RESERVATION OF RIGHTS

The CITY reserves the right to:

- Reject any and all proposals at its discretion
- Cancel the entire RFP
- Waive any minor errors or informalities in any proposals, to the extent permitted by law
- Conduct oral interviews
- Negotiate with one or more offers
- Require a best and final offer from one or more offers
- Issue an amended RFP to ensure compatibility with the Proposal for comparison

TERMS AND CONDITIONS

A. Addendum to the RFP – If it becomes necessary to revise any part the RFP, an addendum will be posted on the City's website (see Section 3, "INQUIRIES AND QUESTIONS" for details). If an answer materially affects the RFP, the information will be incorporated into an addendum and distributed to all vendors via the City's website; no other contact shall be made by the City to vendors regarding addenda to the RFP. All addenda issued during the time of bidding will be incorporated into the resulting contract.

B. Applicable Laws – The laws of the State of California will govern the contract. The applicable law for any legal dispute arising out of the contract shall be the law of the State of California. The Bidder shall comply with all federal, state, county and local laws concerning this type of commodity/service. All systems provided by the Bidder shall comply with all applicable federal, state, and local buildings, fire, safety, and electrical codes and all relevant industry standards.

C. Appropriation of Funds – If the term of this agreement extends into fiscal years after that in which it was approved, such continuation of the contract is subject to the appropriation of funds for such purpose by the City of Pomona City Council. If funds to affect such continued payment are not appropriate, the Bidder agrees to terminate any goods or services supplied to the City under this agreement.

D. Assignment – The Bidder shall, under no circumstances, assign any contract issued because of this proposal by any means whatsoever, or any part thereof to another party without express written permission of the City of Pomona.

E. Award of Contract – A contract may be awarded because of this RFP and may require approval by the City of Pomona City Council as prescribed by City Ordinances and Codes. All awarded contracts must be issued a City of Pomona Purchase Order prior to delivering goods or performing services. If the awarded vendor imposes additional terms or conditions after the award of a contract, the award may be rescinded, and the Contract will be canceled.

F. Bidder's Cost to Develop a Response – Costs for developing a response to this solicitation are entirely the obligation of the Bidder and shall not be chargeable in any manner to the City of Pomona.

G. Conflict of Interest – Except for items that are clearly promotional in nature, mass produced, trivial in value and not intended to invoke any form of reciprocation, employees of the City of Pomona may not accept gratuities, entertainment, meals of anything of value whatsoever from current or potential suppliers. The offer of such gratuity to an employee of the City shall be cause for declaring such supplier to be an irresponsible proposer and preventing him from bidding as provided in Sections 2-974 and 2-975 of the City Code of the City of Pomona.

H. Default Of Vendor - The City of Pomona shall hold the vendor responsible for any damage, which may be sustained because of the failure or neglect of the vendor to comply with any term or condition listed herein.

I. Equal Employment Opportunity – The Bidder shall comply with all applicable state and federal laws addressing Equal Employment Opportunity.

J. General Services – Award will be made to the lowest responsible/responsive bidder. The City may make an award without further discussion of the proposals submitted; therefore, the proposal should be submitted with the most favorable terms that the Bidder can offer.

K. Independent Contractor Status – It is expressly understood that the Bidder named in any contract entered into by the City is acting as an "independent contractor" and not as an agent or employee of the City of Pomona.

L. Late Submission of Bid or Proposal – Any proposals received after the due date and time specified in this RFP will not be accepted. The City will not return late submittals. Late submittals will be destroyed by the City 30 days after proposal opening.

M. News Releases – The Bidder shall not make news releases pertaining to an award resulting from proposals made in response to the RFP without the prior written approval of the City of Pomona Finance Director. In addition, the successful Bidder must agree not to release any advertising copy mentioning the City of Pomona or quoting the opinion of any City employee without written approval by the City of Pomona Finance Director.

N. Permits and Licenses – The Bidder shall secure or maintain in force during the period covered by any contract resulting from this specification all licenses and permits required by law for the operation of their business including a Pomona Business License when required.

O. Public Information – After the date specified for the opening of the RFP, all materials received relative to general service proposals become public information and are available for inspection. Professional service proposals become public upon award of contract. The City reserves the right to retain all proposals submitted, whether the proposal was selected or judged to be responsive.

P. Rejection of Proposals – This RFP does not commit the City of Pomona to award any contract. The City reserves the right, at its sole discretion, to reject any or all proposals without penalty, to waive irregularities in any proposal response or in the proposal procedures, and to be the final judge is determining a responsive and responsible bid or proposal. The City reserves the right, at its sole discretion, to reject any or all proposals that contain items not specified, items that are incorrect, that do not complete all the items scheduled or do not respond to items published specifications or scope of services. Proposals received by telephone or facsimile will be considered non-responsive and will

be rejected. Proposals offering less than 90 days for acceptance from the published closing date may be considered non-responsive and may be rejected.

Q. Signatures – Bid or proposal responses must be signed in longhand by the Bidder with his/her usual signature in the designated areas within the Proposal documents. Submission of proposals must be signed by all representatives legally authorized to contractually bind the Corporation.

R. Unauthorized Use of City Seal or Logo – Section 2-5(3)a of the Pomona City Code prohibits the use of the City's Seal or Logo, or any reproduction thereof, for any purpose other than for official business of the city, its council, officers or departments.

S. Withdrawal of Proposals – Proposal responses received by the Purchasing Division may be withdrawn. An authorized representative of the Bidder must submit a signed, written request to the Purchasing Manager, formally requesting their proposal to be withdrawn from the proposal process.

DEFINITIONS

In accordance with Section 2-961 of the Pomona City Code, the following words, terms and phrases have the meanings ascribed to as follows:

Most qualified bidder means the "most qualified bidder" will be determined by consideration of the following factors:

a) Qualifications, background, and prior experience of the firm in performing services for similar projects.
b) Experience, organization, and technical skills to successfully accomplish the project's scope of services and objectives.
c) Overall project design and methodology.
d) The responsiveness of the RFP to the tasks to be performed as identified in the "Scope of Services" section.
e) The timeliness and speed with which the consultant can complete the scope of work.
f) The comprehensiveness and rationale of the project work plan.
g) Past performance on contracts with business or government agencies in terms of quality of work and compliance with schedules. This will be evaluated based on a check of references.
h) An evaluation of the approach and related costs.

Nonresponsive bidder means an offer, submitted by a bidder, to furnish supplies, equipment or services that are not in conformity with the specifications, delivery terms or conditions or other requirements specified in the invitation for Proposals.

Nonresponsible bidder is a bidder that provides a bid or proposal but fails to demonstrate their capacity (financial or otherwise) to provide the supplies, equipment or service as specified in the bid or proposal.

Professional services means those services provided by an individual, firm, partnership, or corporation as an independent Consultant and which are of a technical and/or unique nature which require persons who are exceptionally qualified by education or experience to perform

administrative, technical or advisory services which do not involve the delivery of a specific end product other than reports, plans, documents or specifications. By way of illustration but not limitation, the following services are considered as professional: general management consulting, personnel consulting, architecture, accounting, land surveying, landscape architecture, law, medicine, engineering, engineering, research, studies of government operations and procedures and training. Services exempt from this definition include various types of testing services, real estate appraisers, equipment repair specialists, janitorial services and security services.

Responsible bidder means a bidder who submits a responsive Proposal and who is not only financially responsible, but also possesses the resources, judgment, skill, ability, capacity and integrity requisite and necessary to perform the contract according to its terms.

Responsive bid means a proposal, submitted by a bidder responsible, to furnish supplies, equipment or services in conformity with the specifications, delivery terms and conditions and other requirements specified in the invitation for Proposals.

CERTIFYING OFFICIAL

Organization Name: _____

Project Name: _____

Print Name: _____

Title: _____

Signature: _____

Date: _____

SAMPLE AGREEMENT FOR CONSULTANT/CONTRACTOR SERVICES

THIS AGREEMENT (hereinafter referred to as AGREEMENT) is entered into by and between the CITY OF POMONA, hereinafter referred to as the "CITY," and _____, a _____Corporation, hereinafter referred to as "CONSULTANT" or "CONTRACTOR".

RECITALS

WHEREAS, the CITY desires to engage CONSULTANT/CONTRACTOR to perform xxxxxxxxxxx consulting / contracting services for CITY.

WHEREAS, CONSULTANT/CONTRACTOR represents that the principal representative is authorized to enter into this agreement on behalf of CONSULTANT/CONTRACTOR and CONSULTANT/CONTRACTOR is willing to perform such services hereinafter defined.

NOW, THEREFORE, the parties agree as follows:

1. TERM. This Agreement shall be for a term of one year commencing on xxxx xx, 20xx, through xxxx xx, 20xx, with xx one-year extension options, subject to written agreement of the Parties.

2. **REPRESENTATIVES OF THE PARTIES AND SERVICE OF NOTICE**. The representative of the parties who are primarily responsible for the administration of the AGREEMENT, and to whom formal notice, demands and communications shall be given, are as follows:

A. The principal representative of the CITY shall be:

_____
City of Pomona
505 South Garey Avenue
Pomona, CA 91766
(909) 620-_____

B. The principal representative of the CONSULTANT/CONTRACTOR shall be:

_____

C. Formal notices, demands and communications to be given hereunder by either party shall be made in writing and may be affected by personal delivery or by mail.

D. If the name of the principal representative designated to receive the notices, demands or communications, or the address of such person is changed, written notice shall be given within five (5) working days of said changes.

3. **RETENTION.** The CITY retains and employs CONSULTANT/CONTRACTOR to act as such for CITY to perform such consulting services as may be requested by it by the CITY. CONSULTANT/CONTRACTOR accepts the employment and agrees to render such services as CONSULTANT/CONTRACTOR on the terms and conditions herein stated.

4. **SCOPE OF SERVICES.** The scope of such services is set forth in the attached Scope of Work, which is made Exhibit "A" to this Agreement.

5. **COMPENSATION.** The CITY agrees to pay CONSULTANT/CONTRACTOR for the above-stated services, as set forth in the aforementioned attached Scope of Work. CONSULTANT/CONTRACTOR agrees that fees for services shall not exceed the authorized amount of **$XXXXX.**XX as set forth in the fee schedule, Exhibit "B" attached hereto, unless the CITY has given specific advance approval in writing.

6. **INDEPENDENT CONTRACTOR**. CONSULTANT/CONTRACTOR is an independent contractor. As such, CONSULTANT/CONTRACTOR shall have no power or authority to incur any debt, obligation or liability on behalf of CITY. Further, CONSULTANT is not entitled to any benefit typically associated with an employee such as medical, sick leave or vacation benefit.

7. **PERS ELIGIBILITY INDEMNITY.** In the event that CONSULTANT/CONTRACTOR or any employee, agent, or subcontractor of CONSULTANT/CONTRACTOR providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, CONSULTANT/CONTRACTOR shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONSULTANT/CONTRACTOR or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONSULTANT and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by CITY, including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contribution and/or employee contributions for PERS benefits.

8. **ECONOMIC INTEREST STATEMENT.** CONSULTANT/CONTRACTOR hereby acknowledges that pursuant to Government Code Section 87300 and the Conflict of Interest Code adopted by CITY hereunder, CONSULTANT/CONTRACTOR is designated in said Conflict of Interest Code and is therefore required to file an Economic Interest Statement (Form 700) with the City Clerk, for each employee providing advise under this Agreement, prior to the commencement of work. The extent of CONSULTANT/CONTRACTORS disclosure requirements is set forth in the written determination of the City Manager of CITY attached hereto as Exhibit "C."

9. **INDEMNITY AND INSURANCE**

A. INDEMNITY. CONSULTANT/CONTRACTOR hereby agrees to protect, indemnify and hold CITY and its employees, officers and servants free and harmless from any and all loss, claims, liens, demands and causes of action of every kind and character including, but not limited to, the amounts of judgment, interests, court costs, legal fees, expert costs, expert fees and all other expenses incurred by the CITY to the maximum extent allowed by law arising in favor of any party, including claims, liens, debts, personal injuries, including employees of the CITY, death and damages to property (including property of the CITY) and without limitation by enumeration of all other loss or demands of every character occurring or arising directly out of or as a consequence of the performance of the work performed hereunder, except only such injury to persons or damage to property due or claimed to be due to the sole negligence of the CITY. This provision is not intended to create any cause of action in favor of any third party against CONSULTANT/CONTRACTOR or the CITY or to enlarge in any way the CONSULTANT/CONTRACTOR'S liability but is intended solely to provide for indemnification of the CITY for liability for damages or injuries to third persons or property arising from CONSULTANT/CONTRACTOR'S negligent performance hereunder.

B. INSURANCE. CONSULTANT/CONTRACTOR shall procure and maintain at all times during the term of this Agreement insurance as set forth in Exhibit "D" attached hereto.

10. **OWNERSHIP OF WORK PRODUCT.** All reports, documents or other written material developed by CONSULTANT/CONTRACTOR in the performance of this AGREEMENT shall be and remain the property of CITY without restriction or limitation upon its use or dissemination by CITY. Such Material shall not be the subject of a copyright application by CONSULTANT/CONTRACTOR. Any re-use by CITY of any such materials on any project other than the project for which they were prepared shall be at the sole risk of CITY unless CITY compensates CONSULTANT/CONTRACTOR for such use.

11. **CONFIDENTIALITY.** Employees of CONSULTANT/CONTRACTOR in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of CITY. CONSULTANT/CONTRACTOR covenants that all data, documents, discussion, or other information developed or received by CONSULTANT/CONTRACTOR or provided for performance of this AGREEMENT are deemed confidential and shall not be disclosed by CONSULTANT/CONTRACTOR without written authorization by CITY. CITY shall grant such authorization if disclosure is required by law. All CITY data shall be returned to CITY upon the termination of

this AGREEMENT. CONSULTANT/CONTRACTOR's covenant under this Section shall survive the termination of this AGREEMENT.

12. **TERMINATION FOR CONVENIENCE**. Either the CITY or the CONSULTANT/CONTRACTOR may terminate this AGREEMENT at any time without cause by giving thirty (30) calendar days written notice to the other of such termination and specifying the effective date thereof. If this AGREEMENT is terminated as provided herein, CONSULTANT/CONTRACTOR shall be paid only the total amount equal to the service CONSULTANT/CONTRACTOR has provided as of the termination date. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this AGREEMENT or the value of services provided as of date of termination.

13. **TERMINATION FOR CAUSE**. If for any reason, CONSULTANT/CONTRACTOR shall fail to fulfill in a timely and proper manner its obligation under this AGREEMENT, or if CONSULTANT/CONTRACTOR shall violate any of the covenants or stipulations of this agreement, CITY shall then have the right to terminate this agreement by giving a five (5) calendar day written notice to CONSULTANT/CONTRACTOR. The notice shall refer to this clause, shall specify the nature of the alleged default, and shall specify the effective date of the termination. The CONSULTANT/CONTRACTOR will be paid a total amount equal to the service CONSULTANT/CONTRACTOR has provided as of the termination date. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this AGREEMENT.

14. **ASSIGNMENT AND SUBCONTRACTING.** Neither party shall assign or subcontract the rights or responsibilities under this agreement without the express, written consent of the other party, which may be withheld for any reason or for no reason.

15. **STANDARD.** CONSULTANT/CONTRACTOR agrees that all services to be rendered pursuant to this Agreement shall be performed in accordance with the standards customarily provided by an experienced and competent professional organization rendering the same or similar services. CONSULTANT/CONTRACTOR shall re-perform any of said services, which are not in conformity with standards as determined by the CITY. The CONSULTANT/CONTRACTOR will be relieved of its obligation to re-perform said services if the CITY does not notify CONSULTANT/CONTRACTOR within 180 days after the completion of the non-conforming service. Compensation for CONSULTANT/CONTRACTOR to re-perform said services shall be subject to the approval of the CITY, but in no event shall such compensation exceed the actual cost of re-performing services. Except as hereinafter provided in respect of personal injury or property damage, the foregoing are the CONSULTANT/CONTRACTOR'S entire responsibilities and the CITY'S exclusive remedies for service rendered or to be rendered hereunder, and no other warranties, guarantees, liabilities, or obligations are to be implied.

16. **RESOLUTION OF DISPUTES**.

A. Disputes regarding the interpretation or application of any provisions of this AGREEMENT shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

B. If any action, at law or in equity, is brought to enforce or to interpret any provisions of this AGREEMENT, the prevailing party in such action shall be entitled to recover reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

17. **FORCE MAJEURE.** The respective duties and obligations of the parties hereunder shall be suspended while and so long as performance hereto is prevented or impeded by strikes, disturbances, riots, fire, severe weather, government action, war acts, acts of God, or any other cause similar or dissimilar to the foregoing which are beyond the control of the party from whom the affected performance was due.

18. **NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY.** In the performance of this AGREEMENT, CONSULTANT/CONTRACTOR shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age physical or mental handicap, medical condition, or sexual orientation. CONSULTANT/CONTRACTOR will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment,

without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

19. **SEVERABILITY**. If any provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions nevertheless will continue in full force and effect without being impaired or invalidated in any way.

20. **GOVERNING LAW**. This Agreement shall be governed by and construed in accordance with laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Central District of California.

21. **ENTIRE AGREEMENT**. This AGREEMENT, together with Exhibits "A," "B," "C" and "D" supersede any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this AGREEMENT acknowledges that no representation by any party, which is not embodied herein, nor any other agreement; statement or promise not contained in this AGREEMENT shall be valid and binding. Any modification of the AGREEMENT shall be effective only if it is in writing and signed by all parties.

IN WITNESS WHEREOF this Agreement is entered into by the parties hereto on the dates set forth below.

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

THE CITY OF POMONA

By:_____
City Ma

Date: _____

CONSULTANT/CONTRACTOR/CONTRACTOR

By:_____

Title: _____

Date: _____

Approved by City Council on _____