



# **REQUEST FOR PROPOSALS**

**For**

**PROFESSIONAL CONSULTING SERVICES**

**San Jacinto's Trails Master Plan**

**SUBMITTAL DEADLINE: 2:00 PM, Monday, May 15, 2017**



## INTRODUCTION

The City of San Jacinto is seeking proposals from qualified firms or individuals interested in contracting with the City to develop the San Jacinto Trails Master Plan, which will provide a strategic framework for the future development of a fully connected, multi-use, non-motorized trails network. The city has budgeted \$134,295.00 to facilitate the development of the Trails Master Plan. We are pleased to have been awarded an \$116,000 Sustainable Communities grant from the State of California Department of Transportation in order to fund a large majority of this project. Remaining funds are supported by Development Impact Fees, local cash match and by third party in-kind matching.

Firms interested in this Request for Proposals (RFP) must submit a detailed proposal (See details of specific submittal requirements on pages 5 and 6 of this RFP.) by 2 p.m. on Monday, May 15, 2017. Please submit 5 bound paper proposals and one PDF electronic copy (on a flash drive) addressed to: Bob Brady, Special Projects Manager, City of San Jacinto/ 595 S San Jacinto Avenue, San Jacinto, CA 92583/ 951-537-6351. Proposal should be 8 ½ x 11 inches, printed two-sided on recycled and recyclable paper with removable bindings, bound in a single document and organized in sections following the order specified under contents. Proposals must be received by mail or delivery to the City no later than 2 p.m., May 15, 2017.

## OVERVIEW

The City of San Jacinto is located in western Riverside County, 80 miles east of Los Angeles, 90 miles north of San Diego. Regional access is provided by State Routes 74 and 79. Public transit is provided by Riverside Transit Agency and offers alternative transportation options for many of the city's low-income population. A partially developed trails network provides recreational opportunities within the planning area and offers opportunities for future trails and linear parks, as well as bike and pedestrian paths along the San Jacinto River levee, include hiking and biking trails along scenic and interesting corridors. The San Jacinto Valley is abundant with natural resources and scenic vistas including a 10,000 acre San Jacinto Wildlife Area, Mystic Lake, and Potrero Creek Conservation Unit, Historic De Anza Trail along the San Jacinto River, and North Mountain. San Jacinto's terrain is relatively flat, making it an ideal destination for cycling and walking. The proposed Trails Master Plan would identify opportunities to connect these trails to parks, schools and neighborhoods.

The San Jacinto Valley is an integral part of Western Riverside Council of Governments Non-Motorized Trail Plan. Centrally located, San Jacinto provides vital connections to the cities of Hemet, Murrieta, and Temecula to the south, Menifee, Perris and Moreno Valley to the west, Banning and Beaumont to the north, and Idyllwild to the east.

San Jacinto's Trails Master Plan will provide a strategic framework for the future development of a fully connected, multi-use, non-motorized trails network. Planning efforts will focus on improved safety for travelers; ensure equitable transportation options for all ages and ability; increase access to public transit, schools, employment, and city amenities; engage the general public, especially underserved populations to participate in planning efforts, and improve public health and residents' overall quality of life. The San Jacinto Trails Master Plan will express the vision and culture of this growing community, align with regional non-motorized transportation plans, and address sustainable community planning goals and objectives.

## **SCOPE OF WORK**

The City of San Jacinto is seeking skilled, creative and qualified firms, individuals or consultant teams that will take an inclusive look at the City's existing trails and make future recommendations based upon our community vision and goals.

The consultant team hired shall use a comprehensive and inclusive public process during preparation of the proposed Trails Master Plan. Community outreach efforts include three visioning workshops and will engage low-income, minority, tribal residents, community groups, government agencies, bicycle and pedestrian advocates, and private and nonprofit partners. A robust public participation process will include bilingual outreach, involve residents in gathering, assessing, and reporting on priority transportation issues in their neighborhoods, such as pedestrian and bicycle safety, and facilitate a hands-on, interactive approach at each of the visioning workshops. This community input will be utilized in creating the framework needed for the plan.

The consultant team shall work with City staff and the Project Management Team (PMT) comprised of City leadership, staff, local stakeholders, and consultants(s) to develop the Trails Master Plan.

To create the San Jacinto Trails Master Plan, several phases of work and areas of key focus by the consultant team should be outlined when submitting proposals. These include the following:

### **Plan Elements**

The San Jacinto Trails Master Plan should, at a minimum, include these key elements in a way that will make the plan specific and tailored to the needs of the San Jacinto community. The consultant is encouraged to propose any other elements for consideration in the proposal that may make the plan more effective.

- Analysis of existing conditions of non-motorized trails
- Focus on the way in which the plan will improve public health; increase safety and security by providing access and mobility options for low-income residents
- Identify and map pedestrian and bicycle safety issues
- Analyze first-last mile opportunities to reduce vehicle miles traveled (VMT) and lower greenhouse-gas emissions
- Align with Western Riverside Council of Governments (WRCOG) Non-Motorized Trail Plan
- Meet the goals and objectives of Caltrans State Transportation Program by incorporating Complete Streets design, integrating Smart Mobility 2010 concepts, identifying and emphasizing sustainable community and mobility opportunities for all ages and ability.

### **Process**

Refer to Scope of Work Exhibit "A".

### **Project schedule**

The final plan must be completed no later than November, 2018. The consultant should propose a realistic and justified timeline that will yield the outcome that is described in this RFP.



## Budget

Project Title	Fund Source				FY
	Responsible Party	Total Cost	Grant Amount	Local Cash Match	
<b>Project Initiation</b>					
Kick-Off Meeting	City	\$500	\$0	\$500	\$0
Request for Proposal	City	\$7,000	\$2,000	\$5,000	\$0
PMT Monthly Status Meetings	Consultants, City	\$1,000	\$500	\$500	\$0
	<b>subtotal</b>	<b>\$8,500</b>	<b>\$2,500</b>	<b>\$6,000</b>	<b>\$0</b>
<b>Data Collection and Analysis</b>					
Existing Conditions & Map Overlays	Consultant	\$9,500	\$9,000	\$500	\$0
Land Use & Trails Facility Map	Consultant	\$8,500	\$8,000	\$500	\$0
Right-of-Way/Public Easement Map	Consultant	\$8,500	\$8,000	\$500	\$0
First Mile/Last Mile Map & Analysis	Consultant	\$8,500	\$8,000	\$500	\$0
Recreational Trails Facilities Map	Consultant	\$8,000	\$7,500	\$500	\$0
Bike & Pedestrian Traffic Safety Assessment Map & Analysis	Consultant	\$8,000	\$7,500	\$500	\$0
Health & Equity Index & Map	Consultant	\$6,500	\$6,000	\$500	\$0
Transportation/Traffic Study	Consultant	\$10,500	\$10,000	\$500	\$0
	<b>subtotal</b>	<b>\$68,000</b>	<b>\$64,000</b>	<b>\$4,000</b>	<b>\$0</b>
<b>Public Outreach</b>					
Key Stakeholder Identification, Public Outreach	Consultant	\$3,250	\$3,000	\$250	\$0
Community Workshop #1 - Introduction & Review of Existing Conditions	Consultant	\$5,665	\$4,500	\$500	\$665
Community Workshop #2 - Present Draft Master Plan	Consultant	\$5,565	\$4,500	\$500	\$565
Community Workshop #3 Final Trails Master Plan	Consultant	\$5,565	\$4,500	\$500	\$565
	<b>subtotal</b>	<b>\$20,045</b>	<b>\$16,500</b>	<b>\$1,750</b>	<b>\$1,795</b>
<b>Development of Plan</b>					
Trails Master Plan Concept and Alternatives	Consultant	\$10,250	\$10,000	\$250	\$0
Draft Trails Master Plan	Consultant	\$8,250	\$8,000	\$250	\$0
Adoption of Final Trails Master Plan	Consultant	\$6,500	\$6,000	\$500	\$0
City Council Resolution Adoption	Consultant	\$3,000	\$2,500	\$500	\$0
	<b>subtotal</b>	<b>\$28,000</b>	<b>\$26,500</b>	<b>\$1,500</b>	<b>\$0</b>
<b>Fiscal Management</b>					
Invoicing		\$2,500	\$1,500	\$1,000	\$0
Quarterly Reports		\$2,000	\$1,000	\$1,000	\$0
Final Report and Close Out		\$1,500	\$500	\$1,000	\$0
	<b>subtotal</b>	<b>\$6,000</b>	<b>\$3,000</b>	<b>\$3,000</b>	<b>\$0</b>
<b>Funding Strategy</b>					
Develop Funding Strategy		\$3,750	\$3,500	\$250	\$0
	<b>subtotal</b>	<b>\$3,750</b>	<b>\$3,500</b>	<b>\$250</b>	<b>\$0</b>
<b>TOTALS</b>		<b>\$134,295</b>	<b>\$116,000</b>	<b>\$16,500</b>	<b>\$1,795</b>

## **Final Deliverables**

- Project Management Team agendas and summaries
- Existing Conditions Report & Map
- Land Use & Trails Facility Map
- Summary and documentation of Community Workshops
- Right-of-way/Public Easement Map
- First-Mile, Last Mile Analysis
- Recreation Trails Map
- Pedestrian and Bicycle Traffic Safety Assessment
- Community Health and Equity Index & Map
- Transportation/Traffic Existing Conditions Report
- Final Trails Master Plan including a narrative, vision and goals, maps and implementation/funding strategy and matrix (projects, priorities, estimated costs, and management responsibilities over the long term)
- Final document shall be provided in an emailed electronic copy, one copy on a flash drive, and one unbound paper copy for reproduction purposes

## **REQUEST FOR PROPOSAL SUBMITTAL REQUIREMENTS**

1. Proposers should send five (5) copies of the completed proposals, one PDF electronic copy (on a flash drive) and cost bid so that it is received by the City no later than 2:00 p.m. on May 15, 2017 to:

City of San Jacinto  
Attention: Bob Brady  
Special Projects Manager  
595 S. San Jacinto Avenue  
San Jacinto, CA 92583

2. Format: Proposal should be 8 ½ x 11 inches, printed two-sided on recycled and recyclable paper with removable bindings, bound in a single document and organized in sections following the order specified under contents.
3. Contents: Proposal shall contain the following information:

### **A. Firm Description**

If responding as a firm rather than as an individual, provide a description of your firm and list relevant information about capabilities, size, services, and length of time in existence.

### **B. Relevant Experience**

Describe relevant experience managing and implementing Trails Master Plans or other educational or encouragement programs for public agencies or private entities.

### **C. Key Personnel Qualifications**

If responding as a firm, identify key personnel who would work on the project, as assigned their respective roles and a synopsis of relevant experience. If responding as an individual, provide a synopsis of relevant experience.

#### D. References

List of public agencies or clients for whom similar or comparable work has been performed, with the name, title and phone number of a contact person.

#### E. Scope of Work

Provide an explanation of tasks associated with the project in the Scope of Work section, including a general description of how you propose to complete each task.

#### F. Budget and Schedule of Charges

Provide a “Not to Exceed” final project cost and a list of Personnel Rates, Equipment Charges, Travel Reimbursement Costs, and Job Descriptions for Personnel. Include an estimated breakdown of costs for each phase or key task of the project that you have outlined within scope of work.

#### G. Work Schedule

Provide time schedule for completion of work based on the project timeline provided.

#### H. Insurance

The individual or firm receiving the contract shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or subcontracts as set forth in Section 3.2.10 of Exhibit “B” which is attached hereto and incorporated by reference herein. The cost of such insurance shall be included in the consultant’s proposal.

#### I. Consultant Agreement

The City of San Jacinto’s standard professional services agreement is attached as Exhibit “B”. Please identify if your firm would have any issues with the provisions of the City’s standard professional services agreement.

### PROPOSAL EVALUATION CRITERIA

The following factors will form the basis for evaluating the proposals:

- Quality, creativity, ability, and approach put forth in the detailed scope of work outlined by the consultant that clearly and specifically illustrates the tasks that will be completed and accomplished to reach and develop the final San Jacinto Trails Master Plan.
- Summary of qualifications demonstrating experience and knowledge in formulating Trails Master Plans.
- Knowledge and understanding of the geographic region and the variety of uses of trails in these environments.
- Qualifications and experience of key individuals
- Scope of Work and Timeline for completion of work
- Cost of Proposal
- Results of reference checks and past performance for other clients

Finalists will be selected based upon the proposal’s response to the RFP, experience, knowledge of the region, and references, as noted above. A selection committee will convene on May 30th or May 31st to review and discuss proposals, and finalists will be notified on June 1st and invited to an interview. Finalist interviews will be conducted on June 6-7, 2017. Proposing consultants are



encouraged to keep time available in their schedules to accommodate this selection and interview schedule. We will try to be as flexible as possible on those dates to accommodate consultants.

The contract award will be based upon the City's evaluation of the proposing team's:

- Written proposal
- Interview/in-person presentation
- Experience
- Approach to the San Jacinto's Trails Master Plan
- Favorable references

Thereafter, a recommendation for award of contract will be presented to the San Jacinto City Council on June 20, 2017.

### **OTHER CONSIDERATIONS:**

The City of San Jacinto reserves the right to reject any and all proposals. This Request for Proposals does not commit the City to award contract, pay any costs incurred in the preparation of proposals, or to procure or contract for supplies or services.

The City of San Jacinto reserves the right to negotiate with any qualified source or to cancel, in part or in its entirety, this Request for Proposals, if it is in the best interest of the City to do so. The City may require the selected consultant to participate in negotiations, and submit such price, technical or other revisions of the proposal that may result from negotiations.

### **QUESTIONS:**

Questions concerning the RFP or the selection process may be submitted in writing by Monday, May 8, 2017 at 9:00 a.m. via email to [bbrady@sanjacintoca.us](mailto:bbrady@sanjacintoca.us). All questions and responses will be posted on the City of San Jacinto website at <http://www.ci.san-jacinto.ca.us> by May 10, at 10:00 a.m.

## EXHIBIT A

### SCOPE OF WORK: San Jacinto Trails Master Plan

#### **Task 1: Project Management Team (PMT) Meetings.**

Identify and convene the Project management Team. The Project Management Team (PMT) will be comprised of City leadership, staff, local stakeholders, and consultant(s). The PMT will meet monthly to review project work schedules to ensure project activities and milestones are completed according to contracted Scope of Work, Project Timeline and Budget. The PMT will prepare a schedule of activities including target dates for monthly PMT meetings, provide guidance for the development of public outreach materials, community workshops and materials. In addition, prepare monthly reports, submit modifications to scope, timeline, or budget as needed. A process for review and feedback between City and Consultant(s) will be established and implemented throughout the Project.

#### **2.0: Task Title: Data Collection and Analysis**

Data collection and analysis efforts will identify constraints and safety concerns of existing facilities and prepare maps necessary to assess existing and future conditions related to the Trails Master Plan. Consultants will identify gaps and review potential network alignments to close trail network gaps; summarize information on existing on-street, trail, and pedestrian and bicycle facilities; provide a qualitative assessment of well-served and under-served areas and destination trail connections; identify opportunities and constraints (e.g. topography, built environment; authorized and unauthorized rail crossings, easements) for additional trails to improve connectivity.

#### **Task 2.1: Existing Conditions Map: Individual and Map Overlays**

Compile Baseline Condition Inventory of San Jacinto's existing bikeway, pedestrian, and equestrian trails to identify the area's non-motorized facilities and community resources. Meetings will be scheduled with the county and adjacent city jurisdictions to review and update existing conditions report. Additional meetings with regional agency stakeholders: Riverside County Flood Control District and Water Conservation District, Metropolitan Water District, Eastern Municipal Water District, Western Riverside Regional Conservation Authority, Western Riverside Council of Governments, State Department of Fish and Wildlife, Soboba Band of Luiseno Indians, and other public, private, and non-profit sectors will be held to identify opportunities to construct trails along levee and drainage facilities. Consultant will present at Community Workshop #1.

#### **Task 2.2: Prepare a Land Use & Trails Facility Overlay Map**

Bikeway, Pedestrian, Equestrian and Hiking Trail Facilities Map will show existing and proposed development settlement patterns within the City and its immediate surroundings. Address problematic intersections, grades, vehicular traffic, etc. Review all updates to trail plans prepared by staff and all applicable City design and planning standards and guidelines for incorporation into the plan update. Consultant will present at Community Workshop #1.

**Task 2.3: Prepare Right-of-Way (ROW)/Public Easement Map**

Create a ROW/Public Easement Opportunity Map to identify corridors of public land ownership. Consultant will present at Community Workshop #1.

**Task 2.4: Prepare a First-Mile, Last Mile Analysis**

Prepare a First-Mile, Last Mile Analysis Report and Map illustrating walking distances and biking distances to public transit and end of trip locations, such as park-and-ride lots, schools, shopping, employment hubs, social services, and recreational centers. Consultant will present at Community Workshop #1.

**Task 2.5: Prepare a Recreational Trails Facilities Map**

Review Riverside County Parks and Recreation Master Plan. Prepare a Recreational Trails Facility Map identifying potential areas for future end-of-trip facilities such as “comfort stations” with bike/hiker lockers, restrooms. Illustrate locations for potential facilities at or near recreational areas, trailheads, parks, and restaurants. Consultant will present at Community Workshop #1.

**Task 2.6: Conduct a Bike and Pedestrian Traffic Safety Assessment**

Engage community members in gathering, analyzing and conducting a Bike and Pedestrian Traffic Safety Assessment in their neighborhood and at schools. Consultant will compile information and present existing pedestrian and bicycle patterns and pedestrian and bicycle injury fatality data; produce a Pedestrian and Bicycle Injury and Fatality Heat Map; a Pedestrian and Bicycle Injury & Fatality Community Profile describing and illustrating types of injury and socio-demographic data and present during Community Workshop #1.

**Task 2.7: Prepare a Health and Equity Index and Map**

Analyze existing socio-economic and demographic data to identify Disadvantaged Communities by census tract. Identify opportunities for low-income residents, children, seniors, disabled, to access to non-motorized transportation options such as transit, bike or pedestrian paths, and trails. Consultant will present at Community Workshop #1.

**Task 2.8: Prepare Transportation/Traffic Study**

Prepare a Transportation/Traffic Study which describes existing area traffic conditions, evaluate and summarize traffic-related impacts and present recommended mitigation measures to address the direct and cumulative traffic-related impacts of the Trails Master Plan. An Existing Conditions report will be prepared.

**3.0 Task Title: Public Outreach**

Community engagement is vital during the planning process to ensure the plan reflects community needs. Three Community Workshops are planned to educate and assess community needs as it relates to the development of a Trails Master Plan. Caltrans will be an active partner during each of the workshops. The Workshops will engage the community by educating participants on land use and transportation options; discuss health, safety concerns in their neighborhoods and identify solutions. The workshops and presentations will provide general information about trails and bikeways, safety, accessibility, and mobility options. Interactive, hands-on Charrette process utilizing maps and visuals will be used to engage participants at each

Workshop. Bilingual public notices, flyers, mailers and social media announcements will be posted to reach a broad audience. Manual and web-based surveys will be incorporated into the public outreach effort.

**Task 3.1: Key Stakeholder Identification & Outreach**

Outreach to local constituents will ensure broad-based input, especially among traditionally under-represented groups. Bilingual public notices will be disseminated using traditional mail, flyers, social media, and the City’s website. The Key Stakeholder contact list will remain a dynamic document, adding new stakeholders as the project evolves and gains momentum.

**Task 3.2: Community Workshop #1 – Introduction & Review of Existing Conditions**

Workshop #1 will introduce the goals and objectives of updating the Trails Master Plan; discuss opportunity and constraints and present Existing Condition Map Overlays. Stakeholder comments will be captured, filed, and incorporated into the planning process.

- Land Use & Trails Map
- Right-Of-Way/Public Easement Map
- First-Mile, Last Mile Analysis
- Recreational Trails Map
- Bike & Pedestrian Traffic Safety Analysis
- Health & Equity Index and Map
- Transportation/Traffic Study

**Task 3.3: Community Workshop #2 – Draft Trails Master Plan Charrette**

Workshop #2 will be held after the existing conditions analysis has been completed. The charrette will focus on community vision setting along with identification of focus areas or themes. This workshop will build upon the information compiled from Workshop #1, summarizing, compiling, and reporting Stakeholder input. The Draft Trails Master Plan will be prepared to present to Planning Commission and City Council.

**Task 3.4: Community Workshop #3 - Present Final Trails Master Plan**

Community Workshop #3 will present the Final Trails Master Plan to the Community. This final workshop will be an “open-house” format, to allow the community to focus their comments on specific areas of interest. The workshop format will be an opportunity to celebrate and demonstrate the work completed.

**4.0 Task Title: Development of Plan**

Development of the Trails Master Plan will include analysis of existing conditions of non-motorized trails, with a special focus on the way in which the plan will improve public health; increase safety and security by providing access and mobility options for low-income residents; identify and map pedestrian and bicycle safety issues; and analyze first-last mile opportunities to reduce vehicle miles traveled (VMT) and lower greenhouse-gas emissions. Moreover, the Trails Master Plan will align with Western Riverside Council of Governments Non-Motorized Trail Plan (2010) and meet the goals and objectives of Caltrans State Transportation Program by incorporating Complete Streets design, integrating Smart Mobility 2010 concepts, identifying and emphasizing sustainable community and mobility opportunities for all ages and ability.

**Task 4.1: Trails Master Plan Concept and Alternatives**

Based upon community input from Workshop #1, a Trails Master Plan conceptual design will be developed. The conceptual design will incorporate complete streets concepts and will include plan, sketches, and photos. Consultants will develop a prioritized and phased implementation plan by identifying trail and bikeway segment locations that need to be connected; evaluate and recommend site specific solutions for these areas such as by-pass, green painted bike paths, sharrows, and/or separated facilities.

**Task 4.2: Draft Trails Master Plan**

Based on the Trails Master Plan conceptual design, prepare a Draft Trails Master Plan with trail specifics such as cross sections, surface material, width, grade variations and length for each segment by identifying trail head and proposed amenities and adding end-of-trip requested items such as bike racks, storage, lockers, etc. Update the estimated costs for the construction of trails and trail heads, striping of bikeways, and installation of bike racks and bike storage facilities. Consultants will prepare a Draft Trails Master Plan document for review and comment by City and County Planning Departments; present the Draft Trails Master Plan Map to Community Stakeholders, Planning Commission and City Council; receive, address and file Stakeholder comments and incorporate where appropriate.

**Task 4.3: Adoption of Final Trails Master Plan**

Submit Revised/Finalized Trails Master Plan version for Planning Commission and City Council approval. Finalize Trails Master Plan document for Planning Commission approval and City Council adoption.

**Task 4.4: City Council Resolution Adopting Trails Master Plan**

Submit Revised/Finalized Trails Master Plan version for Planning Commission and City Council approval. Prepare City Resolutions for Trails Master Plan adoption by Planning Commission and City Council.

**5.0 Task Title: Fiscal Management**

Fiscal management of the project will be led by the City's Finance Department and Consultant. This team will ensure that Caltrans LAPM Invoicing and Reporting procedures are met in a timely manner.

**Task 5.1: Invoicing**

Prepare and submit quarterly invoices pursuant to Caltrans Grant Guidelines.

**Task 5.2: Quarterly Reports**

Prepare and submit quarterly reports pursuant to Caltrans Grant Guidelines.

**Task 5.3: Final Report and Close-Out**

Prepare and submit Final Invoice and Project Close-Out documents pursuant to Caltrans Grant Guidelines.

## **6.0 Task Title: Funding Strategy**

Execution of the Trails Master Plan will depend upon a variety of factors including identifying and receiving funding. A funding strategy will identify traditional and alternative transportation funding sources and financing options for transportation and capital improvement projects. The consultant will prepare a short and long-term funding strategy which will include a matrix outlining cyclical federal, state, regional, and local transportation funding opportunities as well as identify innovative funding mechanisms and leveraging models.

### **Task 6.1: Prepare Funding Strategy Plan**

The funding strategy will identify projects and phases of projects; costs for developing project initiation documents, environmental documents, project design, construction, and maintenance.



## EXHIBIT B:

# PROFESSIONAL SERVICES AGREEMENT TEMPLATE

### CITY OF SAN JACINTO PROFESSIONAL SERVICES AGREEMENT

#### 1. PARTIES AND DATE.

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of San Jacinto, a municipal corporation organized under the laws of the State of California with its principal place of business at 595 South San Jacinto Avenue, San Jacinto, California 92583 (“City”) and [\_\_INSERT NAME\_\_], a [\_\_INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY\_\_] with its principal place of business at [\_\_INSERT ADDRESS\_\_] (“Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

#### 2. RECITALS.

##### 2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing [\_\_INSERT TYPE OF SERVICES\_\_] services to public clients, is licensed in the State of California, and is familiar with the plans of City.

##### 2.2 Project.

City desires to engage Consultant to render such services for the [\_\_INSERT NAME OF PROJECT\_\_] project (“Project”) as set forth in this Agreement.

#### 3. TERMS.

##### 3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional [\_\_INSERT TYPE OF SERVICES\_\_] consulting services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in



accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from [\_\_INSERT START DATE\_\_] to [\_\_INSERT ENDING DATE\_\_], unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual written consent, extend the term of this Agreement if necessary to complete the services.

### **3.2 Responsibilities of Consultant.**

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a



threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: [ **INSERT KEY PERSONNEL** ],

3.2.5 City's Representative. The City hereby designates [ **INSERT NAME OR TITLE** ], or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates [ **INSERT NAME OR TITLE** ], or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9.1 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.9.2 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.9.3 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Consultant shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its sub-consultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

### 3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract



until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.2.10.2 Minimum Requirements. Consultant 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 Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants 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:

(A) 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.

(B) Minimum Limits of Insurance. Consultant 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, including, but not limited to, form CG 2503, 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.

3.2.10.3 Professional Liability. **[\*\*\*INCLUDE THIS SUBSECTION ONLY IF APPLICABLE; DELETE OTHERWISE\*\*\*]** Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than **[\*\*\*INSERT AMOUNT - TYPICALLY \$1,000,000 MINIMUM; HOWEVER, AMOUNT OF INSURANCE REQUIRED DEPENDS UPON NATURE OF CONTRACT AND RISK TO CITY. PLEASE CONTACT RISK MANAGEMENT TO CONFIRM AMOUNT\*\*\*]** per claim, and shall be endorsed to include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its



directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.2.10.8 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.9 Reporting of Claims. Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed [**\_\_INSERT WRITTEN DOLLAR AMOUNT\_\_**] (\$[**\_\_INSERT NUMERICAL DOLLAR AMOUNT\_\_**]) without written approval of City's [**\_\_INSERT TITLE\_\_**]. Extra Work may be authorized, as defined and described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.



3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, “Extra Work” means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City’s Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If applicable, 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 \$1,000 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 at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **3.4 Accounting Records.**

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### 3.5 General Provisions.

#### 3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant:**

**[\*\*\*INSERT NAME, ADDRESS & CONTACT PERSON\*\*\*]**

**City:**

City of San Jacinto  
595 S. San Jacinto Avenue  
San Jacinto, CA 92583

Attn: **[\*\*\*INSERT NAME & DEPARTMENT\*\*\*]**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### 3.5.3 Ownership of Materials and Confidentiality.

#### 3.5.3.1 Documents & Data; Licensing of Intellectual Property.

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City’s express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

#### 3.5.3.2 Subconsultants. Consultant shall require all

subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

#### 3.5.3.3 Right to Use. City shall not be limited in any way in its

use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City’s sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant’s seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the

City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.5.3.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.3.5 Confidentiality. All Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

### 3.5.6 Indemnification.

3.5.6.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged negligent acts, omissions or willful misconduct of Consultant, its officials, officers, employees, subconsultants, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential

damages, expert witness fees, attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.5.6.2 Additional Indemnity Obligations. Consultant shall defend, with counsel of City's choosing, at Consultant's own cost, expense and risk, any and all such aforesaid claims, suits, actions or other legal proceedings of every kind that may be brought or instituted against City or its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents or volunteers.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.



3.5.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.21 Grant Provisions. Since funding for the Services is provided, in whole or in part, with Proposition 84 Sustainable Communities Grant funds, Consultant shall also fully and adequately comply with the provisions included in Exhibit “D” (Grant Requirements) attached hereto and incorporated herein by reference (“Grant Requirements”). With respect to any conflict between such Grant Requirements and the terms of this Agreement, the Grant Requirements shall govern.

### **3.6 Subcontracting.**

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

**[SIGNATURES ON NEXT PAGE]**



**SIGNATURE PAGE TO**

**PROFESSIONAL SERVICES AGREEMENT BY AND  
BETWEEN THE CITY OF SAN JACINTO AND [\*\*\*INSERT  
NAME\*\*\*]**

**CITY OF SAN JACINTO**

**[\*INSERT NAME OF CONSULTANT\*]  
[\*INSERT NAME OF LEGAL ENTITY\*]**

By: \_\_\_\_\_  
[\*\*\*INSERT NAME\*\*\*]  
[\*\*\*INSERT TITLE\*\*\*]

By: \_\_\_\_\_  
[\*\*\*INSERT NAME\*\*\*]  
[\*\*\*INSERT TITLE\*\*\*]

*Attest:*

\_\_\_\_\_  
City Clerk

*Approved as to Form:*

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney