

CITY OF INDUSTRY

CITY COUNCIL
SPECIAL MEETING AGENDA

NOVEMBER 17, 2016
9:00 AM



Mayor Mark Radecki
Mayor Pro Tem Cory Moss
Council Member Abraham Cruz
Council Member Roy Haber, III
Council Member Newell Ruggles

Location: City Council Chamber, 15651 East Stafford Street, City of Industry, California 91744

Addressing the City Council:

- ▶ **Agenda Items:** *Members of the public may address the City Council 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 City Council is asked to complete a Speaker's Card which can be found at the back of the room and at the podium. The completed card should be submitted to the City Clerk prior to the Agenda item being called and prior to the individual being heard by the City Council.*
- ▶ **Public Comments (Agenda Items Only):** *During public comments, if you wish to address the City Council during this Special Meeting, under Government Code Section 54954.3(a), you may only address the City Council concerning any item that has been described in the notice for the Special Meeting.*

Americans with Disabilities Act:

- ▶ *In compliance with the ADA, if you need special assistance to participate in any City meeting (including assisted listening devices), please contact the City Clerk's Office (626) 333-2211. Notification of at least 48 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 SB 343, 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 City Clerk during regular business hours, Monday through Friday 9:00 a.m. to 5:00 p.m. Any person with a question concerning any agenda item may call the City Clerk's Office at (626) 333-2211.*
-

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

5. **ACTION ITEMS**

- 5.1 Consideration of Resolution No. CC 2016-77 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF INDUSTRY, CALIFORNIA, APPROVING THE THIRD AMENDMENT TO THE AGREEMENT FOR THE OPERATION AND MANAGEMENT OF THE CITY OF INDUSTRY POTABLE WATER SYSTEM, BETWEEN THE CITY OF INDUSTRY AND THE LA PUENTE VALLEY COUNTY WATER DISTRICT.

RECOMMENDED ACTION: Adopt Resolution No. CC 2016-77.

- 5.2 Consideration of a Maintenance Services Agreement with SureTeck Industrial and Commercial Services, Inc., for Maintenance Services from November 17, 2016 to November 17, 2017, in an amount not-to-exceed \$250,000.00.

RECOMMENDED ACTION: Approve the Agreement.

- 5.3 Consideration of Amendment No. 2 to Professional Services Agreement between the City and MuniEnvironmental, LLC, in an amount not-to-exceed \$145,277.50, from November 17, 2016 to May 17, 2017.

RECOMMENDED ACTION: Approve the Amendment.

- 5.4 Consideration of a Professional Services Agreement with Cordoba Corporation to provide Engineering Staff Augmentation Services, in an amount not-to-exceed \$3,000,000.00, from November 17, 2016 to November 17, 2019.

RECOMMENDED ACTION: Approve the Agreement.

- 5.5 Consideration of a Professional Services Agreement with JMDiaz Engineering, Inc., to provide Engineering Staff Augmentation Services, in an amount not-to-exceed \$3,000,000.00, from November 17, 2016 to November 17, 2019.

RECOMMENDED ACTION: Approve the Agreement.

- 5.6 Consideration of a License Agreement with Gaytan Foods, a California corporation, for property located at 1123-1135 South Hatcher Avenue in the City of Industry, for the storage of equipment and supplies.

RECOMMENDED ACTION: Approve the Agreement.

6. **CLOSED SESSION**

- 6.1 CONFERENCE WITH LEGAL COUNSEL – Anticipated Litigation
Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2) (One Case).
7. Adjournment. Next regular meeting: Thursday, December 8, 2016 at 9:00 a.m.

CITY COUNCIL

ITEM NO. 5.1

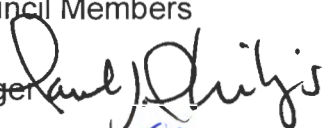



CITY OF INDUSTRY

P.O. Box 3366 • 15625 E. Stafford St • City of Industry, CA 91744-0366 • (626) 333-2211 • FAX (626) 961-6795

MEMORANDUM

TO: Honorable Mayor and Council Members

FROM: Paul J. Philips, City Manager 

STAFF: Susan Paragas, Director of Finance 

DATE: November 17, 2016

SUBJECT: Resolution No. CC 2016-77 of the City of Industry, California, Approving the Third Agreement for the Operation and Management of the City of Industry Potable Water System, between the City of Industry and the La Puente Valley County Water District

BACKGROUND:

In an effort to provide water at a reasonable costs, the City of Industry ("City") and La Puente Valley County Water District ("District") entered into an "Agreement for Operation and Management of City of Industry Potable Water System ("2004 Agreement"), dated February 12, 2004, where the District agreed to operate and manage the City's potable water distribution system. The 2004 Agreement has since been amended twice, with the most recent one entered on October 14, 2010, Amended and Restated Agreement for Operation and Management of City of Industry Potable Water System ("Agreement").

City Council approval is needed should the term of the agreement be modified.

DISCUSSION:

The Industry Public Utilities Water ("Water") operations in FY 2015-2016, year-ending June 30, 2016, resulted in a revenue surplus of \$36,164. Per the Agreement, Section 3.4 instructs the District to remit this amount to the City. However, it is requested by the District's General Manager, Greg Galindo, to retain the surplus and increase the current Water reserve balance from \$182,241.41 to a total of \$218,405.41.

The total balance maintains a level of reserves covering two months of estimated average operating expenses that allows the District to retain an adequate level of funds to meet cash flow requirements. The balance will be payable to the City when the Water reserve level is adequate to pay down the balance.

Therefore, because the needs of the Water operations can vary from year-to-year, the following language is proposed, amending the Agreement's section 3.4 :

“For each calendar year, or portion thereof, during which this Agreement (Amendment No. 3) is in effect, after payment of the sums under subsections 3.1, 3.2, and 3.3 above, if any, the District shall pay the City any remaining revenues generated by the System during any calendar year, concurrently with the submission of the annual accounting under Section 5, *unless otherwise directed in writing, by the City Manager.*

The last section of the line “...unless otherwise directed in writing, by the City Manager” allows greater flexibility regarding the remittance of surplus revenues from the City's water operations from year-to-year. Any action that deviates from the remittance of the surplus revenues will require approval from the City Manager in written form.

FISCAL IMPACT:

The fiscal impact of the recommended action, to approve Amendment No. 3, will vary from year-to-year. However, by retaining the surplus revenues of FY 2015-2016, the total accumulated amount due to the City from Water operations will increase to \$218,405.41.

RECOMMENDED ACTION:

Staff recommends the City Council adopt Resolution CC 2016-77, approving Amendment No. 3 to Section 3.4 of the Agreement for the operation and management of the City potable water system between the City and the District. It is also recommended that the District retain FY 2015-2016 the surplus revenues of the Water operations to maintain adequate level of funds for operating expenses.

ATTACHMENT:

1. Resolution No. CC 2016-77: Council Approval of Amendment No. 3 to the Agreement for the Operation and Management of the City of Industry Potable Water System
2. Amended No. 3 to Agreement For Operation and Management of City of Industry Potable Water System with La Puente Valley County Water District
3. Request from District General Manager

RESOLUTION NO. CC 2016-77

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF INDUSTRY, CALIFORNIA, APPROVING THE THIRD AMENDMENT TO THE AGREEMENT FOR THE OPERATION AND MANAGEMENT OF THE CITY OF INDUSTRY POTABLE WATER SYSTEM, BETWEEN THE CITY OF INDUSTRY AND THE LA PUENTE VALLEY COUNTY WATER DISTRICT

WHEREAS, on February 12, 2004, the Agreement for Operation and Management of City of Industry Potable Water System ("Agreement") between the City of Industry ("City") and La Puente Valley County Water District ("District") was approved; and

WHEREAS, on March 1, 2006, the First Amendment to the Agreement was approved; and

WHEREAS, on October 4, 2010, the Second Amendment to the Agreement was approved; and

WHEREAS, the parties desire to enter into a Third Amendment to the Agreement to allow greater flexibility with respect to the remittance of surplus revenues from the City's water operations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF INDUSTRY DOES RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City Council finds that all of the facts set forth in the Recitals are true and correct, and are incorporated herein by reference.

SECTION 2. The City Council hereby adopts the Third Amendment to the Agreement, attached hereto as Exhibit A, and incorporated herein by reference.

SECTION 3. The City Council hereby directs the City Manager to do any and all things which he may deem necessary or advisable to effectuate this Resolution, and any such actions previously taken by City officials and Staff are hereby ratified and confirmed.

SECTION 4: The provisions of this Resolution are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Resolution or their applicability to other persons or circumstances.

SECTION 5: That the City Clerk shall certify to the adoption of this Resolution and that the same shall be in full force and effect.

PASSED, APPROVED and ADOPTED by the City Council of the City of Industry,
at a regular meeting held on November 17, 2016 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Mark D. Radecki, Mayor

ATTEST:

Diane M. Schlichting, Chief Deputy City Clerk

**AMENDMENT NO. 3
TO AGREEMENT FOR OPERATION AND MANAGEMENT OF CITY OF INDUSTRY
POTABLE WATER SYSTEM WITH
LA PUENTE VALLEY COUNTY WATER DISTRICT**

This Amendment No. 3 to the Agreement for Operation and Management of City of Industry Potable Water System (“Agreement”), is made and entered into this 17th day of November, 2016, (“Effective Date”) by and between the City of Industry, a California municipal corporation (“City”) and the La Puente Valley County Water District, a county water district (District”). The City and District are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, the City owns a potable water distribution system that provides water to various businesses and residents in the City; and

WHEREAS, in an effort to provide water at a reasonable cost, on or about February 12, 2004, the Parties entered into the Agreement, whereby the District is tasked with operating and managing the City’s water system; and

WHEREAS, on March 1, 2006, the First Amendment to the Agreement was approved; and

WHEREAS, on October 4, 2010, the Second Amendment to the Agreement was approved; and

WHEREAS, the Parties desire to enter into a Third Amendment to the Agreement to allow greater flexibility with respect to the remittance of surplus revenues from the City’s water operations; and

WHEREAS, for the reasons set forth herein, the City and District 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 3.4

Section 3.4 of the Agreement shall be revised in its entirety to read as follows.

For each calendar year, or portion thereof, during which this Agreement is in effect, after payment of the sums under subsections 3.1, 3.2, and 3.3 above, if any, the District shall pay the City any remaining revenues generated by the System during any calendar year, concurrently with the submission of the annual accounting under Section 5, unless otherwise directed in writing, by the City Manager.

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

“CITY”
City of Industry

“DISTRICT”
La Puente Valley County Water District

By: _____
Paul J. Philips, City Manager

By: _____
Greg Galindo, General Manager

Attest:

By: _____
Diane M. Schlichting, Chief Deputy City Clerk

APPROVED AS TO FORM

By: _____
James M. Casso, City Attorney

Memo



To: Susan Paragas, Director of Finance – City of Industry
 Alex Gonzalez, Director of Administrative Services and
 Administration – City of Industry

From: Greg B. Galindo, General Manager

Date: October 17, 2016

Subject: Industry Public Utilities Water Operations Net Revenues

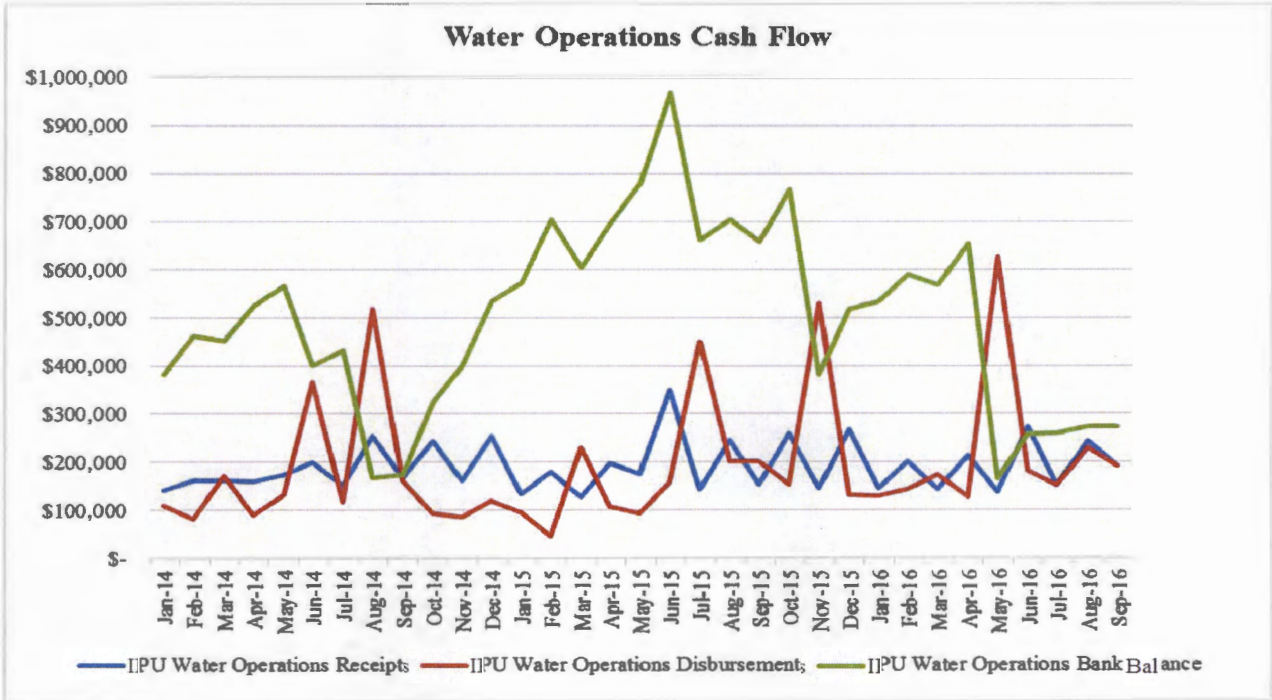
The City's contracted accounting firm Frazer, LLP has recently completed a review of the Industry Public Utilities Water Operations (Water Operations) and determined the net revenue for the period of July 1, 2015 to June 30, 2016. The result of this review indicates the net revenue for this past fiscal year to be \$36,164.00. In addition to this amount there is an estimated \$182,241.41 that is due to the City for the balance of Water Operations' net revenue from previous periods spanning from January 1, 2012 through June 30, 2015, that was not previously paid to the City. The total amount due to the City from Water Operations net revenue is \$218,405.41. The amounts previously retained allowed for an adequate level of available funds to meet the cash flow requirements of Water Operations during this period of time. The cash account managed by our District for the Water Operations is done so in accordance with Section 1.2 of the Amended and Restated Agreement for Operation and Management of the City of Industry Potable Water System. This cash account is a distinct account for Water Operations' receivables and payables only.

The table below details net revenue from previous periods and payments made from the Water Operations account to the City:

Period	Amount Due	Amount Paid	Amount Outstanding
1/1/2012-12/31/2012	423,215.00	350,000.00	\$ 73,215.00
1/1/2013-12/31/2013	362,782.00	362,782.00	\$ -
1/1/2014-6/30/2014	43,979.58	-	\$ 43,979.58
7/1/2014-6/30/2015	490,968.83	425,922.00	\$ 65,046.83
7/1/2015-6/30/2016	533,125.00	-	\$ 533,125.00
Amount due to City Industry UC without prepaid water lease			\$ 715,366.41
Amount of prepaid water lease			\$ (496,961.00)
Amount due to City Industry UC with prepaid water lease			\$ 218,405.41

The Industry Public Utilities Water Operations has rates in place that currently allow for full cost recovery. However, the timing of the cash payments can vary depending up many factors,

including repairs and maintenance needs, developer projects, capital projects, management fees, and the availability of leased water to purchase. Water rights leases are the largest expense item year to year besides the net revenue payments made to the City. The graph shown below shows the Water Operations monthly receipts, disbursement and the cash balance from January 2014 to August 2016, in an effort to illustrate the cash flow requirements of Water Operations.



It is my recommendation that the net revenue from this past year and the balance from previous periods remain in the Water Operations account in an effort to maintain a minimum of two months of average operating expenses to allow the District to properly manage cash flow to keep operations functioning in times of negative cash flow. The current Water Operations account balance as of the end of September 2016 is \$274,558.00.

If this approach is not agreeable to the City, please advise how you wish us to proceed in handling the disbursement of net revenues from the Water Operations account. Thank you.

Respectfully Submitted,

Greg B. Galindo

General Manager

CITY COUNCIL

ITEM NO. 5.2

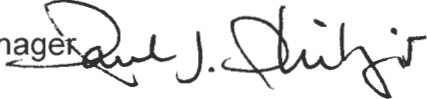



CITY OF INDUSTRY

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MEMORANDUM

To: Honorable Mayor Radecki and Members of the City Council

From: Paul J. Philips, City Manager 

Staff: Alex Gonzalez, Director of Development Services and Administration 
Bill Hayes, Field Operations & Asset Superintendent

Date: November 17, 2016

SUBJECT: Consideration of a Maintenance Services Agreement with SureTeck Industrial and Commercial Services, Inc., for Maintenance Services from November 17, 2016 to November 17, 2017 in an amount not to exceed \$250,000.00

Per the City of Industry Municipal Code, procedure for awarding maintenance service contracts, Section 3.52.120, any or all other contracts relating to maintenance of public works or public facilities may be provided by competitive bidding, informal public bidding or by negotiated contract, at the discretion of the City Council.

Recently, two (2) contracted City maintenance staff members that provided maintenance services to the City resigned from their positions to accept other employment. Due to these openings, City staff negotiated a contract with SureTeck Industrial and Commercial Services, Inc. ("SureTeck") for maintenance services. SureTeck has been in business since 2001 and provides contract or subcontracted maintenance services to over thirty cities in Southern California. The rates SureTeck provided are reasonable and less than half of what the City was previously paying for maintenance services.

The maintenance services would include, but is not limited to, general maintenance, plumbing, electrical, concrete, windows and tile maintenance repair services for City facilities. SureTeck will be assigned work through the City's Cartegraph work order software system. SureTeck will be responsible for updating each work order once the project is completed with photographs of work performed, material receipts and labor records.

Fiscal Impact

The fiscal impact associated with this action requires an appropriation of \$250,000.00 to General Fund – Civic Financial Center – Property Maintenance (account no. 100-625-8510).

Recommendation

Staff recommends approving a Maintenance Services Agreement with SureTeck for maintenance services in an amount not to exceed \$250,000 for one (1) year of service from November 17, 2016 to November 17, 2017.

Exhibits

- A. Maintenance Services Agreement with SureTeck Industrial and Commercial Services, Inc., for Maintenance Services from November 17, 2016 to November 17, 2017 in an amount not to exceed \$250,000
-

PJP:AG:WH:mk

EXHIBIT A

Maintenance Services Agreement with SureTeck Industrial and Commercial Services, Inc., for Maintenance Services from November 17, 2016 to November 17, 2017 in an amount not to exceed \$250,000

[Attached]

CITY OF INDUSTRY

MAINTENANCE SERVICES AGREEMENT

This MAINTENANCE SERVICES AGREEMENT (“Agreement”), is made and effective as of November 17, 2016 (“Effective Date”), between the City of Industry, a municipal corporation (“City”) and SureTeck Industrial and Commercial Services, Inc. (“SureTeck”), a California Corporation. The City and Consultant are hereinafter collectively referred to as the “Parties”.

RECITALS

WHEREAS, 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.

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 tasks described herein are completed, but in no event later than November 17, 2017 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 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 maintenance 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) City has not consented in writing to Consultant's performance of such work. 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 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.

4. PAYMENT

(a) The City agrees 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. This amount shall not exceed two hundred fifty thousand dollars (\$250,000.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(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 business day of each month and fifteenth calendar 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 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, 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 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 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.

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 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 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 and 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 adjudicating the City 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.

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 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.

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 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 City: City of Industry
15625 E. Stafford, Suite 100
City of Industry, CA 91744

Attention: City Manager

With a Copy To: James M. Casso, City Attorney

Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345
City of Industry, CA 91746

To Consultant: Gino Garcia, CEO
SureTeck Industrial & Commercial Services
10742 Central Avenue, Unit A
Ontario, CA 91762

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 and indemnity provision similar to the one provided herein and identifying City 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 City for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the City for the performance of its subconstulant 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

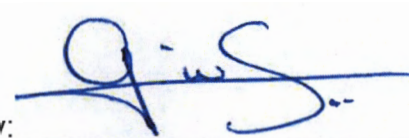
The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

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

“CITY”
City of Industry

“CONSULTANT”
SureTeck, Inc.

By: _____
Paul J. Philips, City Manager

By:  _____
Gino Garcia, CEO

Attest:

By: _____
Diane M. Schlichting, Chief Deputy City Clerk

Approved as to form:

By: _____
James M. Casso, City Attorney

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

EXHIBIT A

SCOPE OF SERVICES

Consistent with the provisions set forth in the City's Code for maintenance work, the Contractor shall provide all general maintenance services at all City facilities.

The Contractor shall be assigned work by the City through the City's Cartegraph software system. The Contractor is required to enter a start and end date for each work order, and update the work order once the project is completed with photographs of work performed, material receipts and labor records.

The Contractor shall be available to the City 24 hours a day in order to immediately respond to emergency situations.

Other related maintenance services:

- Attend meetings with the City's Director of Development Services and Administration, and Field Operations and Asset Superintendent, as needed; and
- Attend meetings with other City Departments or outside agencies, as deemed necessary.

EXHIBIT B

RATE SCHEDULE

General Maintenance	\$75.00/hour
Plumbing	\$95.00/hour, 2 hour minimum
Electrical	\$85.00/hour
Concrete	\$95.00/hour

Contractor shall invoice the City on a time and materials basis. City shall reimburse Contractor its actual costs for all materials, upon submittal of evidence of said costs along with the monthly invoice, as set forth in the agreement.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, 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 City, 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 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 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 City 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 before the City'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 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, 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 City, 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 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.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City 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 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 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 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 City 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 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 City.

Timely notice of claims. Consultant shall give the City 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.

CITY COUNCIL

ITEM NO. 5.3



CITY OF INDUSTRY

P.O. Box 3366 • 15625 E. Stafford St. • City of Industry, CA 91744-0366 • (626) 333-2211 • FAX (626) 961-6795

MEMORANDUM

To: Honorable Mayor Radecki and Members of the City Council

From: Paul J. Philips, City Manager *Paul Philips*

Staff: Alex Gonzalez, Director of Development Services and Administration *ae*
Kristen Weger, Administrative Analyst *KW*

Date: November 17, 2016

SUBJECT: Consideration of MuniEnvironmental, LLC Amendment No. 2 to Professional Services Agreement from November 17, 2016 to May 17, 2017 in an amount not to exceed \$145,277.50

On August 13, 2015, City Council approved a Professional Services Agreement with Waste Systems Technology, Inc., to provide services to ensure that the City maintains compliance with AB 939 (California Integrated Waste Management Act of 1989), SB 1374 (mandatory construction diversion programming of 2002), California Green Building Code (2010 and forward), AB 341 (mandatory commercial recycling act), and AB 1826 (mandatory organics waste recycling) and assist the City in developing an accurate Use Permit Database.

On January 14, 2016, City Council approved Amendment No. 1 to the Professional Services Agreement to increase the compensation by \$10,635.00 to include providing educational outreach and technical assistance.

Amendment No. 2 to the Professional Services Agreement is to recognize Waste Systems Technology, Inc., became MuniEnvironmental, LLC in 2016, to extend the Agreement for a period of six months from November 17, 2016 to May 17, 2017, to increase the compensation by \$145,277.50 to cover the additional months of service and updated fee schedule. Waste management compliance services is scheduled to be released for competitive procurement in February 2017.

Fiscal Impact

The fiscal year 2016-2017 adopted budget including funding for services under General Fund – Central Services – Professional Services (account no. 100-507-5120.01). An additional appropriation of \$145,277.50 is required to cover Amendment No. 2 to the Professional Services Agreement.

Table 1 – Waste Management Compliance Services Summary

Professional Services Agreement	\$240,785.00
Amendment No. 1 to Professional Services Agreement	\$10,635.00
Amendment No. 2 to Professional Services Agreement	\$145,277.50
Total	\$396,697.50

Recommendation

- 1.) Staff recommends approving Amendment No. 2 to the Professional Services Agreement with MuniEnvironmental, LLC for six months from November 17, 2016 to May 17, 2017 in an amount not to exceed \$145,277.50; and
- 2.) Appropriating \$145,277.50 for Amendment No. 2 to the Professional Services Agreement.

Exhibits

- A. Amendment No. 2 to Professional Services Agreement with MuniEnvironmental, LLC from November 17, 2016 to May 17, 2017 in an amount not to exceed \$145,277.50
 - B. Professional Services Agreement with Waste Systems Technology, Inc., dated August 13, 2015
 - C. Amendment No. 1 to Professional Services Agreement with Waste Systems Technology, Inc., dated January 14, 2016
-

PJP:AG:KW:mk

EXHIBIT A

**Amendment No. 2 to Professional Services Agreement with MuniEnvironmental,
LLC from November 17, 2016 to May 17, 2017 in an amount not to exceed
\$145,277.50**

[Attached]

**AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT WITH
MUNIENVIRONMENTAL, LLC**

This Amendment No. 2 to the Professional Services Agreement (“Agreement”), is made and entered into this 17th day of November, 2016, (“Effective Date”) by and between the City of Industry, a California municipal corporation (“City”) and MuniEnvironmental, LLC a California limited liability company (“Consultant”). The City and Consultant are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, on or about August 2015, the Agreement was entered into and executed between the City and Waste Systems Technology, Inc. to provide services to ensure that the City maintains compliance with AB 939 (integrated waste management act of 1989), SB 1374 (mandatory construction diversion programming of 2002), California Green Building Code (2010 and forward), AB 341 (mandatory commercial recycling act), and AB 1826 (mandatory organics waste recycling), and to provide educational outreach, technical assistance, and assist the City in developing an accurate Use Permit database; and

WHEREAS, on or about January 14, 2016, Amendment No. 1 to the Agreement was entered into and executed between the City and Waste Systems Technology, Inc. to increase the compensation of the contract by \$10,635.00 to include providing educational outreach, technical assistance, and assist the City in developing an accurate Use Permit Database; and

WHEREAS, on or about January 1, 2016, Waste Systems Technology, Inc., became MuniEnvironmental, LLC; and

WHEREAS, the Parties desire to amend the Agreement to recognize MuniEnvironmental, LLC as the provider of the services; and

WHEREAS, the Parties desire to amend the Agreement to extend the Agreement for a period of six months; and

WHEREAS, the Parties desire to amend the Agreement to increase the compensation of the Agreement by \$145,277.50 to cover an additional six (6) months of service; and

WHEREAS, the Parties desire to amend the Fee Schedule (“Exhibit B”) to include Consultant’s 2016-2017 Schedule of Fees; and

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

AMENDMENT

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

Commencing January 1, 2016, Waste Systems Technology, Inc. is no longer a party to this Agreement. All obligations and rights under the Agreement which previously designated Waste Systems Technology, Inc. as the responsible party, shall be assigned to MuniEnvironmental, LLC, effective January 1, 2016.

Section 1. Term of Agreement.

Section 1 of the Agreement shall be revised in its entirety to read as follows.

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 May 17, 2017, unless sooner terminated pursuant to Section 20 of this Agreement.

Exhibit B Key Personnel & Compensation

1. Total compensation under this Agreement, including reimbursement for actual expenses, may not exceed Three Hundred Ninety-Six Thousand Six Hundred Ninety-Seven Dollars and Fifty Cents (\$396,697.50).

The Fee Schedule shall be revised in its entirety to read as follows:

Principal	\$150.00/hour
Senior Consultant	\$135.00/hour
Administration	\$65.00/hour

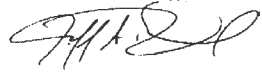
City shall reimburse Consultant its actual costs for all photocopying and postage, upon submittal of evidence of said costs along with the monthly invoice, as set forth in the Agreement.

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

“CITY”
City of Industry

By: _____
Paul J. Philips, City Manager

“CONSULTANT”
MuniEnvironmental, LLC

By:  _____
Jeff Duhamel, President

Attest:

By: _____
Diane M. Schlichting, Chief Deputy City Clerk

APPROVED AS TO FORM

By: _____
James M. Casso, City Attorney

EXHIBIT B

**Professional Services Agreement with Waste Systems Technology, Inc., dated
August 13, 2015**

[Attached]



City of Industry

PROFESSIONAL SERVICES AGREEMENT

With

Waste Systems Technology, Inc.

Effective Date: August 13, 2015

TABLE OF CONTENTS

	<u>Page No.</u>
Section 1. Term of Agreement.....	1
Section 2. Scope and Performance of Services.....	1
Section 3. Additional Services and Changes in Services.....	2
Section 4. Familiarity with Services and Site.....	2
Section 5. Compensation and Payment.....	3
Section 6. Required Documentation Prior to Performance.....	3
Section 7. Time of Performance; Excusable Delays; Extensions.....	4
Section 8. Cooperation by City.....	4
Section 9. Project Documents.....	4
Section 10. Confidential Information; Release of Information.....	5
Section 11. Consultant's Books and Records.....	5
Section 12. Status of Consultant.....	6
Section 13. Compliance with Applicable Laws.....	6
Section 14. Unauthorized Aliens.....	7
Section 15. Conflicts of Interest.....	7
Section 16. Indemnification.....	8
Section 17. Insurance.....	10
Section 18. Assignment.....	10
Section 19. Default; Limitations on Liability.....	10
Section 20. Termination of Agreement.....	10
Section 21. Notices.....	11
Section 22. General Provisions.....	11
EXHIBIT A - SCOPE OF SERVICES.....	A-1
EXHIBIT B – KEY PERSONNEL & COMPENSATION.....	B-1
EXHIBIT C - INSURANCE.....	C-1

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is effective as of August 13, 2015 ("Effective Date"), and is between the City of Industry, a California municipal corporation and charter city ("City") and Waste Systems Technology, Inc. a California corporation ("Consultant").

Section 1. Term of Agreement.

Subject to the provisions of Section 20 ("Termination of Agreement"), the term of this Agreement will be for a period commencing on the Effective Date and will terminate upon the completion of Consultant's services.

Section 2. Scope and Performance of Services.

- 2.1 Consultant agrees to perform the services set forth in Exhibit A ("Scope of Services"), which is made a part of this Agreement.
- 2.2 Consultant will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculations, and all other means whatsoever, except as otherwise expressly specified in this Agreement, necessary to perform the services required of Consultant under this Agreement.
- 2.3 Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are listed in Exhibit B ("Key Personnel & Compensation"), which is made a part of this Agreement.
- 2.4 Consultant must make every reasonable effort to maintain the stability and continuity of Consultant's key personnel and subcontractors, if any, listed in Exhibit B to perform the services required under this Agreement. Consultant must notify City and obtain City's written approval with respect of any changes in key personnel prior to the performance of any services by replacement personnel.
- 2.5 Consultant must obtain City's prior written approval before utilizing any subcontractors to perform any services under this Agreement. This written approval must include the identity of the subcontractor and the terms of compensation.
- 2.6 Consultant represents that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant will at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described in this Agreement. In meeting its obligations under this Agreement, Consultant must employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

- 2.7 City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. Acceptance of any of Consultant's work by City will not constitute a waiver of any of the provisions of this Agreement.
- 2.8 The Consultant must maintain any work site in the City in a safe condition, free of hazards to persons and property resulting from its operations.

Section 3. Additional Services and Changes in Services.

- 3.1 Consultant will not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in the Scope of Services or otherwise required by this Agreement, unless such additional services are authorized in advance and in writing by City.
- 3.2 If Consultant believes that additional services are needed to complete the Scope of Services, Consultant will provide the City Manager with written notification describing the proposed additional services, the reasons for such services, and a detailed proposal regarding cost.
- 3.3 City may order changes to the Scope of Services, consisting of additions, deletions, or other revisions, and the compensation to be paid Consultant will be adjusted accordingly. All such changes must be authorized in writing, and executed by Consultant and City. The cost or credit to City resulting from changes in the services will be determined by the written agreement between the parties.

Section 4. Familiarity with Services and Site.

- 4.1 By executing this Agreement, Consultant represents that Consultant:
- (a) has thoroughly investigated and considered the Scope of Services to be performed;
 - (b) has carefully considered how the services should be performed;
 - (c) understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement; and
 - (d) possesses all licenses required under local, state or federal law to perform the services contemplated by this Agreement, and will maintain all required licenses during the performance of this Agreement.
- 4.2 If services involve work upon any site, Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing its services. Should Consultant discover any latent or unknown conditions that may materially affect the performance of services, Consultant will immediately inform City of such fact and will not proceed except at Consultant's own risk until written instructions are received from City.

Section 5. Compensation and Payment.

- 5.1 Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in Exhibit B (“Key Personnel & Compensation”). The total compensation, including reimbursement for actual expenses, may not exceed the amount set forth in Exhibit B, unless additional compensation is approved in writing by City.
- 5.2 The use of subconsultants will not be considered a reimbursable expense, and such costs must be applied towards the approved budgeted amount.
- 5.3 Each month during the term of this Agreement, Consultant must furnish City with an original invoice for all services performed and expenses incurred during the preceding month in accordance with the fee schedule set forth in Exhibit B. The invoice must detail charges by the following categories: labor (by subcategory), reimbursable costs, subcontractor contracts and miscellaneous expenses. The invoice must list, as applicable, the hours worked and hourly rates for each personnel category, the tasks performed, the percentage of the task completed during the billing period, the cumulative percentage completed for each task, and the total cost of the services. If applicable, the invoice must also provide a budget summary including the total amounts previously invoiced and paid, the current invoice amount and the budget remaining.
- 5.4 City will review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with this Agreement. In the event that no charges or expenses are disputed, the invoice will be approved and paid. In the event any charges or expenses are disputed by City, the invoice will be returned by City to Consultant for correction and resubmission.
- 5.5 Except as to any charges for work performed or expenses incurred by Consultant that are disputed by City, City will cause Consultant to be paid within 30 days of receipt of Consultant’s invoice.
- 5.6 Payment to Consultant for services performed under this Agreement may not be deemed to waive any defects in the services performed by Consultant, even if such defects were known to City at the time of payment.
- 5.7 City reserves the right to withhold future payment to Consultant if any aspect of the Consultant’s work is found substantially inadequate.

Section 6. Required Documentation Prior to Performance.

- 6.1 Consultant may not perform any services under this Agreement until:
- (a) Consultant furnishes proof of insurance as required under Exhibit C;
 - (b) Consultant provides City with a Taxpayer Identification Number;
 - (c) Consultant obtains a City business tax certificate and license, if applicable, and provides proof of compliance; and

(d) City gives Consultant a written notice to proceed.

6.2 The City will have no obligation to pay for any services rendered by Consultant in advance of receiving written authorization to proceed, and Consultant acknowledges that any such services are at Consultant's own risk.

Section 7. Time of Performance; Excusable Delays; Extensions.

7.1 Consultant must adhere to all schedules and deadlines set forth in this Agreement.

7.2 Consultant will not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Consultant. Such causes include, but are not limited to, acts of God, acts of terrorism, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather.

7.3 If Consultant is delayed by any cause beyond Consultant's control, City may grant, but is not required to, a time extension for the completion of services. If delay occurs, Consultant must notify City within 48 hours, in writing, of the cause and the extent of the delay and how such delay interferes with Consultant's performance of services.

Section 8. Cooperation by City.

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the Scope of Services will be furnished to Consultant in every reasonable way to facilitate, without undue delay, the services to be performed under this Agreement.

Section 9. Project Documents.

9.1 All original computer programs, data, designs, drawings, files, maps, memoranda, models, notes, photographs, reports, studies, surveys and other documents (collectively, "Project Documents") prepared, developed or discovered by Consultant in the course of providing services under this Agreement will become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of Consultant. Consultant will take such steps as are necessary to perfect or protect the ownership interest of City in such Project Documents. Upon completion, expiration or termination of this Agreement or upon request by City, Consultant must turn over to City all such original Project Documents in its possession; provided, however, that Consultant may retain copies of Project Documents. City acknowledges and agrees that use of Consultant's completed work product, for purposes other than identified in this Agreement, or use of incomplete work product, is at City's own risk. If necessary, Consultant agrees to execute all appropriate documents to assign to City the copyright or intellectual property rights to the Project Documents created pursuant to this Agreement.

9.2 Except as necessary for the performance of services under this Agreement, no Project Documents prepared under this Agreement, will be released by Consultant to any other person or entity without City's prior written approval.

Section 10. Confidential Information; Release of Information.

- 10.1** All information gained or work product produced by Consultant in performance of this Agreement will be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant may not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.
- 10.2** Consultant, its officers, employees, or agents, may not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the services performed under this Agreement. Response to a subpoena or court order will not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.
- 10.3** If Consultant, or any officer, employee, or agent of Consultant, provides any information or work product (including Project Documents) in violation of this Agreement, then City will have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused to the extent by or incurred as a result of Consultant's conduct.
- 10.4** Consultant must promptly notify City should Consultant, its officers, employees, or agents be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the services performed under this Agreement. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.
- 10.5** All media and press releases, including graphic display information, must be approved and distributed solely by City, unless otherwise agreed to in writing by City. All media interviews regarding the performance of services under this Agreement are prohibited unless expressly authorized by City.

Section 11. Consultant's Books and Records.

- 11.1** Consultant must maintain all documents and records demonstrating or relating to Consultant's performance of services under this Agreement, including ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City under this Agreement. All financial documents or records must be maintained in accordance with generally accepted accounting principles and all other documents must be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant under this Agreement. All such documents or records must be maintained for at least three years following the final payment under this Agreement.

- 11.2** Any and all records or documents required to be maintained by this section must be made available for inspection, audit and copying, at any time during regular business hours, upon written request by City or its designated representative. Copies of such documents or records must be provided directly to City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records must be made available at Consultant's address indicated for receipt of notices in this Agreement.
- 11.3** Where City has reason to believe that any of the documents or records required to be maintained by this section may be lost or discarded due to dissolution or termination of Consultant's business, City may, by written request, require that custody of such documents or records be given to a person or entity mutually agreed upon and that such documents and records thereafter be maintained by such person or entity at Consultant's expense. Access to such documents and records must be granted to City, as well as to its successors-in-interest and authorized representatives.

Section 12. Status of Consultant.

- 12.1** Consultant is and will at all times remain a wholly independent contractor and not an officer or employee of City. Consultant has no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.
- 12.2** The personnel performing the services under this Agreement on behalf of Consultant will at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, will have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as provided in this Agreement. Consultant agrees that it will not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, or employees of City.
- 12.3** Neither Consultant, nor any of Consultant's officers, employees or agents, will obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim to any such rights or benefits.

Section 13. Compliance with Applicable Laws.

- 13.1 In General.** Consultant must use the standard of care in its profession to keep itself informed of and comply with all federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement that apply to the services performed by Consultant.
- 13.2 Professional Licenses and Approvals.** Consultant agrees that it will, at its sole cost and expense, obtain and maintain in effect at all times during the term of this Agreement any licenses, permits, insurance and approvals that are legally required for Consultant to practice its profession.

13.3 Employment Laws. Consultant agrees to comply with all applicable federal and state employment laws including those that relate to minimum hours and wages, occupational health and safety, and workers compensation insurance. Consultant further represents that it is an equal opportunity employer and in performing services under this Agreement agrees to comply with all applicable federal and state laws governing equal opportunity employment, and further agrees that it will not discriminate in the employment of persons to perform services under this Agreement on the basis of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any such person, except as may be permitted by California Government Code section 12940.

Section 14. Unauthorized Aliens.

Consultant agrees to comply with all of the applicable provisions of the Federal Immigration and Nationality Act (8 U.S.C. § 1101 *et seq.*), as it may be amended, and further agrees not to employ unauthorized aliens as defined under the Act. Should Consultant employ any unauthorized aliens for the performance of any work or services covered by this Agreement, and should any liability or sanctions be imposed against City for the use of unauthorized aliens, Consultant agrees to reimburse City for the amount of all such liabilities or sanctions imposed, together with any and all related costs, including attorneys' fees, incurred by City.

Section 15. Conflicts of Interest.

15.1 Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City or that would in any way hinder Consultant's performance of services under this Agreement. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 and following) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 *et seq.*), and California Government Code section 1090.

15.2 Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm will make, participate in the making, or in any way attempt to use the position of Consultant to influence any decision of the City in which Consultant knows or has reason to know that Consultant, or any officer, principal or employee of Consultant has any of the financial interests listed in Government Code section 87103.

15.3 If Consultant discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant **must promptly** disclose the relationship to City and take such action as City may direct to remedy the conflict.

15.4 City understands and acknowledges that Consultant is, as of the Effective Date, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant represents that, except as otherwise disclosed to City, it is unaware of any stated position of City relative to these projects. Any future position of City on these projects will not be considered a conflict of interest for purposes of this section.

Section 16. Indemnification.

- 16.1** The parties agree that City should, to the fullest extent permitted by law, be defended, indemnified and held harmless from all Claims (defined below) related to the performance by Consultant of this Agreement. Accordingly, the provisions of this section are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and defend City as set forth in this section.
- 16.2** For the purposes of this section, "City" includes City's officers, officials, employees, agents and volunteers, and "Consultant" includes Consultant's officers, officials, employees, agents and subcontractors.
- 16.3** Consultant agrees to defend and indemnify City from and against, any and all claims and liabilities, regardless of the nature or type, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant committed in performing any services under this Agreement or the failure to comply with any of the obligations of this Agreement (collectively, "Claims") to the extent such Claims arise out of, are a consequence of, or are in any way attributable to, or caused, in whole or in part, by the negligence, recklessness, or willful misconduct of Consultant in the performance of any services under this Agreement. The Claims subject to Consultant's duties to defend and indemnify include, without limitation, all claims, actions, causes of action, proceedings, suits, losses, damages, penalties, fines, judgments, liens, levies, and associated investigation and administrative expenses. Such Claims also include defense costs, including reasonable attorneys' fees and disbursements, expert fees, court costs, and costs of alternative dispute resolution.
- 16.4** Consultant must notify City within five days of receipt of notice of any Claim made or legal action initiated that arises out of or pertains to Consultant's performance of services under this Agreement.
- 16.5** Consultant's duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant is obligated to defend City in all legal, equitable, administrative, or special proceedings, with counsel approved by City, immediately upon tender to Consultant of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Consultant are responsible for the Claim does not relieve Consultant from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. Except for a Claim covered by Consultant's professional liability insurance, the defense obligation includes an obligation to provide independent **defense** counsel if **Consultant asserts** that liability is **caused** in whole or in part by the negligence or willful misconduct of any City indemnified party. If it is finally adjudicated or agreed by City that liability was caused by the comparative active negligence or willful misconduct of any City indemnified party, then Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established or agreed upon comparative liability of the City indemnified party.
- 16.6** Consultant agrees that its defense and indemnity obligation under this section, includes the reasonable costs of attorney fees incurred by City's City Attorney office to monitor and

consult with Consultant regarding the defense of any Claim, including providing direction with regard to strategy, preparation of pleadings, settlement discussions, and attendance at court hearings, mediations, or other litigation related appearances. City will use its best efforts to avoid duplicative attorney work or appearances in order to keep litigation costs to a reasonable minimum. This Section 16.6 does not apply to a Claim covered by Consultant's professional liability insurance.

- 16.7** Consultant agrees that settlement of any Claim against City requires the consent of City. City agrees that its consent will not be unreasonably withheld provided that Consultant is financially able (based on demonstrated assets including insurance) to fulfill its obligation to indemnify City for the costs of any such settlement as required under this Agreement.
- 16.8** Consultant's obligation to indemnify City applies unless it is finally adjudicated or agreed by City that the liability was caused by the sole active negligence or sole willful misconduct of a City indemnified party. If a Claim is finally adjudicated and a determination made that liability was caused by the sole active negligence or sole willful misconduct of a City indemnified party or the City otherwise agrees to such a determination, then Consultant's indemnification obligation will be reduced in proportion to the established comparative liability.
- 16.9** The insurance required to be maintained by Consultant under this Agreement is intended to ensure Consultant's obligations under this section, but the limits of such insurance do not limit the liability of Consultant.
- 16.10** Notwithstanding any provision of this Agreement to the contrary, design professionals are required to defend and indemnify the City only to the extent permitted by Civil Code section 2782.8, which limits claims to those that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The term "design professional," is defined in Section 2782.8, and includes licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors and the business entities that offer such services in accordance with the applicable provisions of the Business and Professions Code.
- 16.11** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required, Consultant will be fully responsible for all obligations under this section. City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights under this Agreement.
- 16.12** The provisions of this section will survive the expiration or earlier termination of this Agreement.
- 16.13** The provisions of this section will survive the expiration or earlier termination of this Agreement.

Section 17. Insurance.

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance coverages listed in Exhibit C ("Insurance"), which is made a part of this Agreement. All insurance policies are subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager or City Attorney.

Section 18. Assignment.

The expertise and experience of Consultant are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant may not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of City, which may be withheld in the City's sole discretion. Any attempted assignment will be null and void, and will constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement.

Section 19. Default; Limitations on Liability.

- 19.1** In the event that Consultant is in default under the terms of this Agreement, City will have no obligation or duty to continue compensating Consultant for any services performed after City provides written notice to Consultant of such default.
- 19.2** Consultant agrees that no City official, officer, employee or agent will be personally liable to Consultant in the event of any default or breach of City, or for any amount which may become due to Consultant, or for any obligations directly or indirectly incurred under this Agreement.
- 19.3** City's liability under this Agreement is limited to payment of Consultant in accordance with the terms of this Agreement and excludes any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

Section 20. Termination of Agreement.

- 20.1** City may terminate this Agreement, with or without cause, at any time by written notice of termination to Consultant. In the event such notice is given, Consultant must cease immediately all work and services in progress.
- 20.2** Consultant may terminate this Agreement at any time upon 30 days prior written notice of termination to City.
- 20.3** Upon termination of this Agreement by either Consultant or City, all property belonging to City that is in Consultant's possession must be returned to City. Consultant must promptly deliver to City a final invoice for all outstanding services performed and expenses incurred by Consultant as of the date of termination. Compensation for work in progress not based on an hourly rate will be prorated based on the percentage of work completed as of the date of termination.

- 20.4** Consultant acknowledges City's rights to terminate this Agreement as provided in this section, and hereby waives any and all claims for damages that might otherwise arise from City's termination of this Agreement.

Section 21. Notices.

- 21.1** All written notices required or permitted to be given under this Agreement will be deemed made when received by the other party at its respective address as follows:

To City: City of Industry
15625 East Stafford Street, Suite 100
City of Industry, CA 91744
Attention: Paul Phillips, City Manager

(Tel.) (626) 333-2211
(Fax) (626) 961-6795
(E-Mail) Paul@cityofindustry.org

To Consultant: Waste Systems Technology, Inc.
P.O. Box 33252
Long Beach, CA 90832
Attn: Jeff Duhamel

(Tel.) (562) 754-1609
(Fax) (866) 963-0147
(E-mail) jaduhamel@gmail.com

- 21.2** Notice will be deemed effective on the date personally delivered or electronically transmitted by facsimile. If the notice is mailed, notice will be deemed given three days after deposit of the same in the custody of the United States Postal Service, postage prepaid, for first class delivery, or upon delivery if using a major courier service with tracking capabilities.

- 21.3** Any party may change its notice information by giving notice to the other party in compliance with this section.

Section 22. General Provisions.

- 22.1 Authority to Execute; Counterparts.** Each party represents and warrants that all necessary action has been taken by such party to authorize the undersigned to execute this Agreement and to bind it to the performance of its obligations hereunder. This Agreement may be executed in several counterparts, each of which will constitute one and the same instrument and will become binding upon the parties when at least one copy has been signed by both parties.

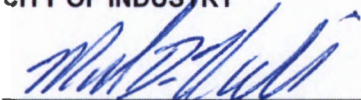
- 22.2 Entire Agreement.** This Agreement, including the attached Exhibits A through C, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed in this Agreement and supersedes all other agreements or understandings, whether oral or written, between Consultant and City prior to the execution of this Agreement.

- 22.3 Binding Effect.** This Agreement is binding upon the heirs, executors, administrators, successors and assigns of the parties.
- 22.4 Modification of Agreement.** No amendment to or modification of this Agreement will be valid unless made in writing and approved by Consultant and by the City Council or City Manager, as applicable. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver will be void.
- 22.5 Facsimile Signatures.** Amendments to this Agreement will be considered executed when the signature page of a party is delivered by electronic transmission. Such electronic signatures will have the same effect as an original signature.
- 22.6 Waiver.** Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement will not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement will not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any services by Consultant will not constitute a waiver of any of the provisions of this Agreement.
- 22.7 Interpretation.** This Agreement will be interpreted, construed and governed according to the laws of the State of California. Each party has had the opportunity to review this Agreement with legal counsel. The Agreement will be construed simply, as a whole, and in accordance with its fair meaning. It will not be interpreted strictly for or against either party.
- 22.8 Severability.** If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will not be affected and the Agreement will be read and construed without the invalid, void or unenforceable provision.
- 22.9 Venue.** In the event of litigation between the parties, venue in will be exclusively in a state court in the County of Los Angeles.

[Signatures on the following page.]

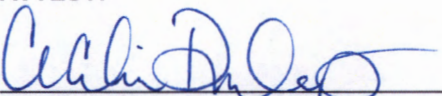
THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF the parties hereby execute this Agreement as follows:

CITY OF INDUSTRY



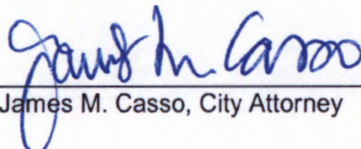
Mark D. Radecki, Mayor

ATTEST:



Cecelia Dunlap, Deputy City Clerk

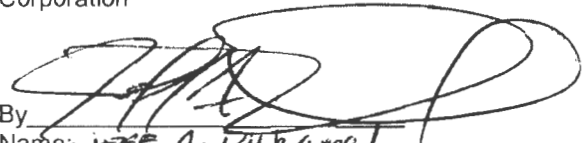
APPROVED AS TO FORM:



James M. Casso, City Attorney

CONSULTANT:

WASTE SYSTEMS TECHNOLOGY, INC., a California Corporation


By _____
Name: *JEFF A. DUNHAM*
Title: *President / Treasurer*

By _____
Name:
Title:

EXHIBIT A

SCOPE OF SERVICES

[Attached]

Exhibit A

A PROPOSAL FOR

SOLID WASTE CONSULTING
&
RECYCLING PERMIT PROGRAM

FOR THE
CITY OF INDUSTRY
2015-2016

Prepared by: *WASTE SYSTEMS TECHNOLOGY, INC.*
Long Beach, California.

Presented to: *BRIAN JAMES*
City Planner

When: *July 2015*

Cover Letter

Subject: **Proposal to Implement Commercial Recycling Program coupled with AB 939, AB 341, SB 1374, AB 1826 and the California Green Building Code 2014 programming.**

Waste Systems Technology, Inc. (WST) is pleased to present the following task driven proposal for the continued operation of the City of Industry Permit Recycling Program, The ongoing Solid Waste and Recycling Consultant services.

The proposal contained herein addresses the tasks necessary to continue to meet the requirements of AB 939 (The integrated waste management act of 1989), SB 1374 (Mandatory construction diversion programming of 2002), California Green Building Code (2010 and forward), AB 341 (Mandatory commercial recycling act), AB 1826 (Mandatory Organics Waste Recycling) and additional program mandates enacted by California State Legislature and/or CalRecycle.

In addition, WST proposes an option task to continue to support through both educational outreach and technical assistance, the city's desire to update and develop an accurate and complete Use Permit database.

The cost estimate for the 2015-21016 Term is **\$240,785** with an optional task for \$10,635. All services will be completed within twelve (12) months from the date of authorization to proceed.

If you require any further assistance or clarification, please do not hesitate to call me at 562-754-1609.

Sincerely,

Jeff Duhamel
President

I. Related Experience

Waste Systems Technology, Inc. (WST) was established in California in 1997 to focus specifically on the planning and implementation of AB 939 programs identified in the Source Reduction and Recycling Elements (SRRE) of California cities. WST realized the tremendous costs of SRRE development, implementation and compliance for targeted California cities that needed cost-effective programs and services that produced actual results.

WST focuses on the implementation of recycling programs through facility development, permitting, waste studies and surveys as well as statistical methods of diversion accounting and extrapolation.

WST has worked closely with the City of Industry for over twelve (12) years as the City of Industry solid contract solid waste and recycling consultant. WST has assisted the City in a number of programs including the recent construction diversion programming, the food waste monitoring program, a number of recycling education programs, annual CalRecycle reporting, CalRecycle bi-annual reviews, the day-to-day operations of the city's commercial permit recycling program, along with technical and education outreach programs, hundreds of on-site waste audits and WST was instrumental in the CIWMB's adoption of the new base year reporting.

For the last five (5) years, WST has been tasked with the day-to-day operations of City of Industry Salvage/Recycling Permit Program. Having reduced the program costs considerably, last year the City of Industry was afforded the opportunity to reduce the recycler permit fees, saving the recyclers and generators over \$50,000.00 per year.

II. Scope of Work

Task 1.0 Construction and Demolition Waste Monitoring and Reporting Program

The consultant has worked with the City of Industry in the ongoing Construction and Demolition diversion, recycling and monitoring program. This program was originally implemented shortly after the enactment AB 939 requiring municipalities to develop programs of diversion. In 2002 the California Legislature passed SB 1374, requiring all municipalities to enact mandatory construction and demolition recycling programs targeting 75% diversion.

The consultant proposes to continue with the implementation of the existing SB 1374 construction project-tracking program through the recently implemented Construction Waste Management Plan (CWMP) in accordance with the **California Green Building Code** requirements.

1.1. Monitoring

The consultant will monitor active projects on a daily basis by tracking and managing the job-site CWMP from the original submittal date through the completion of each covered project. WST will quantify all on-site, off-site and re-use covered materials as required by CalRecycle and the California Green Building Code.

1.2 Diversion Tonnage Reporting

In addition the consultant will work closely with CNC Engineering, Grand Central Recycling, and Valley Vista Services to confirm the accuracy of reported tonnage information.

1.3 Job-Site Visits/Technical Assistance/Education Outreach

On an ongoing basis the consultant will perform site visits at construction and demolition projects in the City of Industry as well as meet with the franchise hauler to quantify their diversion efforts. Each general contractor from these projects will receive the City's new construction & demolition recycling outreach package along with copies of reporting forms and requirements. The consultant will aid the contractor/developer in the completion of all forms and reporting requirements.

WST will update and reissue educational information for construction and demolition debris recycling through the annual recycling outreach brochure required by CalRecycle.

Task 2.0 City of Industry Recycling/Salvage Permit Program

Since the enactment of AB 939, All City of Industry recyclers have been required to procure an annual Recycling Permit, report their activities on a monthly base while adhering to all the requirements of Chapter 8.20 of the IMC. Additionally, each collector is now required to submit their vehicle insurance certification and a list of all proposed vehicles to be used for collection activities.

WST will qualify each application according to the performance requirements and regulations stipulated IMC 8.20. Each collector will be provided a copy of the ordinance and assisted in the reporting and permitting requirements. WST will issue and document all collector permits, container decals, generator data, vehicle inventory and required insurance certificates.

Any recycler/salvager operating outside of the prescribed permit program will be referred to the City of Industry code enforcement department.

2.1 Reporting

Each and every recycler will be required to submit accurate and verifiable reports as stipulated in IMC 8.20. WST will prepare and mail-out all required monthly blank report logs. Monthly reports will be verified for accuracy and all information contained therein will be gathered into a master database program. All tonnages, points of service (generators), commodities and processing locations will be recorded.

City of Industry personnel will collect all reports and fees. Copies of the payments and original reports shall be submitted to Waste Systems for processing. Waste Systems will not collect any funds from either the recyclers or generators for any aspect of this program. All financial dealings will be processed by City of Industry appointed personnel.

WST requires recyclers to maintain verifiable back-up documentation to substantiate the monthly reports and materials recovered. Verifiable documentation may consist of scale tickets, billing records, dump tickets, and any industry standard reporting documents. All self-haulers will be required to present the same documentation, if requested, as the recyclers. Any generator self-hauling will be required to identify the equipment being used and proof of ownership, additionally; self-haulers will be required to identify a point of final destination.

Waste Systems will reconcile all reports for accuracies so to safeguard against fraudulent reporting.

2.2 Database Management

All program information and data will be kept in a comprehensive database management program. WST will manage a database that will record and document all recycler and generator activities associated with the Salvage/Recycler Permit Program.

All database information including commodities, material handling, container size, bin decal numbers and the generator/recycler relationship will be available for review by city personnel within 24 hours of notice.

2.3 Recycler Audits

When necessary, WST will initiate and perform recycler audits when it discovers inconsistent reporting and/or fraudulent activities. Each audit will include an on-site inspection of all back-up documentation supplied by the particular recycler for that particular reporting period. This Audit will also quantify all tonnages reported, point of generation, and a financial accounting of fees paid.

Any salvager found to be out of compliance or having misreported a number greater than 10% will be referred to the City Investigator for further review.

Task 3.0 Mandatory Commercial Recycling Program (AB 341)

The current recycler/salvage permit program constitutes a significant source of diversion for the City of Industry. In addition, the financial structure of the permit program covers the costs associated with the operation of the program.

For the past number of years, the consultant has overseen the recycler/salvager permit program including; permitting, monitoring, reporting, database management, and recycler audits. With the advent of AB 341 (Mandatory Commercial Recycling) the recycling and reporting program has transitioned from a voluntary program with marginal participation, to a mandatory program that requires citywide participation, monitoring and reporting.

3.1 Education Outreach & Monitoring

Assembly Bill 341 (AB 341) requires that all commercial generators that generate four (4) cubic yards of refuse per week or more, to implement onsite commercial recycling or have their waste processed through a permitted material recovery facility.

AB 341 puts the monitoring and program implementation under the local jurisdiction's control, requiring each municipality to implement mandatory programs and report these actions back to the State of California.

In May of 2014, the City of Industry City Council amended IMC 8.20 requiring all business entities to register as a generator and choose the recycling method they will enact in order to meet the requirements of AB 341.

In 2015, the City and WST distributed a two-page **information/outreach** brochure that described the requirements of AB 341 while soliciting the generators contact information and details on whether the generator had an existing recycling program. WST collected all the information and prepared an exhaustive database that includes the generators desired recycling option, as well as updated contact information, waste generated per week and vital Use Permit information.

During the 2015-2016 fiscal year, WST will continue to manage the generator database, distribute updated outreach materials to all new businesses while maintaining the CalRecycle mandatory annual education outreach to existing covered businesses.

3.2 Onsite Technical Assistance

WST will continue onsite technical assistance in the implementation of city approved commercial recycling programs. WST implements the education and monitoring requirements of AB 939 and AB 341 by working closely with local generators in the setting up of approved recycling programs. WST conducts onsite technical assistance by providing the generators with a zero cost onsite waste and recycling survey. WST meets with the generators key employees, provides a list of options as well as a complete listing of all the permitted recyclers that provide the services that are applicable to the customer.

Task 4.0 Mandatory Organic Waste Recycling Program

On September 28, 2014, Governor Brown signed California Assembly Bill 1826 (AB 1826) into law. Beginning in 2016, AB 1826 requires each covered commercial business within the City of Industry to adopt a number of organic-waste recycling programs that target the entire organic waste stream including; food-waste, green-waste, wood-waste and food soiled paper-waste. AB 1826 mandates that the City of Industry provide all education, technical assistance, generator monitoring and annual reports for all covered commercial businesses.

Overview

By January 1, 2016, local jurisdictions must have in place and organics waste recycling program that identifies each covered generator and that identifies programs that meet the above-mentioned organic waste streams.

A covered commercial business is one that generates the stipulated cubic yards of either organic waste or solid waste as presented below.

- **April 1, 2016** – Any commercial business that generates eight (8) cubic yards or more of organic waste per week will be required to arrange for organic waste recycling.
- **January 1, 2017** – Any commercial businesses that generate four (4) cubic yards or more of organic waste per week will be required to arrange for organic waste recycling.
- **January 1, 2019** – Any commercial businesses that generate four (4) cubic yards of **municipal solid waste** will be required to arrange for organic waste recycling.

It is easy to see that time is short and the task is enormous. WST strongly suggests, as recommended by CalRecycle officials, that we focus on the **January 2017** goal and immediately identify those covered entities and conduct educational outreach and technical assistance so to meet the 2017 timeline.

4.1 Identify Covered Commercial Businesses

During a recent stakeholders meeting, CalRecycle stated that they expect every jurisdiction to identify covered entities by utilizing the NAISC business codes and implement an approved per employee methodology. CalRecycle stated that they would provide the referenced methodology in the coming months. In addition to the prescribed methodology, jurisdictions are free to submit any additional information that may add to the accuracy of the study.

WST has already conducted research and has been in contact with CalRecycle on avenues by which to identify covered entities. CalRecycle also suggested that in situations that a municipality does not have records of their commercial businesses identifying either the NAISC number or the employee count, to contract with a private listing service such as Dunn and Bradstreet. WST has reached out to Dunn & Bradstreet and has found that their listing services meet all the criteria necessary for this effort. WST will contract with Dunn & Bradstreet for accurate business lists that contain the NAISC number, owner contact information and employee count. WST will geo-code all businesses entities onto an outlined City of Industry boundary map. WST will then delete those entities that reside outside of the city boundaries and then apply the CalRecycle approved methodology to each listed business entity.

Those businesses that meet the requirements of a covered commercial business would be targeted for education outreach documentation and technical assistance. This database will also be utilized in the Use Permit tasks identified later in this proposal.

4.2 Identify infrastructure and opportunities

One of the key provisions contained in the organics recycling mandate is the requirement that the municipalities must provide the generators with recycling opportunities by identifying individual recycling programs for each of the targeted organic waste streams.

WST will work closely with all the stakeholders, including other jurisdictions, in the identification of permitted organic facilities. Additionally, WST will identify organic recyclers, food banks, rendering companies and other opportunities for review the purpose of meeting these unfunded mandates. All information will be provided to the City Engineer for review and direction.

4.3 Outreach & Technical Assistance (Combined with Task 3.1 and 3.2)

WST proposes that we augment the existing AB 341 outreach and technical assistance program with an expanded AB 1826 outreach and technical assistance program. Utilizing the both the existing Salvage Permit database, coupled with above-mentioned NAISC database, WST will prepare a targeted covered business mailing list and begin to both identify existing organic recycling while conducting technical assistance to those generators lacking either opportunity or expertise.

Task 5.0 Project Management, City Meetings and Annual Reporting

WST and the City of Industry staff will meet monthly to review all deliverables and program implementation results. WST will prepare an agenda and produce working documents of all programs currently being implemented.

Any and all program difficulties will be presented to staff for comments and suggestions. WST will present a report of hours allocated to each task to date. WST will review program costs, hourly budgets and proposed changes to the tasks pending.

WST will monitor and track all legislation and regulations that may impact the City or selected programs. All bills before the State Assembly, as well as the State Senate that pertain to solid waste will be reviewed and presented to the City Engineer. In the event proposed legislation would have any impact, either positive or negative, WST will recommend appropriate actions to the City Engineer.

WST staff will prepare any and all annual reports for CalRecycle along with the form 303A/B for DTSC. WST staff will be in attendance during all bi-annual reviews and any local CalRecycle required meetings.

Optional Task(s)

Task 6.0 Solid Waste Generator & Use Permit

In 2014 the City Council approved a revision to chapter 8.20 of the IMC, requiring each business operating within the City of Industry to register as a solid waste generator. This was needed in order to satisfy the mandatory commercial recycling requirements of AB 341, while attempting to ascertain an accurate account of the City of Industry business community.

6.1 Identify/Outreach

It is estimated by Dunn & Bradstreet that approximately 3,700 business entities operate within the City of Industry. Currently only 1,725 businesses hold a valid City of Industry Use Permit and many of those are outdated. Last year WST was able to identify 2,535 businesses through old Use Permit records, Industry Manufacturer Council lists and Valley Vista Services records. Of those 2,535 businesses contacted, 1,333 responded through the Solid Waste Generator Form (Form 104). Of the 1,333 respondents, 298 businesses did not have a Use Permit on file. Of the 935 non-respondents, indications are that approximately 410 of them do not have a use permit on file.

WST proposes to utilize the Dunn & Bradstreet listing service for accurate and reliable business data. WST will procure a business data subscription that will identify all active businesses within the City of Industry. The data will included the business entity, the building owner and all contact information for each. WST will merge the new database with our current database and update all business and contact information.

After the new database is merged and all contact information has been updated, those businesses that are newly identified will receive a packet of recycling outreach materials and information regarding Use Permit requirements. Those businesses and building owners that have yet to respond to previous demand letters, it is proposed by WST that we send a certified letter giving warning to both the building owner and occupant of pending administrative action. The letter will be approved and signed by the City Planner. This letter should be the last opportunity to procure a Use Permit before assessing an administrative fine by code enforcement.

For the term of the subscription, WST will receive updates on all businesses and any changes those identified businesses may have encountered. Updates will included name changes, ownership changes, contact information and address changes. WST will monitor all changes and update the database as well as forward address changes, name changes and contact information to the City of Industry.

6.2 Geo-Code

WST will geocode all business entities on Google map in a color-coded overlay. The maps will identify each business, their contact information and their Use Permit status. The geocode maps will aid code enforcement with critical contact information and location identifiers.

2015-2016 City of Industry Proposal

Task	Title	\$150.00 Principal	\$65.00 Project Mngr.	Total
1.0	Construction Monitoring & Reporting Program			
1.1	Monitoring	40	150	\$15,750.00
1.2	Diversion Tonnage Reporting	30	60	\$8,400.00
1.3	Job-Site Visits/Technical Assistance/Outreach	50	0	\$7,500.00
		120	210	\$31,650.00
2.0	Recycling/Salvage Permit Program			
2.1	Reporting & Permitting	150	450	\$51,750.00
2.2	Database Management	0	750	\$48,750.00
2.3	Recycler Audits	20	0	\$3,000.00
		170	1200	\$103,500.00
3.0	Mandatory Commercial Recycling			
3.1	Education Outreach & Monitoring	104	215	\$29,575.00
3.2	On-Site Technical Assistance	104	0	\$15,600.00
		208	215	\$45,175.00
4.0	Mandatory Organic Recycling			
4.1	Identify Covered Businesses	80	164	\$22,660.00
	<i>Dunn & Bradstreet Subscription Service</i>			\$4,800.00
4.2	Identify Opportunities	20	0	\$3,000.00
4.3	Outreach & Technical Assistance	Inc.	Inc.	Inc.
		100	164	\$30,460.00
5.0	Project Management/Reporting	200	0	\$30,000.00
	Total Cost Estimate	798	1789	\$240,785.00
		\$119,700.00	\$116,285.00	
6.0	Solid Waste Generator & Use Permit			
6.1	Identify/Outreach	10	64	\$5,660.00
6.2	Geo-Code	5	65	\$4,975.00
		15	129	\$10,635.00

Please see the following page for a budget/income breakdown.

2015-2016 Budget/Income Projections

Task	Description	2015-2016 Proposal	2014-2015 Income	2015-2016 Projections	Notes
1.0	Construction Monitoring & Reporting	\$ 31,650.00	\$ 0.00	\$ 0.00	No fees associated/State Requirement
2.0	Recycling Permit Program	\$103,500.00	\$189,522.00	\$192,700.00	Sole income generator
3.0	Mandatory Commercial Recycling	\$ 45,175.00	Included	Included	No fees associated/State Requirement
4.0	Mandatory Organics Recycling	\$ 30,460.00	New	Unknown	New state required program, no fee's assoc.
5.0	Project Management	\$ 30,000.00	Included	Included	
6.0	Solid Waste Generator/Use Permit	\$ 10,635.00	\$ 0.00	\$ 0.00	No fees associated with the Business License
		\$251,420.00	\$189,522.00	\$192,700.00	

Recycling Permit Program Breakdown 2014-2015

- Tonnage – 67,771 x \$2.35 per = \$159,262
- Permit Fees – 43 x \$500 per = \$ 21,500
- Permit Fees – 26 x \$200 per = \$ 5,200
- Decal Fees – 356 x \$10 per = \$ 3,560
- \$189,522**

Recycling Permit Program Projections 2015-2016

- Tonnage – 70,000 x \$2.35 per = \$164,000
- Permit Fees – 42 x \$500 per = \$ 20,000
- Permit Fee – 26 x \$200 per = \$ 5,200
- Decals – 350 x \$10 per = \$ 3,500
- \$ 192,700**

During the 2013-2014 contract year the City was involved with a lawsuit with an unpermitted recycler regarding permit fees and licensing. The City Attorney (BWS) reviewed all the associated costs and income for the recycling/salvage permit program and determined that certain fees were excessive and unfair. The City Attorney recommended that the fees be lowered, causing a net income decrease of approximately \$51,000 for the 2014-2015 fiscal year. Should those changes not have occurred, the income for 2014-2015 would have been \$240,562 easily covering the \$198,765 contract fee for 2014-2015.

Of all the tasks outlined in the proposal only the recycling permit program has income associated with it. The recycling permit program covers the costs of tasks 1.0, 2.0 and 5.0. Task 3.0 “Mandatory Commercial Recycling” has been in place for only one year, while task 4.0 “Mandatory Organic Recycling” is a new state requirement. All in all, subtracting the new programs (3.0 and 4.0) the contract fees for WST services have always been covered by the income generated by the permit program.

Waste Systems 2015-2016 Schedule of Fees

EXHIBIT B

KEY PERSONNEL & COMPENSATION

1. Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are: Jeff Duhamel.
2. Total compensation under this Agreement, including reimbursement for actual expenses, may not exceed: \$240,785.00.

FEE SCHEDULE

(See attached Schedule)

Exhibit B

Principal	\$150/hour
Senior Consultant	\$135/hour
Administration	\$ 65/hour
Copies/Printing	Cost
Travel	Cost
Postage	Cost

Cancellation Clause

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 Waste Systems Technology, Inc. at least thirty (30) days prior written notice. Upon receipt of said notice, Waste Systems Technology, Inc. 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 void or invalidate the remainder of this agreement.

In the event this agreement is terminated pursuant to this section, the City shall pay to Waste Systems Technology, Inc. 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, Waste Systems Technology, Inc. will submit an invoice to the City pursuant to this proposal.

EXHIBIT C

INSURANCE

- A. **General Requirements.** Before commencing the performance of services under this Agreement, and at all other times this Agreement is effective, Consultant must procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

<u>Type of Insurance</u>	<u>Limits (combined single)</u>
Commercial General Liability:	\$1,000,000
Business Automobile Liability	\$1,000,000
Professional Liability	\$1,000,000
Workers Compensation	Statutory Requirement.

- B. **Commercial General Liability Insurance.** Commercial general liability insurance must have coverage at least as broad as Insurance Services Office (ISO) CGL Form No. CG 00 01 . The amount of insurance set forth above must be a combined single limit per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability for the policy coverage. The insurance must be on an "occurrence" not a "claims made" basis.
- C. **Business Automobile Insurance.** Automobile insurance must have coverage at least as broad as ISO Business Auto Coverage Form CA 00 01 covering bodily injury and property damage, including coverage for any owned, hired, non-owned or rented vehicles. If Consultant or Consultant's employees will use personal autos in connection with the provision of services under this Agreement, Consultant will provide evidence of personal auto liability coverage for each such person.
- D. **Professional Liability (Errors & Omissions) Insurance.** This coverage must be on a "claims made" basis, including coverage for contractual liability. The Professional Liability Insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of Consultant's services. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Consultant must purchase extended period coverage for a minimum of three years after completion of services.
- E. **Workers Compensation.** Consultant must have a State of California approved policy form providing the statutory benefits required by law with employer's liability limits of no less than \$1,000,000 per accident for all covered losses, or Consultant must provide evidence of an approved self-insurance program. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the Labor Code. Consultant certifies that it will comply with such provisions before commencing performance of services under this Agreement and thereafter maintain such coverage as required by the Labor Code.
- F. **Additional Insureds.** Each Commercial General Liability Insurance policy and Business Auto Insurance policy must provide that the City, its officials, officers, employees, agents and volunteers are "additional insureds" under the terms of the policy, and must provide that an act or omission of one the insureds will not reduce or avoid coverage to the other insureds.

- G. **Deductibles and Self-Insured Retention.** Any deductibles or self-insured retentions applicable to the insurance policies required under this Agreement must be declared to and approved by City. In no event may any required insurance policy have a deductible, self-insured retention or other similar policy provision in excess of \$50,000 without prior written approval by City in its sole discretion. At the option of City, either the insurer will reduce or eliminate such deductibles or self-insured retentions with respect to the City's additional insureds or Consultant will procure a bond guaranteeing payment of any losses, damages, expenses, costs or settlements up to the amount of such deductibles or self-insured retentions.
- H. **Primary Insurance.** Each of the commercial general liability and business auto insurance policies maintained by Consultant under this Agreement must state that such insurance will be deemed "primary" so that any insurance that may be carried by City will be deemed excess to that of Consultant. This endorsement must be reflected on ISO Form No. CG 20 10 11 85 or 88, or current equivalent form acceptable to City.
- I. **Certificates of Insurance and Endorsements; Notice of Termination or Changes to Policies.** Prior to commencing any services under this Agreement, Consultant must file with the City certificates of insurance and endorsements evidencing the existence of all insurance required by this Agreement, along with such other evidence of insurance or copies of policies as may reasonably be required by City. These certificates of insurance and endorsements must be in a form approved by the City Attorney. Consultant must maintain current certificates and endorsements on file with City during the term of this Agreement reflecting the existence of all required insurance. Each of the certificates must expressly provide that no termination or cancellation of the required coverage will be effective except upon 30 days' prior written notice to City. The delivery to City of any certificates of insurance or endorsements that do not comply with the requirements of this Agreement will not waive the City's right to require compliance. In the event that Consultant's policies are materially changed, Consultant must provide the City with at least 30 days' prior written notice of the applicable changes.
- J. **Insurance Rating.** All insurance required to be maintained by Consultant under this Agreement must be issued by companies licensed by or admitted to conduct insurance business in the State of California by the California Department of Insurance and must have a rating of A or better and Class VII or better by the latest edition of A.M. Best's Key Rating Guide.
- K. **Aggregate Limits.** The aggregate limits for each insurance policy required under this Agreement must apply separately and solely to the services performed under this Agreement. If the required policies do not have an endorsement providing that the aggregate limit applies separately to the services being performed, or if defense costs are included in the aggregate limit, then the required aggregate limits must be increased to an amount satisfactory to City.
- L. **Excess or Umbrella Liability Insurance (Over Primary).** If an excess or umbrella liability policy is used to meet limit requirements, the insurance must provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an excess or umbrella liability policy must include a "drop-down provision" providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage must be provided on a "pay-on-behalf" basis, with defense costs payable in addition to policy limits. There may be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage must be applicable to City for injury to employees of Consultant, its subcontractors or others performing work to satisfy Consultant's obligations under this Agreement. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review, but in no event may be less than \$4,000,000 per occurrence and aggregate.
- M. **Waiver of Subrogation Rights.** Consultant and each insurer providing any insurance required by this Agreement must waive all rights of subrogation against City, its officials, officers,

employees, agents and volunteers, and each insurer must issue a certificate to the City evidencing this waiver of subrogation rights.

- N. **Subcontractor Insurance.** Should the Consultant subcontract out any of the work or services required under this Agreement, it must include all subcontractors as insured's under its policies or maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Exhibit C. If this option is exercised, both City and Consultant must be named as additional insured under the subcontractor's general liability policy. All coverages for subcontractors will be subject to all the requirements of this Exhibit C. The City reserves the right to perform an insurance audit during the term of this Agreement to verify compliance with requirements.
- O. **Failure to Maintain Required Insurance.** If Consultant, for any reason, fails to obtain and maintain the insurance required by this Agreement, City may obtain such coverage at Consultant's expense and deduct the cost of such insurance from payments due to Consultant under this Agreement or may terminate the Agreement.
- P. **Effect of Coverage.** The existence of the required insurance coverage under this Agreement will not be deemed to satisfy or limit Consultant's indemnity obligations under this Agreement. Consultant acknowledges that the insurance coverage and policy limits set forth in this Agreement constitute the minimum coverage and policy limits required. Any insurance proceeds available to City in excess of the limits and coverage required by this Agreement, and which is applicable to a given loss, must be made available to City to compensate it for such losses.
- Q. **Higher Limits of Insurance.** If Consultant maintains higher limits of insurance than the minimums shown above, City will be entitled to coverage for the higher limits maintained by Consultant.
- R. **Evaluation and Revision of Coverage.** City retains the right to modify, delete, alter or change the insurance requirements set forth in this Exhibit C upon not less than 90 days prior written notice. If any such change results in a substantial additional cost to Consultant, the City and Consultant may renegotiate Consultant's compensation under this Agreement.

EXHIBIT C

**Amendment No. 1 to Professional Services Agreement with Waste Systems
Technology, Inc. dated January 14, 2016**

[Attached]

**AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT WITH WASTE SYSTEMS
TECHNOLOGY, INC.**

This Amendment No. 1 to the Professional Services Agreement (“Agreement”), is made and entered into this 14th day of January, 2016, by and between the City of Industry, a California municipal corporation (“Customer”) and Waste Systems Technology, Inc., a California corporation (“Consultant”). The City and Consultant are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, on or about August 2015, the Agreement was entered into and executed between the Customer and Consultant to provide services to ensure that the City maintains compliance with AB 939 (integrated waste management act of 1989), SB 1374 (mandatory construction diversion programming of 2002), California Green Building Code (2010 and forward), AB 341 (mandatory commercial recycling act), and AB 1826 (mandatory organics waste recycling), and to provide educational outreach, technical assistance, and assist the City in developing an accurate Use Permit database; and

WHEREAS, Exhibit B (“Key Personnel & Compensation”) of the Agreement stipulated a total compensation not to exceed \$240,785.00; and

WHEREAS, the budget for Task 6 (\$10,635.00) was inadvertently omitted from the total compensation listed in Exhibit B of the Agreement. As noted in the Agreement, Task 6 is to provide educational outreach, technical assistance, and assist the City in developing an accurate Use Permit database; and

WHEREAS, in order to allow the Consultant to continue to perform Task 6, the Customer and Consultant desire to enter into this Amendment No. 1, as set forth below.

AMENDMENT

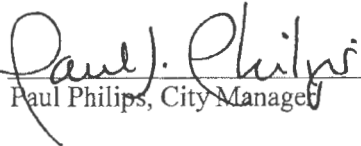
NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, it is agreed the aforesaid Agreement, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference, shall remain in full force and effect except as otherwise hereinafter provided:

Exhibit B. Key Personnel & Compensation

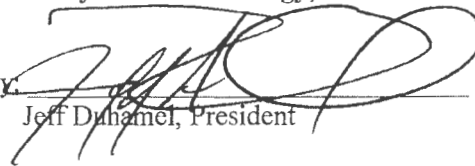
2. Total compensation under this Agreement, including reimbursement for actual expenses, may not exceed: \$251,420.00.

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

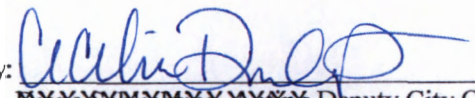
“CUSTOMER”
City of Industry

By: 
Paul Philips, City Manager

“CONSULTANT”
Waste Systems Technology, Inc.

By: 
Jeff Duhamel, President

Attest:

By: 
~~Deputy City Clerk~~ Deputy City Clerk
Cecelia Dunlap,

APPROVED AS TO FORM

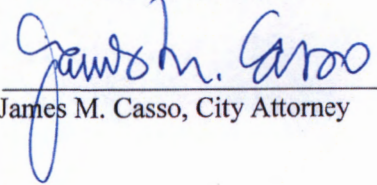
By: 
James M. Casso, City Attorney

EXHIBIT A TO AMENDMENT NUMBER 1:

**PROFESSIONAL SERVICES AGREEMENT WITH WASTE
SYSTEMS TECHNOLOGY, INC (August 13, 2015)**



CITY OF INDUSTRY

Incorporated June 18, 1957

August 18, 2015

Mr. Jeff Duhamel
President
Waste Systems Technology, Inc.
P.O. Box 33252
Long Beach, CA 90832

Re: Commercial Waste Reduction, Permit Salvaging and Education Program 2015-2016

Dear Mr. Duhamel:

Enclosed is an executed Professional Services Agreement, which was approved by the City Council at its meeting of August 13, 2015, in the amount of \$240,785.00.

You are hereby authorized to proceed with the work as outlined in this Agreement, which has been assigned Consultant Contract No. 1-WASTE 15-01. In connection with any invoice billed against this Agreement, please provide the following information:

1. Consultant Contract number;
2. Remaining balance of the contract;
3. A brief description of the work performed during the billing period;
4. Copies of receipts for reimbursable charges;
5. Invoices addressed to my attention.

Incomplete invoices will be returned unpaid. Additionally, no invoice will be paid which exceeds the approved amount without prior written approval by the City Council.

Sincerely,

Chris Brown
Administrative Specialist

/cb

Enclosure

c: Paul J. Phillips, City Manager
John Ballas, Director of Public Works
Dean Yamagata, Finance Department
Carmen Cooper, Finance Department



City of Industry

PROFESSIONAL SERVICES AGREEMENT

With

Waste Systems Technology, Inc.

Effective Date: August 13, 2015

TABLE OF CONTENTS

	<u>Page No.</u>
Section 1. Term of Agreement.....	1
Section 2. Scope and Performance of Services.....	1
Section 3. Additional Services and Changes in Services.....	2
Section 4. Familiarity with Services and Site.....	2
Section 5. Compensation and Payment.....	3
Section 6. Required Documentation Prior to Performance.....	3
Section 7. Time of Performance; Excusable Delays; Extensions.....	4
Section 8. Cooperation by City.....	4
Section 9. Project Documents.....	4
Section 10. Confidential Information; Release of Information.....	5
Section 11. Consultant's Books and Records.....	5
Section 12. Status of Consultant.....	6
Section 13. Compliance with Applicable Laws.....	6
Section 14. Unauthorized Aliens.....	7
Section 15. Conflicts of Interest.....	7
Section 16. Indemnification.....	8
Section 17. Insurance.....	10
Section 18. Assignment.....	10
Section 19. Default; Limitations on Liability.....	10
Section 20. Termination of Agreement.....	10
Section 21. Notices.....	11
Section 22. General Provisions.....	11
EXHIBIT A - SCOPE OF SERVICES.....	A-1
EXHIBIT B – KEY PERSONNEL & COMPENSATION.....	B-1
EXHIBIT C - INSURANCE.....	C-1

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is effective as of August 13, 2015 ("Effective Date"), and is between the City of Industry, a California municipal corporation and charter city ("City") and Waste Systems Technology, Inc. a California corporation ("Consultant").

Section 1. Term of Agreement.

Subject to the provisions of Section 20 ("Termination of Agreement"), the term of this Agreement will be for a period commencing on the Effective Date and will terminate upon the completion of Consultant's services.

Section 2. Scope and Performance of Services.

- 2.1 Consultant agrees to perform the services set forth in Exhibit A ("Scope of Services"), which is made a part of this Agreement.
- 2.2 Consultant will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculations, and all other means whatsoever, except as otherwise expressly specified in this Agreement, necessary to perform the services required of Consultant under this Agreement.
- 2.3 Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are listed in Exhibit B ("Key Personnel & Compensation"), which is made a part of this Agreement.
- 2.4 Consultant must make every reasonable effort to maintain the stability and continuity of Consultant's key personnel and subcontractors, if any, listed in Exhibit B to perform the services required under this Agreement. Consultant must notify City and obtain City's written approval with respect of any changes in key personnel prior to the performance of any services by replacement personnel.
- 2.5 Consultant must obtain City's prior written approval before utilizing any subcontractors to perform any services under this Agreement. This written approval must include the identity of the subcontractor and the terms of compensation.
- 2.6 **Consultant represents that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant will at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described in this Agreement. In meeting its obligations under this Agreement, Consultant must employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.**

- 2.7 City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. Acceptance of any of Consultant's work by City will not constitute a waiver of any of the provisions of this Agreement.
- 2.8 The Consultant must maintain any work site in the City in a safe condition, free of hazards to persons and property resulting from its operations.

Section 3. Additional Services and Changes in Services.

- 3.1 Consultant will not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in the Scope of Services or otherwise required by this Agreement, unless such additional services are authorized in advance and in writing by City.
- 3.2 If Consultant believes that additional services are needed to complete the Scope of Services, Consultant will provide the City Manager with written notification describing the proposed additional services, the reasons for such services, and a detailed proposal regarding cost.
- 3.3 City may order changes to the Scope of Services, consisting of additions, deletions, or other revisions, and the compensation to be paid Consultant will be adjusted accordingly. All such changes must be authorized in writing, and executed by Consultant and City. The cost or credit to City resulting from changes in the services will be determined by the written agreement between the parties.

Section 4. Familiarity with Services and Site.

- 4.1 By executing this Agreement, Consultant represents that Consultant:
 - (a) has thoroughly investigated and considered the Scope of Services to be performed;
 - (b) has carefully considered how the services should be performed;
 - (c) understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement; and
 - (d) possesses all licenses required under local, state or federal law to perform the services contemplated by this Agreement, and will maintain all required licenses during the performance of this Agreement.
- 4.2 **If services involve** work upon any site, **Consultant has** or will **investigate** the site and is or will be fully acquainted with the conditions there existing, before commencing its services. Should Consultant discover any latent or unknown conditions that may materially affect the performance of services, Consultant will immediately inform City of such fact and will not proceed except at Consultant's own risk until written instructions are received from City.

Section 5. Compensation and Payment.

- 5.1 Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in Exhibit B ("Key Personnel & Compensation"). The total compensation, including reimbursement for actual expenses, may not exceed the amount set forth in Exhibit B, unless additional compensation is approved in writing by City.
- 5.2 The use of subconsultants will not be considered a reimbursable expense, and such costs must be applied towards the approved budgeted amount.
- 5.3 Each month during the term of this Agreement, Consultant must furnish City with an original invoice for all services performed and expenses incurred during the preceding month in accordance with the fee schedule set forth in Exhibit B. The invoice must detail charges by the following categories: labor (by subcategory), reimbursable costs, subcontractor contracts and miscellaneous expenses. The invoice must list, as applicable, the hours worked and hourly rates for each personnel category, the tasks performed, the percentage of the task completed during the billing period, the cumulative percentage completed for each task, and the total cost of the services. If applicable, the invoice must also provide a budget summary including the total amounts previously invoiced and paid, the current invoice amount and the budget remaining.
- 5.4 City will review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with this Agreement. In the event that no charges or expenses are disputed, the invoice will be approved and paid. In the event any charges or expenses are disputed by City, the invoice will be returned by City to Consultant for correction and resubmission.
- 5.5 Except as to any charges for work performed or expenses incurred by Consultant that are disputed by City, City will cause Consultant to be paid within 30 days of receipt of Consultant's invoice.
- 5.6 Payment to Consultant for services performed under this Agreement may not be deemed to waive any defects in the services performed by Consultant, even if such defects were known to City at the time of payment.
- 5.7 City reserves the right to withhold future payment to Consultant if any aspect of the Consultant's work is found substantially inadequate.

Section 6. Required Documentation Prior to Performance.

- 6.1 Consultant may not perform any services under this Agreement until:
 - (a) Consultant furnishes proof of insurance as required under Exhibit C;
 - (b) Consultant provides City with a Taxpayer Identification Number;
 - (c) Consultant obtains a City business tax certificate and license, if applicable, and provides proof of compliance; and

(d) City gives Consultant a written notice to proceed.

6.2 The City will have no obligation to pay for any services rendered by Consultant in advance of receiving written authorization to proceed, and Consultant acknowledges that any such services are at Consultant's own risk.

Section 7. Time of Performance; Excusable Delays; Extensions.

7.1 Consultant must adhere to all schedules and deadlines set forth in this Agreement.

7.2 Consultant will not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Consultant. Such causes include, but are not limited to, acts of God, acts of terrorism, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather.

7.3 If Consultant is delayed by any cause beyond Consultant's control, City may grant, but is not required to, a time extension for the completion of services. If delay occurs, Consultant must notify City within 48 hours, in writing, of the cause and the extent of the delay and how such delay interferes with Consultant's performance of services.

Section 8. Cooperation by City.

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the Scope of Services will be furnished to Consultant in every reasonable way to facilitate, without undue delay, the services to be performed under this Agreement.

Section 9. Project Documents.

9.1 All original computer programs, data, designs, drawings, files, maps, memoranda, models, notes, photographs, reports, studies, surveys and other documents (collectively, "Project Documents") prepared, developed or discovered by Consultant in the course of providing services under this Agreement will become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of Consultant. Consultant will take such steps as are necessary to perfect or protect the ownership interest of City in such Project Documents. Upon completion, expiration or termination of this Agreement or upon request by City, Consultant must turn over to City all such original Project Documents in its possession; provided, however, that Consultant may retain copies of Project Documents. City acknowledges and agrees that use of Consultant's completed work product, for purposes other than identified in this Agreement, or use of incomplete work product, is at City's own risk. If necessary, Consultant agrees to execute all appropriate documents to assign to City the copyright or intellectual property rights to the Project Documents created pursuant to this Agreement.

9.2 Except as necessary for the performance of services under this Agreement, no Project Documents prepared under this Agreement, will be released by Consultant to any other person or entity without City's prior written approval.

Section 10. Confidential Information; Release of Information.

- 10.1 All information gained or work product produced by Consultant in performance of this Agreement will be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant may not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.
- 10.2 Consultant, its officers, employees, or agents, may not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the services performed under this Agreement. Response to a subpoena or court order will not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.
- 10.3 If Consultant, or any officer, employee, or agent of Consultant, provides any information or work product (including Project Documents) in violation of this Agreement, then City will have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused to the extent by or incurred as a result of Consultant's conduct.
- 10.4 Consultant must promptly notify City should Consultant, its officers, employees, or agents be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the services performed under this Agreement. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.
- 10.5 All media and press releases, including graphic display information, must be approved and distributed solely by City, unless otherwise agreed to in writing by City. All media interviews regarding the performance of services under this Agreement are prohibited unless expressly authorized by City.

Section 11. Consultant's Books and Records.

- 11.1 Consultant must maintain all documents and records demonstrating or relating to Consultant's performance of services under this Agreement, including ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City under this Agreement. All financial documents or records must be maintained in accordance with generally accepted accounting principles and all other documents must be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant under this Agreement. All such documents or records must be maintained for at least three years following the final payment under this Agreement.

- 11.2 Any and all records or documents required to be maintained by this section must be made available for inspection, audit and copying, at any time during regular business hours, upon written request by City or its designated representative. Copies of such documents or records must be provided directly to City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records must be made available at Consultant's address indicated for receipt of notices in this Agreement.
- 11.3 Where City has reason to believe that any of the documents or records required to be maintained by this section may be lost or discarded due to dissolution or termination of Consultant's business, City may, by written request, require that custody of such documents or records be given to a person or entity mutually agreed upon and that such documents and records thereafter be maintained by such person or entity at Consultant's expense. Access to such documents and records must be granted to City, as well as to its successors-in-interest and authorized representatives.

Section 12. Status of Consultant.

- 12.1 Consultant is and will at all times remain a wholly independent contractor and not an officer or employee of City. Consultant has no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.
- 12.2 The personnel performing the services under this Agreement on behalf of Consultant will at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, will have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as provided in this Agreement. Consultant agrees that it will not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, or employees of City.
- 12.3 Neither Consultant, nor any of Consultant's officers, employees or agents, will obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim to any such rights or benefits.

Section 13. Compliance with Applicable Laws.

- 13.1 **In General.** Consultant must use the standard of care in its profession to keep itself informed of and comply with all federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement that apply to the services performed by Consultant.
- 13.2 **Professional Licenses and Approvals.** Consultant agrees that it will, at its sole cost and expense, obtain and maintain in effect at all times during the term of this Agreement any licenses, permits, insurance and approvals that are legally required for Consultant to practice its profession.

13.3 Employment Laws. Consultant agrees to comply with all applicable federal and state employment laws including those that relate to minimum hours and wages, occupational health and safety, and workers compensation insurance. Consultant further represents that it is an equal opportunity employer and in performing services under this Agreement agrees to comply with all applicable federal and state laws governing equal opportunity employment, and further agrees that it will not discriminate in the employment of persons to perform services under this Agreement on the basis of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any such person, except as may be permitted by California Government Code section 12940.

Section 14. Unauthorized Aliens.

Consultant agrees to comply with all of the applicable provisions of the Federal Immigration and Nationality Act (8 U.S.C. § 1101 *et seq.*), as it may be amended, and further agrees not to employ unauthorized aliens as defined under the Act. Should Consultant employ any unauthorized aliens for the performance of any work or services covered by this Agreement, and should any liability or sanctions be imposed against City for the use of unauthorized aliens, Consultant agrees to reimburse City for the amount of all such liabilities or sanctions imposed, together with any and all related costs, including attorneys' fees, incurred by City.

Section 15. Conflicts of Interest.

- 15.1** Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City or that would in any way hinder Consultant's performance of services under this Agreement. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 and following) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 *et seq.*), and California Government Code section 1090.
- 15.2** Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm will make, participate in the making, or in any way attempt to use the position of Consultant to influence any decision of the City in which Consultant knows or has reason to know that Consultant, or any officer, principal or employee of Consultant has any of the financial interests listed in Government Code section 87103.
- 15.3** If Consultant discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant must promptly disclose the relationship to City and take such action as City may direct to remedy the conflict.
- 15.4** City understands and acknowledges that Consultant is, as of the Effective Date, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant represents that, except as otherwise disclosed to City, it is unaware of any stated position of City relative to these projects. Any future position of City on these projects will not be considered a conflict of interest for purposes of this section.

Section 16. Indemnification.

- 16.1** The parties agree that City should, to the fullest extent permitted by law, be defended, indemnified and held harmless from all Claims (defined below) related to the performance by Consultant of this Agreement. Accordingly, the provisions of this section are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and defend City as set forth in this section.
- 16.2** For the purposes of this section, "City" includes City's officers, officials, employees, agents and volunteers, and "Consultant" includes Consultant's officers, officials, employees, agents and subcontractors.
- 16.3** Consultant agrees to defend and indemnify City from and against, any and all claims and liabilities, regardless of the nature or type, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant committed in performing any services under this Agreement or the failure to comply with any of the obligations of this Agreement (collectively, "Claims") to the extent such Claims arise out of, are a consequence of, or are in any way attributable to, or caused, in whole or in part, by the negligence, recklessness, or willful misconduct of Consultant in the performance of any services under this Agreement. The Claims subject to Consultant's duties to defend and indemnify include, without limitation, all claims, actions, causes of action, proceedings, suits, losses, damages, penalties, fines, judgments, liens, levies, and associated investigation and administrative expenses. Such Claims also include defense costs, including reasonable attorneys' fees and disbursements, expert fees, court costs, and costs of alternative dispute resolution.
- 16.4** Consultant must notify City within five days of receipt of notice of any Claim made or legal action initiated that arises out of or pertains to Consultant's performance of services under this Agreement.
- 16.5** Consultant's duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant is obligated to defend City in all legal, equitable, administrative, or special proceedings, with counsel approved by City, immediately upon tender to Consultant of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Consultant are responsible for the Claim does not relieve Consultant from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. Except for a Claim covered by Consultant's professional liability insurance, the defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of any City indemnified party. If it is finally adjudicated or agreed by City that liability was caused by the comparative active negligence or willful misconduct of any City indemnified party, then Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established or agreed upon comparative liability of the City indemnified party.
- 16.6** Consultant agrees that its defense and indemnity obligation under this section, includes the reasonable costs of attorney fees incurred by City's City Attorney office to monitor and

consult with Consultant regarding the defense of any Claim, including providing direction with regard to strategy, preparation of pleadings, settlement discussions, and attendance at court hearings, mediations, or other litigation related appearances. City will use its best efforts to avoid duplicative attorney work or appearances in order to keep litigation costs to a reasonable minimum. This Section 16.6 does not apply to a Claim covered by Consultant's professional liability insurance.

- 16.7** Consultant agrees that settlement of any Claim against City requires the consent of City. City agrees that its consent will not be unreasonably withheld provided that Consultant is financially able (based on demonstrated assets including insurance) to fulfill its obligation to indemnify City for the costs of any such settlement as required under this Agreement.
- 16.8** Consultant's obligation to indemnify City applies unless it is finally adjudicated or agreed by City that the liability was caused by the sole active negligence or sole willful misconduct of a City indemnified party. If a Claim is finally adjudicated and a determination made that liability was caused by the sole active negligence or sole willful misconduct of a City indemnified party or the City otherwise agrees to such a determination, then Consultant's indemnification obligation will be reduced in proportion to the established comparative liability.
- 16.9** The insurance required to be maintained by Consultant under this Agreement is intended to ensure Consultant's obligations under this section, but the limits of such insurance do not limit the liability of Consultant.
- 16.10** Notwithstanding any provision of this Agreement to the contrary, design professionals are required to defend and indemnify the City only to the extent permitted by Civil Code section 2782.8, which limits claims to those that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The term "design professional," is defined in Section 2782.8, and includes licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors and the business entities that offer such services in accordance with the applicable provisions of the Business and Professions Code.
- 16.11** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required, Consultant will be fully responsible for all obligations under this section. City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights under this Agreement.
- 16.12** The provisions of this section will survive the expiration or earlier termination of this Agreement.
- 16.13** The provisions of this section will survive the expiration or earlier termination of this Agreement.

Section 17. Insurance.

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance coverages listed in Exhibit C ("Insurance"), which is made a part of this Agreement. All insurance policies are subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager or City Attorney.

Section 18. Assignment.

The expertise and experience of Consultant are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant may not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of City, which may be withheld in the City's sole discretion. Any attempted assignment will be null and void, and will constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement.

Section 19. Default; Limitations on Liability.

- 19.1 In the event that Consultant is in default under the terms of this Agreement, City will have no obligation or duty to continue compensating Consultant for any services performed after City provides written notice to Consultant of such default.
- 19.2 Consultant agrees that no City official, officer, employee or agent will be personally liable to Consultant in the event of any default or breach of City, or for any amount which may become due to Consultant, or for any obligations directly or indirectly incurred under this Agreement.
- 19.3 City's liability under this Agreement is limited to payment of Consultant in accordance with the terms of this Agreement and excludes any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

Section 20. Termination of Agreement.

- 20.1 City may terminate this Agreement, with or without cause, at any time by written notice of termination to Consultant. In the event such notice is given, Consultant must cease immediately all work and services in progress.
- 20.2 Consultant may terminate this Agreement at any time upon 30 days prior written notice of termination to City.
- 20.3 Upon termination of this Agreement by either Consultant or City, all property belonging to City that is in Consultant's possession must be returned to City. Consultant must promptly deliver to City a final invoice for all outstanding services performed and expenses incurred by Consultant as of the date of termination. Compensation for work in progress not based on an hourly rate will be prorated based on the percentage of work completed as of the date of termination.

- 20.4 Consultant acknowledges City's rights to terminate this Agreement as provided in this section, and hereby waives any and all claims for damages that might otherwise arise from City's termination of this Agreement.

Section 21. Notices.

- 21.1 All written notices required or permitted to be given under this Agreement will be deemed made when received by the other party at its respective address as follows:

To City: City of Industry
15625 East Stafford Street, Suite 100
City of Industry, CA 91744
Attention: Paul Phillips, City Manager

(Tel.) (626) 333-2211
(Fax) (626) 961-6795
(E-Mail) Paul@cityofindustry.org

To Consultant: Waste Systems Technology, Inc.
P.O. Box 33252
Long Beach, CA 90832
Attn: Jeff Duhamel

(Tel.) (562) 754-1609
(Fax) (866) 963-0147
(E-mail) jaduhamel@gmail.com

- 21.2 Notice will be deemed effective on the date personally delivered or electronically transmitted by facsimile. If the notice is mailed, notice will be deemed given three days after deposit of the same in the custody of the United States Postal Service, postage prepaid, for first class delivery, or upon delivery if using a major courier service with tracking capabilities.
- 21.3 Any party may change its notice information by giving notice to the other party in compliance with this section.

Section 22. General Provisions.

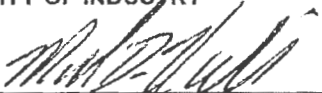
- 22.1 **Authority to Execute; Counterparts.** Each party represents and warrants that all necessary action has been taken by such party to authorize the undersigned to execute this Agreement and to bind it to the performance of its obligations hereunder. This Agreement may be executed in several counterparts, each of which will constitute one and the same instrument and will become binding upon the parties when at least one copy has been signed by both parties.
- 22.2 **Entire Agreement.** This Agreement, including the attached Exhibits A through C, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed in this Agreement and supersedes all other agreements or understandings, whether oral or written, between Consultant and City prior to the execution of this Agreement.

- 22.3 Binding Effect.** This Agreement is binding upon the heirs, executors, administrators, successors and assigns of the parties.
- 22.4 Modification of Agreement.** No amendment to or modification of this Agreement will be valid unless made in writing and approved by Consultant and by the City Council or City Manager, as applicable. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver will be void.
- 22.5 Facsimile Signatures.** Amendments to this Agreement will be considered executed when the signature page of a party is delivered by electronic transmission. Such electronic signatures will have the same effect as an original signature.
- 22.6 Waiver.** Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement will not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement will not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any services by Consultant will not constitute a waiver of any of the provisions of this Agreement.
- 22.7 Interpretation.** This Agreement will be interpreted, construed and governed according to the laws of the State of California. Each party has had the opportunity to review this Agreement with legal counsel. The Agreement will be construed simply, as a whole, and in accordance with its fair meaning. It will not be interpreted strictly for or against either party.
- 22.8 Severability.** If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will not be affected and the Agreement will be read and construed without the invalid, void or unenforceable provision.
- 22.9 Venue.** In the event of litigation between the parties, venue in will be exclusively in a state court in the County of Los Angeles.

[Signatures on the following page.]

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF the parties hereby execute this Agreement as follows:

CITY OF INDUSTRY



Mark D. Radecki, Mayor

ATTEST:



Cecelia Dunlap, Deputy City Clerk

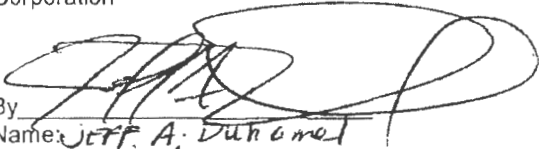
APPROVED AS TO FORM:



James M. Casso, City Attorney

CONSULTANT:

WASTE SYSTEMS TECHNOLOGY, INC., a California Corporation


By _____
Name: *Jeff A. Duhanet*
Title: *President / Treasurer*

By _____
Name:
Title:

EXHIBIT A
SCOPE OF SERVICES
[Attached]

Exhibit A

A PROPOSAL FOR

SOLID WASTE CONSULTING
&
RECYCLING PERMIT PROGRAM

FOR THE
CITY OF INDUSTRY
2015-2016

Prepared by: *WASTE SYSTEMS TECHNOLOGY, INC.*
Long Beach, California.

Presented to: *BRIAN JAMES*
City Planner

When: *July 2015*

Cover Letter

Subject: **Proposal to Implement Commercial Recycling Program coupled with AB 939, AB 341, SB 1374, AB 1826 and the California Green Building Code 2014 programming.**

Waste Systems Technology, Inc. (WST) is pleased to present the following task driven proposal for the continued operation of the City of Industry Permit Recycling Program, The ongoing Solid Waste and Recycling Consultant services.

The proposal contained herein addresses the tasks necessary to continue to meet the requirements of AB 939 (The integrated waste management act of 1989), SB 1374 (Mandatory construction diversion programming of 2002), California Green Building Code (2010 and forward), AB 341 (Mandatory commercial recycling act), AB 1826 (Mandatory Organics Waste Recycling) and additional program mandates enacted by California State Legislature and/or CalRecycle.

In addition, WST proposes an option task to continue to support through both educational outreach and technical assistance, the city's desire to update and develop an accurate and complete Use Permit database.

The cost estimate for the 2015-21016 Term is **\$240,785** with an optional task for \$10,635. All services will be completed within twelve (12) months from the date of authorization to proceed.

If you require any further assistance or clarification, please do not hesitate to call me at 562-754-1609.

Sincerely,

Jeff Duhamel
President

I. Related Experience

Waste Systems Technology, Inc. (WST) was established in California in 1997 to focus specifically on the planning and implementation of AB 939 programs identified in the Source Reduction and Recycling Elements (SRRE) of California cities. WST realized the tremendous costs of SRRE development, implementation and compliance for targeted California cities that needed cost-effective programs and services that produced actual results.

WST focuses on the implementation of recycling programs through facility development, permitting, waste studies and surveys as well as statistical methods of diversion accounting and extrapolation.

WST has worked closely with the City of Industry for over twelve (12) years as the City of Industry solid contract solid waste and recycling consultant. WST has assisted the City in a number of programs including the recent construction diversion programming, the food waste monitoring program, a number of recycling education programs, annual CalRecycle reporting, CalRecycle bi-annual reviews, the day-to-day operations of the city's commercial permit recycling program, along with technical and education outreach programs, hundreds of on-site waste audits and WST was instrumental in the CIWMB's adoption of the new base year reporting.

For the last five (5) years, WST has been tasked with the day-to-day operations of City of Industry Salvage/Recycling Permit Program. Having reduced the program costs considerably, last year the City of Industry was afforded the opportunity to reduce the recycler permit fees, saving the recyclers and generators over \$50,000.00 per year.

II. Scope of Work

Task 1.0 Construction and Demolition Waste Monitoring and Reporting Program

The consultant has worked with the City of Industry in the ongoing Construction and Demolition diversion, recycling and monitoring program. This program was originally implemented shortly after the enactment AB 939 requiring municipalities to develop programs of diversion. In 2002 the California Legislature passed SB 1374, requiring all municipalities to enact mandatory construction and demolition recycling programs targeting 75% diversion.

The consultant proposes to continue with the implementation of the existing SB 1374 construction project-tracking program through the recently implemented Construction Waste Management Plan (CWMP) in accordance with the **California Green Building Code** requirements.

1.1. Monitoring

The consultant will monitor active projects on a daily basis by tracking and managing the job-site CWMP from the original submittal date through the completion of each covered project. WST will quantify all on-site, off-site and re-use covered materials as required by CalRecycle and the California Green Building Code.

1.2 Diversion Tonnage Reporting

In addition the consultant will work closely with CNC Engineering, Grand Central Recycling, and Valley Vista Services to confirm the accuracy of reported tonnage information.

1.3 Job-Site Visits/Technical Assistance/Education Outreach

On an ongoing basis the consultant will perform site visits at construction and demolition projects in the City of Industry as well as meet with the franchise hauler to quantify their diversion efforts. Each general contractor from these projects will receive the City's new construction & demolition **recycling outreach package along with copies of reporting forms** and requirements. The consultant will aid the contractor/developer in the completion of all forms and reporting requirements.

WST will update and reissue educational information for construction and demolition debris recycling through the annual recycling outreach brochure required by CalRecycle.

Task 2.0 City of Industry Recycling/Salvage Permit Program

Since the enactment of AB 939, All City of Industry recyclers have been required to procure an annual Recycling Permit, report their activities on a monthly base while adhering to all the requirements of Chapter 8.20 of the IMC. Additionally, each collector is now required to submit their vehicle insurance certification and a list of all proposed vehicles to be used for collection activities.

WST will qualify each application according to the performance requirements and regulations stipulated IMC 8.20. Each collector will be provided a copy of the ordinance and assisted in the reporting and permitting requirements. WST will issue and document all collector permits, container decals, generator data, vehicle inventory and required insurance certificates.

Any recycler/salvager operating outside of the prescribed permit program will be referred to the City of Industry code enforcement department.

2.1 Reporting

Each and every recycler will be required to submit accurate and verifiable reports as stipulated in IMC 8.20. WST will prepare and mail-out all required monthly blank report logs. Monthly reports will be verified for accuracy and all information contained therein will be gathered into a master database program. All tonnages, points of service (generators), commodities and processing locations will be recorded.

City of Industry personnel will collect all reports and fees. Copies of the payments and original reports shall be submitted to Waste Systems for processing. Waste Systems will not collect any funds from either the recyclers or generators for any aspect of this program. All financial dealings will be processed by City of Industry appointed personnel.

WST requires recyclers to maintain verifiable back-up documentation to substantiate the monthly reports and materials recovered. Verifiable documentation may consist of scale tickets, billing records, dump tickets, and any industry standard reporting documents. All self-haulers will be required to present the same documentation, if requested, as the recyclers. Any generator self-hauling will be required to identify the equipment being used and proof of ownership, additionally; self-haulers will be required to identify a point of final destination.

Waste Systems will reconcile all reports for accuracies so to safeguard against fraudulent reporting.

2.2 Database Management

All program information and data will be kept in a comprehensive database management program. WST will manage a database that will record and document all recycler and generator activities associated with the Salvage/Recycler Permit Program.

All database information including commodities, material handling, container size, bin decal numbers and the generator/recycler relationship will be available for review by city personnel within 24 hours of notice.

2.3 Recycler Audits

When necessary, WST will initiate and perform recycler audits when it discovers inconsistent reporting and/or fraudulent activities. Each audit will include an on-site inspection of all back-up documentation supplied by the particular recycler for that particular reporting period. This Audit will also quantify all tonnages reported, point of generation, and a financial accounting of fees paid.

Any salvager found to be out of compliance or having misreported a number greater than 10% will be referred to the City Investigator for further review.

Task 3.0 Mandatory Commercial Recycling Program (AB 341)

The current recycler/salvage permit program constitutes a significant source of diversion for the City of Industry. In addition, the financial structure of the permit program covers the costs associated with the operation of the program.

For the past number of years, the consultant has overseen the recycler/salvager permit program including; permitting, monitoring, reporting, database management, and recycler audits. With the advent of AB 341 (Mandatory Commercial Recycling) the recycling and reporting program has transitioned from a voluntary program with marginal participation, to a mandatory program that requires citywide participation, monitoring and reporting.

3.1 Education Outreach & Monitoring

Assembly Bill 341 (AB 341) requires that all commercial generators that generate four (4) cubic yards of refuse per week or more, to implement onsite commercial recycling or have their waste processed through a permitted material recovery facility.

AB 341 puts the monitoring and program implementation under the local jurisdiction's control, requiring each municipality to implement mandatory programs and report these actions back to the State of California.

In May of 2014, the City of Industry City Council amended IMC 8.20 requiring all business entities to register as a generator and choose the recycling method they will enact in order to meet the requirements of AB 341.

In 2015, the City and WST distributed a two-page **information/outreach** brochure that described the requirements of AB 341 while soliciting the generators contact information and details on whether the generator had an existing recycling program. WST collected all the information and prepared an exhaustive database that includes the generators desired recycling option, as well as updated contact information, waste generated per week and vital Use Permit information.

During the 2015-2016 fiscal year, WST will continue to manage the generator database, distribute updated outreach materials to all new businesses while maintaining the CalRecycle mandatory annual education outreach to existing covered businesses.

3.2 Onsite Technical Assistance

WST will continue onsite technical assistance in the implementation of city approved commercial recycling programs. WST implements the education and monitoring requirements of AB 939 and AB 341 by working closely with local generators in the setting up of approved recycling programs. WST conducts onsite technical assistance by providing the generators with a zero cost onsite waste and recycling survey. WST meets with the generators key employees, provides a list of options as well as a complete listing of all the permitted recyclers that provide the services that are applicable to the customer.

Task 4.0 Mandatory Organic Waste Recycling Program

On September 28, 2014, Governor Brown signed California Assembly Bill 1826 (AB 1826) into law. Beginning in 2016, AB 1826 requires each covered commercial business within the City of Industry to adopt a number of organic-waste recycling programs that target the entire organic waste stream including; food-waste, green-waste, wood-waste and food soiled paper-waste. AB 1826 mandates that the City of Industry provide all education, technical assistance, generator monitoring and annual reports for all covered commercial businesses.

Overview

By January 1, 2016, local jurisdictions must have in place and organics waste recycling program that identifies each covered generator and that identifies programs that meet the above-mentioned organic waste streams.

A covered commercial business is one that generates the stipulated cubic yards of either organic waste or solid waste as presented bellow.

- **April 1, 2016** – Any commercial business that generates eight (8) cubic yards or more of organic waste per week will be required to arrange for organic waste recycling.
- **January 1, 2017** – Any commercial businesses that generate four (4) cubic yards or more of organic waste per week will be required to arrange for organic waste recycling.
- **January 1, 2019** – Any commercial businesses that generate four (4) cubic yards of **municipal solid waste** will be required to arrange for organic waste recycling.

It is easy to see that time is short and the task is enormous. WST strongly suggests, as recommended by CalRecycle officials, that we focus on the **January 2017 goal and immediately identify those covered entities** and conduct educational outreach and technical assistance so to meet the 2017 timeline.

4.1 Identify Covered Commercial Businesses

During a recent stakeholders meeting, CalRecycle stated that they expect every jurisdiction to identify covered entities by utilizing the NAISC business codes and implement an approved per employee methodology. CalRecycle stated that they would provide the referenced methodology in the coming months. In addition to the prescribed methodology, jurisdictions are free to submit any additional information that may add to the accuracy of the study.

WST has already conducted research and has been in contact with CalRecycle on avenues by which to identify covered entities. CalRecycle also suggested that in situations that a municipality does not have records of their commercial businesses identifying either the NAISC number or the employee count, to contract with a private listing service such as Dunn and Bradstreet. WST has reached out to Dunn & Bradstreet and has found that their listing services meet all the criteria necessary for this effort. WST will contract with Dunn & Bradstreet for accurate business lists that contain the NAISC number, owner contact information and employee count. WST will geo-code all businesses entities onto an outlined City of Industry boundary map. WST will then delete those entities that reside outside of the city boundaries and then apply the CalRecycle approved methodology to each listed business entity.

Those businesses that meet the requirements of a covered commercial business would be targeted for education outreach documentation and technical assistance. This database will also be utilized in the Use Permit tasks identified later in this proposal.

4.2 Identify infrastructure and opportunities

One of the key provisions contained in the organics recycling mandate is the requirement that the municipalities must provide the generators with recycling opportunities by identifying individual recycling programs for each of the targeted organic waste streams.

WST will work closely with all the stakeholders, including other jurisdictions, in the identification of permitted organic facilities. Additionally, WST will identify organic recyclers, food banks, rendering companies and other opportunities for review the purpose of meeting these unfunded mandates. All information will be provided to the City Engineer for review and direction.

4.3 Outreach & Technical Assistance (Combined with Task 3.1 and 3.2)

WST proposes that we augment the existing AB 341 outreach and technical assistance program with an expanded AB 1826 outreach and technical assistance program. Utilizing the both the existing Salvage Permit database, coupled with above-mentioned NAISC database, WST will prepare a targeted covered business mailing list and begin to both identify existing organic recycling while conducting technical assistance to those generators lacking either opportunity or expertise.

Task 5.0 Project Management, City Meetings and Annual Reporting

WST and the City of Industry staff will meet monthly to review all deliverables and program implementation results. WST will prepare an agenda and produce working documents of all programs currently being implemented.

Any and all program difficulties will be presented to staff for comments and suggestions. WST will present a report of hours allocated to each task to date. WST will review program costs, hourly budgets and proposed changes to the tasks pending.

WST will monitor and track all legislation and regulations that may impact the City or selected programs. All bills before the State Assembly, as well as the State Senate that pertain to solid waste will be reviewed and presented to the City Engineer. In the event proposed legislation would have any impact, either positive or negative, WST will recommend appropriate actions to the City Engineer.

WST staff will prepare any and all annual reports for CalRecycle along with the form 303A/B for DTSC. WST staff will be in attendance during all bi-annual reviews and any local CalRecycle required meetings.

Optional Task(s)

Task 6.0 Solid Waste Generator & Use Permit

In 2014 the City Council approved a revision to chapter 8.20 of the IMC, requiring each business operating within the City of Industry to register as a solid waste generator. This was needed in order to satisfy the mandatory commercial recycling requirements of AB 341, while attempting to ascertain an accurate account of the City of Industry business community.

6.1 Identify/Outreach

It is estimated by Dunn & Bradstreet that approximately 3,700 business entities operate within the City of Industry. Currently only 1,725 businesses hold a valid City of Industry Use Permit and many of those are outdated. Last year WST was able to identify 2,535 businesses through old Use Permit records, Industry Manufacturer Council lists and Valley Vista Services records. Of those 2,535 businesses contacted, 1,333 responded through the Solid Waste Generator Form (Form 104). Of the 1,333 respondents, 298 businesses did not have a Use Permit on file. Of the 935 non-respondents, indications are that approximately 410 of them do not have a use permit on file.

WST proposes to utilize the Dunn & Bradstreet listing service for accurate and reliable business data. WST will procure a business data subscription that will identify all active businesses within the City of Industry. The data will include the business entity, the building owner and all contact information for each. WST will merge the new database with our current database and update all business and contact information.

After the new database is merged and all contact information has been updated, those businesses that are newly identified will receive a packet of recycling outreach materials and information regarding Use Permit requirements. Those businesses and building owners that have yet to respond to previous demand letters, it is proposed by WST that we send a certified letter giving warning to both the building owner and occupant of pending administrative action. The letter will be approved and signed by the City Planner. This letter should be the last opportunity to procure a Use Permit before assessing an administrative fine by code enforcement.

For the term of the subscription, WST will receive updates on all businesses and any changes those identified businesses may have encountered. Updates will include name changes, ownership changes, contact information and address changes. WST will monitor all changes and update the database as well as forward address changes, name changes and contact information to the City of Industry.

6.2 Geo-Code

WST will geocode all business entities on Google map in a color-coded overlay. The maps will identify each business, their contact information and their Use Permit status. The geocode maps will aid code enforcement with critical contact information and location identifiers.

2015-2016 City of Industry Proposal

Task Title	\$150.00 Principal	\$65.00 Project Mngr.	Total
1.0 Construction Monitoring & Reporting Program			
1.1 Monitoring	40	150	\$15,750.00
1.2 Diversion Tonnage Reporting	30	60	\$8,400.00
1.3 Job-Site Visits/Technical Assistance/Outreach	50	0	\$7,500.00
	<hr/> 120	<hr/> 210	<hr/> \$31,650.00
2.0 Recycling/Salvage Permit Program			
2.1 Reporting & Permitting	150	450	\$51,750.00
2.2 Database Management	0	750	\$48,750.00
2.3 Recycler Audits	20	0	\$3,000.00
	<hr/> 170	<hr/> 1200	<hr/> \$103,500.00
3.0 Mandatory Commercial Recycling			
3.1 Education Outreach & Monitoring	104	215	\$29,575.00
3.2 On-Site Technical Assistance	104	0	\$15,600.00
	<hr/> 208	<hr/> 215	<hr/> \$45,175.00
4.0 Mandatory Organic Recycling			
4.1 Identify Covered Businesses	80	164	\$22,660.00
<i>Dunn & Bradstreet Subscription Service</i>			\$4,800.00
4.2 Identify Opportunities	20	0	\$3,000.00
4.3 Outreach & Technical Assistance	Inc.	Inc.	Inc.
	<hr/> 100	<hr/> 164	<hr/> \$30,460.00
5.0 Project Management/Reporting	200	0	\$30,000.00
Total Cost Estimate	<hr/> 798	<hr/> 1789	<hr/> \$240,785.00
	\$119,700.00	\$116,285.00	
6.0 Solid Waste Generator & Use Permit			
6.1 Identify/Outreach	10	64	\$5,660.00
6.2 Geo-Code	5	65	\$4,975.00
	<hr/> 15	<hr/> 129	<hr/> \$10,635.00

Please see the following page for a budget/income breakdown.

2015-2016 Budget/Income Projections

Task	Description	2015-2016 Proposal	2014-2015 Income	2015-2016 Projections	Notes
1.0	Construction Monitoring & Reporting	\$ 31,650.00	\$ 0.00	\$ 0.00	No fees associated/State Requirement
2.0	Recycling Permit Program	\$103,500.00	\$189,522.00	\$192,700.00	Sole income generator
3.0	Mandatory Commercial Recycling	\$ 45,175.00	Included	Included	No fees associated/State Requirement
4.0	Mandatory Organics Recycling	\$ 30,460.00	New	Unknown	New state required program, no fee's assoc.
5.0	Project Management	\$ 30,000.00	Included	Included	
6.0	Solid Waste Generator/Use Permit	\$ 10,635.00	\$ 0.00	\$ 0.00	No fees associated with the Business License
		\$251,420.00	\$189,522.00	\$192,700.00	

Recycling Permit Program Breakdown 2014-2015

- Tonnage – 67,771 x \$2.35 per = \$159,262
- Permit Fees – 43 x \$500 per = \$ 21,500
- Permit Fees – 26 x \$200 per = \$ 5,200
- Decal Fees – 356 x \$10 per = \$ 3,560
- \$189,522**

Recycling Permit Program Projections 2015-2016

- Tonnage – 70,000 x \$2.35 per = \$164,000
- Permit Fees – 42 x \$500 per = \$ 20,000
- Permit Fee – 26 x \$200 per = \$ 5,200
- Decals – 350 x \$10 per = \$ 3,500
- \$ 192,700**

During the 2013-2014 contract year the City was involved with a lawsuit with an unpermitted recycler regarding permit fees and licensing. The City Attorney (BWS) reviewed all the associated costs and income for the recycling/salvage permit program and determined that certain fees were excessive and unfair. The City Attorney recommended that the fees be lowered, causing a net income decrease of approximately \$51,000 for the 2014-2015 fiscal year. Should those changes not have occurred, the income for 2014-2015 would have been \$240,562 easily covering the \$198,765 contract fee for 2014-2015.

Of all the tasks outlined in the proposal only the recycling permit program has income associated with it. The recycling permit program covers the costs of tasks 1.0, 2.0 and 5.0. Task 3.0 "Mandatory Commercial Recycling" has been in place for only one year, while task 4.0 "Mandatory Organic Recycling" is a new state requirement. All in all, subtracting the new programs (3.0 and 4.0) the contract fees for WST services have always been covered by the income generated by the permit program.

Waste Systems 2015-2016 Schedule of Fees

7/29/15

EXHIBIT B

KEY PERSONNEL & COMPENSATION

1. Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are: Jeff Duhamel.
2. Total compensation under this Agreement, including reimbursement for actual expenses, may not exceed: \$240,785.00.

FEE SCHEDULE

(See attached Schedule)

Exhibit B

Principal	\$150/hour
Senior Consultant	\$135/hour
Administration	\$ 65/hour
Copies/Printing	Cost
Travel	Cost
Postage	Cost

Cancellation Clause

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 Waste Systems Technology, Inc. at least thirty (30) days prior written notice. Upon receipt of said notice, Waste Systems Technology, Inc. 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 void or invalidate the remainder of this agreement.

In the event this agreement is terminated pursuant to this section, the City shall pay to Waste Systems Technology, Inc. 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, Waste Systems Technology, Inc. will submit an invoice to the City pursuant to this proposal.

EXHIBIT C

INSURANCE

- A. **General Requirements.** Before commencing the performance of services under this Agreement, and at all other times this Agreement is effective, Consultant must procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

<u>Type of Insurance</u>	<u>Limits (combined single)</u>
Commercial General Liability:	\$1,000,000
Business Automobile Liability	\$1,000,000
Professional Liability	\$1,000,000
Workers Compensation	Statutory Requirement.

- B. **Commercial General Liability Insurance.** Commercial general liability insurance must have coverage at least as broad as Insurance Services Office (ISO) CGL Form No. CG 00 01 . The amount of insurance set forth above must be a combined single limit per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability for the policy coverage. The insurance must be on an "occurrence" not a "claims made" basis.
- C. **Business Automobile Insurance.** Automobile insurance must have coverage at least as broad as ISO Business Auto Coverage Form CA 00 01 covering bodily injury and property damage, including coverage for any owned, hired, non-owned or rented vehicles. If Consultant or Consultant's employees will use personal autos in connection with the provision of services under this Agreement, Consultant will provide evidence of personal auto liability coverage for each such person.
- D. **Professional Liability (Errors & Omissions) Insurance.** This coverage must be on a "claims made" basis, including coverage for contractual liability. The Professional Liability Insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of Consultant's services. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Consultant must purchase extended period coverage for a minimum of three years after completion of services.
- E. **Workers Compensation.** Consultant must have a State of California approved policy form providing the statutory benefits required by law with employer's liability limits of no less than \$1,000,000 per accident for all covered losses, or Consultant must provide evidence of an approved self-insurance program. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the Labor Code. Consultant certifies that it will comply with such provisions before commencing performance of services under this Agreement and thereafter maintain such coverage as required by the Labor Code.
- F. **Additional Insureds.** Each Commercial General Liability Insurance policy and Business Auto Insurance policy must provide that the City, its officials, officers, employees, agents and volunteers are "additional insureds" under the terms of the policy, and must provide that an act or omission of one the insureds will not reduce or avoid coverage to the other insureds.

- G. **Deductibles and Self-Insured Retention.** Any deductibles or self-insured retentions applicable to the insurance policies required under this Agreement must be declared to and approved by City. In no event may any required insurance policy have a deductible, self-insured retention or other similar policy provision in excess of \$50,000 without prior written approval by City in its sole discretion. At the option of City, either the insurer will reduce or eliminate such deductibles or self-insured retentions with respect to the City's additional insureds or Consultant will procure a bond guaranteeing payment of any losses, damages, expenses, costs or settlements up to the amount of such deductibles or self-insured retentions.
- H. **Primary Insurance.** Each of the commercial general liability and business auto insurance policies maintained by Consultant under this Agreement must state that such insurance will be deemed "primary" so that any insurance that may be carried by City will be deemed excess to that of Consultant. This endorsement must be reflected on ISO Form No. CG 20 10 11 85 or 88, or current equivalent form acceptable to City.
- I. **Certificates of Insurance and Endorsements; Notice of Termination or Changes to Policies.** Prior to commencing any services under this Agreement, Consultant must file with the City certificates of insurance and endorsements evidencing the existence of all insurance required by this Agreement, along with such other evidence of insurance or copies of policies as may reasonably be required by City. These certificates of insurance and endorsements must be in a form approved by the City Attorney. Consultant must maintain current certificates and endorsements on file with City during the term of this Agreement reflecting the existence of all required insurance. Each of the certificates must expressly provide that no termination or cancellation of the required coverage will be effective except upon 30 days' prior written notice to City. The delivery to City of any certificates of insurance or endorsements that do not comply with the requirements of this Agreement will not waive the City's right to require compliance. In the event that Consultant's policies are materially changed, Consultant must provide the City with at least 30 days' prior written notice of the applicable changes.
- J. **Insurance Rating.** All insurance required to be maintained by Consultant under this Agreement must be issued by companies licensed by or admitted to conduct insurance business in the State of California by the California Department of Insurance and must have a rating of A or better and Class VII or better by the latest edition of A.M. Best's Key Rating Guide.
- K. **Aggregate Limits.** The aggregate limits for each insurance policy required under this Agreement must apply separately and solely to the services performed under this Agreement. If the required policies do not have an endorsement providing that the aggregate limit applies separately to the services being performed, or if defense costs are included in the aggregate limit, then the required aggregate limits must be increased to an amount satisfactory to City.
- L. **Excess or Umbrella Liability Insurance (Over Primary).** If an excess or umbrella liability policy is used to meet limit requirements, the insurance must provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an excess or umbrella liability policy must include a "drop-down provision" providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage must be provided on a "pay-on-behalf" basis, with defense costs payable in addition to policy limits. There may be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage must be applicable to City for injury to employees of Consultant, its subcontractors or others performing work to satisfy Consultant's obligations under this Agreement. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review, but in no event may be less than \$4,000,000 per occurrence and aggregate.
- M. **Waiver of Subrogation Rights.** Consultant and each insurer providing any insurance required by this Agreement must waive all rights of subrogation against City, its officials, officers,

employees, agents and volunteers, and each insurer must issue a certificate to the City evidencing this waiver of subrogation rights.

- N. **Subcontractor Insurance.** Should the Consultant subcontract out any of the work or services required under this Agreement, it must include all subcontractors as insured's under its policies or maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Exhibit C. If this option is exercised, both City and Consultant must be named as additional insured under the subcontractor's general liability policy. All coverages for subcontractors will be subject to all the requirements of this Exhibit C. The City reserves the right to perform an insurance audit during the term of this Agreement to verify compliance with requirements.
- O. **Failure to Maintain Required Insurance.** If Consultant, for any reason, fails to obtain and maintain the insurance required by this Agreement, City may obtain such coverage at Consultant's expense and deduct the cost of such insurance from payments due to Consultant under this Agreement or may terminate the Agreement.
- P. **Effect of Coverage.** The existence of the required insurance coverage under this Agreement will not be deemed to satisfy or limit Consultant's indemnity obligations under this Agreement. Consultant acknowledges that the insurance coverage and policy limits set forth in this Agreement constitute the minimum coverage and policy limits required. Any insurance proceeds available to City in excess of the limits and coverage required by this Agreement, and which is applicable to a given loss, must be made available to City to compensate it for such losses.
- Q. **Higher Limits of Insurance.** If Consultant maintains higher limits of insurance than the minimums shown above, City will be entitled to coverage for the higher limits maintained by Consultant.
- R. **Evaluation and Revision of Coverage.** City retains the right to modify, delete, alter or change the insurance requirements set forth in this Exhibit C upon not less than 90 days prior written notice. If any such change results in a substantial additional cost to Consultant, the City and Consultant may renegotiate Consultant's compensation under this Agreement.

CITY COUNCIL

ITEM NO. 5.4

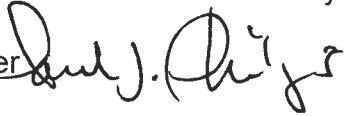




CITY OF INDUSTRY

P.O. Box 3366 • 15625 E. Stafford St. • City of Industry, CA 91744-0366 • (626) 333-2211 • FAX (626) 961-6795

MEMORANDUM

To: Honorable Mayor Radecki and Members of the City Council

From: Paul J. Philips, City Manager 

Staff: Alex Gonzalez, Director of Development Services and Administration 
Kristen Weger, Administrative Analyst 

Date: November 17, 2016

SUBJECT: Consideration of a Professional Services Agreement with Cordoba Corporation for Engineering Staff Augmentation Services from November 17, 2016 to November 17, 2019 in an amount not to exceed \$3,000,000

On September 8, 2016, the City of Industry released a Request for Qualifications (“RFQ”) for Engineering Services Bench. The RFQ was posted in the City’s PlanetBids™ vendor portal and an email notification was sent out to all registered vendors. The appropriate trade journals were notified and included Bid America, Southern California Builders Association, Construction Bidboard and Dodge Data & Analytics on September 6, 2016. The RFQ was advertised on Thursday, September 8, 2016 and Tuesday, September 15, 2016 in the San Gabriel Valley Tribune. Questions pertaining to the RFQ were received up until September 29, 2016 at 1:00 pm in the City’s PlanetBids vendor portal. The deadline to submit a Statement of Qualifications (“SOQ”) to the City was October 12, 2016 at 1:00 pm.

An RFQ Bench allows for evaluators to determine if multiple contractors are qualified to perform work. Price is not a determining factor in a Request for Qualifications. Proposers submitted a separate electronic document in PlanetBids™ with labor rates, and those documents are not opened until the results of the evaluation process are completed.

The City received responses from thirty-nine engineering firms. One (1) engineering firm was invalidated by PlanetBids due to not acknowledging receipt of issued RFQ addendums. The thirty-eight engineering firms that successfully submitted their Statement of Qualifications each chose different service categories that they would like to be considered based on their expertise. Those service categories were staff augmentation, civil engineering, structural engineering, project management/construction management, geotechnical engineering, survey and right of way engineering, traffic and transportation engineering, contract and funding administration, permit inspections, potable water, recycled water and storm water design, electrical engineering, internet and data utility design, landfill management design, ADA and CASp support and

environmental engineering. Eighteen firms submitted to be evaluated to provide staff augmentation services to the City.

A selection panel evaluated the SOQs submitted based on the following criteria:

Table 1 – Statement of Qualifications Evaluation Per Criteria

Criteria Categories	Criterion	Possible Points	Points Awarded
Project Understanding	Statement of Qualifications consistent with RFQ. Scope and workplan consistent with subject areas of expertise selected. Identification of key project factors.	10	
Project Management	Does the account manager and team members assigned to the project have prior experience on similar successful projects including, but not limited to, other public agencies?	10	
Qualifications of Firm/Team	Did the Consultant describe the technical qualifications and experience of proposed staff members?	10	
Responsiveness	Is the Consultant willing and able to respond 24 hours a day, seven days a week in the event of an emergency? Can the Consultant perform or provide the required services promptly, or within the time specified without delay or interference?	10	
Total Points			

Based on the results of the Statement of Qualifications process, the highest ranking and qualified firms were invited to interview. The City held interviews on October 8, 2016 at City Hall. Five firms were invited to interview, which were Cordoba Corporation, CWE Corp, HRGreen, JMDiaz, Inc., and Onward Engineering. The interview panel consisted of five (5) members who evaluated the firms based on the following criteria:

Table 2 – Engineering Staff Augmentation Services Interview Evaluation Per Criteria

Criteria Categories	Criteria	Possible Points	Points Awarded
Project Understanding	Does the Consultant have a clear understanding of staff augmentation services to include, but not limited to engineering, quality assurance and quality control (“QA/QC”), safety assurance, plan checking, inspection, project management, value engineering, GIS, project accounting, and utility coordination?	10	
Project Management	Does the account manager and team members assigned to the project have prior experience on similar successful projects including, but not limited to, other public agencies?	10	
Qualifications of Firm/Team	Did the Consultant describe the technical qualifications and experience of proposed staff members?	10	
Responsiveness	Is the Consultant willing and able to respond 24 hours a	10	

	day, seven days a week in the event of an emergency? Can the Consultant perform or provide the required services promptly, or within the time specified without delay or interference?		
Total Points			

The following tables summarize the interview evaluation rankings.

Table 1 – Summary of Utility Administration Rankings

Firm	Rank
Cordoba Corporation	1
JMDiaz, Inc.	2
Onward Engineering	3
HRGreen	4
CWE Corp	5

Engineering staff augmentation services is necessary to provide peer review of designs and plans provided by the City's in-house engineering firm C & C Engineering, Inc., and to ensure Quality Control and Quality Assurance ("QA/QC") as well as conformance to generally accepted engineering principles and project management.

Fiscal Impact

An appropriation of \$1,000,000 from General Fund reserves to General Fund – Civil Financial Center – General Engineering (account no. 100-625-5900) is necessary at this time to fund the Professional Services Agreement for Fiscal Year 2016-2017.

Recommendation

- 1.) Based on the interview rankings, staff recommends that Cordoba Corporation be awarded a Professional Services Agreement to provide Engineering Staff Augmentation Services from November 17, 2016 to November 17, 2019 in an amount not to exceed \$3,000,000; and
- 2.) Appropriate \$1,000,000 from General Fund reserves to General Fund – Civil Financial Center – General Engineering (account no. 100-625-5900) for the Professional Services Agreement in Fiscal Year 2016-2017.

Staff will return to City Council on December 8, 2016, for consideration of the bench results for all remaining engineering services categories to include civil engineering, structural engineering, project management/construction management, geotechnical engineering, survey and right of way engineering, traffic and transportation engineering, contract and funding administration, permit inspections, potable water, recycled water and storm water design, electrical engineering, internet and data utility design, landfill management design, ADA and CASp support and environmental engineering.

Exhibits

- A. Professional Services Agreement with Cordoba Corporation for Engineering Staff Augmentation Services from November 17, 2016 to November 17, 2019 in an amount not to exceed \$3,000,000
 - B. Request for Qualifications ("RFQ") for Engineering Services Bench, Contract No. 2016-1002 released September 8, 2016, and Addendum Nos. 1 - 3
-

PJP:AG:KW:mk

EXHIBIT A

**Professional Services Agreement with Cordoba Corporation for Engineering Staff
Augmentation Services from November 17, 2016 to November 17, 2019 in an
amount not to exceed \$3,000,000**

[Attached]

CITY OF INDUSTRY

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of November 17, 2016 ("Effective Date"), between the City of Industry, a municipal corporation ("City") and Cordoba Corporation, a California corporation ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, 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.

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 tasks described herein are completed, but in no event later than November 17, 2019, 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 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 staff augmentation 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) City has not consented in writing to Consultant's performance of such work. 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 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.

4. PAYMENT

(a) The City agrees to pay Consultant in accordance with the payment rates and terms and the hourly 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 million dollars (\$3,000,000.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(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 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 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, 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 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 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.

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 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 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 and 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 adjudicating the City 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.

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 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.

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 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 City: City of Industry
15625 E. Stafford, Suite 100
City of Industry, CA 91744

Attention: City Manager

With a Copy To: James M. Casso, City Attorney
Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345

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

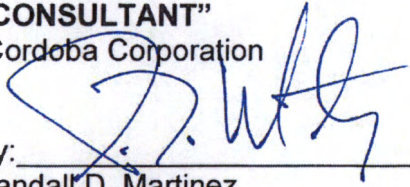
The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

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

"CITY"
City of Industry

By: _____
Paul J. Philips, City Manager

"CONSULTANT"
Cordoba Corporation

By:  _____
Randall D. Martinez,
Executive Vice President & COO

Attest:

By: _____
Diane M. Schlichting, Chief Deputy City Clerk

Approved as to form:

By: _____
James M. Casso, City Attorney

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:

1. General Engineering and Project Management

- A. Provide all aspects of civil engineering, plan checking, capital project management, and assistance in obtaining federal, state and other funding for transportation and other infrastructure projects;
- B. Review all matters pertaining to engineering to ensure that initiatives proposed and implemented by the City and others are done in a manner that protects the City's interests, and are consistent with local, state and federal laws;
- C. Assist in planning, coordinating, supervising and evaluating infrastructure, programs, plans, and services;
- D. Evaluate the City'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;
- E. Provide engineering, design services, land surveying and manage construction of public works projects;
- F. Be available to public and private developers to handle matters dealing with the engineering functions of city government;
- G. Maintain, at City Hall, municipal engineering records and maps required to ensure accurate information is available to the public and City staff;
- H. Prepare reports, investigations, studies and evaluations as may be required by the Director of Development Services and Administration or his designee;
- I. Advise the City as to engineering and construction funding available from other government agencies, and when so directed, prepare and initiate applications for funding;
- J. Design of capital improvement projects, improvement plans, specifications, bid documents, and public improvement project management and inspection;
- K. Solicit proposals for capital improvement project design work, construction management, and inspection, as needed;
- L. Review and evaluate bid submittals;
- M. 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;
- N. Negotiate land acquisitions, dispositions, easements, agreements, leases, and other associated property rights as it relates to engineering projects;

- O. Assist with the development and implementation of a multi-year Capital Improvement Program for the City;
- P. Attend City Council, The Successor Agency to the Industry Urban-Development Agency, Oversight Board of the Successor Agency to the Industry-Urban Development Agency and other meetings as requested;
- Q. Provide such other related engineering services as requested by the City Manager or his designee;
- R. Provide peer review for City contractors and accept peer review from City Contractors, as directed;
- S. Shall provide peer review of C&C Engineering, Inc., designs and plans to ensure Quality Control and Quality Assurance ("QC/QA") as well as conformance to generally accepted accounting principles;
- T. Conform to systems of procurement, administrative and financial controls, as directed; and
- M. Provide utility coordination services as requested.

2. 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 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.

3. Schedule of Services

- A. Place the highest emphasis on customer service;
- B. Be reachable and available to respond to emergencies within the City all times. Consultant must provide City with emergency contact numbers for key personnel to facilitate the immediate response by Consultant to emergencies and provide an updated contact list every six months;
- C. Communicate effectively with citizens before, during, and after construction projects;
- D. Consultant shall provide written comments for initial and subsequent review to the City no later than ten (10) calendar days from date of receipt of the plans. Consultant shall provide comments for expedited plan reviews within three (3) working days of receipt of the plans.

EXHIBIT B

RATE SCHEDULE

NAME	CLASSIFICATION/Job Function	HOURLY RATE
Roberto Ramirez PE	Account Manager/Sr. Project Manager & Sr. Design Engineer	\$240
Angel Alvarez PE	Construction Services Senior Advisor	\$240
Ara Movsessian	Project Controls 2/Contracts Administration	\$130
Arnold Luft, P.E., S.E.	Senior Design Engineer/Design QA and QC	\$175
Barry Thomas	Project Manager 2/ADA and CASp	\$160
Caren Whilhoit, CSST, CIP	Office Engineer 2/Permit Inspections, NPDES, CEQA, NEPA	\$135
Catherine Mireles	Design Engineer 1/Civil Infrastructure Water-Wastewater Design	\$140
Cathy Higley	Transportation Planning Senior Advisor	\$275
Cesar Manapsal	Senior Project Controls/Scheduling and Cost	\$175
Christine Mcleod	Senior Planner /Environmental and Regulatory Affairs	\$175
Claudia Tarpin	Construction Manager 1/Permits Coordination	\$140
Danielle Chupa	Senior Planner/Environmental & Regulatory Planning Project Mgmt	\$175
Evgeny Gavrilov PE	Design Engineer 2/Civil and Transportation Infrastructure	\$160
Gabriel Murillo	Project Manager 2/Civil Infrastructure and Utilities	\$160
Guadalupe (Pete) Gomez	CADD Technician 1	\$90
Henry Martinez	Water "Infrastructure" Senior Advisor	\$275
Jim Stahl	Strategic Advisor-Wastewater/Recycled Water (Policy, Storage, Water Rights)	\$335
Joe Villa	CADD Manager/ CADD Management and Design Standards	\$120
John Duong, AIA	Project Manager 2/ Facilities and ADA Compliance	\$160
Jose Garcia	Design Engineer 1/Civil Infrastructure and Storm Water Design	\$140
Karen Scarborough	Sr. Planner/Env. Mitigation Specialist, Regulatory & Env. Compliance	\$175
Lisa Linder	Project Controls 1/Project Accounting	\$110
Phil Valadez	Senior Construction Manager/Facilities	\$175
Robert Phillips	Field Engineer 1/Internet and Data Utility Design	\$110
Ronald Gastelum	Strategic Advisor-Potable Water/Recycled Water (Policy, Storage, Water Rights)	\$335
Sam Tenorio	Senior Project Manager/ Civil and Mechanical Infrastructure	\$175
Sharon Woods, GIT	Senior Field Engineer/Geotechnical and Permit Inspections	\$135
Sonia Babian	Project Manager 1/ADA and CASp	\$140
Valerie Mudegoren	Project Controls 2/Cost Analysis	\$130

CLASSIFICATION/Job Function	HOURLY RATE
Senior Energy Advisor	\$240
Senior Project/Construction Management Advisor	\$240
Sr. Project Manager	\$175
Project Manager 2	\$160
Project Manager 1	\$140
Senior Construction Manager	\$175
Construction Manager 2	\$160
Construction Manager 1	\$140
Senior Design Engineer	\$175
Design Engineer 2	\$160
Design Engineer 1	\$140
Senior Planner	\$175
Planner 2	\$140
Planner	\$130
Senior Field Engineer	\$135
Field Engineer 2	\$110
Field Engineer 1	\$ 85
Senior Office Engineer (includes Permit Coordination)	\$140
Office Engineer 2 (includes Permit Coordination)	\$135
Office Engineer 1 (includes Permit Coordination)	\$110
Senior Project Controls	\$175
Project Controls 2	\$140
Project Controls 1	\$110
CAD Design Management	\$120
CADD 2	\$100
CADD 1	\$ 90
Technical Editor	\$153
Executive Assistant	\$ 62

City shall reimburse Consultant its actual costs for all photocopying and postage, upon submittal of evidence of said costs along with the monthly invoice, as set forth in the agreement.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, 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 City, 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 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 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 City 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 before the City'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 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, 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 City, 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 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.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City 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 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 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 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 City 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 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 City.

Timely notice of claims. Consultant shall give the City 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.

EXHIBIT B

**Request for Qualifications (“RFQ”) for Engineering Services Bench, Contract No.
2016-1002 released September 8, 2016 and Addendum Nos. 1 - 3**

[Attached]

CITY OF INDUSTRY

NOTICE INVITING REQUEST FOR QUALIFICATIONS

(RFQ) FOR ENGINEERING SERVICES BENCH

Contract No. 2016-1002



**SUBMIT PROPOSALS TO
City of Industry via
PlanetBids™ Vendor Portal:**

<http://www.cityofindustry.org/?p=proposal-and-bid>

SCHEDULE AND PROCESS:

RFQ Announcement and Issuance	Thursday, September 8, 2016
Question Submittal Deadline	Thursday, September 29, 2016 at 1:00 pm
Proposal Submittal Deadline	Wednesday, October 12, 2016 at 1:00 pm
Contractor Interview (if desired by City)	October 17-28, 2016
City Council Consideration (tentative)	Thursday, November 10, 2016

Table of Contents

Description

Section 1: Introduction and General Information	3
Section 2: Scope of Services	5
Section 3: Contractor Qualifications and Requirements	6
Section 4: Proposal Submittal Requirements	8

Attachments

Attachment 1: Sample Professional Services Agreement	10
Attachment 2: Insurance Requirements	21

SECTION 1 INTRODUCTION AND GENERAL INFORMATION

Overview of the Request for Proposals

The City of Industry (City) is requesting Qualifications to procure qualified contractors to provide technical, professional, and staff support services to the City's Development Services Department and to develop a bench of qualified consultant firms that may be used as necessary.

Qualified contractors that are accepted on the Engineering Services Bench will execute agreements with the City that detail the areas of expertise for the firm and the hourly rates for services through the term of the contract. The City will use the pre-qualified Engineering Services Bench as projects arise by distributing proposal requests to a minimum of three firms on the pre-qualified bench to meet the procurement policies of the City of Industry.

The City reserves the right to release competitive procurements to firms outside of the pre-qualified Engineering Services Bench if the City determines that it is in its best interests, based on the project's funding source or any other factors at the discretion of the City.

RFQ Guidelines

All contacts pertaining to this Request for Qualifications shall be directed via the City of Industry's PlanetBids™ vendor portal to:

**Kristen Weger, Administrative Analyst
City of Industry
P.O. Box 3366
City of Industry, CA 91744-0366
(626) 333-2211**

The City assumes no responsibility for any costs incurred by an individual/Contractor in the preparation and/or presentation of a proposal in response to this Request. To be considered, respondents must submit a complete response in accordance with the requirements contained in **Section 4** of this Request. Submittals must be signed by the individual or an officer of the Contractor authorized to bind the Contractor to its provisions.

All submittals and supporting materials become the property of the City of Industry upon its receipt by the City. The City reserves the right to reject any and all submittals received, or to request additional information from any or all of the respondents for the purpose of ascertaining the most qualified individual(s)/Contractor(s) for the services requested.

Response Date

To be considered, a statement of qualifications must be received by the City of Industry no later than 1:00 p.m., on Wednesday, October 12, 2016 via the City of Industry's PlanetBids™ vendor portal. Proposals are to be submitted through <http://www.cityofindustry.org/?p=proposal-and-bid>.

Proposals cover page must clearly state: **ENGINEERING SERVICES BENCH**

Postmarks, mailed, emailed or hard copy proposals will not be accepted. Late proposals will not be accepted.

Selection of Contractor

The City shall select MULTIPLE Individual(s)/Contractor(s) based on a combination of factors, such as: responsiveness and comprehensiveness of the Proposer with respect to this Request for Qualifications (RFQ); technical background and experience of the firm; technical background and experience of the proposed team members; previous work performed for other public agencies; and information obtained from references. Proposers will self-identify the engineering services categories in which they consider themselves qualified, and proposers are encouraged to detail in their submittal the full range of expertise that the firm can provide. Cost will not be a deciding factor in selection, proposers will submit sealed price proposals that detail hourly rates for proposed staff. Markups for travel, subcontractor markups, or markups for other expenses that cannot be clearly documented and supported will not be accepted. Modifications to the City's Professional Services Agreement will not be accepted. This RFQ, to determine a prequalified bench for multiple engineering services, will be used to procure future project and program work that is not required to be procured under Federal guidelines. The City of Industry Municipal Code requires a minimum of three (3) proposals to award work, therefore, it is expected that a minimum of three (3) firms will be pre-qualified in each category in order to comply with the City's Municipal Code.

In addition, the following factors will be considered:

1. Completeness of the proposal and ability of the Proposer to comply with the mandatory requirements proposed under this RFQ;
2. Whether the Contractor has the financial resources and facilities to perform or provide the required services promptly, or within the time specified without delay or interference;
3. Experience implementing similar projects/programs;
4. Recommendations from prior clients and record of performance on previous contracts or services;
5. Ability to communicate effectively with a diverse population, particularly English, Spanish, Korean and Cantonese/Mandarin language speakers; and
6. Ability to respond or operate 24 hours a day, seven days a week in the event of an emergency.

Some or all of the respondents may be requested to make an oral presentation of their qualifications.

SECTION 2 SCOPE OF SERVICES

General Description

The City of Industry is seeking qualified contractors to provide a wide range of professional engineering services to the City under the guidance of City staff and the City's in-house contracted engineering firm(s). The City's in-house contracted engineering firm(s) are not precluded from submitting bids on projects that require procurement. If the contracted in-house engineering firm expresses a desire to submit a bid on a project that requires procurement, their staff will be precluded from participating in the procurement process. However, if the City's in-house contracted engineering firm(s) is awarded a contract after a competitive procurement process, another engineering firm from the pre-qualified bench will be chosen to provide project oversight and management, plan checking, inspection, QA/QC services, and any other services deemed necessary to ensure peer review. It is the intent of the City to develop a comprehensive bench of pre-qualified contractors that can work in synergy to deliver the large number of projects that are included in the City's Capital Improvement Program, while introducing transparency in the procurement process. It is also critical for the City that multiple checks and balances are in place to ensure that the City's funds are used efficiently and that projects are built on-time and under budget. Services to be provided under this Request for Qualifications include, but are not necessarily limited to, the following:

1. **Staff Augmentation:** Engineering, QA/QC, Safety Assurance, Plan Checking, Inspection, Project Management, Value Engineering, GIS, Project Accounting, Utility Coordination and other staff augmentation services as deemed necessary.
2. **Civil Engineering** Plans, Specifications and Estimates, CADD, Design topo and Mapping/Cadastral Services.
3. **Structural Engineering** Services.
4. **Project Management/Construction Management**, Public Bidding Process Coordination, Closeout and Audits.
5. **Geotechnical Engineering** Services.
6. **Survey and Right of Way Engineering**.
7. **Traffic and Transportation Engineering** – including Railroad, Bicycle, Pavement, Pedestrian and Human Factors.
8. **Contract and Funding Administration**, including oversight and reporting.
9. **Permit Inspections** (NPDES, MS4) as needed and Sanitary Sewer Design, Plans, Inspections, and System Capacity Calculations.
10. **Potable Water, Recycled Water, and Stormwater Design**, Plans and Specifications.
11. **Electrical Engineering**, including Electrical Utility Design, Plans and Specifications – including PV and alternative energy generation.
12. **Internet and Data Utility Design**, Plans and Specifications.
13. **Landfill Management Design**, Plans and Specifications.
14. **ADA and CASp support**.
15. **Environmental Engineering**, staff support and reporting for open space and habitat areas.

SECTION 3 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

General Qualifications and Requirements

In order to be considered, Proposers must meet the requirements outlined in this section. Proposers that do not meet the requirements will be considered non-responsive and their submittal will be rejected.

1. **Experience.** The selected individual(s)/Contractor(s) will have extensive experience that shows the Contractor(s) can provide professional, first-class service.
2. **Principal.** The account manager, or contact person, assigned to the City will be a consideration in the selection. Qualifications and prior experience in similar programs and activities must be demonstrated in the proposal. Once selected, the account manager, or contact person, assigned to the project or contract shall not be changed without prior written consent of the City. An organizational chart, if applicable, shall be submitted with the proposal.
3. **Appropriate Licenses or certifications.** Contractor is required to have in full force and affect all licenses and permits required by all applicable laws.
4. **Insurance.** The following are the legal and insurance requirements of the City of Industry for the selected Contractor. They are non-negotiable. The detailed insurance requirements are included in Exhibit A:
 - a) Time for Compliance. Contractor shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.
 - b) Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:
 1. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and*

Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

2. Minimum Limits of Insurance. Contractor shall maintain limits no less than:
(1) *General Liability:* \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

SECTION 4 PROPOSAL SUBMITTAL REQUIREMENTS

Submittal Format and Content

1. The submittal should be typed and as brief as possible while adequately describing the qualifications of the Contractor.
2. Only one proposal per Contractor will be considered, and the Contractor must clearly state all of the subject areas of expertise: **Staff Augmentation, Civil Engineering, Structural Engineering, Project Management/Construction Management, Geotechnical Engineering, Survey and Right of Way Engineering, Traffic and Transportation Engineering, Contract and Funding Administration, Permit Inspections, Potable Water, Recycle Water and Stormwater Design, Electrical Engineering, Internet and Data Utility Design, Landfill Management Design, ADA and CASp Support, and/or Environmental Engineering.**
3. The proposing Contractor shall submit the following information with the package, including the same information on subcontractors, in the following format:
 - a. **Cover Letter.** In no more than two (2) pages, the Contractor should provide the name, address and phone number of the Consultant, the primary contact name and phone number, any qualifying statements or comments regarding the proposal and identification of any sub-consultants and their responsibilities. The signed letter should also include a paragraph stating that the Contractor is unaware of any conflict of interest in performing the proposed work.
 - b. **Qualifications.** This portion should include a description of the qualifications of the assigned staff and sub-contractors, relevant technical experience, and the availability of the staff for the services provided. After selection of a Contractor(s) by the City, no substitution of key staff or subcontractors may occur without the written approval of the City. A list of related projects should be included with the name of the contract person and the telephone number for which the Contractor has recently or currently provides services as outlined under the Scope of Work.
 - c. **Scope of Work.** The Contractor shall describe the proposed work by task, including any tasks to be performed by sub-contractors.
 - d. **Project Fees.** Proposing Contractors must submit a sealed hourly fee proposal that includes a schedule of fees for all pertinent employees proposed for the project. Fee schedules for contractors that are not chosen will not be opened. Hourly rates are not a deciding factor in the award. It is expected that the hourly rates submitted will remain fixed for the duration of the contract, which is projected to be a three (3) year term.
 - e. **Acceptance of Conditions.** This section will be a statement offering the Contractor's acceptance of all conditions listed in the Request for Qualifications document. Any

exceptions or suggested changes to the RFQ or any contractual obligations, including the suggested change, the reasons therefore and the impact it may have on cost or other considerations on the Contractor's behalf must be stated in the submittal. Unless specifically noted by the Contractor, the City will assume that the submittal is in compliance with all aspects of the RFQ.

Evaluation and Selection Process

Selection will follow these steps:

1. **Submittal Review:** Each submittal will be reviewed to determine if it meets the RFQ requirements. Failure to meet the requirements of the RFQ will be cause for rejection. The City will consider the following in selecting a contractor(s).

Response to requested Scope of Services and this RFQ;
Professional reputation;
Experience of the Contractor;
Qualifications;
Number and experience of personnel;
References provided.

2. **Interview.** Contractors may be interviewed by an oral board.
3. **Professional Services Agreement.** The Director of Development Services and Administration will request a professional services agreement subject to negotiation of precise work program, terms of payment and other City requirements from the Contractor(s) found most qualified. Nothing in this RFQ should imply a contractual obligation for employment.
4. **Contract Approval and Execution.** The agreement will be presented to the City of Industry City Council for approval and execution by the City Manager.

Please submit the proposal **no later than 1:00 p.m., on Wednesday, October 12, 2016** via City of Industry PlanetBids™ vendor portal <http://www.cityofindustry.org/?p=proposal-and-bid>.

Attachment 1

**City of Industry
Professional Services Agreement**

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of **INSERT DATE** ("Effective Date"), between the City of Industry, a municipal corporation ("City") and **INSERT NAME OF CONSULTANT AND TYPE OF LEGAL ENTITY [i.e.-limited liability company, corporation, partnership, etc.]**("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, 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.

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 tasks described herein are completed, but in no event later than **INSERT DATE**, 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 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 **INSERT TYPE OF 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) City has not consented in writing to Consultant's performance of such work. 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 **INSERT STAFF RESPONSIBLE FOR THE PROJECT** 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.

4. PAYMENT

(a) The City 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 **INSERT WRITTEN DOLLAR AMOUNT** dollars (\$) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(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 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 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, 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 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 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.

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 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 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 and 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 adjudicating the City 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.

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 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.

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 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 City:

City of Industry
15625 E. Stafford, Suite 100
City of Industry, CA 91744

Attention: City Manager

With a Copy To:

James M. Casso, City Attorney
Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345
City of Industry, CA 91746

To Consultant:

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 and indemnity provision similar to the one provided herein and identifying City 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 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.

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

“CITY”

City of Industry

“CONSULTANT”

INSERT NAME OF COMPANY

By: _____ By _____

Paul Philips, City Manager

Name, Title

Attest:

By: _____

Cecelia Dunlap, Deputy City Clerk

Approved as to form:

By: _____

James M. Casso, City Attorney

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

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

RATE SCHEDULE

EXHIBIT CINSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, 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 City, 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 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 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 City 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 before the City'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 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, 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 City, 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 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.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City 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 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 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 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 City 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 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 City.

Timely notice of claims. Consultant shall give the City 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.

September 21, 2016

City of Industry
15625 E. Stafford Street, Suite 100
City of Industry, CA 91744

RFQ Addendum No. 1

CITY OF INDUSTRY

REQUEST FOR QUALIFICATIONS ("RFQ") FOR ENGINEERING SERVICES BENCH

CONTRACT NO. 2016-1002

NOTE: The following attachments are hereby made a part of the project and supersede or amend the corresponding information included in the original "Request for Qualifications" (RFQ).

All other terms and conditions remain unchanged.

REQUEST FOR QUALIFICATIONS

SECTION 4, PROPOSAL SUBMITTAL REQUIREMENTS, PAGE 8, D. PROJECT FEES, Proposing Contractors must upload and submit a sealed hourly fee proposal that includes a schedule of fees for all pertinent employees proposed for the project via the City of Industry's Planet Bids vendor portal. All sealed hourly fee proposal files shall be uploaded as a separate file from the Statement of Qualifications and shall be clearly marked "Hourly Fee Proposal" in the file name.

END OF ADDENDUM

September 21, 2016

City of Industry
15625 E. Stafford Street, Suite 100
City of Industry, CA 91744

RFQ Addendum No. 2

CITY OF INDUSTRY

REQUEST FOR QUALIFICATIONS ("RFQ") FOR ENGINEERING SERVICES BENCH

CONTRACT NO. 2016-1002

NOTE: The following attachments are hereby made a part of the project and supersede or amend the corresponding information included in the original "Request for Qualifications" (RFQ).

All other terms and conditions remain unchanged.

REQUEST FOR QUALIFICATIONS

SECTION 4, PROPOSAL SUBMITTAL REQUIREMENTS, PAGE 8,

3. The proposing Contractor shall submit the following information with the package, in the following format:

A. COVER LETTER, the first sentence shall read: In no more than two (2) pages, the Contractor should provide the name, address and phone number of the Consultant, the primary contact name and phone number, any qualifying statements or comments regarding the proposal and identification of their responsibilities.

B. QUALIFICATIONS. This portion should include a description of the qualifications of the assigned staff, relevant technical experience, and the availability of the staff for the services provided. After selection of a Contractor(s) by the City, no substitution of key staff may occur without the written approval of the City. A list of related projects should be included with the name of the contract person and

the telephone number for which the Contractor has recently or currently provides services as outlined under the Scope of Work.

- C. SCOPE OF WORK.** The Contractor shall briefly describe the proposed work that would be performed for the engineering services category submitting. However, the City would like firms to submit individually based on their experience and in-house qualifications.

END OF ADDENDUM

October 6, 2016

City of Industry
15625 E. Stafford Street, Suite 100
City of Industry, CA 91744

RFQ Addendum No. 3

CITY OF INDUSTRY

REQUEST FOR QUALIFICATIONS ("RFQ") FOR ENGINEERING SERVICES BENCH

CONTRACT NO. 2016-1002

NOTE: The following attachments are hereby made a part of the project and supersede or amend the corresponding information included in the original "Request for Qualifications" (RFQ).

All other terms and conditions remain unchanged.

REQUEST FOR QUALIFICATIONS

COVER PAGE, SCHEDULE AND PROCESS,

Contractor Interview (if desired by City) October 17 – November 4, 2016.

PAGE 9, EVALUATION AND SELECTION PROCESS, 2. INTERVIEW,

Contractors submitting for consideration to provide Staff Augmentation services may be interviewed by an oral board. All other subject areas of expertise will not be interviewed.

END OF ADDENDUM

CITY COUNCIL

ITEM NO. 5.5



CITY OF INDUSTRY

P.O. Box 3366 • 15625 E. Stafford St. • City of Industry, CA 91744-0366 • (626) 333-2211 • FAX (626) 961-6795

MEMORANDUM

To: Honorable Mayor Radecki and Members of the City Council

From: Paul J. Philips, City Manager *Paul J. Philips*

Staff: Alex Gonzalez, Director of Development Services and Administration *AG*
Kristen Weger, Administrative Analyst *KW*

Date: November 17, 2016

SUBJECT: Consideration of a Professional Services Agreement with JMDiaz, Inc. for Engineering Staff Augmentation Services from November 17, 2016 to November 17, 2019 in an amount not to exceed \$3,000,000

On September 8, 2016, the City of Industry released a Request for Qualifications (“RFQ”) for Engineering Services Bench. The RFQ was posted in the City’s PlanetBids™ vendor portal and an email notification was sent out to all registered vendors. The appropriate trade journals were notified and included Bid America, Southern California Builders Association, Construction Bidboard and Dodge Data & Analytics on September 6, 2016. The RFQ was advertised on Thursday, September 8, 2016 and Tuesday, September 15, 2016 in the San Gabriel Valley Tribune. Questions pertaining to the RFQ were received up until September 29, 2016 at 1:00 pm in the City’s PlanetBids vendor portal. The deadline to submit a Statement of Qualifications (“SOQ”) to the City was October 12, 2016 at 1:00 pm.

An RFQ Bench allows for evaluators to determine if multiple contractors are qualified to perform work. Price is not a determining factor in a Request for Qualifications. Proposers submitted a separate electronic document in PlanetBids™ with labor rates, and those documents are not opened until the results of the evaluation process are completed.

The City received responses from thirty-nine engineering firms. One (1) engineering firm was invalidated by PlanetBids due to not acknowledging receipt of issued RFQ addendums. The thirty-eight engineering firms that successfully submitted their Statement of Qualifications each chose different service categories that they would like to be considered based on their expertise. Those service categories were staff augmentation, civil engineering, structural engineering, project management/construction management, geotechnical engineering, survey and right of way engineering, traffic and transportation engineering, contract and funding administration, permit inspections, potable water, recycled water and storm water design, electrical engineering, internet and data utility design, landfill management design, ADA and CASp support and

environmental engineering. Eighteen firms submitted to be evaluated to provide staff augmentation services to the City.

A selection panel evaluated the SOQs submitted based on the following criteria:

Table 1 – Statement of Qualifications Evaluation Per Criteria

Criteria Categories	Criterion	Possible Points	Points Awarded
Project Understanding	Statement of Qualifications consistent with RFQ. Scope and workplan consistent with subject areas of expertise selected. Identification of key project factors.	10	
Project Management	Does the account manager and team members assigned to the project have prior experience on similar successful projects including, but not limited to, other public agencies?	10	
Qualifications of Firm/Team	Did the Consultant describe the technical qualifications and experience of proposed staff members?	10	
Responsiveness	Is the Consultant willing and able to respond 24 hours a day, seven days a week in the event of an emergency? Can the Consultant perform or provide the required services promptly, or within the time specified without delay or interference?	10	
Total Points			

Based on the results of the Statement of Qualifications process, the highest ranking and qualified firms were invited to interview. The City held interviews on October 8, 2016 at City Hall. Five firms were invited to interview which were Cordoba Corporation, CWE Corp, HRGreen, JMDiaz, Inc., and Onward Engineering. The interview panel consisted of five (5) members who evaluated the firms based on the following criteria:

Table 2 – Engineering Staff Augmentation Services Interview Evaluation Per Criteria

Criteria Categories	Criteria	Possible Points	Points Awarded
Project Understanding	Does the Consultant have a clear understanding of staff augmentation services to include, but not limited to engineering, quality assurance and quality control (“QA/QC”), safety assurance, plan checking, inspection, project management, value engineering, GIS, project accounting, and utility coordination?	10	
Project Management	Does the account manager and team members assigned to the project have prior experience on similar successful projects including, but not limited to, other public agencies?	10	
Qualifications of Firm/Team	Did the Consultant describe the technical qualifications and experience of proposed staff members?	10	
Responsiveness	Is the Consultant willing and able to respond 24 hours a	10	

	day, seven days a week in the event of an emergency? Can the Consultant perform or provide the required services promptly, or within the time specified without delay or interference?		
Total Points			

The following tables summarize the interview evaluation rankings.

Table 1 – Summary of Utility Administration Rankings

Firm	Rank
Cordoba Corporation	1
JMDiaz, Inc.	2
Onward Engineering	3
HRGreen	4
CWE Corp	5

Engineering staff augmentation services is necessary to provide peer review of designs and plans provided by the City’s in-house engineering firm C & C Engineering, Inc., and to ensure Quality Control and Quality Assurance (“QA/QC”) as well as conformance to generally accepted engineering principles and project management.

Fiscal Impact

An appropriation of \$1,000,000 from General Fund reserves to General Fund – Streets & Roads – General Engineering (account no. 100-623-5900) is necessary at this time to fund the Professional Services Agreement for Fiscal Year 2016-2017.

Recommendation

- 1.) Based on the interview rankings, staff recommends that JMDiaz, Inc., be awarded a Professional Services Agreement to provide Engineering Staff Augmentation Services from November 17, 2016 to November 17, 2019 in an amount not to exceed \$3,000,000; and
- 2.) Appropriate \$1,000,000 from General Fund reserves to General Fund – Streets & Roads – General Engineering (account no. 100-623-5900) for the Professional Services Agreement in Fiscal Year 2016-2017.

Staff will return to City Council on December 8, 2016, for consideration of the bench results for all remaining engineering services categories to include civil engineering, structural engineering, project management/construction management, geotechnical engineering, survey and right of way engineering, traffic and transportation engineering, contract and funding administration, permit inspections, potable water, recycled water and storm water design, electrical engineering, internet and data utility design, landfill management design, ADA and CASp support and environmental engineering.

- A. Professional Services Agreement with JMDiaz, Inc. for Engineering Staff Augmentation Services from November 17, 2016 to November 17, 2019 in an amount not to exceed \$3,000,000
 - B. Request for Qualifications ("RFQ") for Engineering Services Bench, Contract No. 2016-1002 released September 8, 2016 and Addendum Nos. 1-3
-

PJP:AG:KW:mk

EXHIBIT A

**Professional Services Agreement with JMDiaz, Inc. for Engineering Staff
Augmentation Services from November 17, 2016 to November 17, 2019 in an
amount not to exceed \$3,000,000**

[Attached]

CITY OF INDUSTRY

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of November 17, 2016 ("Effective Date"), between the City of Industry, a municipal corporation ("City") and JMDiaz, Inc., a California corporation ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, 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.

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 tasks described herein are completed, but in no event later than November 17, 2019, 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 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 staff augmentation 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) City has not consented in writing to Consultant's performance of such work. 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 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.

4. PAYMENT

(a) The City agrees to pay Consultant in accordance with the payment rates and terms and the hourly 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 million dollars (\$3,000,000.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(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 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 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, 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 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 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.

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 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 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 and 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 adjudicating the City 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.

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 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.

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 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 City: City of Industry
15625 E. Stafford, Suite 100
City of Industry, CA 91744

Attention: City Manager

With a Copy To: James M. Casso, City Attorney
Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345

City of Industry, CA 91746

To Consultant: Juan M. Diaz, PE, President & CEO
JMDiaz, Inc.
18645 East Gale Avenue, Suite 212
City of Industry, CA 91748

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 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 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

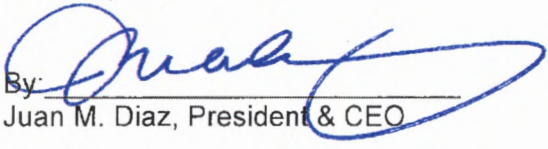
The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

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

"CITY"
City of Industry

"CONSULTANT"
JMDiaz, Inc.

By: _____
Paul J. Philips, City Manager

By:  _____
Juan M. Diaz, President & CEO

Attest:

By: _____
Diane M. Schlichting, Chief Deputy City Clerk

Approved as to form:

By: _____
James M. Casso, City Attorney

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:

1. General Engineering and Project Management

- A. Provide all aspects of civil engineering, plan checking, capital project management, and assistance in obtaining federal, state and other funding for transportation and other infrastructure projects;
- B. Review all matters pertaining to engineering to ensure that initiatives proposed and implemented by the City and others are done in a manner that protects the City's interests, and are consistent with local, state and federal laws;
- C. Assist in planning, coordinating, supervising and evaluating infrastructure, programs, plans, and services;
- D. Evaluate the City'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;
- E. Provide engineering, design services, land surveying and manage construction of public works projects;
- F. Be available to public and private developers to handle matters dealing with the engineering functions of city government;
- G. Maintain, at City Hall, municipal engineering records and maps required to ensure accurate information is available to the public and City staff;
- H. Prepare reports, investigations, studies and evaluations as may be required by the Director of Development Services and Administration or his designee;
- I. Advise the City as to engineering and construction funding available from other government agencies, and when so directed, prepare and initiate applications for funding;
- J. Design of capital improvement projects, improvement plans, specifications, bid documents, and public improvement project management and inspection;
- K. Solicit proposals for capital improvement project design work, construction management, and inspection, as needed;
- L. Review and evaluate bid submittals;
- M. 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;
- N. Negotiate land acquisitions, dispositions, easements, agreements, leases, and other associated property rights as it relates to engineering projects;

- O. Assist with the development and implementation of a multi-year Capital Improvement Program for the City;
- P. Attend City Council, The Successor Agency to the Industry Urban-Development Agency, Oversight Board of the Successor Agency to the Industry-Urban Development Agency and other meetings as requested;
- Q. Provide such other related engineering services as requested by the City Manager or his designee;
- R. Provide peer review for City contractors and accept peer review from City Contractors, as directed;
- S. Shall provide peer review of C&C Engineering, Inc., designs and plans to ensure Quality Control and Quality Assurance ("QC/QA") as well as conformance to generally accepted accounting principles;
- T. Conform to systems of procurement, administrative and financial controls, as directed; and
- M. Provide utility coordination services as requested.

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 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 not to exceed ten calendar 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 thirty days, 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 Engineering in control of private development; and
- F. Provide front counter in-take and public information services.

3. 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 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.

4. Schedule of Services

- A. Place the highest emphasis on customer service;
- B. Be reachable and available to respond to emergencies within the City all times. Consultant must provide City with emergency contact numbers for key personnel to facilitate the immediate response by Consultant to emergencies and provide an updated contact list every six months;
- C. Communicate effectively with citizens before, during, and after construction projects;
- D. Consultant shall provide written comments for initial and subsequent review to the City no later than ten (10) calendar days from date of receipt of the plans. Consultant shall provide comments for expedited plan reviews within three (3) working days of receipt of the plans.

EXHIBIT B

RATE SCHEDULE

<u>Professional</u>	
Principal	\$220.00/hour
QA/QC Manager	\$210.00/hour
Senior Project Manager	\$185.00/hour
Project Manager	\$160.00/hour
Senior Project Engineer	\$145.00/hour
Project Engineer	\$135.00/hour
Project Coordinator	\$125.00/hour
Sr. Design Engineer	\$110.00/hour
Sr. Designer/Analyst/Graphics	\$100.00/hour
Design Engineer	\$ 80.00/hour
CAD Operator	\$ 70.00/hour
Intern	\$ 55.00/hour
Expert Engineer/Witness	\$265.00/hour
<u>Administrative</u>	
Administrative/Clerical	\$ 50.00/hour
<u>Field (On-Site)</u>	
Construction Manager	\$185.00/hour
Construction Inspector	\$120.00/hour

City shall reimburse Consultant its actual costs for all photocopying and postage, upon submittal of evidence of said costs along with the monthly invoice, as set forth in the agreement.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, 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 City, 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 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 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 City 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 before the City'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 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, 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 City, 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 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.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City 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 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 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 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 City 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 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 City.

Timely notice of claims. Consultant shall give the City 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.

EXHIBIT B

**Request for Qualifications (“RFQ”) for Engineering Services Bench, Contract No.
2016-1002 released September 8, 2016 and Addendum Nos. 1 - 3**

[Attached]

CITY OF INDUSTRY

NOTICE INVITING REQUEST FOR QUALIFICATIONS

(RFQ) FOR ENGINEERING SERVICES BENCH

Contract No. 2016-1002



**SUBMIT PROPOSALS TO
City of Industry via
PlanetBids™ Vendor Portal:**

<http://www.cityofindustry.org/?p=proposal-and-bid>

SCHEDULE AND PROCESS:

RFQ Announcement and Issuance	Thursday, September 8, 2016
Question Submittal Deadline	Thursday, September 29, 2016 at 1:00 pm
Proposal Submittal Deadline	Wednesday, October 12, 2016 at 1:00 pm
Contractor Interview (if desired by City)	October 17-28, 2016
City Council Consideration (tentative)	Thursday, November 10, 2016

Table of Contents

Description

	<u>Page</u>
Section 1: Introduction and General Information	3
Section 2: Scope of Services	5
Section 3: Contractor Qualifications and Requirements	6
Section 4: Proposal Submittal Requirements	8

Attachments

Attachment 1: Sample Professional Services Agreement	10
Attachment 2: Insurance Requirements	21

SECTION 1 INTRODUCTION AND GENERAL INFORMATION

Overview of the Request for Proposals

The City of Industry (City) is requesting Qualifications to procure qualified contractors to provide technical, professional, and staff support services to the City's Development Services Department and to develop a bench of qualified consultant firms that may be used as necessary.

Qualified contractors that are accepted on the Engineering Services Bench will execute agreements with the City that detail the areas of expertise for the firm and the hourly rates for services through the term of the contract. The City will use the pre-qualified Engineering Services Bench as projects arise by distributing proposal requests to a minimum of three firms on the pre-qualified bench to meet the procurement policies of the City of Industry.

The City reserves the right to release competitive procurements to firms outside of the pre-qualified Engineering Services Bench if the City determines that it is in its best interests, based on the project's funding source or any other factors at the discretion of the City.

RFQ Guidelines

All contacts pertaining to this Request for Qualifications shall be directed via the City of Industry's PlanetBids™ vendor portal to:

Kristen Weger, Administrative Analyst
City of Industry
P.O. Box 3366
City of Industry, CA 91744-0366
(626) 333-2211

The City assumes no responsibility for any costs incurred by an individual/Contractor in the preparation and/or presentation of a proposal in response to this Request. To be considered, respondents must submit a complete response in accordance with the requirements contained in **Section 4** of this Request. Submittals must be signed by the individual or an officer of the Contractor authorized to bind the Contractor to its provisions.

All submittals and supporting materials become the property of the City of Industry upon its receipt by the City. The City reserves the right to reject any and all submittals received, or to request additional information from any or all of the respondents for the purpose of ascertaining the most qualified individual(s)/Contractor(s) for the services requested.

Response Date

To be considered, a statement of qualifications must be received by the City of Industry no later than 1:00 p.m., on Wednesday, October 12, 2016 via the City of Industry's PlanetBids™ vendor portal. Proposals are to be submitted through <http://www.cityofindustry.org/?p=proposal-and-bid>.

Proposals cover page must clearly state: **ENGINEERING SERVICES BENCH**

Postmarks, mailed, emailed or hard copy proposals will not be accepted. Late proposals will not be accepted.

Selection of Contractor

The City shall select MULTIPLE Individual(s)/Contractor(s) based on a combination of factors, such as: responsiveness and comprehensiveness of the Proposer with respect to this Request for Qualifications (RFQ); technical background and experience of the firm; technical background and experience of the proposed team members; previous work performed for other public agencies; and information obtained from references. Proposers will self-identify the engineering services categories in which they consider themselves qualified, and proposers are encouraged to detail in their submittal the full range of expertise that the firm can provide. Cost will not be a deciding factor in selection, proposers will submit sealed price proposals that detail hourly rates for proposed staff. Markups for travel, subcontractor markups, or markups for other expenses that cannot be clearly documented and supported will not be accepted. Modifications to the City's Professional Services Agreement will not be accepted. This RFQ, to determine a prequalified bench for multiple engineering services, will be used to procure future project and program work that is not required to be procured under Federal guidelines. The City of Industry Municipal Code requires a minimum of three (3) proposals to award work, therefore, it is expected that a minimum of three (3) firms will be pre-qualified in each category in order to comply with the City's Municipal Code.

In addition, the following factors will be considered:

1. Completeness of the proposal and ability of the Proposer to comply with the mandatory requirements proposed under this RFQ;
2. Whether the Contractor has the financial resources and facilities to perform or provide the required services promptly, or within the time specified without delay or interference;
3. Experience implementing similar projects/programs;
4. Recommendations from prior clients and record of performance on previous contracts or services;
5. Ability to communicate effectively with a diverse population, particularly English, Spanish, Korean and Cantonese/Mandarin language speakers; and
6. Ability to respond or operate 24 hours a day, seven days a week in the event of an emergency.

Some or all of the respondents may be requested to make an oral presentation of their qualifications.

SECTION 2 SCOPE OF SERVICES

General Description

The City of Industry is seeking qualified contractors to provide a wide range of professional engineering services to the City under the guidance of City staff and the City's in-house contracted engineering firm(s). The City's in-house contracted engineering firm(s) are not precluded from submitting bids on projects that require procurement. If the contracted in-house engineering firm expresses a desire to submit a bid on a project that requires procurement, their staff will be precluded from participating in the procurement process. However, if the City's in-house contracted engineering firm(s) is awarded a contract after a competitive procurement process, another engineering firm from the pre-qualified bench will be chosen to provide project oversight and management, plan checking, inspection, QA/QC services, and any other services deemed necessary to ensure peer review. It is the intent of the City to develop a comprehensive bench of pre-qualified contractors that can work in synergy to deliver the large number of projects that are included in the City's Capital Improvement Program, while introducing transparency in the procurement process. It is also critical for the City that multiple checks and balances are in place to ensure that the City's funds are used efficiently and that projects are built on-time and under budget. Services to be provided under this Request for Qualifications include, but are not necessarily limited to, the following:

1. **Staff Augmentation:** Engineering, QA/QC, Safety Assurance, Plan Checking, Inspection, Project Management, Value Engineering, GIS, Project Accounting, Utility Coordination and other staff augmentation services as deemed necessary.
2. **Civil Engineering** Plans, Specifications and Estimates, CADD, Design topo and Mapping/Cadastral Services.
3. **Structural Engineering** Services.
4. **Project Management/Construction Management**, Public Bidding Process Coordination, Closeout and Audits.
5. **Geotechnical Engineering** Services.
6. **Survey and Right of Way Engineering.**
7. **Traffic and Transportation Engineering** – including Railroad, Bicycle, Pavement, Pedestrian and Human Factors.
8. **Contract and Funding Administration**, including oversight and reporting.
9. **Permit Inspections** (NPDES, MS4) as needed and Sanitary Sewer Design, Plans, Inspections, and System Capacity Calculations.
10. **Potable Water, Recycled Water, and Stormwater Design**, Plans and Specifications.
11. **Electrical Engineering**, including Electrical Utility Design, Plans and Specifications – including PV and alternative energy generation.
12. **Internet and Data Utility Design**, Plans and Specifications.
13. **Landfill Management Design**, Plans and Specifications.
14. **ADA and CASp support.**
15. **Environmental Engineering**, staff support and reporting for open space and habitat areas.

SECTION 3 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

General Qualifications and Requirements

In order to be considered, Proposers must meet the requirements outlined in this section. Proposers that do not meet the requirements will be considered non-responsive and their submittal will be rejected.

1. **Experience.** The selected individual(s)/Contractor(s) will have extensive experience that shows the Contractor(s) can provide professional, first-class service.
2. **Principal.** The account manager, or contact person, assigned to the City will be a consideration in the selection. Qualifications and prior experience in similar programs and activities must be demonstrated in the proposal. Once selected, the account manager, or contact person, assigned to the project or contract shall not be changed without prior written consent of the City. An organizational chart, if applicable, shall be submitted with the proposal.
3. **Appropriate Licenses or certifications.** Contractor is required to have in full force and affect all licenses and permits required by all applicable laws.
4. **Insurance.** The following are the legal and insurance requirements of the City of Industry for the selected Contractor. They are non-negotiable. The detailed insurance requirements are included in Exhibit A:
 - a) Time for Compliance. Contractor shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.
 - b) Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:
 1. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and*

Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

2. Minimum Limits of Insurance. Contractor shall maintain limits no less than:
(1) *General Liability:* \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

SECTION 4 PROPOSAL SUBMITTAL REQUIREMENTS

Submittal Format and Content

1. The submittal should be typed and as brief as possible while adequately describing the qualifications of the Contractor.
2. Only one proposal per Contractor will be considered, and the Contractor must clearly state all of the subject areas of expertise: **Staff Augmentation, Civil Engineering, Structural Engineering, Project Management/Construction Management, Geotechnical Engineering, Survey and Right of Way Engineering, Traffic and Transportation Engineering, Contract and Funding Administration, Permit Inspections, Potable Water, Recycle Water and Stormwater Design, Electrical Engineering, Internet and Data Utility Design, Landfill Management Design, ADA and CASp Support, and/or Environmental Engineering.**
3. The proposing Contractor shall submit the following information with the package, including the same information on subcontractors, in the following format:
 - a. **Cover Letter.** In no more than two (2) pages, the Contractor should provide the name, address and phone number of the Consultant, the primary contact name and phone number, any qualifying statements or comments regarding the proposal and identification of any sub-consultants and their responsibilities. The signed letter should also include a paragraph stating that the Contractor is unaware of any conflict of interest in performing the proposed work.
 - b. **Qualifications.** This portion should include a description of the qualifications of the assigned staff and sub-contractors, relevant technical experience, and the availability of the staff for the services provided. After selection of a Contractor(s) by the City, no substitution of key staff or subcontractors may occur without the written approval of the City. A list of related projects should be included with the name of the contract person and the telephone number for which the Contractor has recently or currently provides services as outlined under the Scope of Work.
 - c. **Scope of Work.** The Contractor shall describe the proposed work by task, including any tasks to be performed by sub-contractors.
 - d. **Project Fees.** Proposing Contractors must submit a sealed hourly fee proposal that includes a schedule of fees for all pertinent employees proposed for the project. Fee schedules for contractors that are not chosen will not be opened. Hourly rates are not a deciding factor in the award. It is expected that the hourly rates submitted will remain fixed for the duration of the contract, which is projected to be a three (3) year term.
 - e. **Acceptance of Conditions.** This section will be a statement offering the Contractor's acceptance of all conditions listed in the Request for Qualifications document. Any

exceptions or suggested changes to the RFQ or any contractual obligations, including the suggested change, the reasons therefore and the impact it may have on cost or other considerations on the Contractor's behalf must be stated in the submittal. Unless specifically noted by the Contractor, the City will assume that the submittal is in compliance with all aspects of the RFQ.

Evaluation and Selection Process

Selection will follow these steps:

1. **Submittal Review:** Each submittal will be reviewed to determine if it meets the RFQ requirements. Failure to meet the requirements of the RFQ will be cause for rejection. The City will consider the following in selecting a contractor(s).

Response to requested Scope of Services and this RFQ;
Professional reputation;
Experience of the Contractor;
Qualifications;
Number and experience of personnel;
References provided.

2. **Interview.** Contractors may be interviewed by an oral board.
3. **Professional Services Agreement.** The Director of Development Services and Administration will request a professional services agreement subject to negotiation of precise work program, terms of payment and other City requirements from the Contractor(s) found most qualified. Nothing in this RFQ should imply a contractual obligation for employment.
4. **Contract Approval and Execution.** The agreement will be presented to the City of Industry City Council for approval and execution by the City Manager.

Please submit the proposal **no later than 1:00 p.m., on Wednesday, October 12, 2016** via City of Industry PlanetBids™ vendor portal <http://www.cityofindustry.org/?p=proposal-and-bid>.

Attachment 1

**City of Industry
Professional Services Agreement**

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of **INSERT DATE** ("Effective Date"), between the City of Industry, a municipal corporation ("City") and **INSERT NAME OF CONSULTANT AND TYPE OF LEGAL ENTITY [i.e.-limited liability company, corporation, partnership, etc.]**("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, 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.

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 tasks described herein are completed, but in no event later than **INSERT DATE**, 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 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 **INSERT TYPE OF 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) City has not consented in writing to Consultant's performance of such work. 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 **INSERT STAFF RESPONSIBLE FOR THE PROJECT** 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.

4. PAYMENT

(a) The City 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 **INSERT WRITTEN DOLLAR AMOUNT** dollars (\$) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(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 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 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, 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 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 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.

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 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 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 and 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 adjudicating the City 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.

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 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.

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 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 City:

City of Industry
15625 E. Stafford, Suite 100
City of Industry, CA 91744

Attention: City Manager

With a Copy To:

James M. Casso, City Attorney
Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345
City of Industry, CA 91746

To Consultant:

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 and indemnity provision similar to the one provided herein and identifying City 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 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.

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

“CITY”

City of Industry

“CONSULTANT”

INSERT NAME OF COMPANY

By: _____ By _____

Paul Philips, City Manager

Name, Title

Attest:

By: _____

Cecelia Dunlap, Deputy City Clerk

Approved as to form:

By: _____

James M. Casso, City Attorney

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

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

RATE SCHEDULE

EXHIBIT CINSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, 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 City, 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 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 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 City 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 before the City'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 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, 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 City, 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 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.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City 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 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 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 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 City 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 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 City.

Timely notice of claims. Consultant shall give the City 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.

September 21, 2016

City of Industry
15625 E. Stafford Street, Suite 100
City of Industry, CA 91744

RFQ Addendum No. 1

CITY OF INDUSTRY

REQUEST FOR QUALIFICATIONS ("RFQ") FOR ENGINEERING SERVICES BENCH

CONTRACT NO. 2016-1002

NOTE: The following attachments are hereby made a part of the project and supersede or amend the corresponding information included in the original "Request for Qualifications" (RFQ).

All other terms and conditions remain unchanged.

REQUEST FOR QUALIFICATIONS

SECTION 4, PROPOSAL SUBMITTAL REQUIREMENTS, PAGE 8, D. PROJECT FEES, Proposing Contractors must upload and submit a sealed hourly fee proposal that includes a schedule of fees for all pertinent employees proposed for the project via the City of Industry's Planet Bids vendor portal. All sealed hourly fee proposal files shall be uploaded as a separate file from the Statement of Qualifications and shall be clearly marked "Hourly Fee Proposal" in the file name.

END OF ADDENDUM

September 21, 2016

City of Industry
15625 E. Stafford Street, Suite 100
City of Industry, CA 91744

RFQ Addendum No. 2

CITY OF INDUSTRY

REQUEST FOR QUALIFICATIONS ("RFQ") FOR ENGINEERING SERVICES BENCH

CONTRACT NO. 2016-1002

NOTE: The following attachments are hereby made a part of the project and supersede or amend the corresponding information included in the original "Request for Qualifications" (RFQ).

All other terms and conditions remain unchanged.

REQUEST FOR QUALIFICATIONS

SECTION 4, PROPOSAL SUBMITTAL REQUIREMENTS, PAGE 8,

3. The proposing Contractor shall submit the following information with the package, in the following format:
 - A. **COVER LETTER**, the first sentence shall read: In no more than two (2) pages, the Contractor should provide the name, address and phone number of the Consultant, the primary contact name and phone number, any qualifying statements or comments regarding the proposal and identification of their responsibilities.
 - B. **QUALIFICATIONS**. This portion should include a description of the qualifications of the assigned staff, relevant technical experience, and the availability of the staff for the services provided. After selection of a Contractor(s) by the City, no substitution of key staff may occur without the written approval of the City. A list of related projects should be included with the name of the contract person and

the telephone number for which the Contractor has recently or currently provides services as outlined under the Scope of Work.

- C. SCOPE OF WORK.** The Contractor shall briefly describe the proposed work that would be performed for the engineering services category submitting. However, the City would like firms to submit individually based on their experience and in-house qualifications.

END OF ADDENDUM



October 6, 2016

City of Industry
15625 E. Stafford Street, Suite 100
City of Industry, CA 91744

RFQ Addendum No. 3

CITY OF INDUSTRY

REQUEST FOR QUALIFICATIONS ("RFQ") FOR ENGINEERING SERVICES BENCH

CONTRACT NO. 2016-1002

NOTE: The following attachments are hereby made a part of the project and supersede or amend the corresponding information included in the original "Request for Qualifications" (RFQ).

All other terms and conditions remain unchanged.

REQUEST FOR QUALIFICATIONS

COVER PAGE, SCHEDULE AND PROCESS,

Contractor Interview (if desired by City) October 17 – November 4, 2016.

PAGE 9, EVALUATION AND SELECTION PROCESS, 2. INTERVIEW,

Contractors submitting for consideration to provide Staff Augmentation services may be interviewed by an oral board. All other subject areas of expertise will not be interviewed.

END OF ADDENDUM

CITY COUNCIL

ITEM NO. 5.6




CITY OF INDUSTRY

P.O. Box 3366 • 15625 E. Stafford St. • City of Industry, CA 91744-0366 • (626) 333-2211 • FAX (626) 961-6795

MEMORANDUM

To: Honorable Mayor Radecki and Members of the City Council

From: Paul J. Philips, City Manager 

Staff: Alex Gonzalez, Director of Development Services and Administration AG

Date: November 17, 2016

SUBJECT: Consideration of a License Agreement with Gaytan Foods for Access to Assessor's Parcel Number 8264-004-908 located at 1123 South Hatcher Avenue as a Storage Area

Gaytan Foods ("Gaytan") contacted the City of Industry ("City") regarding the use of a portion of the property located at 1123 South Hatcher Avenue to use as a storage area. Gaytan Foods will be responsible for maintaining the premises which shall include, but is not limited to, upon the close of each day, all supplies and equipment shall be locked and secured, and at no time shall perishable goods or hazardous materials be stored. The License Agreement shall be for a term of two years, terminating on November 16, 2018. The City may, by written notice, terminate the License Agreement at any time.

Fiscal Impact

Gaytan Foods will be utilizing 10,000 square feet at a rate of twenty-five cents a square foot for a monthly lease rate of \$2,500 per month. Payment of \$2,500 per month shall be payable to the City in advance on the first day of each month during the term of the Agreement.

Exhibit

A: License Agreement with Gaytan Foods dated November 17, 2016

PJP:AG:KW:mk

EXHIBIT A

License Agreement with Gaytan Foods dated November 17, 2016

[Attached]

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“**Agreement**”), dated November 17, 2016, (“**Effective Date**”) is entered into by and between the City of Industry, a public body, corporate and politic (“**Licensor/City**”), and Gaytan Foods, a California corporation (“**Licensee**”) (Licensor and Licensee are individually referred to as “**Party**” and collectively referred to as the “**Parties**”).

RECITALS

WHEREAS, the City is the owner of certain property located at **1123-1135 S. Hatcher Avenue, City of Industry, CA 91748**, and Licensee desires to enter the portion of the property, as set forth in Exhibit A, attached hereto and incorporated herein by reference (“**Premises**”).

WHEREAS, Licensee desires to utilize the Premises for the storage of equipment and supplies; and

WHEREAS, Licensee acknowledges that Licensee is entering onto the Premises at its sole risk and expense, and Licensor does not have any liability to Licensee under this Agreement.

NOW, THEREFORE, for valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS

1. License to Enter the Premises. Licensor hereby grants to Licensee a non-exclusive license (the “**License**”) granting permission to enter upon the Premises as of the Effective Date of this Agreement, and to use the Premises for the storage of equipment and supplies (collectively, “**Permitted Use**”); provided, that Licensee’s use of the Premises shall not interfere with the operation of business activities, if any, then being conducted on the Premises, , and provided Licensee provides written notice to the Licensor at least five (5) days prior to Licensee first entering upon the Premises (said written notice shall state the purpose for the entry upon the Premises, and said entry shall not exceed the stated purpose). Prior to any initial entry pursuant to the License, Licensee shall, provide to Licensor proof of insurance as set forth in Section 7 of this Agreement. Licensee shall not permit any other party, except the duly-authorized representatives, agents, employees and contractors (collectively “**Representatives**”) of Licensee to enter or use the Premises during the term of this License, without Licensor’s prior written consent, and in all events the sole reason for entry and use of the Premises shall be for the performance of Licensee’s Permitted Use. Licensee hereby acknowledges that it is only permitted to utilize the portion of the Premises designated in Exhibit A, and that Licensor may grant a license to other entities to utilize other portions of the Premises, or may use other portions of the Premises for its own use.

2. Payment. Licensee shall pay Licensor, and Licensor shall accept two thousand five hundred dollars \$2,500.00) (“**License Payment**”) per month, for the use of the Premises. Payment shall be due in advance on the first day of each month during the term of the Agreement. For the month of November 2016, the rent shall be pro-rated, and the pro-rata License Payment shall be due upon execution of the Agreement by Licensee. Payment shall be made to Licensor at 15625 E. Stafford Street, Suite 100, City of Industry, CA 91746.

3. Permitted Use. The Permitted Use is hereby defined to include the storage of equipment and supplies. At no time shall Licensee store any hazardous materials or perishable goods on the Premises. Licensee shall not conduct any business, or use the Premises for any manufacturing use, or anything incidental to a manufacturing use, at any time. Further, Licensee shall ensure that upon close of business each day, all supplies and equipment are locked and secured on premises to deter theft, and other criminal activities. Licensee shall obtain any and all approvals required by the Los Angeles County Fire Department for the Permitted Use, within 10 days of the Effective Date of this Agreement. Licensee shall exercise due care in the performance of the Permitted Use and such use shall be exercised in a manner which complies with all applicable laws.

4. Maintenance of Premises. Upon termination of the License, Licensee shall repair any damage done to the Premises by Licensee or its duly authorized Representatives, and shall restore the Premises to its condition as of the Effective Date of this Agreement.

5. Government Regulations and Other Obligations of Licensee. As a condition precedent to commencement of the Permitted Use, if required, Licensee shall obtain at its sole cost and expense all governmental permits and authorizations of whatever nature required, if any (“Permits”) by any and all governmental authorities having jurisdiction over the Premises for Licensee’s exercise of the Permitted Use. Licensor shall use commercially reasonable efforts to cooperate with Licensee and to support any and all applications or request for said Permits submitted by Licensee or on Licensee’s behalf. Licensee shall, in all activities undertaken pursuant to this Agreement, comply and cause its Representatives to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees.

6. Liens.

6.1 Licensee shall not cause or permit to be filed, recorded or enforced against the Premises, or any part thereof, any mechanics’, material men’s, contractors’ or subcontractors’ liens arising from the Permitted Use or any claim or action affecting the title to the Premises arising from the Permitted Use, and Licensee shall pay or cause to be paid, or otherwise removed or bonded over, the full amount of all such liens or claim within fifteen (15) days of receiving written notice thereof. In addition to and not in limitation of Licensor’s other rights and remedies under this Agreement or under law, should Licensee fail within fifteen (15) business days of a written notice from Licensor to pay and discharge or bond over any lien arising out of Licensee’s use of the Premises, then a material breach under this Agreement shall be deemed to have occurred which, at Licensor’s election, shall entitle Licensor to terminate this License effective upon notice by Licensor to Licensee so stating.

6.2 If Licensee desires to contest in good faith the validity of any lien or any claim or demand that could result in a lien against the Premises or any portion thereof for which Licensor could become liable if not successfully resolved, as a condition to such contest, Licensee shall notify Licensor of Licensee’s intent to contest the lien or claim and the grounds for such contest. Notwithstanding anything to the contrary set forth herein, Licensee shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against Licensor or the Premises.

7. Insurance. Prior to entering the Premises and until the termination of this Agreement, Licensee shall maintain at its sole expense insurance limits as stipulated in this section.

7.1 Minimum Scope and Limit of Insurance. Coverage shall be at least as broad as:

(a) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

(b) Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Licensee has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(c) Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

7.2 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

(a) Additional Insured Status. The Licensor and City Representatives, (as defined in Section 8, below) are to be additional insureds on the CGL policy with respect to liability arising out of Licensee’s use of the Premises. General liability coverage can be provided in the form of an endorsement to the Licensee’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

(b) Primary Coverage. For any claims related to this Agreement, the Licensee’s insurance coverage shall be primary insurance as respects the Licensor/City Representatives. Any insurance or self-insurance maintained by the Licensor/City Representatives, shall be excess of the Licensee’s insurance and shall not contribute with it.

(c) Contractors and Subcontractors. Licensee shall require and verify that all contractors and subcontractors maintain insurance meeting all the requirements stated herein, and Licensee shall ensure that Licensor/City Representatives are additional insureds on insurance required from contractors/subcontractors. For CGL coverage contractors and subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

(d) Notice of Cancellation. Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the City.

(e) Waiver of Subrogation. Licensee hereby grants to City a waiver of any right to subrogation which any insurer of said Licensee may acquire against the City by virtue of the payment of any loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation provided such endorsement is available on commercially reasonable terms, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

(f) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Licensee

to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(g) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

(h) Deductibles. All such insurance shall have deductibility limits of not greater than \$50,000.00 unless otherwise approved by the City.

(i) Verification of Coverage. Licensee shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the City before exercise of the Permitted use commences. However, failure to obtain the required documents prior to the exercise of the Permitted Use shall not waive the Licensee's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies, including endorsements, required by these specifications, at any time.

(j) Occurrence Basis Coverage. All policies shall be written on an occurrence basis unless otherwise approved by the City.

8. Indemnification. From and after the execution of this Agreement, Licensee hereby agrees to indemnify, defend, protect and hold harmless, with counsel of the Licensor's choosing, the City and any and all predecessors, successors, assigns, agents, officials, employees, members, independent contractors, affiliates, principals, officers, directors, attorneys, accountants, representatives, staff, and council members of the City collectively, the "**City Representatives**", and each of them, from and against all claims, including any claims from any third party beneficiary to this Agreement, causes of action, liabilities, losses, damages, injuries, expenses, charges, penalties, or costs, of whatsoever character, nature and kind, (including attorney's fees and costs incurred by the indemnified Party with respect to legal counsel of its choice), whether to property or to person(s), and whether by direct or derivative action, known or unknown, suspected or unsuspected, latent or patent, existing or contingent (collectively "**Losses and Liabilities**"), related directly or indirectly to, or arising out of or in any way connected with any of the activities of Licensee, its agents, employees, licensees, lessees, representatives, invitees, contractors, subcontractors or independent contractors on the Premises. This indemnification requires Licensee to indemnify the City and any and all City Representatives from and against all Losses and Liabilities, including attorneys' fees, arising out of the use or release of any Hazardous Substances on the Premises by Licensee. Licensee's obligation to defend shall arise regardless of any claim or assertion that the City caused or contributed to the Losses and/or Liabilities, provided, however, that Licensee's liability under this Section 8 will be limited to the extent of any contributory negligence of Licensor.

9. Term, Termination and Remedies. The License shall commence as of the Effective Date of this Agreement, and shall automatically terminate on **November 16, 2018**. Notwithstanding the foregoing, at any time, for any reason, the Licensor may, at its sole and absolute discretion, terminate this Agreement without cause, upon 30 days' written notice to Licensee. Further, in the event Licensor sells or transfers the Premises during the term of this Agreement, this Agreement shall terminate upon seven (7) days written notice to Licensee. In addition, if Licensee shall be in breach of any of its obligations under this Agreement and shall fail to cure such breach within ten (10) business days of written notice from Licensor specifying the nature of any such breach,

Licensor shall have the right to terminate this Agreement upon written notice to Licensee. Licensee acknowledges that this License is solely a license, and that Licensee has no rights as an owner, purchaser or tenant by virtue thereof. Upon termination of the Agreement, Licensee shall promptly vacate the Premises and comply with the provisions of Section 4 above. No termination or expiration of this License shall relieve Licensee of its obligations hereunder.

10. Inspection and Access to Premises. Licensor and any of its duly authorized representatives, employees, agents or independent contractors shall be entitled to enter the Premises, to show the Premises to potential purchasers, to inspect the premises, to inspect Licensee's use of the Premises, and for any other purpose, at any time

11. Assignability. This License cannot be assigned by Licensee whether voluntarily or by operation of law, and Licensee shall not permit any use of the Premises, or any part thereof during the Term of this License in violation of the provisions of this License, except with the consent of Licensor (which shall not be unreasonably withheld, conditioned or delayed), and any attempt to do so shall be null and void.

12. Cost of Enforcement. In the event it is necessary for either Party to employ an attorney or other person or commence an action to enforce or interpret any of the provisions of this License or for Licensor to remove Licensee from the Premises, the non-prevailing party agrees to pay to the prevailing party, in addition to such other relief as may be awarded by the court, City or other authority before which such suit or proceeding is commenced, all reasonable costs of enforcement in connection therewith including, but not limited to, reasonable attorneys' fees, expenses and costs of investigation.

13. Notices. All notices, consents, approvals, requests, demands and other communications provided for herein shall be in writing and shall be deemed to have been duly given upon the earlier of when personally delivered or served or twenty-four (24) hours after being deposited with FedEx or any other established overnight courier service to the intended party addressed as follows:

Licensor:	Paul Philips City Manager 15625 East Stafford Street, Suite 100 City of Industry, CA 91744 Tel: (626) 333-2211 paul@cityofindustry.org
With a Copy to:	James M. Casso, City Attorney Casso & Sparks, LLP 13200 Crossroads Parkway North, Suite 345 City of Industry, CA 91746 Tel: (626) 269-2980 jcasso@cassosparks.com
Licensee:	Ryan Gaytan, President 15430 East Proctor Avenue City of Industry, CA 91745

Tel: (626) 330-4553
ryan@gaytanfoods.com

14. No Liability of Licensor. Licensee and Licensor acknowledge and agree that Licensee is entering into the Premises prior to the transfer of the Premises to Licensee and that Licensee does so at its sole risk and expense. The provisions hereof shall inure to the benefit of Licensor's and Licensee's successors and assigns including any Mortgagee.

15. Miscellaneous. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the Parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. The indemnifications under this Agreement, the obligations of Licensee hereunder to remove liens and Licensee's obligations hereunder with respect to vacating and repairing the Premises shall survive the expiration or termination of the License Term. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California. Any action brought concerning this Agreement shall be brought in the appropriate court for the County of Los Angeles, California. Each Party hereby irrevocably consents to the jurisdiction of said court. Licensee hereby expressly waives all provisions of law providing for a change of venue due to the fact that the City may be a party to such action, including, without limitation, the provisions of California Code of Civil Procedure Section 394. Licensee further waives and releases any right it may have to have any action concerning this Agreement transferred to Federal District Court due to any diversity of citizenship that may exist between City and Licensee. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument. Neither this instrument nor a short form memorandum or assignment hereof shall be filed or recorded in any public office without Licensor's or Licensee's prior written consent.

16. Authority. Each person executing this Agreement hereby represents and warrants (i) their authority to do so, and (ii) that such authority has been duly and validly conferred.

(SIGNATURES ON FOLLOWING PAGE)

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

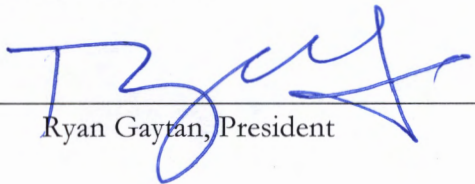
“LICENSOR”

“LICENSEE”

CITY OF INDUSTRY

GAYTAN FOODS

By: _____
Paul J. Philips, City Manager

By:  _____
Ryan Gaytan, President

ATTEST:

Diane M. Schlichting, Chief Deputy City Clerk

APPROVED AS TO FORM:

James M. Casso, City Attorney

EXHIBIT A

Assessor's Parcel Number (APN) 8264-004-908 located at 1123 South Hatcher Avenue, City of Industry, CA 91748. Licensee shall only occupy Suites A and B, and the parking area adjacent to Suites A and B on the northeast side of the Premises. The area identified in the map below by defining yellow lines identifies the area of the Premises, where the Permitted Use shall occur.

Location Map – 1123 South Hatcher Avenue

