CTM 229)	200
		Cleanliness value of coarse aggregate (CTM 227)	210
		Unit weight of aggregate (CTM 212)	50
		Soundness, magnesium (ASTM C88)	225
		Soundness, sodium	650
		Uncompacted void content – fine aggregate (CTM 234/AASHTO T304)	130
		Flat & elongated particles in coarse aggregate (CTM 235/ASTM D4791)	215
		Percent of crushed particles (CTM 205/AASHTO T335)	135
		Organic impurities in concrete sand (CTM 213)	60
		Specific gravity – coarse aggregate (CTM 206)	100
		Specific gravity – fine aggregate (CTM 207)	125
		Sand Equivalent (SE, CTM 217/AASHTO T176)	105
		Apparent specific gravity of fine aggregate (CTM 208)	130
		Moisture content of aggregates by oven drying (CTM 226/AASHTO T255)	40
		Clay lumps, friable particles (ASTM C142)	175

METHOD	\$/TEST	METHOD	\$/TEST
MASONRY		SLAB-ON-GRADE MOISTURE EMISSION KIT	
Mortar cylinders (2" by 4", ASTM C780)	25	Moisture test kit (excludes labor to perform test, ASTM E1907)	60
Grout prisms (3" by 6", ASTM C1019)	25	REINFORCING STEEL	
Masonry cores compression, ≤6" diameter (testing only, ASTM C42)	40	Rebar tensile test, ≤ up to No. 10 (ASTM A370)	45
CMU compression to size 8" x 8" x 16" (3 required, ASTM C140)	45	Rebar tensile test, ≥No. 11 & over (ASTM A370)	100
CMU moisture content, absorption & unit weight (6 required, ASTM C140)	40	Rebar bend test, up to No. 11 (ASTM A370)	45
CMU linear drying shrinkage (ASTM C426)	175	Epoxy coated rebar/dowel film thickness (coating) test (ASTM A775)	45
CMU grouted prisms (compression test ≤8" x 8" x 16", ASTM E 447 C1314)	180	Epoxy coated rebar/dowel continuity (Holiday) test (ASTM A775)	65
CMU grouted prisms (compression test > 8" x 8" x 16", ASTM E 447 C1314)	250	Epoxy coated rebar flexibility/bend test, up to No. 11 (ASTM A775)	45
Masonry core-shear, Title 24 (test only)	70	STEEL	
BRICK		Tensile strength, ≤100,000 pounds axial load (ASTM A370)	45
Compression (cost for each, 5 required, ASTM C67)	40	Prestressing wire, tension (ASTM A416)	150
		Sample preparation (cutting)	50
		SPRAY APPLIED FIREPROOFING	
		Unit weight (density, ASTM E605)	60

EQUIPMENT, SUPPLIES & MATERIALS

	\$/UNIT		\$/UNIT
Dynamic Core Petrameter	400 Day	Manometer	25 day
Particulate Monitor	125 day	Mileage (IRS Allowable)	0.535 mile
1/4 inch Grab plates	5 each	Nuclear moisture and density gauge	88 day
1/4 inch Tubing (bonded)	0.55 foot	Pachometer	25 day
1/4 inch Tubing (single)	0.35 foot	pH/Conductivity/Temperature meter	55 day
3/8 inch Tubing, clear vinyl	0.55 foot	Photo-ionization Detector (PID)	120 day
4-Gas meter (RKI Eagle or similar)/GEM 2000	130 day	Pump, Typhoon 2 or 4 stage	50 day
Air flow meter and purge pump (200 cc/min)	50 day	QED bladder pump w/QED control box	160 day
Box of 24 soil drive-sample rings	120 box	Resistivity field meter & pins	50 day
Brass sample tubes	10 each	Slip / Threaded Cap, 2-inch or 4-inch diameter, PVC Schedule 40	15 each
Caution tape (1000-foot roll)	20 each	Slope inclinometer	200 day
Combination lock or padlock	11 each	Soil sampling T-handle (Encore)	10 day
Compressed air tank and regulator	50 day	Soil sampling tripod	35 day
Concrete coring machine (≤6-inch-dia)	150 day	Stainless steel bailer	40 day
Consumables (gloves, rope, soap, tape, etc.)	35 day	Submersible pump, 10 gpm, high powered Grundfos 2-inch with controller	160 day
Core sample boxes	11 each	Submersible pump/transfer pump, 10-25 gpm	50 day
Crack monitor	25 each	Survey/fence stakes	8 each
Cutoff saws, reciprocating, electric (Saws All)	75 day	Tedlar® bags	18 each
Disposable bailers	12 each	Traffic cones (≤25)/barricades (single lane)	50 day
Disposable bladders	10 each	Turbidity meter	70 day
Dissolved oxygen meter	45 day	Tyvek® suit (each)	18 each
DOT 55-gallon containment drum with lid	65 each	Vapor sampling box	55 day
Double-ring infiltrometer	125 day	Vehicle usage	15 hour
Dual-stage interface probe	80 day	VelociCalc	35 day
Generator, portable gasoline fueled, 3,500 watts	90 day	Visqueen (20 x 100 feet)	100 roll
Global Positioning System/Laser Range Finder	80 day	Water level indicator (electronic well sounder) <300 feet deep well	60 day
Hand auger set	90 day	Support service truck usage	200 day
HDPE safety fence (≤100 feet)	40 roll	ZIPLEVEL®	15 day
Horiba U-51 water quality meter	135 day		
Magnahelic gauge	15 day		

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

TERMS & CONDITIONS

- **Expiration:** For all classifications except those subject to prevailing wage, this fee schedule is effective through December 31, 2017 after which remaining work will be billed at then-current rates.
- **Proposal Expiration:** Proposals are valid for at least 30 days, subject to change after 30 days; unless otherwise stated in the attached proposal.
- **Prevailing Wages:** Our fees for prevailing wage work are subject to change at any time based upon the project advertised date, and changes in California prevailing wage laws or wage rates. Prevailing wage time accrued will include portal to portal travel time. Prevailing wage rates are subject to increase after June 30, 2017.
- **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, and 2 times basic hourly rates when exceeding 12 hours in 24 hours or on Sunday, and 3 times basic hourly rates on California official holidays.
- **Expert Witness Time:** Expert witness deposition and testimony will be charged at 2 times hourly rates listed on the previous pages, with a minimum charge of four hours per day.
- **Minimum Field Hourly Charges:** For Field Technicians, Special Inspectors or Material Testing Services:
 - 4 hours: 4-hour minimum charge up to the first four hours of work
 - 8 hours: 8-hour minimum charge for over four hours of work, up to eight hours
- **Outside Direct Costs:** Heavy equipment, subcontractor fees and expenses, project-specific permits and/or licenses, project-specific supplemental insurance, travel, subsistence, project-specific parking charges, shipping, reproduction, and other reimbursable expenses will be invoiced at cost plus 20%, unless billed directly to and paid by client.
- **Insurance & Limitation of Liability:** These rates are predicated on standard insurance coverage and 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.
- **Client Disclosures:** Client agrees to provide all information in Client's possession about actual or possible presence of buried utilities and hazardous materials on the project site, prior to fieldwork, and agrees to reimburse Leighton for all costs related to unanticipated discovery of utilities and/or hazardous materials. Client is also responsible for providing safe and 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 and \$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 sample 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 and reporting.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of Agency, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to Agency.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000.00 combined single limit for each accident.

Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000.00).

Consultant shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees and volunteers.

Proof of insurance. Consultant shall provide certificates of insurance to Agency as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by Agency's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Agency at all times during the term of this contract. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may

arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by Agency shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Agency before the Agency's own insurance or self-insurance shall be called upon to protect it as a named insured.

Agency's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Agency has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Agency will be promptly reimbursed by Consultant, or Agency will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Agency may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Agency's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Agency, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against Agency, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Consultant of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to Agency with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that Agency and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Agency and approved of in writing.

Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to Agency for review.

Agency's right to revise specifications. The Agency reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the Agency and Consultant may renegotiate Consultant's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by the Agency. The Agency reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the Agency.

Timely notice of claims. Consultant shall give the Agency prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

SUCCESSOR AGENCY

ITEM NO. 5.2



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

MEMORANDUM

TO: Honorable Chairman Radecki and Agency Board Members

FROM: James M. Casso, Agency Counsel

DATE: March 22, 2018

SUBJECT: Consideration of a Professional Services Agreement with C & C Engineering, Inc., for Engineering Services from March 22, 2018 to March 21, 2021

BACKGROUND: On March 14, 2018, Cordoba Corporation informed Mayor Radecki that it had decided to terminate its working relationship with the City. As the Successor Agency ("Agency") Board is aware, C&C has served as the Agency's Engineer. This Professional Services Agreement reaffirms the Agency's prior decision to have C&C serve as the Agency's Engineer.

Since the early 1980s, C&C Engineering, Inc., ("C&C") has served the City in various capacities, assisting with engineering projects for the City's agencies, commissions and boards. Starting in 2016, with the departure of certain staff members, C&C served as City Engineer for about one year.

DISCUSSION: Before the Agency Board is a three-year agreement with two one-year extensions, engaging C&C Engineering for engineering services and specifically designating Joshua Nelson as the contract Agency Engineer. Attached to the Agreement, as Exhibits A and B, is the scope of services and C&C's rate schedule, which is consistent with the charges C&C currently charges for engineering services.

RECOMMENDATION: Approve the Agreement.

CITY OF INDUSTRY

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”), is made and effective as of March 22, 2018 (“Effective Date”), by and between the City of Industry, a municipal corporation, (“City”), the Successor Agency to the Industry Urban-Development Agency, a public body, corporate and politic (“Agency”), and the Industry Public Utilities Commission, a public body, corporate and politic (“IPUC”) (collectively, the “City”) and C & C Engineering, Inc., a California corporation (“Consultant”). The City and Consultant are hereinafter collectively referred to as the “Parties”.

RECITALS

WHEREAS, the City desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein; and

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

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until March 21, 2021, unless sooner terminated pursuant to the provisions of this Agreement. Notwithstanding the foregoing, the City at its sole and exclusive option, may grant two one (1) year extensions to this Agreement.

2. SERVICES

(a) Consultant shall perform the tasks (“Services”) described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. (“Scope of Services”). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the City. The Services shall be performed by Consultant, unless prior written approval is first obtained from the City. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) City shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the City and in a first-class manner in conformance with the standards of quality normally observed by an entity providing engineering services, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*). No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that

it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Services. All Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Services shall be qualified and licensed to perform such services.

3. MANAGEMENT

City's City Manager/Agency and IPUC Executive Director shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant. For Consultant, Joshua L. Nelson shall serve as the contract City, Agency and IPUC Engineer.

4. PAYMENT

(a) The City agree to pay Consultant bi-monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices bi-monthly for actual services performed. Invoices shall be submitted on or about the first and fifteenth business days of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

5. LABOR CODE AND PREVAILING WAGES

(a) Consultant represents and warrants that it is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 16000, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the

Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000.00 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and any location where the Services are performed. Consultant shall indemnify, defend and hold harmless, the City and its elected officials, officers, employees and agents, from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, Consultant's or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant, failure or alleged failure to comply with Prevailing Wage Laws.

(b) In accordance with the requirements of Labor Code Section 1776, Consultant shall keep accurate payroll records which are either on forms provided by the Division of Labor Standards Enforcement or which contain the same information required by such forms. Consultant shall make all such records available for inspection at all reasonable hours.

(c) To the extent applicable, Consultant shall comply with the provisions of Section 1777.5 of the Labor Code with respect to the employment of properly registered apprentices upon public works.

(d) Consultant shall comply with the legal days work and overtime requirements of Sections 1813 and 1815 of the Labor Code.

(e) If the Services are being performed as part of an applicable Public works or Maintenance project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Agreement and require the same of any subconsultants, as applicable. This Services set forth in this Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

6. SUSPENSION OR TERMINATION OF AGREEMENT

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least thirty (30) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the City pursuant to Section 5 of this Agreement.

(c) In the event this Agreement is terminated pursuant to this section, the Consultant shall provide the City with all sketches, pencil tracings of working drawings, plans, computations in reproducible form, specifications and all contract documents shall be the property of the City without restriction or limitation upon use, duplication or dissemination. With the written permission of the City, Consultant shall be entitled to retain copies of such documents as it may require. It is contemplated that during the Term of this Agreement, all of aforementioned original plans, sketches, drawings, contracts and the like shall be maintained in the possession of the City, but the Consultant may retain copies of all such documents. The City may require Consultant to surrender possession thereof of all existing original documents and work product in Consultant possession upon thirty (30) day notice.

(d) Consultant agrees that approval of this Agreement shall automatically cause the termination of any underlying agreements for engineering services between the City and Consultant, including, but not limited to, the agreement with the City dated September 22, 2016, and any subsequent amendments thereto. Consultant further waives and releases the City, their officials, employees and agents from any and all claims for damages pertaining to the termination of any prior agreements for engineering services between the City and Consultant.

7. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to review such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office, and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to City all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the City.

8. INDEMNIFICATION

(a) Indemnity for professional liability

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs that arise out of, pertain to, or relate to any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnity for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) DUTY TO DEFEND. In the event the City, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall have an immediate duty to defend the City at Consultant's cost or at City's option, to reimburse the City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant, City, as to whether liability arises from the sole negligence of the City or its officers, employees, or agents, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the indemnified party.

9. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

10. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the City a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers,

employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the City, or bind the City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

11. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

12. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

13. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Services during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

14. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City, unless otherwise required by law or court order.

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless Consultant is prohibited by law from informing the City of such Discovery, court order or subpoena. City retains the right, but has no obligation,

to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

15. NOTICES

Any notices which any party may desire to give to any other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City:	City of Industry 15625 E. Stafford, Suite 100 City of Industry, CA 91744 Attention: City Manager/Executive Director
With a Copy To:	James M. Casso, City Attorney/Agency General Counsel Casso & Sparks, LLP 13200 Crossroads Parkway North, Suite 345 City of Industry, CA 91746
To Consultant:	Clement N. Calvillo, President C & C Engineering, Inc. 255 North Hacienda Boulevard, Suite 222 City of Industry, CA 91744

16. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide City with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include an indemnity provision similar to the one provided herein and identifying City as indemnified parties, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the City for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the City for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the

City and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

17. GOVERNING LAW/ATTORNEYS' FEES

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the Parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Los Angeles County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

18. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each Party is entering into this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such Party deems material.

19. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

20. COUNTERPARTS

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

21. CAPTIONS

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

22. WAIVER

The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach

of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

23. REMEDIES

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

24. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

“CITY”
City of Industry

“CONSULTANT”
C & C Engineering, Inc.

By: _____
Mark D. Radecki, Mayor

By: _____
Clement N. Calvillo, President

By: _____
Mary R. Calvillo, Secretary

Attest:

By: _____
Diane M. Schlichting, City Clerk

Approved as to form:

By: _____
James M. Casso, City Attorney

“AGENCY”
Successor Agency to the Industry Urban-
Development Agency

By: _____
Mark D. Radecki, Chairman

Attest:

By: _____
Diane M. Schlichting, Secretary

Approved as to form:

By: _____
James M. Casso, Agency General Counsel

IPUC
Industry Public Utilities Commission

By: _____
Mark D. Radecki, Chairman

Attest:

By: _____
Diane M. Schlichting, Secretary

Approved as to form:

By: _____
James M. Casso, Commission General Counsel

Attachments:	Exhibit A	Scope of Services
	Exhibit B	Rate Schedule
	Exhibit C	Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

Consultant shall provide engineering staff augmentation services as needed and if requested including but not limited to:

1. General Engineering and Project Management

- A. Serve as City Engineer; designated City Engineer/Agency Engineer and Deputy City Engineer/ Agency Engineer must be a registered civil engineer in the State of California;
- B. Manage and provide all aspects of civil engineering, traffic engineering, front counter permit services, plan checking, development conditioning, capital project management, construction inspection, and assistance in obtaining federal, state and other funding for transportation and other infrastructure projects;
- C. Review all matters pertaining to engineering to ensure that initiatives proposed and implemented by the City/Agency and others are done in a manner that protects the City's/Agency's interests, and are consistent with local, state and federal laws;
- D. Assist in planning, coordinating, supervising and evaluating infrastructure, programs, plans, and services;
- E. Evaluate the City's/Agency's needs and formulate short- and long-term plans to meet needs in all areas of public works improvements, including streets, sewers, storm drains, water distribution system, street lights, traffic signals, bridges, median islands, municipal facilities and all other improvements within the public right-of-way;
- F. Provide engineering, design services, land surveying and manage construction of public works projects, including construction inspection and construction staking;
- G. Be available to public and private developers to handle matters dealing with the engineering functions of city government;
- H. Maintain, at City Hall, municipal engineering records and maps required to ensure accurate information is available to the public and City/Agency staff;
- I. Prepare reports, investigations, studies and evaluations as may be requested by the City;
- J. Advise the City/Agency as to engineering and construction funding available from other government agencies, and when so directed, prepare and initiate applications for funding;
- K. Serve as Resident Engineer when required pursuant to Caltrans/federal requirements;

- L. Design of capital improvement projects, improvement plans, specifications, bid documents, and public improvement project management and inspection;
- M. Solicit proposals for capital improvement project design work, construction management, and inspection, as needed;
- N. Review and evaluate bid submittals;
- O. Provide construction observation, management, inspection, and staking during the construction of City/ Agency projects; act as Resident Engineer; assist with cost estimating, approval of payments, and change orders, filing of notices, and other tasks;
- P. Coordinate activities with other departments and outside agencies to obtain various approvals and agreements such as environmental clearances, permits, land acquisition, and rights-of-way for engineering projects;
- Q. Negotiate land acquisitions, dispositions, easements, agreements, leases, and other associated property rights as it relates to engineering projects and/or the dissolution of the Agency;
- R. Assist with the development and implementation of a multi-year Capital Improvement Program for the City and Agency;
- S. Attend City Council, Successor Agency to the Industry Urban-Development Agency, Oversight Board of the Successor Agency to the Industry-Urban Development Agency, Industry Public Utilities Commission, Planning Commission, Civic-Recreational-Industrial Authority and other meetings as requested;
- T. Provide such other related engineering services as requested by the City Manager/Executive Director or other City/Agency Management Personnel or their designee;
- U. Provide peer review for City/Agency contractors and accept peer review from City/Agency Contractors, as directed;
- V. Conform to systems of procurement, administrative and financial controls, as directed;
- W. Provide NPDES services that are necessary and related functions as are the normal practice of City Engineering Departments including any stormwater projects required of the City;
- X. Maintain the City's/Agency's digital and plotted atlases of all infrastructure and assets
- Y. Provide utility coordination services as requested; and
- Z. Assist the City with any needs or requests affiliated with city owned property both within City limits and outside City limits.

2. Development Review

- A. Review proposed improvements and land developments and provide recommendation as to engineering matters to ensure conformance with City ordinances and state law;
- B. Perform statutory functions of City/ Agency Engineer pertaining to the review and checking of lot line adjustments, parcel and tract maps, including tentative, final and vesting maps. Ensure map conformance with State Subdivision Map Act and City ordinances;
- C. Provide a "turn around" checking time for maps and improvement plans within a reasonable number of days for the first plan check once the application has been deemed complete and all subsequent plan checks necessary until plan is approved. The Engineer shall notify the applicant in writing of any final plan or final map deficiencies within the timeframe required by State law, specifying those items needed to complete the application;
- D. Establish performance, labor and material bond amounts when required and ensure the posting of such bonds within the proper time sequence of such development control;
- E. Provide necessary and related functions as are the normal practice of City/Agency Engineering in control of private development; and
- F. Provide front counter in-take and public information services.

3. Traffic Engineering

- A. Provide support and expertise in the application of Traffic Engineering principles and practices to provide and enhance the safety and efficient movement of pedestrians, cyclists and vehicular traffic of people and goods within the City;
- B. Ensure compliance with requirements of Section 627 of the California Vehicle Code and all other applicable federal, state, and local laws;
- C. Provide comprehensive analyses of existing and projected traffic conditions; intersection design, rail line or at-grade crossing impacts, speed humps, City parking lot design, and traffic/transportation data collection services;
- D. Provide electronic traffic control device studies and designs (signs, signals, pavement markings, school zone flashers and curve warning flashers);
- E. Review subdivision or new development projects involving traffic impact analyses, transportation modeling, area-wide transportation studies and road impact fee analyses;
- F. Investigate citizen requests for traffic calming measures and respond to citizens, as directed by the City Manager/Executive Director or other City/Agency management personnel;

- G. Provide technical assistance for traffic signal design and day-to-day traffic operations including traffic signals;
- H. Provide technical input to City/ Agency staff with signing and striping changes, issuing workorders to address citizen requests, signal equipment upgrades and parts, collision analysis, speed limits, traffic volume data and other work performed by City/Agency staff;
- I. Review traffic plans for capital improvement projects and advise City/Agency on potential issues;
- J. Assist City with preparation of Annual Traffic Safety Report;
- K. Review development plans, including environmental impact reports and impact studies for potential traffic issues and advise on possible solutions;
- L. Review precise grading and public improvement plans for potential traffic issues and advise on possible solutions;
- M. Review traffic control plans for construction projects and advise on potential issues;
- N. Maintain traffic collision database and advise on traffic issues involved. And
- O. Serve as the Traffic Engineer if requested.

4. Construction Inspection

- A. Coordinate and attend pre-construction meetings;
- B. Process shop drawings, submittals and requests for information (RFIs) from contractors;
- C. Provide field inspections of work in progress to ensure compliance with plans and specifications;
- D. Follow federal requirements and procedures and filing system for federally funded projects;
- E. Take digital photos of each construction phase throughout duration of project;
- F. Serve as inspector of record (create red lines on as-built drawings) for work inspected;
- G. Prepare and file written daily inspection reports;
- H. Coordinate inspections with utility companies as necessary;
- I. Coordinate special testing and inspection work as required;
- J. Report instances of apparent non-compliance with contract plans, specifications to Director of Development Services and Administration or other City/Agency management personnel or their designee for resolution;
- K. Verify prevailing wages and payroll information; and
- L. Process progress payment applications.

5. Testing

Consultant shall oversee the testing and review construction method and material compliance testing reports. Testing will include, but not be limited to:

- A. Soil compaction testing;
- B. Asphalt concrete testing; and
- C. Concrete slump and strength testing.

6. Federally Funded Projects

- A. Secure all necessary permits, including CEQA and NEPA compliance, surveying, testing, preparation of plans and specifications, description of construction phasing plan, estimate of probable construction costs, preparation of bid documents, review of construction contract bids, recommendation for award, construction inspection, and construction administration;
- B. Provide all services in accordance with Caltrans standards, FHWA standards, and City/ Agency standards;
- C. Comply with California Government Code Section 8355 in matters relating to the provision of a drug-free workplace;
- D. Comply with the Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et. Seq., that govern allowable elements of cost;
- E. Comply with the administrative requirements set forth in 49 CFR Part 18, Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments; and
- F. Comply with CFR Title 49, Part 29, Debarment and Suspension of Certificate, refer to Exhibit 12-E "Debarment and Suspension Certificate" in Chapter 12 of the Caltrans Local Assistance Manual.

7. Provision of Services

- A. Place the highest emphasis on customer service;
- B. Be reachable and available to respond to City/Agency emergencies at all times. Consultant must provide City/ Agency with emergency contact numbers for key personnel to facilitate the immediate response by Consultant to emergencies and provide an updated contact list when needed;
- C. Communicate effectively with citizens before, during, and after construction projects;

- D. Consultant shall provide written comments for initial and subsequent review within a reasonable number of days from date of receipt of the plans. Consultant shall provide comments for expedited plan reviews on a case by case basis;
- E. Consultant will meet approximately twice per month with the Director of Development Services and Administration or other designated staff to provide comprehensive updates on all pending assignments; and
- F. Consultant will make initial contact in response to staff and developer inquiries and citizen concerns within a reasonable amount of time after receipt by the City and update the reporting party and City/Agency staff regularly throughout the investigation and resolution period.

8. City's Industry Public Utility Commission (IPUC) Services

Support of the City's Industry Public Utility Commission (IPUC). Consultant will provide the following services either with Consultant employees or through the use of sub-consultants necessary to develop, conduct, oversee, operate, and grow the IPUC including, at a minimum, all program and project management services needed to ensure adherence to local, state and federal regulations, and operational updates needed to develop and secure the IPUC's financial viability under the following major categories:

A. IPUC Administration

Administrative services for the IPUC needed to ensure proper operation, reporting, and compliance of the IPUC's electric systems and function.

B. Asset Management

Asset management services for IPUC facilities, systems and equipment.

C. File Management

Develop and maintain the IPUC files and databases including, at a minimum the approval, routing, organization, upload and access to appropriate and required personnel.

D. Power Procurement

Oversee the contractors and regulations required in purchasing and supplying the energy needs of the IPUC customers and system, including, at a minimum, contractor(s) contractual obligation and performance, energy pricing review, communications, and obligations and reporting.

E. Environmental Oversight

Oversee, select and work with contractor, local, state and federal officials in providing guidance on the environmental requirements needed to operate and maintain the IPUC facilities, equipment, property, and infrastructure.

F. Legacy Issues

Work with the City and its contractors with legacy concerns that have not been resolved, including, at a minimum, consultation, strategy development, action plan implementation, and corrective actions needed to inform or correct past information or actions.

G. Staff Augmentation

Provide and make available the necessary staff and personnel required to administer the IPUC, including at a minimum, management, program, project, engineering, administrative and support personnel.

H. Process Development and Implementation

Develop and implement IPUC processes and standards needed to operate and maintain the IPUC department, including, at a minimum, customer connections, contract approval, fees and deposits and operation and maintenance procedures.

I. After Hours Response

Provide after-hours response, communication, oversight, and availability for the IPUC facilities, equipment and infrastructure. Personnel responsible for after-hours work will be assigned as needed depending on schedules and availability.

J. Engineering

Provide technical engineering support and services for IPUC facility and infrastructure design and construction.

K. Field Visits

Acting as IPUC staff, will attend, set-up, facilitate, and coordinate visits to IPUC facilities, equipment, infrastructure and property as needed or required by mandates, regulation or requested by the designated City officials.

L. Strategic Planning

Assist with City strategic planning services to further the IPUC growth and financial expansion.

M. Project Management

Provide project management services, including, at a minimum, initiating, planning, implementing, execution, and close out of the scope, schedule and budget of existing and future IPUC projects, in addition to City projects requiring IPUC involvement.

N. Community Choice Aggregation (CCA)

Work with City to determine how they would like to proceed with this program.

O. Other duties as requested.

EXHIBIT B

RATE SCHEDULE

Civil Engineering Services		Municipal Engineering Services	
Principal	\$235.00	City Engineer/Agency Engineer	\$235.00
Sr. Project Manager/Civil Engineer	\$185.00	Deputy City/Agency Engineer	\$195.00
Project Manager/Civil Engineer	\$165.00	Plan Checker Engineer	\$145.00
Sr. Construction Manager	\$185.00	Plan Checker	\$125.00
Construction Manager	\$165.00	Sr. Construction Manager	\$185.00
Sr. Project Engineer	\$155.00	Construction Manager	\$165.00
Project Engineer	\$145.00	Sr. Construction Inspector	\$165.00
Sr. Design Engineer	\$135.00	Construction Inspector	\$135.00
Design Engineer	\$125.00	Permit Coordinator	\$130.00
CADD Operator	\$110.00	Administrative Supervisor	\$95.00
Administrative Supervisor	\$95.00	Administrative Assistant	\$80.00
Administrative Assistant	\$80.00	Senior Energy Advisor	\$235.00
Clerical	\$70.00	Field Operations	\$140.00
Intern	\$70.00		

Field Survey and Inspection Services	
Director of Survey	\$185.00
Survey Manager	\$165.00
Land Surveyor	\$145.00
One Person Crew	\$160.00
Two Person Crew	\$250.00
Three Person Crew	\$325.00
Sr. Construction Inspector	\$165.00
Construction Inspector	\$135.00

The above-mentioned rates shall be adjusted at the beginning of each fiscal year, commencing July 1, 2020, pursuant to the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics as of December of the prior calendar year for the Los Angeles-Long Beach-Anaheim Metropolitan Statistical Area average, all items, not seasonally adjusted, rounded up to the nearest five dollars (\$5.00) per hour, however, such adjustment shall be no less than 2.5% per year.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City and/or Agency, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to the City.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000.00 per occurrence, \$5,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000.00 combined single limit for each accident.

Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000.00).

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City and Agency, their officers, agents, employees and volunteers.

Proof of insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserve the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City and/or Agency shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess

insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City and Agency before the City's and/or Agency's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City and/or Agency has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City and Agency, their elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City and/or Agency, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City and/or Agency nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City and/or Agency.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City and Agency with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that City and Agency and their officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

City's right to revise specifications. The City and Agency reserve the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City, Agency and Consultant may renegotiate Consultant's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by the City. The City reserve the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

Timely notice of claims. Consultant shall give the City and Agency prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

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

STAFF: Joshua Nelson, Program Consultant, CNC Engineering 
Lisette Calleros, Funding Program Consultant, Avant Garde Inc.

DATE: March 22, 2018

SUBJECT: Consideration of Amendment No. 1 to Cooperative Agreement No. 07-5033 between the Successor Agency to the Industry Urban-Development Agency, the City of Industry, and Caltrans for the SR-60 to SR-57 Confluence at Grand Avenue Westbound Off-ramp Project

Background:

On October 16, 2015, the Successor Agency and the City entered Cooperative Agreement 07-5033 ("Cooperative Agreement") with Caltrans, defining the terms and conditions under which Caltrans would advertise the SR-57/60 Confluence at Grand Avenue Westbound Off-ramp Project ("Project") for contractor's bids, award the Project to the successful bidder, and administer the contract in terms of construction administration services. The Project is Phase II of the larger SR-57/60 Confluence Project and consists of an extension of a southbound SR-57 lane to the Grand Avenue off-ramp, reconstruction of the westbound loop on- and off-ramp to Grand Avenue, and reconstruction of the westbound SR-60 Grand Avenue intersection.

Through Metro's 2013 Call for Projects, the City secured \$9,447,781 in local Proposition C grant funds. In addition, the City secured \$10 million through the Federal Highway Administration's (FHWA) TIGER Discretionary Grant program. On March 29, 2016 and September 27, 2016, the City executed a TIGER Grant Agreement and Call for Projects Funding Agreement respectively. Each agreement specified the terms, project funding, scope of work, project schedule, reporting requirements and expenditure guidelines.

Discussion:

An amendment is necessary to transfer TIGER and Metro Call for Projects funds between Construction Support and Construction Capital phases in the Funding and Spending Summaries of the Cooperative Agreement because construction support costs have increased and construction bids came in less than the estimates provided at the time the

agreement was originally executed. There is no change in the total amount funds or project costs.

Fiscal Impact:

The estimated total cost for this project is \$22.5 million. The Cooperative Agreement established that Caltrans would advertise, award, and administer the project for an estimated cost of \$21.3 million. The grant funds amount to a combined 86% share in total project costs. The remaining 14% share is to be funded from the Successor Agency in the amount of approximately \$3,059,630; which is designated in bond proceeds for listed items on the Recognized Obligation Payment Schedule (ROPS). The City is the recipient of the TIGER and Metro Call for Projects funds while the Successor Agency is providing the matching funds.

This amendment will not change the total amount of funds or project costs, but instead will transfer the funds between phases in Caltrans' Funding and Spending Summaries as provided below for reference.

Original Funding Summary

Source	Funding Partner	Fund Type	Construction Support	Construction Capital	Totals
Federal	City	TIGER	\$0	\$10,000,000	\$10,000,000
Local	Agency	Agency funds	\$0	\$1,855,000	\$1,855,000
Local	City	Metro CFP	\$5,000,000	\$4,448,000	\$9,448,000
Totals			\$5,000,000	\$16,303,000	\$21,303,000

Amended Funding Summary

Source	Funding Partner	Fund Type	Construction Support	Construction Capital	Totals
Federal	City	TIGER	\$2,000,000	\$8,000,000	\$10,000,000
Local	Agency	Agency funds	\$0	\$1,855,000	\$1,855,000
Local	City	Metro CFP	\$3,000,000	\$6,448,000	\$9,448,000
Totals			\$5,000,000	\$16,303,000	\$21,303,000

Original Spending Summary

Fund Type	Construction Support			Construction Capital		Totals
	Caltrans	City	Agency	Caltrans	DFM Caltrans	
Federal Funds						
City TIGER	\$0	\$0	\$0	\$10,000,000	\$0	\$10,000,000
Local Funds						
Agency funds	\$0	\$0	\$0	\$1,506,624	\$348,376	\$1,855,000
City Metro CFP	\$5,000,000	\$0	\$0	\$4,448,000	\$0	\$9,448,000
Totals	\$5,000,000	\$0	\$0	\$15,954,624	\$348,376	\$21,303,000

Amended Spending Summary

Fund Type	Construction Support			Construction Capital		Totals
	Caltrans	City	Agency	Caltrans	DFM Caltrans	
Federal Funds						
City TIGER	\$2,000,000	\$0	\$0	\$8,000,000	\$0	\$10,000,000
Local Funds						
Agency funds	\$0	\$0	\$0	\$1,506,624	\$348,376	\$1,855,000
City Metro CFP	\$3,000,000	\$0	\$0	\$6,448,000	\$0	\$9,448,000
Totals	\$5,000,000	\$0	\$0	\$15,954,624	\$348,376	\$21,303,000

Recommendation:

- 1) Staff recommends that the Successor Agency approve and execute Amendment No. 1.

Exhibits

- A. Amendment No. 1 to Cooperative Agreement No. 07-5033 between the Successor Agency to the Industry Urban-Development Agency, the City of Industry, and Caltrans for the SR-57/60 Confluence at Grand Avenue Westbound Off-ramp Project

JN/LC:ml

EXHIBIT A

Amendment No. 1 to Cooperative Agreement No. 07-5033 between the Successor Agency to the Industry Urban-Development Agency, the City of Industry, and Caltrans for the SR-57/60 Confluence at Grand Avenue Westbound Off-ramp Project

[Attached]

AMENDMENT NO. 1 TO COOPERATIVE AGREEMENT 07-5033

THIS AMENDMENT NO. 1 (AMENDMENT 1) TO AGREEMENT 07-5033 (AGREEMENT), entered into and effective on _____, 2018, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Industry, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as CITY, and:

Successor Agency to the Industry Urban-Development Agency, a public corporation/entity, referred to hereinafter as AGENCY, CITY and AGENCY are together referred to as LOCALS.

CALTRANS, CITY and AGENCY are collectively referred to herein as PARTNERS.

RECITALS

1. PARTNERS entered into AGREEMENT on October 16, 2015, defining the terms and conditions for the Construction phase of improvements to the state highway system (SHS) to the SR 60/to State Route 57 Confluence at Grand Avenue, referred to as PROJECT.
2. Under AGREEMENT, CITY is the sole SPONSOR and FUNDING PARTNER AND CALTRANS is the IMPLEMENTING AGENCY for PROJECT. CALTRANS is the CEQA and NEPA lead agency for the PROJECT.
3. PARTNERS wish to enter into AMENDMENT 1 to transfer TIGER and Metro Call for Project funds between Construction Support and Construction Capital phases, as reflected on the FUNDING SUMMARY A1 and SPENDING SUMMARY A1. There is no change on the total amount of funds.

IT IS THEREFORE MUTUALLY AGREED

4. PARTNERS hereby amend AGREEMENT by replacing FUNDING SUMMARY in its entirety with FUNDING SUMMARY A1 and replacing the SPENDING SUMMARY in its entirety with FUNDING SUMMARY 1.
5. All other terms and conditions of the AGREEMENT shall remain in full force and effect.
6. This AMENDMENT 1 is deemed to be a part of, and is included in, AGREEMENT.

CONTACT INFORMATION

The information provided below indicates the primary contact information for each PARTNER to this Agreement. PARTNERS will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this AGREEMENT.

The primary Agreement contact person for CALTRANS is:

Syed Huq, Project Manager
100 South Main Street, Suite 100
Los Angeles, CA 90012
Office Phone: (213) 897-6714
Email: syed.hug@dot.ca.gov

The primary Agreement contact person for AGENCY is:

Alex Gonzalez, Director of Development Services and Administration
15625 East Stafford Street
City of Industry, CA 91744
Office Phone: 626-333-2211
Email: alex@cityofindustry.org

The primary Agreement contact person for CITY is:

Alex Gonzalez, Director of Development Services and Administration
15625 East Stafford Street
City of Industry, CA 91744
Office Phone: 626-333-2211
Email: alex@cityofindustry.org

FUNDING SUMMARY A1

v. 2					
<u>FUNDING TABLE</u>					
<u>IMPLEMENTING AGENCY →</u>			<u>CALTRANS</u>		
Source	FUNDING PARTNER	Fund Type	CONST. SUPPORT	CONST. CAPITAL	Totals
Federal	CITY	TIGER *	2,000,000	8,000,000	10,000,000
Local	AGENCY	AGENCY funds	0	1,855,000	1,855,00
Local	CITY	Metro Call for Projects	3,000,000	6,448,000	9,448,000
Totals			5,000,000	16,303,000	21,303,000

SPENDING SUMMARY

Fund Type	CONST. SUPPORT			CONST. CAPITAL		Totals
	CALTRANS	CITY	AGENCY	CALTRANS	DFM CALTRANS	
Federal Funds						
CITY TIGER	2,000,000	0	0	8,000,000	0	10,000,000
Local Funds						
AGENCY funds	0	0	0	1,506,624	348,376	1,855,000
CITY Metro Call for Projects	3,000,000	0	0	6,448,000	0	9,448,000
Totals	5,000,000	0	0	15,954,624	348,376	21,303,000

SIGNATURES

PARTNER declare that:

1. Each PARTNER is an authorized legal entity under California state law.
2. Each PARTNER has the authority to enter into this AMENDMENT 1.
3. The people signing this AMENDMENT 1 have the authority to do so on behalf of their public agencies.

Signatories may execute through individual signature pages provided that each signature is an original. AMENDMENT 1 is not fully executed until all original signatures are attached.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

Carrie L. Bowen
District 07 Director

VERIFICATION OF FUNDS & AUTHORITY:

Paul Kwong
District Budget Manager

CERTIFIED AS TO FINANCIAL TERMS
AND POLICIES:



Accounting Administrator

CITY OF INDUSTRY

Mark D. Radecki
Mayor

ATTEST:

Diane M. Schlichting
Chief Deputy City Clerk

APPROVED AS TO FORM:

James M. Casso
City Attorney

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

Mark D. Radecki
Chairman

ATTEST:

Diane M. Schlichting
Secretary

APPROVED AS TO FORM:

James M. Casso
Agency General Counsel

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

STAFF: Clement N. Calvillo, Agency Engineer, CNC Engineering *CNC*
Joshua Nelson, Senior Project Manager, CNC Engineering *JN*

DATE: March 22, 2018

SUBJECT: Consideration of Amendment No. 3 to the Agreement for Consulting Services with Casey O'Callaghan Golf Course Design, Inc., 5-CALLAGHAN 10-01 C MP 99-31 #22, for the Freeway Confluence Project extending the term of the Agreement from May 25, 2018 to May 25, 2019 (MP 99-31 #22)

Background:

On January 14, 2010, the Successor Agency to the Industry Urban-Development Agency ("Agency") approved an Agreement for Consulting Services with Casey O'Callaghan Golf Course Design, Inc. ("Casey O'Callaghan"). Casey O'Callaghan was hired to work on the modifications to the Diamond Bar Golf Course as part of the 57/60 Confluence Project. The phase that was affecting the golf course was put on hold in June 2013. However, now that phase of design and construction has started up again, Casey O'Callaghan's services are needed. The term of the Agreement is set to expire May 25, 2018.

Discussion:

On June 10, 2011, the Agency approved a budget increase increasing the Agreement compensation by \$40,000.00 for continued professional services. The original term of the agreement was through January 14, 2013, therefore it was necessary to extend the term of the agreement until May 25, 2018. It was extended last spring through this spring. However, at this time we need to extend this project an additional year, so this amendment will bump the term until May 25, 2019. Casey O'Callaghan is listed in the Recognized Obligation Payment Schedule under Line Item No. 126.

Fiscal Impact:

None.

Recommendation:

It is recommended that the Successor Agency Board approve Amendment No. 3 to the Agreement for Consulting Services with Casey O'Callaghan Golf Course Design, Inc.

Exhibits:

- A. Amendment No. 3 to Agreement for Consulting Services with Casey O'Callaghan Golf Course Design, Inc., dated March 22, 2018

CC/JN:jv

EXHIBIT A

Amendment No. 3 to Agreement for Consulting Services with Casey O'Callaghan
Golf Course Design, Inc., dated March 22, 2018

[Attached]

**AMENDMENT NO. 3
TO AGREEMENT FOR CONSULTING SERVICES**

This Amendment No. 3 to the Agreement for Consulting Services (“Agreement”), is made and entered into this 22nd day of March, 2018, (“Effective Date”) by and between the Successor Agency to the Industry Urban-Development Agency, a public body, corporate and politic (“Agency”) and Casey O’Callaghan Golf Course Design, Inc., a California corporation (“Consultant”). The Agency and Consultant are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, on or about January 14, 2010, the Agency entered into an Agreement for Consulting Services with Consultant, to provide design services for improvements to Diamond Bar Gold Course related to improvements to the Route 57/60 interchange at Grand Avenue (MP 99-31 #22A). Under this Agreement, the Agency compensated Consultant \$80,000.00; and

WHEREAS, the Parties extended the Agreement on or about June 14, 2011, for an additional \$40,000.00; and

WHEREAS, the Parties on or about May 25, 2017 the parties extended the term to May 25, 2018; and

WHEREAS, due to various delays to the design of this project, the Parties desire to amend the Agreement, extending the term for an additional year, expiring on May 25th, 2019, and for no additional compensation for Consultant; and

WHEREAS, for the reasons set forth herein, the Agency and Consultant desire to enter into this Amendment No. 3, 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:

Section 3. Term of Agreement

This Agreement shall remain in full force and effect until May 25th, 2019, unless sooner terminated as provided in Section 4 herein

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 3 to the Agreement as of the Effective Date.

“AGENCY”
Successor Agency to the
Industry-Urban Development Agency

“CONSULTANT”
Casey O’Callaghan Golf Course
Design, Inc.

By: _____
Mark D. Radecki, Chairman

By: _____
Casey O’Callaghan, President

Attest:

By: _____
Diane M. Schlichting, Agency Secretary

APPROVED AS TO FORM

By: _____
James M. Casso, Agency General Counsel

**EXHIBIT A TO AMENDMENT NO. 3:
AGREEMENT FOR CONSULTING SERVICES WITH CASEY O'CALLAGHAN GOLF
COURSE DESIGN, INC. (DATED JANUARY 14, 2010)**

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES is entered into this 14th day January of 2010 (the "Effective Date") by and between the **INDUSTRY URBAN-DEVELOPMENT AGENCY**, (the "Agency") and Casey O'Callaghan Golf Course Design, Inc., a California Corporation ("Consultant").

RECITALS

A. Agency has determined that it requires the following professional services from a consultant for the design of the improvements for the Diamond Bar Golf Course at the Route 57/60 interchange at Grand Avenue. (MP 99-31 #22A).

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 Casey O'Callaghan, 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 January 14, 2013, 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 eighty thousand dollars and no cents (\$80,000.00), 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 unauthorized modification and 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 one year. 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 five (5) 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 that are not available to the public 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 their best professional efforts 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 protect, indemnify, and hold harmless the Agency, its respective officers, attorneys, agents, and employees (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 attorneys, expert witnesses, consultants, or other professionals and all costs associated therewith (collectively, "Claims"), to the extent arising 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 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, 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 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. 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 general liability 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.

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 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:

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:

Casey O'Callaghan Golf Course Design, Inc.
417 31st Street, Suite C
Newport Beach, CA 92663
Att: Casey J. O'Callaghan
(949) 675-5650
Fax: (949) 675-5655

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. 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.

27. 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.

28. 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.

29. 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.

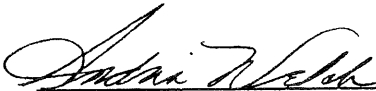
**INDUSTRY URBAN-
DEVELOPMENT AGENCY**

**CASEY O'CALLAGHAN GOLF COURSE
DESIGN, INC.**

By: 
L. Ronald Cipriani, Chairman

By: 
Casey J. O'Callaghan, President

Attest:


~~Ann K. Fure~~, Secretary
Andria Welch

Approved As To Form:

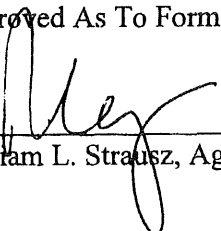

William L. Strausz, Agency Counsel

EXHIBIT A

Scope of Services



Casey O'Callaghan

GOLF • COURSE • DESIGN

Exhibit "A"

December 21, 2009

John Ballas
Agency Engineer
Industry Urban Development Agency
15625 East Stafford Street, Suite 100
City of Industry, California 91744

Re: Preliminary Golf Course Design Consultation Services for the Diamond Bar Golf Course

Dear Mr. Ballas,

I want to thank you for the opportunity to work with you and the City of Industry on the impacts to the Diamond Bar Golf Course. The golf course improvements are in response to the requirements for environmental documents regarding the freeway improvements to the 57/60 Freeway Confluence project.

Scope of Work:

- A. Prepare 100 scale preliminary plan alternatives for the golf course relocation in response to the freeway modifications. Alternatives may be modified in response to comments from the City of Industry and/or the County of Los Angeles. Prepare a 100 scale presentation plan for the preferred golf course alternative based on input from the City of Industry, the County of Los Angeles, and the consultant team.
- B. Attend meetings with the City of Industry, the County of Los Angeles, and the consultant team for the preliminary design planning.
- C. Work with the Owner project manager to assemble a preliminary construction budget. Designer shall collaborate with the project manager to design the golf course to the provided budget criteria.
- D. Provide a "preliminary" set of specifications for golf course building requirements and product types. The final set of specifications will be produced in the "construction document phase" and will respond to any modifications arising from the preliminary construction budgets.
- E. Consult with Jeff Scott of TKE regarding tree selection in response to the resource agencies requirements.

Please feel free to call me if you have any questions.

Sincerely,

Casey J. O'Callaghan, President
Casey O'Callaghan Golf Course Design, Inc.

419 31st Street, Suite B, Newport Beach, California 92663 • (949) 675-5650 • Fax: (949) 675-5655

EXHIBIT B

Project Timeline



Casey O'Callaghan

GOLF • COURSE • DESIGN

Exhibit "B"

December 18, 2009

Project Timeline:

We estimate that the preliminary planning effort will run from December 2009 through June of 2011.

EXHIBIT C

Professional Fee Schedule



Casey O'Callaghan

GOLF • COURSE • DESIGN

Exhibit "C"

December 18, 2009

Fee Breakdown:

Casey O'Callaghan Golf Course Design Inc. Services \$80,000

Rate Schedule:

Casey O'Callaghan Golf Course Design Inc. Rate Schedule for 2009-2010
Casey O'Callaghan (Design Services) \$175/hour

Casey O'Callaghan Golf Course Design, Inc. will complete the scope of services on a time and materials fee basis not to exceed \$80,000. Invoices will be due and payable within thirty (30) days and will be sent on a monthly basis itemizing the services performed. Reimbursable expenses will be billed at cost. These expenses may include government fees, reprographic expenses, delivery costs, and mileage billed at the current standard IRS mileage rates.

Client#: 1263470

304CASEYOCA

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 12/07/2009
PRODUCER BB&T Insurance Services of Orange County 19100 Von Karman Ave. Ste 900 Irvine, CA 92612		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Casey OCallaghan Golf Course Design Inc 417 31st Street, Unit C Newport Beach, CA 92663		INSURERS AFFORDING COVERAGE INSURER A: Fireman's Fund Insurance Compan INSURER B: Argonaut Insurance Company INSURER C: INSURER D: INSURER E:
		NAIC # 21873 19801

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	AZC80783730	04/22/2009	04/22/2010	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$
A		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	AZC80783730	04/22/2009	04/22/2010	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC AGG \$
		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B		OTHER Professional	IAE102270	04/22/2009	04/22/2010	1,000,000 / 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER Industry Urban-Development Agency 15625 E Stafford St. Industry, CA 91744	CANCELLATION 10 Days for Non-Payment SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Daniel Bowman</i>
--	--

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

**FAX COVER LETTER****RECIPIENT**

RECIPIENT: Mr. Ocallaghan

RECIPIENT'S FAX: 949-675-5655

SENDER

SENDER: Pamela Perry

SENDER'S VOICE TELEPHONE NO.
1-800-531-USAA (8722)**IF YOU DO NOT RECEIVE FULL TRANSMISSION, CALL SENDER****CONFIDENTIALITY NOTICE**

The information contained in this facsimile transmission is a **CONFIDENTIAL COMMUNICATION** and may be protected by one or more legal privileges. It is intended solely for the use of the recipient identified above. If you are not the intended recipient, you are hereby notified that reading, copying, or distributing this transmission is **STRICTLY PROHIBITED**. The sender has not waived any applicable privilege by sending the accompanying transmission. If you have received this transmission in error, please notify the sender immediately by telephone, and we will arrange to have the transmission returned at no cost to you.

Thank you.



9800 Fredericksburg Road
San Antonio, Texas 78288

December 9, 2009

FAXED BINDER FOR CONFIRMATION OF AUTOMOBILE INSURANCE
THIS DOES NOT TAKE THE PLACE OF AN INSURANCE IDENTIFICATION CARD

USE THIS FAX AS EVIDENCE OF INSURANCE FOR: CASEY J. OCALLAGHAN

REGISTERED OWNER: CASEY J OCALLAGHAN

REGISTRATION ADDRESS:
417 31ST ST STE C
NEWPORT BEACH CA 92663-3854

USAA POLICY NUMBER: 00495 12 95 7101

(X) LIABILITY LIMITS CARRIED:

BODILY INJURY \$1,000,000 each person
\$1,000,000 each accident

PROPERTY DAMAGE \$100,000 each accident

EFFECTIVE: November 24, 2009

EXPIRATION: May 24, 2010

VEHICLE: 2000 INFINITI I30/I30T
JNKCA31A2YT215214

(X) PROTECTS YOUR INTEREST WITH \$100 COMPREHENSIVE AND \$500
COLLISION DEDUCTIBLES

IF YOU HAVE ANY QUESTIONS, CALL US AT 1-800-531-USAA (8722).

Sincerely,

A handwritten signature in cursive script that reads "Pamela Perry".

Pamela Perry
Member Relationship Specialist
Southwest Region
USAA Casualty Insurance Company