

CITY OF INDUSTRY

CITY COUNCIL SPECIAL MEETING AGENDA

FEBRUARY 13, 2020
9:00 AM



Mayor Cory C. Moss
Mayor Pro Tem Cathy Marcucci
Council Member Abraham Cruz
Council Member Mark D. Radecki
Council Member Newell Ruggles

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

Addressing the City Council:

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

Americans with Disabilities Act:

- ▶ In compliance with the ADA, if you need special assistance to participate in any City meeting (including assisted listening devices), please contact the City Clerk's Office (626) 333-2211. Notification of at least 48 hours prior to the meeting will assist staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting.

Agendas and other writings:

- ▶ In compliance with SB 343, staff reports and other public records permissible for disclosure related to open session agenda items are available at City Hall, 15625 East Stafford Street, Suite 100, City of Industry, California, at the office of the City Clerk during regular business hours, Monday through Thursday 8:00 a.m. to 5:00 p.m., and Fridays 8:00 a.m. to 4:00 p.m. Any person with a question concerning any agenda item may call the City Clerk's Office at (626) 333-2211.

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

5. **ACTION ITEMS**

- 5.1 Consideration of a Professional Services Agreement with I.R.C. Technologies, Inc. dba Independent Roofing Consultants to provide consulting services related to roof restoration and replacement at various City owned properties, for an amount not to exceed \$39,440.00

RECOMMENDED ACTION: Approve the Agreement.

- 5.2 Consideration of Amendment No. 1 to the Professional Services Agreement with IDS Group, Inc. for the Avalon Room and Patio Café Improvements (CIP-EXPO-18-017 B)

RECOMMENDED ACTION: Approve the Amendment.

- 5.3 Consideration of Amendment No. 1 to the Street Sweeping Contract with R.F. Dickson Company, Inc. to increase the budget by \$300,000.00, and extending the term of the Agreement through April 8, 2021 (CITY-1423)

RECOMMENDED ACTION: Approve the Amendment.

- 5.4 Consideration of Amendment No. 2 to the Professional Services Agreement with Tetra Tech, Inc., to continue 30 percent Preliminary Design for Multi-Benefit Stormwater Capture Projects for the Upper San Gabriel River Enhanced Watershed Management Program, for an amount not-to-exceed \$714,000.00 through August 31, 2020 (Contract No. 2017-1002)

RECOMMENDED ACTION: Approve the Amendment.

6. Adjournment. Next regular City Council meeting will be on Thursday, February 27, 2020 at 9:00 a.m.

CITY COUNCIL

ITEM NO. 5.1



CITY OF INDUSTRY

MEMORANDUM

TO: Honorable Mayor Moss and Members of the City Council

FROM: Troy Helling, City Manager *TH*

STAFF: Joshua Nelson, City Engineer *JN*

DATE: February 13, 2020

SUBJECT: Consideration of a Professional Services Agreement with I.R.C. Technologies, Inc. dba Independent Roofing Consultants to provide consulting services related to roof restoration and replacement at various City owned properties, for an amount not to exceed \$39,440.00

Background:

The roof systems at three City-owned facilities appear to have exceeded their expected life, with two of these buildings requiring reoccurring patching and repairs. There is a need for the entire roof system at each building to be evaluated and repaired overall. Staff received a proposal to inspect and provide design criteria, as well as to define the as-built conditions impacting the design and construction of a new roof system. The three locations include: 1) Sheriff's Youth Activity League building/Post Office at 15559 Rausch Road; 2) Public Works Warehouse at 1123 South Hatcher Avenue; and; 3) Chamber of Commerce (Industry Business Council) at 15651 Stafford Street.

Discussion:

Independent Roofing Consultants ("IRC") is a construction consulting firm specializing in roofing and waterproofing systems. IRC will provide consulting services for roof restoration/replacement at each of the locations cited above. During their assessment, the flashing and termination requirements for the new roof system will be reviewed to establish the flashings and accessory components required for a complete, new roof system that meets current building code requirements and Title 24 requirements. IRC will develop and provide written specifications and detailed drawings for each location. During the construction phase, IRC will provide full-time inspection services including the final inspection, the pre-bid conferences and pre-construction meetings.

Fiscal Impact:

The fiscal impact is \$39,440.00 (Account No. 120-706-5120.01). An appropriation of \$39,440.00 is requested from the 2015 Bond Proceeds to City Capital Improvements-Admin, Studies, General, Budget-Professional Services.

Recommendations:

- 1) Approve the Professional Services Agreement with Independent Roofing Consultants, Inc. to provide consulting services related to roof restoration and replacement at various locations in the City; and
- 2) Appropriate \$39,440.00 from the 2015 Bond Proceeds to City Capital Improvements-Admin, Studies, General, Budget-Professional Services (Account No. 120-706-5120.01).

Exhibit:

- A. Professional Services Agreement with Independent Roofing Consultants, Inc. dated February 13, 2020
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TH/JN:jf

EXHIBIT A

Professional Services Agreement with Independent Roofing Consultants, Inc. dated
February 13, 2020

[Attached]

CITY OF INDUSTRY
PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of February 13, 2020 ("Effective Date"), between the City of Industry, a municipal corporation ("City") and I.R.C. Technologies Inc., dba Independent Roofing Consultants, a California Corporation ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

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

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

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than February 13, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

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

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

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the City and in a first-class manner in conformance with the standards of quality normally observed by an entity providing consulting services related to roof restoration and replacement at various locations in the City of Industry, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the

Political Reform Act (Government Code Section 81000 *et seq.*)). During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) City has not consented in writing to Consultant's performance of such work. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

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

3. MANAGEMENT

City Manager shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

4. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Thirty Nine Thousand Four Hundred Forty Dollars (\$39,440.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

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

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

5. LABOR CODE AND PREVAILING WAGES

(a) Consultant represents and warrants that it is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 16000, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000.00 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and any location where the Services are performed. Consultant shall indemnify, defend and hold harmless, the City, its elected officials, officers, employees and agents, from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, Consultant's or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant, failure or alleged failure to comply with Prevailing Wage Laws.

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

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

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT

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

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

7. OWNERSHIP OF DOCUMENTS

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

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

and/or printing computer files. Consultant hereby grants to City all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the City.

8. INDEMNIFICATION

(a) Indemnity for professional liability

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

(b) Indemnity for other than professional liability

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

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

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

9. INSURANCE

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

10. INDEPENDENT CONSULTANT

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

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

11. LEGAL RESPONSIBILITIES

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

12. UNDUE INFLUENCE

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

13. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during

his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

14. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless Consultant is prohibited by law from informing the City of such Discovery, court order or subpoena. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

15. NOTICES

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

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

With a Copy To: Casso & Sparks, LLP
13300 Crossroads Parkway North, Suite 410
City of Industry, CA 91746
Attention: James M. Casso, City Attorney

To Consultant:

IRC Technologies, Inc.
2901 Pullman Street
Santa Ana, CA 92705
Attention: Veronica Foster, Vice President

16. ASSIGNMENT

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

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

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

17. GOVERNING LAW/ATTORNEYS' FEES

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

18. ENTIRE AGREEMENT

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

and upon each party's own independent investigation of any and all facts such party deems material.

19. SEVERABILITY

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

20. COUNTERPARTS

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

21. CAPTIONS

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

22. WAIVER

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

23. REMEDIES

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

24. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

“CITY”
City of Industry

“CONSULTANT”
IRC Technologies, Inc.

By: _____
Troy Helling, City Manager

By: _____
Veronica Foster, Vice President

Attest:

By: _____
Julie Gutierrez-Robles, City Clerk

Approved as to form:

By: _____
James M. Casso, City Attorney

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

EXHIBIT A

SCOPE OF SERVICES

Consultant shall perform the work set forth herein for the following properties: Post Office/Sherriff's Youth Activity League - 15559 Rausch Road, Public Works Warehouse - 1123 South Hatcher Avenue, and Chamber of Commerce (Industry Business Council) - 15651 Stafford Street (collectively, the "Properties")

PHASE I

SITE INVESTIGATION

Consultant shall perform an on-site roof inspection of the existing roof system. Consultant shall obtain design criteria and define as-built conditions impacting the design and construction of a new roof system. During this inspection, the flashing and termination requirements for the new roof system will be reviewed to establish the required flashings and accessory components required for a complete and guaranteed new roof system meeting current building code requirements and Title 24 requirements.

Also, during the course of this inspection, conditions requiring attention such as mechanical equipment ductwork and ductwork connections to mechanical units will be reviewed and if required restoration of these accessory components will be included in the project scope of work.

ROOF SPECIFICATIONS & DETAIL DRAWINGS

Consultant shall develop written specifications for the above referenced property. These specifications will provide the following information:

- Approved material manufacturers and individual material products to define the quality standards for the roof system construction.
- Quality standards for both workmanship and materials in the construction of the new roof system.
- Contractor insurance requirements.
- Contractor and material manufacturer guarantee requirements.
- Contractor requirements during the project, including submittal information, hours of work, conduct of employees and staging areas.
- Project requirements for construction of sheet metal and lead accessories augmenting the roof system design, inclusive of special project conditions to be included in the contractor's bid.
- Contractor bid submittal requirements.

Consultant shall provide will be computer-generated detail drawings illustrating the construction of the roof membrane as well as all flashings at horizontal-to-vertical terminations, penetrations, and transitions with the written specifications.

PRE-BID CONFERENCE

Consultant will attend an onsite conference with the bidding contractors to review the specifications and jobsite conditions and address any contractor questions regarding the project specifications for the purpose of achieving the most accurate, complete and competitive bids possible. Following the conference, Consultant will develop a written report summarizing the conference discussions and any additions, deletions or changes to the project specifications. A copy of this report will be issued to the City.

Bid Review and Bid Tabulation

Consultant will review and evaluate submitted contractor bids. A bid tabulation summarizing the contractor bids, in spreadsheet format, will be provided to the City for ease of reference and comparison.

PHASE II

INSPECTION SERVICES

Consultant shall provide the following field observation services at the above referenced project. Guidelines to be utilized in monitoring the new system installation shall include, but are not limited to, Project Specifications, Contractor Bid Submittals and Material Manufacturer Guidelines, depending on the project design standards available.

Pre-Job Conference

Consultant shall conduct an onsite conference with the application contractor and all trades related to the new system installation to:

- Review material submittals.
- Discuss project scheduling.
- Review project site and substrate, if completed at time of Pre-Job Conference.
- Establish lines of communication and dispute resolution.

At the conclusion of the conference, a written report is generated and issued to the City confirming agreements and identifying pending issues for resolution prior to start of work. Any decisions that affect or alter the existing design criteria must be approved by the Architect of record.

Full-Time Inspections

Consultant shall provide Full-Time Inspections to the project with a continuous daily historical record of the new system installation. Items found not to be in accordance with the project contract documents will be identified and brought to the attention of the roofing contractor's foreman. Items noted for "corrective action" are the responsibility of

the Contractor and/or the Subcontractor who remain liable for any items requiring correction.

Final Inspection

When the roofing contractor and subcontractors (including sheet metal, mechanical, etc.) have completed the system installation, Consultant will conduct a visual final inspection of the roof assembly.

A report will be issued to the City noting items to be completed and/or deficiencies to be corrected with photographs as applicable. The roof system should not be considered complete until all punchlist items have been properly addressed.

Punchlist Verification Inspection (If requested)

Consultant will conduct an inspection of all roofing punchlist development items to verify the deficiencies have been completed. Final payments and retentions can be released once these corrections are properly made.

EXHIBIT B
FEE SCHEDULE

PHASE I

Site Investigation	\$3,750.00
Roof Specification & Detail Drawings	\$7,650.00
Pre-Bid Conference	\$4,500.00
Bid Review & Bid Tabulation	No Charge
PHASE I TOTAL:	\$15,900.00

PHASE II

Pre-Job Conference	\$4,500.00
Full-Time Inspection	\$11,640.00
Final Inspection	\$4,400.00
PHASE II TOTAL:	\$20,540.00

PHASE I & II TOTAL: **\$36,440.00**

Punchlist Verification Inspection \$3,000.00

TOTAL NOT TO EXCEED: **\$39,440.00**

EXHIBIT C

INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for

nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

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

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

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

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

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

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

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

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

CITY COUNCIL

ITEM NO. 5.2



CITY OF INDUSTRY

MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Troy Helling, City Manager *TH*

STAFF: Joshua Nelson, City Engineer *JN*
Tapas Dutta, Senior Project Manager *TD*

DATE: February 13, 2020

SUBJECT: Consideration of Amendment No. 1 to the Professional Services Agreement with IDS Group, Inc. for the Avalon Room and Patio Café Improvements (CIP-EXPO-18-017 B)

Background:

On December 13, 2018, the City Council approved a Professional Services Agreement with IDS Group, Inc. ("IDS") for architectural services for the Avalon Room and Patio Café Improvements ("Project") for an amount not-to-exceed \$226,550.00. The Project entails providing final architectural and engineering construction documents for upgrades to the existing Avalon Room and Patio Café based on the conceptual drawings approved by the Council in 2017. The conceptual drawings were done by a previous consultant.

Discussion:

IDS is working on the upgrade design of the Avalon Room. Some work on the upgrade design for Patio Café started but the Patio Café Design was put on hold. Given that the Avalon Room will not be available for use during time that it is under construction, and because future upgrades are being planned for the Pavilion facility, it is necessary to construct a new facility ("Temporary Facility") that can be used while the aforementioned areas are unavailable. Although the Temporary Facility will host events during the construction of the upgrades to the Avalon Room and the Pavilion, it is being designed as a facility capable of being in service beyond its initial temporary use. The Temporary Facility will be sited at the Team Roping Ring area in the Expo Center between the Expo Center offices and the Pavilion and will accommodate up to 500 guests.

IDS provided Staff with a proposal for the design of the Temporary Facility for an amount not-to-exceed \$330,606.00. The scope of services for the Temporary Facility includes the architectural, structural, mechanical, electrical and plumbing design for this new building from conception to final construction documents, as well as providing construction support for their design and review of submittals once the project is in construction.

The current Agreement with IDS expires on July 5, 2020. The addition of the design of the Temporary Facility and project delays for the Avalon Room Improvements due to the absence of complete as-built drawings, will necessitate for the contract term to be extended through December 31, 2021. Staff is therefore requesting that the City amend the Agreement to revise the scope of work to include the design of the Temporary Facility and increase the compensation in the amount of \$330,606.00

Fiscal Impact:

The fiscal impact for Amendment No. 1 is \$330,606.00 to be added to the approved amount for IDS under Project CIP-EXPO-18-017 B. The current approved budget for this Project for Fiscal Year 2019-2020 is \$1,020,000.00 and will accommodate the additional amount. No additional appropriations are needed at this time.

Recommendation:

It is recommended that the City Council approve Amendment No. 1 to the Professional Services Agreement with IDS Group, Inc.

Exhibit:

- A. Amendment No. 1 to Professional Services Agreement with IDS Group, Inc. dated February 13, 2020
-

TH/JN:jf

EXHIBIT A

Amendment No. 1 to Professional Services Agreement with IDS Group, Inc. dated
February 13, 2020

[Attached]

**AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT FOR CONSULTANT SERVICES
WITH IDS GROUP, INC.**

This Amendment No. 1 to the Professional Services Agreement (“Agreement”), is made and entered into this 13th day of February, 2020 (“Effective Date”), by and between the City of Industry, a municipal corporation (“City”) and IDS Group, Inc., a California corporation (“Consultant”). The City and Consultant are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, on or about December 13, 2018, the Agreement was entered into and executed between the City and Consultant to provide professional services for the Avalon Room and Patio Café Improvement Project; and

WHEREAS, the City is requesting that the Consultant perform additional design and construction management services for a Temporary Facility, and therefore it is necessary to amend the Agreement to include the new services. Further,, as a result of additional work, it is also necessary to increase the total compensation under the Agreement by \$330,606.00, and due to the additional work, and delays with the Avalon Room and Patio Café Improvement Project, it is also necessary to extend the term of the Agreement through December 31, 2021; and

WHEREAS, the Parties also desire to amend the Agreement to reflect the current address for the City Attorney; and

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

AMENDMENT

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

1. TERM

Section 1, Term, is hereby revised to read in its entirety as follows:

This Agreement shall commence on the Effective Date and shall remain and continue in effect until tasks described herein are completed, but in no event later than December 31, 2021, unless sooner terminated pursuant to the provisions of this Agreement.

4. PAYMENT

Section 4(a) is hereby revised to read in its entirety as follows:

The City agrees to pay Consultant monthly, in accordance to the payment rates and terms as set forth in Exhibit B (“Rate Schedule”) attached hereto and incorporated herein by this

reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Five Hundred Fifty-Seven Thousand One Hundred and Fifty-Six dollars (\$557,156.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

14. NOTICES

The address for James M. Casso is hereby revised to read in its entirety as follows:

James M. Casso, City Attorney
Casso & Sparks, LLP
13300 Crossroads Parkway North, Suite 410
City of Industry, CA 91746

Exhibit A Scope of Services

The Scope of Services is hereby amended to include the scope of services provided in Attachment 1, attached hereto, and incorporated herein by reference.

Exhibit B, Rate Schedule

The Rate Schedule is hereby amended to include the rates set forth in Attachment 2, attached hereto, and incorporated herein by reference.

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

“CITY”
City of Industry

“CONSULTANT”
IDS Group, Inc.

By: _____
Troy Helling, City Manager

By: _____
John Silber, Principal Architect

Attest:

By: _____
Julie Gutierrez-Robles, Secretary

APPROVED AS TO FORM

By: _____
James M. Casso, General Counsel

**ATTACHMENT 1
EXHIBIT A**

SCOPE OF SERVICES

The scope of services for the Temporary Facility includes the architectural, structural, mechanical, electrical and plumbing design for this new building from conception to final construction documents, as well as coordination with the site and parking design of the Temporary Facility.

Consultant shall include and address the following in the design:

- The facility will provide banquet style seating as a single room for 500 guests with operable wall permitting the room to be split into two rooms, one for 300 guests and one for 200 guests.
- Operable wall should be sound attenuating.
- There is to be covered walkway(s) and big doors opening to the immediate landscape.
- The Expo Center exemplifies a ranch-type look and this should inform the architectural design.
- Two sets of public restrooms are required and there will be two single accommodation all gender restrooms.
- There will be a bar area serving the banquet areas configured to serve any of the three rooms (single 500 guests, 200 guest space, and 300 guest space).
- A catering service area is to be provided but a commercial kitchen is not required
- General storage for tables, chairs and other facility stuff is required
- The construction estimate will be determined.
- Audio/Visual services – 4 meetings, preliminary drawings, shop drawing review

Architectural

- Schematic design, design development plans, detailed construction cost estimate, permits and construction documents and final Plans, Specification and Estimate (PS&E).
- Coordination of Consultant services with services provided by others retained by the City.

Structural

- Structural details of the building envelop shall be in accordance with California Building Structural Codes and Codes necessary to comply for permitting and building purposes.
- Structural system will be light steel frame with metal roof deck
- Coordination with the Civil and other disciplines for proper location of building foundation, underground utilities, roadways, walkways, and vertical and horizontal components of the structure.
- Collaborate with architect in preparing structural elements of schematic design options.
- Assist in providing scope of work for geotechnical report services.

- Prepare Design Development (DD) and Construction Documents (CD) structural drawings and calculation packages for selected schematic design option in accordance with applicable codes for client reviews and plan check submittals.
- Incorporate plan check comments and prepare construction permit set.
- Provide construction support services.

Mechanical

- Provision of Mechanical system/equipment design for HVAC, and proper air ventilation.
- Preliminary Mechanical system and equipment to be submitted to owner for review and comments Incorporate owner comments.
- Prepare final CD's for plan check, bidding and construction.
- Title 24 calculations and forms to be provided for new mechanical equipment.
- New Title 24 compliant controls will be specified.

Plumbing

- Plumbing system design for the waste and vent, domestic hot and cold water and hot water return system
- Plumbing system design for the natural gas system
- Plumbing system design for the building storm water piping system
- Indirect waste system and plumbing system support for the proposed mechanical system
- Plumbing fixture and equipment selection
- All required plumbing system calculations
- Plumbing system wet utilities to 5 ft outside the building

Electrical:

- Design a lighting (LED) plan/layout for the new Temporary Facility building.
- Design lighting controls within the facility per California's 2016 Lighting standards.
- Design adequate power to the temporary facility from the existing facilities power grid.
- Design a distribution power panel required circuiting the temporary facility which multi-purpose seating area, a patio, a bar, storage room, two restrooms, a utility rooms, and food service area.
- Design to show power and data drops for new Audio Room equipment.
- Design a preliminary lighting, power/data plan to be submitted to owner for review and comments Incorporate owner comments.
- Design the necessary power circuitry required for the mechanical and plumbing equipment.
- Prepare final Construction Documents for plan check, bidding and construction permitting.
- Provide the Title 24 compliant forms for city approval.
- Consultant will provide a performance specification for the Automatic Fire Sprinkler System; this work to be submitted for permit as a deferred submittal and contracted for as "design-build."

- New electrical service panel(s) to building – assume that existing main service will be adequate to service new building – no coordination with power company/main service upgrade
- All wet utility connections to building by Civil – Consultant plumbing to design to 5'-0" past building footprint

Construction Support

- Pre-Bid Job Walk
- Respond to Requests for Information (RFIs)
- Provide review of bids
- Provide written and/or graphical responses to RFI's related to PS&E items
- Review Contractor submittals
- Attend monthly construction meetings
- Review payment applications, as needed
- Respond to any claims or disputes from the Contractor
- Prepare change orders, as needed

The Consultant shall not perform the following for the project:

- surveying/civil engineering
- site utilities for utilities beyond five feet from the building footprint
- geotechnical engineering
- environmental/hazmat testing inspections, reports and technical specifications
- landscape architecture
- grease interceptor
- Selection and specification of furnishings and equipment
- Fire Alarm, Security, Low Voltage (phone/data) systems
- Fire protection sprinkler design
- Refrigeration/Freezer equipment/room(s) design
- Commercial kitchen hood
- Commercial kitchen design

EXHIBIT B

RATE SCHEDULE

The following hourly rates shall apply to the Services set forth in this Agreement.

Principal	\$190
Project Manager – Project Architect – Project Engineer	\$135
Cost Estimator	\$135
Designer/Draftsperson	\$98

EXHIBIT A TO AMENDMENT NO. 1:

**PROFESSIONAL SERVICES AGREEMENT WITH CONSULTANT GROUP, INC.
(DATED DECEMBER 13, 2018)**

CITY OF INDUSTRY

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of December 13, 2018 ("Effective Date"), between the City of Industry, a municipal corporation ("City") and IDS Group, Inc. a California Corporation ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

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

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

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than July 5, 2020, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

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

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

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

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

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

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

3. MANAGEMENT

City's City Manager shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

4. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Two Hundred Twenty-Six Thousand Five Hundred and Fifty dollars (\$226,550.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

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

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

5. SUSPENSION OR TERMINATION OF AGREEMENT

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

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

6. OWNERSHIP OF DOCUMENTS

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

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

including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the City.

7. INDEMNIFICATION

(a) Indemnity for professional liability

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

(b) Indemnity for other than professional liability

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

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

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

8. INSURANCE

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

9. INDEPENDENT CONSULTANT

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

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

10. LEGAL RESPONSIBILITIES

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

11. UNDUE INFLUENCE

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

12. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during

his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

13. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City, unless otherwise required by law or court order. (b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless Consultant is prohibited by law from informing the City of such Discovery, court order or subpoena. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. NOTICES

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

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

Attention: City Manager

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

To Consultant: John Silber, Principal Architect
IDS Group, Inc.
1 Peters Canyon Road, Suite 130
Irvine, CA 92606

15. ASSIGNMENT

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

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

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

16. GOVERNING LAW/ATTORNEYS' FEES

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

17. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each

party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

18. SEVERABILITY

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

19. COUNTERPARTS

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

20. CAPTIONS

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

21. WAIVER

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

22. REMEDIES

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

23. AUTHORITY TO EXECUTE THIS AGREEMENT

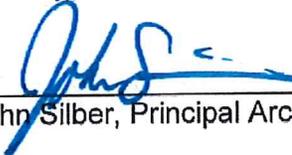
The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

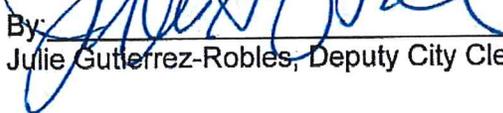
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

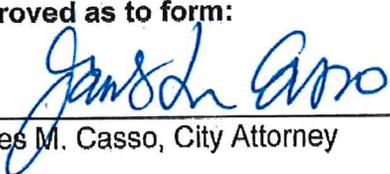
"CITY"
City of Industry

"CONSULTANT"
IDS Group, Inc.

By: 
Troy Helling, City Manager

By: 
John Silber, Principal Architect

Attest: 
By: 
Julie Gutierrez-Robles, Deputy City Clerk

Approved as to form:
By: 
James M. Casso, City Attorney

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

EXHIBIT A

SCOPE OF SERVICES

I. Site Field & Project Scope Verification

Kick-off Meeting: The Consultant will meet with the City to review transition of the project to design development. At this meeting also receive end-user feedback to the existing conceptual design. [Meeting #1]

Field verify existing conditions: the Consultant will make a visual inspection, photograph and make field measurements within the limits of the work proposed.

II. Development of Plans, Specifications, and Estimate (PS&E)

Consultant will develop the project PS&E as follows.

Schematic Design: Revise the schematic design once the existing concept design floor plans are provided to Consultant; revisions will address end-user comments. Where more than one viable solution is identified Consultant will provide up to three (3) alternates. Meet with the City [Meeting #2] to review the revisions proposed to seek City guidance going forward.

Provide to the City's Geotechnical Engineer a scoping document for the Preliminary Geotechnical Report.

Design Development: Prepare Design Development Plans. Consultant will develop the schematic design illustrated by dimensioned building and site plan designs, building cross and transverse sections, exterior elevations, and site plans. Consultant will complete preliminary engineering and design drawings for the building structural, mechanical (plumbing), and electrical systems including lighting. Consultant will submit the Design Development deliverables at a meeting with the City. [Meeting #3]

Construction Documents to "Plans ready for plan check submittal." Consultant will develop construction documents including data, plans and exhibits, applications and documents as needed to obtain all necessary building permits and approvals from The City of Industry.

Detailed construction cost estimate and preliminary construction schedule Consultant will prepare a professional opinion of likely construction costs for the developed design and submitted to the City accompanied by his professional opinion of the likely construction schedule. Consultant's cost estimate for the project will be an itemized "schedule of values." Consultant will present the PS&E progress set and construction estimate and construction schedule at a meeting with the City. [Meeting #4]

Permits and Construction Documents to "permits ready to issue" Consultant will be responsible for necessary coordination for processing the plan review and approvals and make any corrections for comments received and resubmit plans for approvals as necessary, until final approval of plans is received. In addition, Consultant will coordinate

documents with other disciplines providing design (such as civil, landscape, etc.) and approvals, Consultant will coordinate with the City such that the final plans include the City's input and comments.

"Ready to bid" PS&E Package Consultant will prepare complete PS&E bid package ready for bidding. The PS&E design will include providing all necessary services and preparing all necessary plans required for the construction of the project in all detail. Consultant will prepare complete technical specifications for the project. City will provide Administrative Section of the Specifications.

III. Construction Contract Bidding and Negotiation (BN) Phase

Consultant will assist the City with the process of securing bids and negotiating the Construction Contract Award as follows.

Pre-bid Job Walk the Consultant's Project Manager will attend one pre-bid job walk

Bidders' Requests for Information (RFI's) Consultant will prepare written/graphic responses to bidders RFI's interpreting/clarifying the intent drawings and technical specifications

Consultant will review bid costs/schedule of values of 3 low bidders and inform City if the costs are in line with estimates.

IV. Construction Administration Phase

During the construction administration period, Consultant will perform the following services:

Consultant will provide support to City by providing written and/or graphic responses with reasonable promptness clarifying items which relate to the PS&E package prepared by Consultant to written questions submitted to Consultant (RFI's and Architect's Supplemental Instructions).

Review and take other appropriate action with reasonable promptness upon contractor's submittals as shop drawings, product data, and samples, for conformance with the general design concept of the work as provided in the construction contract documents review and approve shop drawings with reasonable promptness to be submitted by the contractor as per the PS&E package.

When requested, attend monthly construction meetings with the City, contractor, and other involved parties.

During the monthly construction meeting observe, evaluate and report to the City upon representative samples of the work and report to the City defects and deficiencies in the work observed during the site reviews.

When requested, review and make recommendations to the City regarding the Contractor's Application(s) for Payment based on the Architect's observation and evaluation of the

progress of the work in the value proportionate to the amount of the construction contract, of work performed and products delivered to the Place of the Work.

Render written findings within a reasonable time, on all claims, disputes and other matters in question between the City and the contractor relating to the execution or performance of the work or the interpretation of the construction contract documents.

Render interpretations and findings consistent with the intent of and reasonably inferable from the construction contract documents; showing partiality to neither the City nor the contractor; but Consultant shall not be liable for the result of any interpretation or finding rendered in good faith in such capacity.

Based on direction from the City, have the authority to reject work which does not conform to the construction contract documents, and whenever, in the Architect's opinion, it is necessary or advisable for the implementation of the intent of the construction contract documents, have the authority to require special inspection or testing of Work, whether or not, such work has been fabricated, installed or completed.

When requested, prepare change orders and change directives for the City's approval and signature in accordance with the construction contract documents.

With the City's approval, have the authority to order minor adjustments in the work which are consistent with the intent of the construction contract documents, when these do not involve an adjustment in the contract price or an extension of the contract time.

V. Meetings

Meetings During the development of PS&E documents the Consultant's Project Manager will attend in person the following meetings. (Individual A/E project team members will attend these meetings via teleconference as needed.)

Additional concept development meetings/workshops with the City provided upon request and authorization as additional services, when approved by the City.

4 meetings provided with the City as listed above.

Presentations to the City Council or other public body provided upon request and authorization as additional services.

EXHIBIT B

RATE SCHEDULE

The following hourly rates shall apply:

Principal	\$190.00
Project Manager	\$135.00
Project Architect	\$135.00
Project Engineer	\$135.00
Cost Estimator	\$135.00
Designer/Draftsperson	\$ 98.00

EXHIBIT C

INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY COUNCIL

ITEM NO. 5.3



CITY OF INDUSTRY

MEMORANDUM

TO: Honorable Mayor Moss and Members of the City Council

FROM: Troy Helling, City Manager *TH*

STAFF: Joshua Nelson, City Engineer *JN*
Philip De Jong, Field Operation Project Manager, CNC Engineering *PD*

DATE: February 13, 2020

SUBJECT: Consideration of Amendment No. 1 to the Street Sweeping Contract with R.F. Dickson Company, Inc. to increase the budget by \$300,000.00, and extending the term of the Agreement through April 8, 2021 (CITY-1423)

Background:

On April 9, 2015, the City Council awarded a Street Sweeping Contract ("Contract") to R.F. Dickson Company, Inc. ("R.F. Dickson"). R.F. Dickson was retained to provide street sweeping services throughout the City for a five-year period, for \$1,007,736.

Discussion:

City Staff will be preparing a Request for Qualifications this year for street sweeping services throughout the City. As this process takes place, Staff recommends continuing the services of R.F. Dickson an additional year to avoid any disruption of services. The Agreement will terminate on April 8, 2020, and this Amendment No. 1 will extend it through April 8, 2021. Given that the Contract does not include a not-to-exceed amount, no amendment to the Contract is necessary to increase the total compensation under the Contract, however, a budget increase of \$300,000 is necessary to cover the costs of the extension.

Fiscal Impact:

The fiscal impact associated with this Amendment No 1 is \$300,000 (Account No. 100-624-7450 and 100-624-7450.01; PO No. 2018-118).

Recommendation:

It is recommended that the City Council approve Amendment No. 1 to the Street Sweeping Contract to R.F. Dickson Company, Inc.

Exhibit:

- A. Amendment No. 1 to Street Sweeping Contract to R.F. Dickson Company, Inc. dated February 13, 2020

TH/JN/PDJ:jf

EXHIBIT A

Amendment No. 1 to Street Sweeping Contract to R.F. Dickson Company, Inc. dated
February 13, 2020

[Attached]

**AMENDMENT NO. 1
TO STREET SWEEPING CONTRACT
R.F. DICKSON COMPANY, INC.**

This Amendment No. 1 to the Street Sweeping Contract (“Contract”), is made and entered into this 13th day of February, 2020, by and between the City of Industry, a municipal corporation, (“City”) and R.F. Dickson Company, Inc., a California corporation (“Contractor”). The City and Contractor are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, on or about April of 2015, the Contract was entered into and executed between the City and Contractor to provide street sweeping services throughout the City; and

WHEREAS, the Contract is set to expire on April 8, 2020 and an extension is needed through April 8, 2021, while a Request for Qualification is prepared by City; and

WHEREAS, it is also necessary to amend the Contract to add the address for the City’s Attorney; and

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

AMENDMENT

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

TERM OF CONTRACT

The Term of Contract section shall be revised to read in its entirety as follows:

This Contract shall commence on the Effective Date, and shall remain and continue in effect until the tasks described herein are completed, but in no event later than April 8, 2021, unless sooner terminated as hereinafter provided.

NOTICE

The Notice section shall be revised to include the contact information for the City Attorney after the contact information to the City, as follows:

WITH A COPY TO:

James M. Casso, City Attorney
Casso & Sparks, LLP

13300 Crossroads Parkway North, Suite 410
City of Industry, CA 91746

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

“CITY”
CITY OF INDUSTRY

“CONTRACTOR”
R.F. DICKSON COMPANY, INC.

By: _____
Cory Moss, Mayor

By: _____
Terry Roberts, General Manager

Attest:

By: _____
Julie Gutierrez-Robles, City Clerk

APPROVED AS TO FORM

By: _____
James M. Casso, City Attorney

**EXHIBIT A TO AMENDMENT NO. 1:
CITY OF INDUSTRY STREET SWEEPING CONTRACT
(DATED APRIL 9, 2015)**

**CITY OF INDUSTRY STREET
SWEEPING CONTRACT
CITY CONTRACT NO. 1423**

This Street Sweeping Contract ("Contract"), made and entered into this 9th day of April, 2015 ("Effective Date"), by and between the CITY OF INDUSTRY, a municipal corporation, ("CITY"), and R.F. Dickson Company, Inc., address, a corporation, ("CONTRACTOR"). CITY and CONTRACTOR may be collectively referred to as the "Parties".

In consideration of the terms, covenants and conditions hereinafter set forth in this Contract, the Parties hereto do mutually agree as follows:

TERM OF CONTRACT

This Contract shall be for a period of five years commencing on the 9th day of April 2015 and ending on the 8th day of April 2020, unless sooner terminated as hereinafter provided.

SCOPE OF WORK

A. The work to be performed by the CONTRACTOR under this Contract is set forth Exhibit "A" to this Contract ("Contract Work").

B. The Contract Work is further described in the Street Sweeping Schedule attached as Exhibit "B" to this Contract and the Parking Lot Sweeping Schedule attached as Exhibit "C" to this Contract.

C. The CONTRACTOR shall also provide revised sweeping services when requested to do so in writing by the CITY Director of Public Works as referenced in Section 3B of this Contract.

COMPENSATION

A. Contract Work

Subject to Section 3B of this Contract, for all of the services which the CONTRACTOR is obligated to perform under the terms of this Contract ("Contract Work"), the City shall pay to the CONTRACTOR the sum each month as specified in Exhibit D to this Contract, payable on or before the fifteenth day of each month next succeeding the month during which the service was performed, and continuing thereafter during the term of this Contract unless sooner terminated.

B. Revised Work

The City has calculated the street sweeping work to be 215 curb miles and the parking lot work to be 1.84 million square feet. The CONTRACTOR understands and agrees that the City may revise the work ("Revised Work") by adding or subtracting Contract Work for street sweeping and/or parking lot sweeping upon 30 (thirty) calendar days written notice to the CONTRACTOR based upon the following formula as reference in Exhibit D to this Contract:

- (1) Add or subtract street sweeping work on a curb mile basis.

The City will divide the Unit Price submitted by the CONTRACTOR in its response to the Request for Proposals for the Streets work by 215 to determine the per curb mile cost that will be used by the City in calculating additional compensation or a reduction in compensation. For purposes of this Contract and the Exhibits thereto, the term "curb mile" shall mean: (1) raised street curbs; (2) median curbs and (3) painted medians without curbs.

- (2) Add or subtract parking lot work on a square foot basis

The City will divide the Unit Price submitted by the CONTRACTOR in its response to the Request for Proposals for the Parking Lots work by 1.84 million to determine the per square foot cost that will be used by the City in calculating additional compensation or a reduction in compensation.

INCREASES IN COMPENSATION

The Parties recognize that increases in compensation to the CONTRACTOR due to increases in the cost of living are reasonable and foreseeable. It is therefore agreed the above-stated monthly compensation for Contract Work only shall be subject to a percentage adjustment commencing July 1, 2016, and on each July 1 thereafter, in an amount equal to the increase or decrease in the "Los Angeles-Long Beach All Urban Consumer Price Index July to July".

TRUCKS AND EQUIPMENT

The CONTRACTOR agrees that all labor, material, equipment, supplies and facilities necessary and proper to perform this Contract shall be furnished by CONTRACTOR at its sole cost and expense. Adequate back-up equipment must be available at all times to service the CITY. CONTRACTOR further agrees as follows:

Equipment Standards

All trucks and equipment shall be maintained by the CONTRACTOR in good mechanical condition, be neatly painted, and meet other reasonable standards as may

be established by the Director of Public Works. The trucks' sides and covers shall be so constructed, used and maintained, that debris will not blow, fall or dislodge out of said truck into the street at any time. The bodies of the equipment shall be watertight and equipped with close-fitting metal covers.

Operation of Vehicles

All vehicles shall be operated in conformance with the California Vehicle Code and all other federal, state, county and local laws, regulations and ordinances governing the operation of motor vehicles on public and private streets.

Maintenance

CONTRACTOR shall institute a complete and comprehensive system of preventive maintenance. All vehicles shall be kept lubricated, in good repair, clean and free of odor. The City may conduct an annual inspection, at which time a complete inspection of CONTRACTOR'S vehicles shall be made, at CONTRACTOR'S cost, by CITY or by inspection authorities designated by CITY. CONTRACTOR shall at all times comply with all California State, Los Angeles County and local applicable safety, noise and smog control laws, regulations and ordinances. Should any inspection by the State, County or local authorities disclose safety defects in vehicles being used by CONTRACTOR under this Contract, CONTRACTOR shall be given two weeks' notice by CITY to remedy such defects. In no case shall CONTRACTOR use any vehicle the CITY that is known or should reasonably be known by CONTRACTOR to be unsafe for use. CONTRACTOR further agrees to submit to regular California Highway Patrol inspections as required and to provide the Director of Public Works with all documentation pertaining to the maintenance of its trucks and equipment including inspections thereof by the California Highway Patrol upon request. In addition to an annual inspection, the CITY shall have the right to inspect any truck at any time on reasonable notice.

Environmental Standards

Noise. No noise shall be generated which causes excessive irritation to residents. Noise Levels produced that exceed background (ambient noise), including traffic, by 10 db (A) measured at the nearest residential unit shall be classified as excessive. Vehicles must also conform to standards of the State of California as they relate to noise abatement. Equipment must be updated to eliminate noise as the "state of the art" develops with special devices or methods that can be adapted to existing equipment.

Air Quality and Odors. Any operation or activity which causes the release of air contaminants or foul odors exceeding reasonable standards associated with solid waste collection and recycling shall be abated. The CONTRACTOR shall comply with all applicable laws, rules and regulations, including those promulgated by the South Coast Air Quality Management District (SCAQMD) including, but not limited to,

Rule 1186 attached as Exhibit E to this Contract, as may be amended from time to time.

Release of Hazardous Materials. Any operation or activity, including accidental spills or equipment malfunctions which result in the release of any hazardous substance including, but not limited to, hydraulic fluid, coolant, gasoline or diesel fuel, or oil, shall be immediately contained by the CONTRACTOR to prevent said spill from propagating on the street, in the gutters, or in the storm drain. The CONTRACTOR shall immediately notify the CITY when such event occurs. The CONTRACTOR shall carry at all times, on all trucks used within the city, the proper absorbent materials and equipment necessary to contain such a release. The CONTRACTOR shall, at his sole expense, clean and abate any such release to the satisfaction of the controlling governmental authority.

LIABILITY, INDEMNIFICATION, DUTY TO DEFEND

CONTRACTOR agrees to reimburse, defend and indemnify, and save the CITY, the City Council, its officers and employees free and harmless from any claims, suits or actions brought by any person or persons, including CONTRACTORS' agents or employees, subcontractors or agents or employees thereof, for or on account of any injury or damage sustained because of or arising out of the services performed by CONTRACTOR herein. CONTRACTOR waives, as consideration of this Contract, any right it may have to seek indemnity or other relief against CITY by reason of any judgment against it or payment by it because of any such claim, suit, accident or occurrence.

The provision herein contained requiring CONTRACTOR to defend the CITY, its officers and employees, means and includes the reimbursement to the CITY and all officers and employees thereof, of all costs and expenses incurred by the CITY in investigating or defending any claims filed against the CITY arising out of the performance of this Contract by CONTRACTOR. CONTRACTOR agrees to pay for the defense, or to provide at the option of the CITY, when demanded by the CITY, defense counsel and/or investigators to defend the CITY.

INSURANCE

Prior to the beginning of and throughout the duration of the Contract, CONTRACTOR will maintain insurance in conformance with the requirements set forth below. CONTRACTOR will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, it will be amended to do so. CONTRACTOR acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CITY in excess of the limits and coverage required in this Contract and which is applicable to a given loss, will be available to CITY.

CONTRACTOR shall provide the following types and amounts of insurance:

Commercial General Liability Insurance.

CONTRACTOR shall use Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits shall be no less than \$2,000,000 per occurrence for all covered losses and no less than \$5,000,000 general aggregate, and include property damage (all risk) of no less than \$500,000.

Workers' Compensation

The CONTRACTOR shall use a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses.

Business Auto Coverage

The CONTRACTOR shall use an ISO Business Auto Coverage form CA 00 01 than \$5,000,000 per accident, combined single limit. If CONTRACTOR or CONTRACTOR'S employees will use personal autos in any way on this project, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person.

Excess or Umbrella Liability Insurance (Over Primary)

If Excess or Umbrella Liability is used to meet limit requirements, the CONTRACTOR shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a "drop down" provision with a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to CITY for injury to employees of CONTRACTOR, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval of CITY following receipt of proof of insurance as required herein.

Stipulations Regarding Insurance and Indemnity

CONTRACTOR agrees to endorse third party liability coverage required herein to include as additional insureds CITY, its officials, employees and agents, using ISO endorsements CG 20 10 11 85. CONTRACTOR also agrees to require all CONTRACTORS, subcontractors, and anyone else involved in this Contract on behalf of the CONTRACTOR (hereinafter "indemnifying Parties") to comply with these provisions.

CONTRACTOR agrees to waive subrogation rights against CITY regardless of the applicability of any insurance proceeds, and to require all indemnifying Parties to do likewise.

All insurance coverage maintained or procured by CONTRACTOR or required of others by CONTRACTOR pursuant to this Contract shall be endorsed to delete the subrogation condition as to CITY, or must specifically allow the named insured to waive subrogation prior to a loss.

All coverage types and limits required are subject to approval, modification and additional requirements by the CITY. CONTRACTOR shall not make any reductions in scope or limits of coverage that may affect CITY'S protection without CITY'S prior written consent.

Proof of compliance with these insurance requirements, consisting of endorsements and certificates of insurance shall be delivered to CITY delivered as required, or if such insurance is canceled at any time and no replacement coverage is provided, CITY has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests. Any premium so paid by CITY shall be charged to and promptly paid by CONTRACTOR or deducted from sums due CONTRACTOR.

CONTRACTOR agrees to endorse the insurance provided pursuant to these requirements, to require 30 days' notice to CITY prior to cancellation of such coverage or any material alteration or non-renewal of any such coverage, and to require indemnifying Parties to do likewise.

It is acknowledged by the Parties of this Contract that all insurance coverage required to be provided by CONTRACTOR or indemnifying party, is intended to apply first and on a primary noncontributing basis in relation to any other insurance or self-insurance available to CITY.

CONTRACTOR agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any indemnifying party to self-insure its obligations to CITY. If CONTRACTOR'S existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the CITY. The CITY may review options with the CONTRACTOR, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

CONTRACTOR will renew the required coverage annually as long as CITY, or its employees or agents face an exposure from operations of any type pursuant to this Contract. This obligation applies whether or not the Contract is canceled or terminated for any reason. Termination

of this obligation is not effective until CITY executes a written statement to that effect.

CONTRACTOR'S EMPLOYEES

Uniforms

CONTRACTOR'S employees performing services pursuant to this Contract shall at all times be dressed in clean uniforms with suitable CONTRACTOR and employee identification. Employees shall not remove any portion of their uniform while working. Any uniform selected by CONTRACTOR shall be subject to the approval of the Director of Public Works before being worn by CONTRACTOR'S employees.

Supervision

CONTRACTOR shall provide a competent field supervisor satisfactory to the CITY. The supervisor shall be an employee of the CONTRACTOR and responsible for directing the work. Notices, orders and instructions given by the CITY to the supervisor shall be deemed, for all purposes, as satisfactory notice to the CONTRACTOR.

Character of Employees

If any person employed by CONTRACTOR shall appear to the Director to be incompetent, or to act in a disorderly or improper manner, they shall be removed by CONTRACTOR from any activities on behalf of the CITY under this Contract when so requested by the Director.

Anti-harassment Policy

In conformance with CITY policy, and State and Federal law, the CONTRACTOR shall be responsible to assure that all employees of the CONTRACTOR refrain from any form of harassment of any individual while providing services to the CITY. The prohibition on harassment shall include sexual harassment, and harassment related to an individual's race or ethnicity, religious creed, physical disability, medical condition, marital status, sexual orientation or age. In the event that the CITY receives a complaint or becomes aware of an incident involving harassment, the CONTRACTOR shall immediately investigate the complaint and take steps to assure that such harassment ceases.

Fees And Gratuities

Neither the CONTRACTOR, nor any of its agents or employees, shall request, demand or accept, either directly or indirectly, any compensation or gratuity from any person, firm or corporation for the service described herein, provided within the City of Industry as herein defined, except such compensation as may herein be provided for and permitted.

CONTRACTOR SAFETY PROGRAM

CONTRACTOR shall be solely responsible for the safety of his employees. CONTRACTOR shall develop and maintain an Injury and Illness Protection Program (IIPP) in accordance with the Cal/OSHA requirements contained in the California Code of Regulations, Title 8 Section 3203 (CCR T8 Section 3203), "Injury and Illness Prevention Program." CONTRACTOR shall provide safety, health, and job skills training so as to provide a safe and healthful workplace, and meet all applicable Cal/OSHA requirements. CONTRACTOR shall maintain all OSHA 300 logs and records, and have them available for inspection.

INDEPENDENT CONTRACTOR

It is expressly understood and agreed that CONTRACTOR has been retained as an independent CONTRACTOR as distinguished from any employee or agent of the CITY to perform the aforementioned services. CONTRACTOR acknowledges the independent CONTRACTOR relationship, and releases the CITY from any liability or obligation to make deductions or withholdings in respect to unemployment, income tax, disability, social security, health, pension or retirement benefits. It is expressly understood no officer, agent or employee of CONTRACTOR shall have any CITY status or benefits, including health, retirement or workers' compensation benefits.

It is understood and agreed between the Parties hereto that the CITY shall have no control over said officers, agents, and employees, or the equipment, machinery or trucks hired or used by the CONTRACTOR in the performance of this Contract, other than that control necessary to ensure this Contract is performed in accordance with the terms and provisions thereof, and Chapter 3 of Article V of the Code. CONTRACTOR acknowledges its independent CONTRACTOR status in performing said services, and assumes the risks to itself, all agents, employees and subcontractors, and their agents and employees, of personal injury or death, and all risks of property damage or loss of any property arising out of the performance of said services by and on behalf of the City of Industry, or arising out of the work-site, the place of work, or the duties bestowed upon the CONTRACTOR pursuant to this Contract, and does hereby release the CITY, its officers and personnel from any liability to the CONTRACTOR, its officers, agents, employees, subcontractors or agents or employees thereof, for any loss or damage thereby incurred, or for contribution as a joint tortfeasor therefore. In respect to any liability, claims or suits that might arise because of any property damage or loss of property, personal injury or death arising out of the foregoing, CONTRACTOR shall defend the City of Industry and hold the CITY free and harmless from liability thereon.

NON-DISCRIMINATION

In connection with the performance of this Contract, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, national origin or because an otherwise qualified person is handicapped. CONTRACTOR shall take affirmative action to insure that applicants are employed and that employees are treated, during their employment, without regard to their race, religion,

Any Party may change its notice information by giving notice to the other Party in compliance with this section.

TERMINATION.

CITY may terminate this Contract, with or without cause, at any time by giving 30 days written Notice of termination to CONTRACTOR.

CONTRACTOR acknowledges CITY's rights to terminate this Contract as provided in this Section, and hereby waives any and all claims for damages that might otherwise arise from CITY's termination of this Contract.

GENERAL PROVISIONS.

Authority to Execute. Each Party represents and warrants that all necessary action has been taken by such Party to authorize the undersigned to execute this Contract and to bind it to the performance of its obligations.

Assignment. CONTRACTOR may not assign this Contract without the prior written consent of CITY, which consent may be withheld in the City's sole discretion since the experience and qualifications of CONTRACTOR were material considerations for this Contract.

Binding Effect. This Agreement is binding upon the heirs, executors, administrators, successors and permitted assigns of the Parties.

Integrated Contract. This Contract, including the Contract Documents, is the entire, complete, final and exclusive expression of the Parties with respect to the Work to be performed under this Contract and supersedes all other agreements or understandings, whether oral or written, between CONTRACTOR and CITY prior to the execution of this Contract.

Modification of Contract. No amendment to or modification of this Contract will be valid unless made in writing and approved by CONTRACTOR and by the City Council or City Manager, as applicable: The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver will be void.

Waiver. Waiver by any Party of any term, condition, or covenant of this Contract will not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Contract will not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Contract. Acceptance by CITY of any Work performed by CONTRACTOR will not constitute a waiver of any of the provisions of this Contract.

Interpretation. This Contract will be interpreted, construed and governed according to the laws of the State of California. Each party has had the

opportunity to review this Contract with legal counsel. The Contract will be construed simply, as a whole, and in accordance with its fair meaning. It will not be interpreted strictly for or against either party.

Severability. If any term, condition or covenant of this Contract is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Contract will not be affected and the Contract will be read and construed without the invalid, void or unenforceable provision.

Venue. In the event of litigation between the Parties, venue in state trial courts will be in the County of Los Angeles. In the event of litigation in a U.S. District Court, venue will be in the Central District of California, in Los Angeles.

THE AUTHORIZED REPRESENTATIVES of the Parties have caused this Contract to be executed as of the Effective Date.

CONTRACTOR.

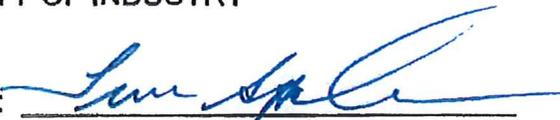
By:  _____
Signature

Print Name: Terry Roberts

Print Title: General Manager

CITY OF INDUSTRY

ATTEST

By:  _____
Tim Spohn, Mayor

 _____

**EXHIBIT A TO CITY OF INDUSTRY STREET
SWEEPING CONTRACT
CITY CONTRACT NO. 1423**

CONTRACT WORK (1 Sheet)

**EXHIBIT A TO CITY OF INDUSTRY STREET
SWEEPING CONTRACT
CITY CONTRACT NO. 1423**

CONTRACT WORK

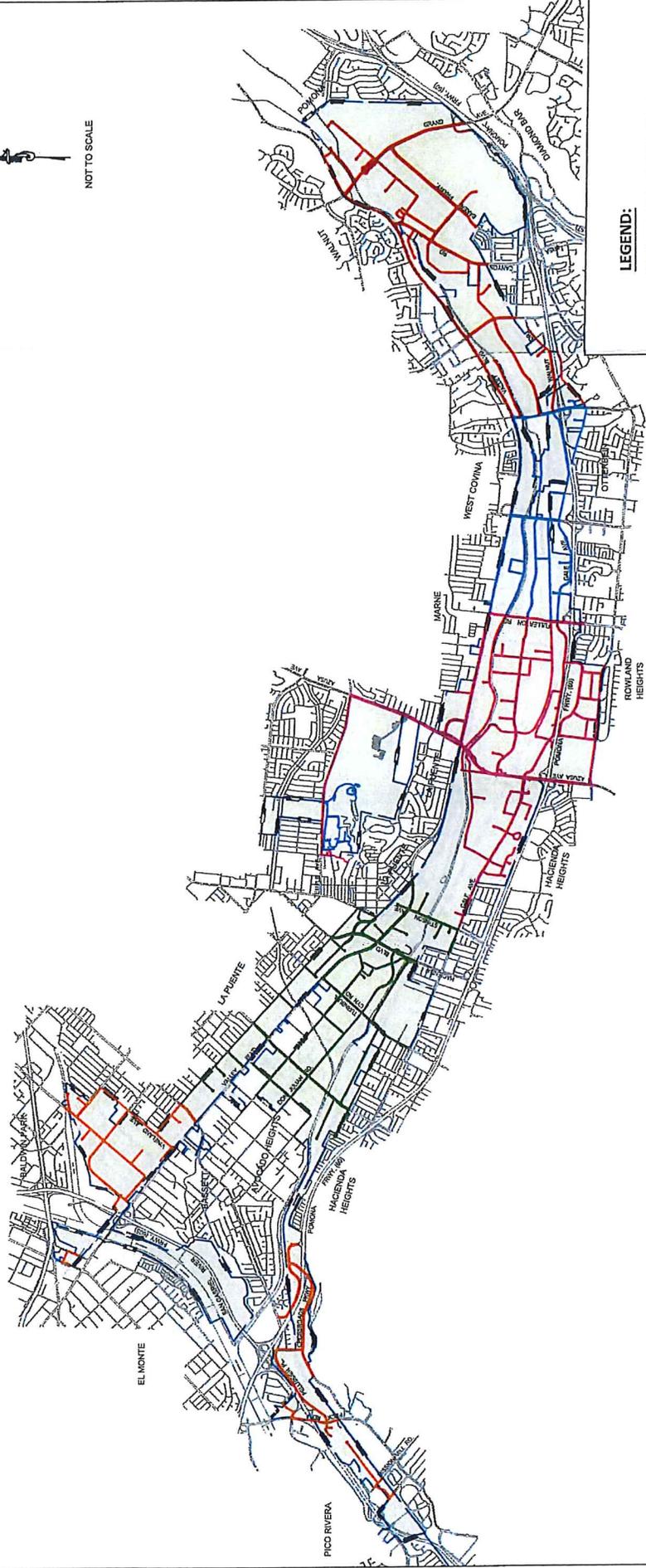
The Contract Work shall include all the provisions of the Contract and all Exhibits thereto. In addition, the Contract Work shall include the following:

1. Truck sweepers shall not be more the 5 (five) years old or such other age as mutually agreed upon in writing by the CITY and CONTRACTOR.
2. Truck sweepers shall be alternative fuel compliant
3. Debris collected shall be delivered to Grand Central Material Recovery Facility
4. Water:
 - A. The CITY will be invoiced and will pay the water usage fees with no charge to the CONTRACTOR.
 - B. For the easterly half of the CITY, the CITY has made arrangements for the CONTRACTOR to attach to any fire hydrant in the Walnut Valley Water District system without the need for a meter.
 - C. For the westerly half of the CITY, the CITY has made arrangements for the CONTRACTOR to use a fire hydrant meter provided by the La Puente Valley Water District Walnut Valley Water District to connect to any fire hydrant in that District's system.
5. All streets and parking lots listed in the Schedules attached as Exhibits B and C to this Contract will be swept once a week on the days designated in these Schedules.
6. All sweeping work for streets and parking lots shall include sweeping all of the following as shown in Exhibits B and C: (1) raised curbs; (2) median curbs and (3) painted medians without curbs.

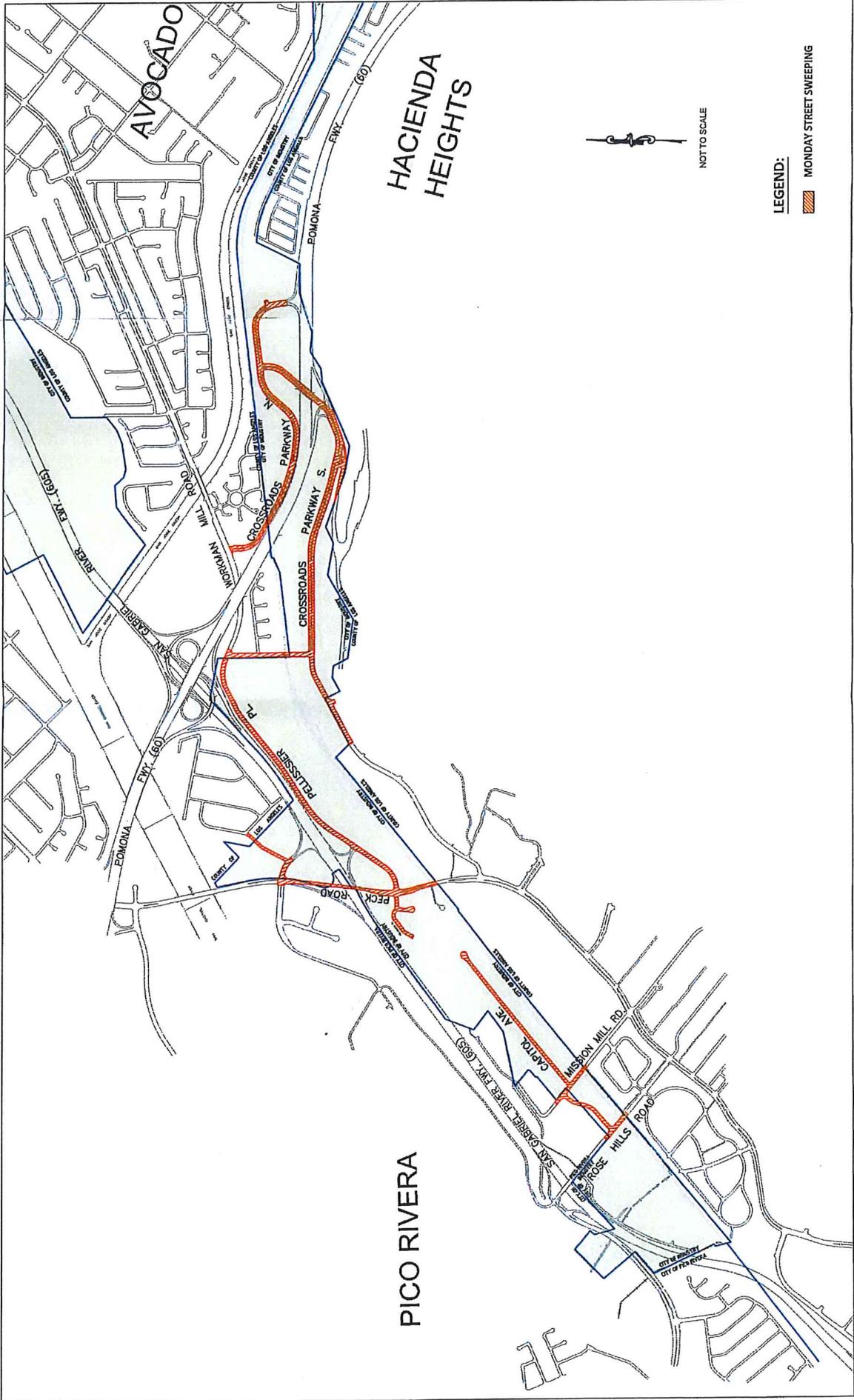
**EXHIBIT B TO CITY OF INDUSTRY STREET
SWEEPING CONTRACT
CITY CONTRACT NO. 1423**

STREET SWEEPING SCHEDULE - (7 Sheets)

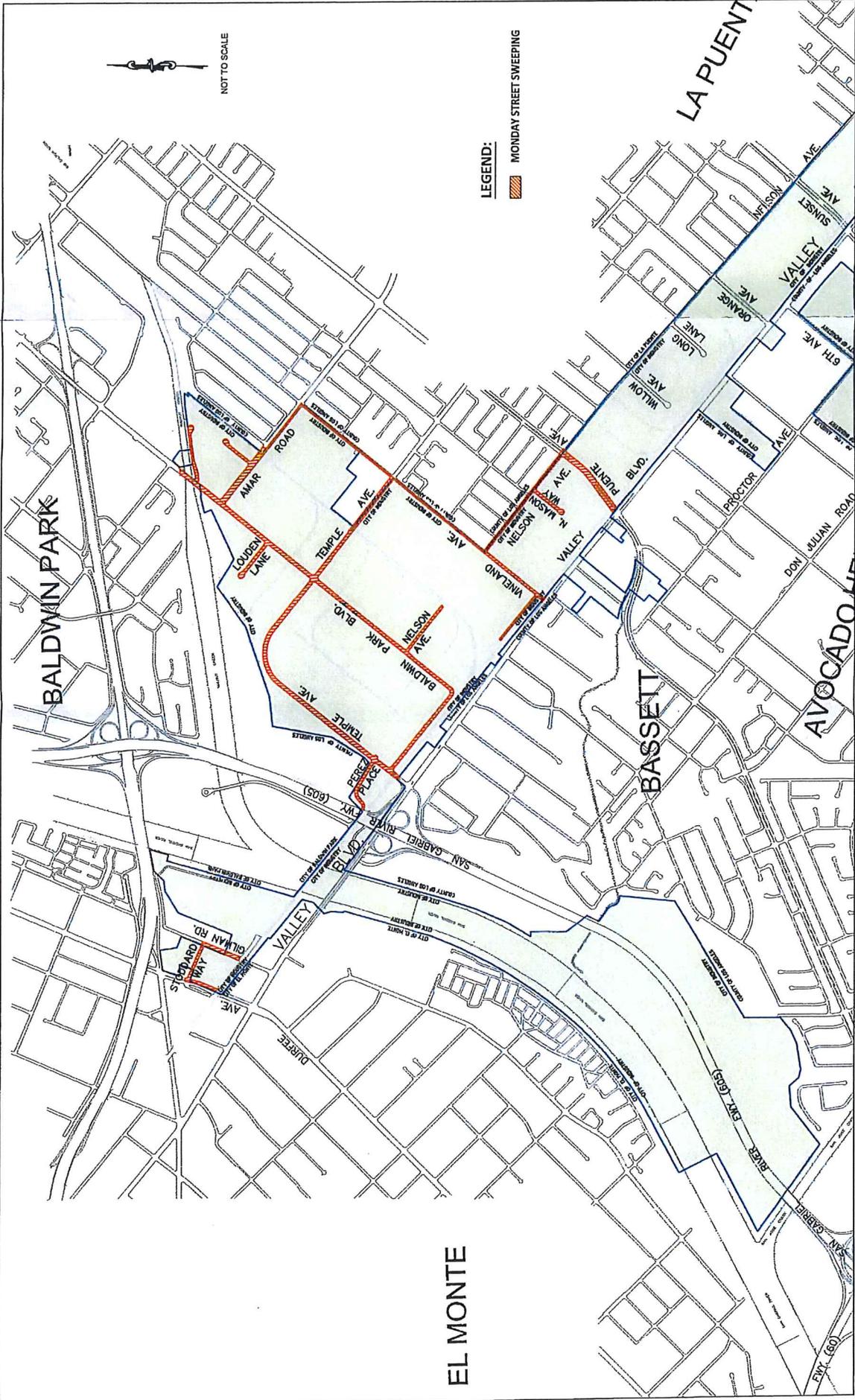
CITY OF INDUSTRY STREET SWEEPING SCHEDULE



- LEGEND:**
- MONDAY STREET SWEEPING
 - TUESDAY STREET SWEEPING
 - WEDNESDAY STREET SWEEPING
 - THURSDAY STREET SWEEPING
 - FRIDAY STREET SWEEPING



LEGEND:
 MONDAY STREET SWEEPING



EL MONTE

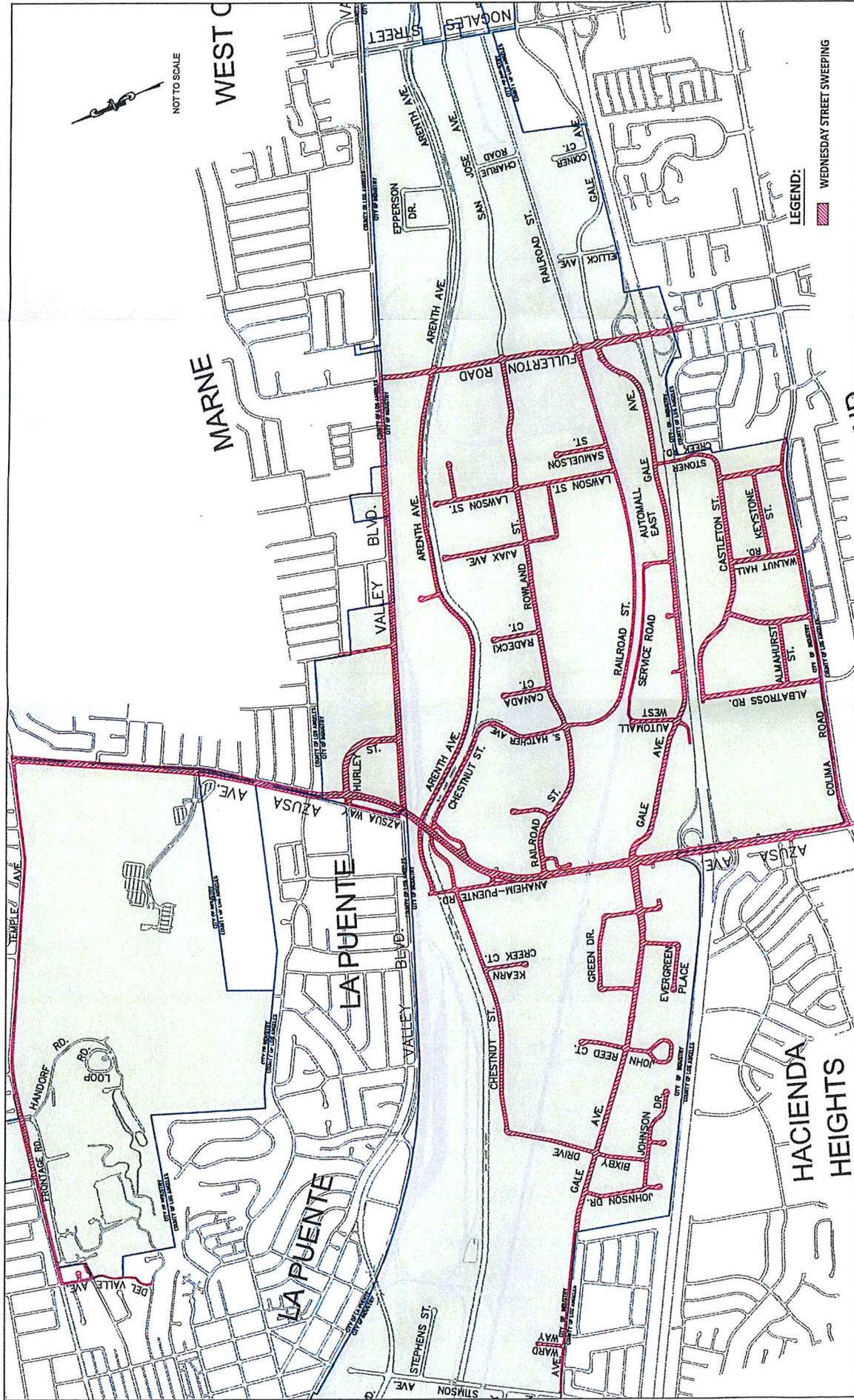


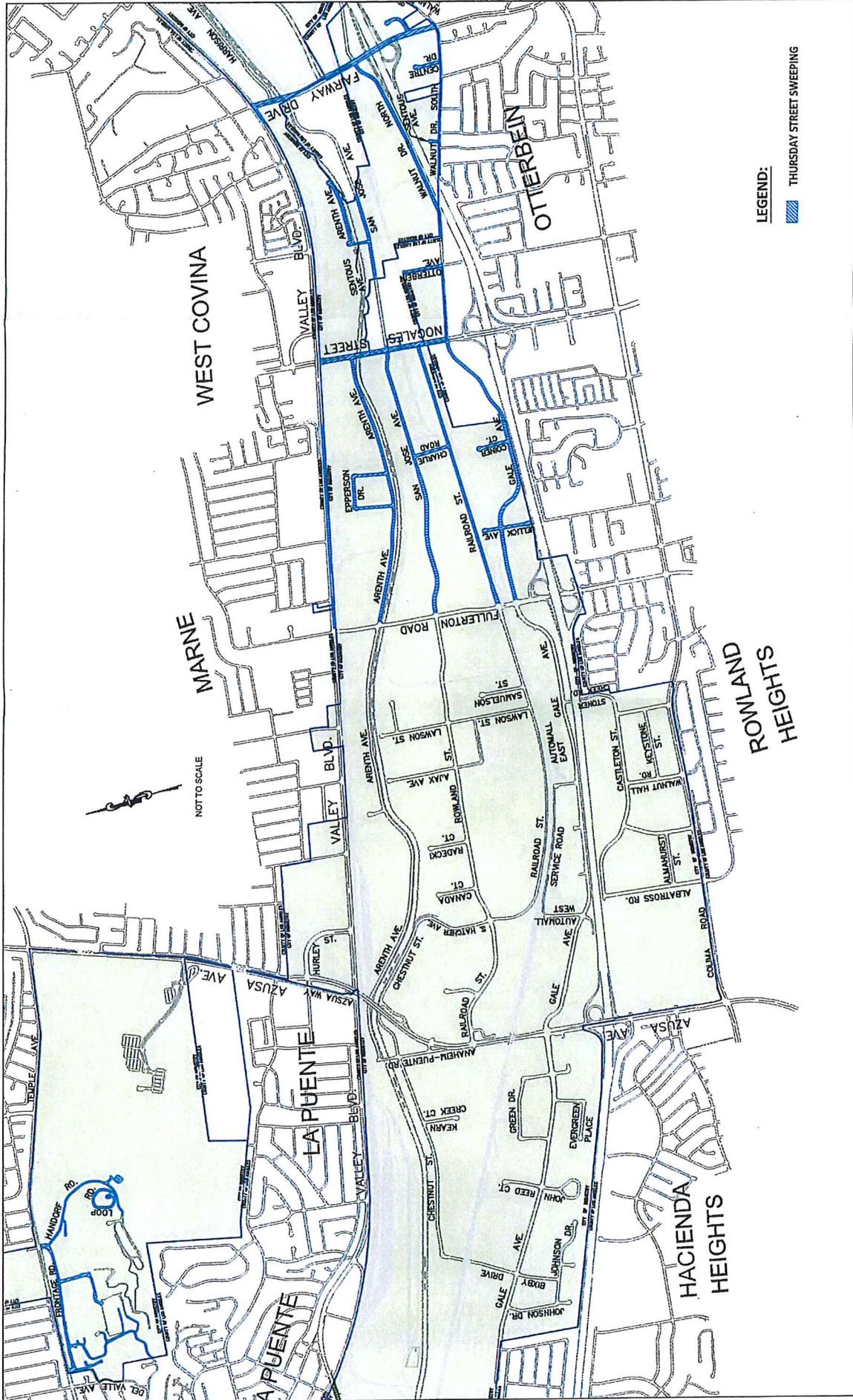
LA PUENTE

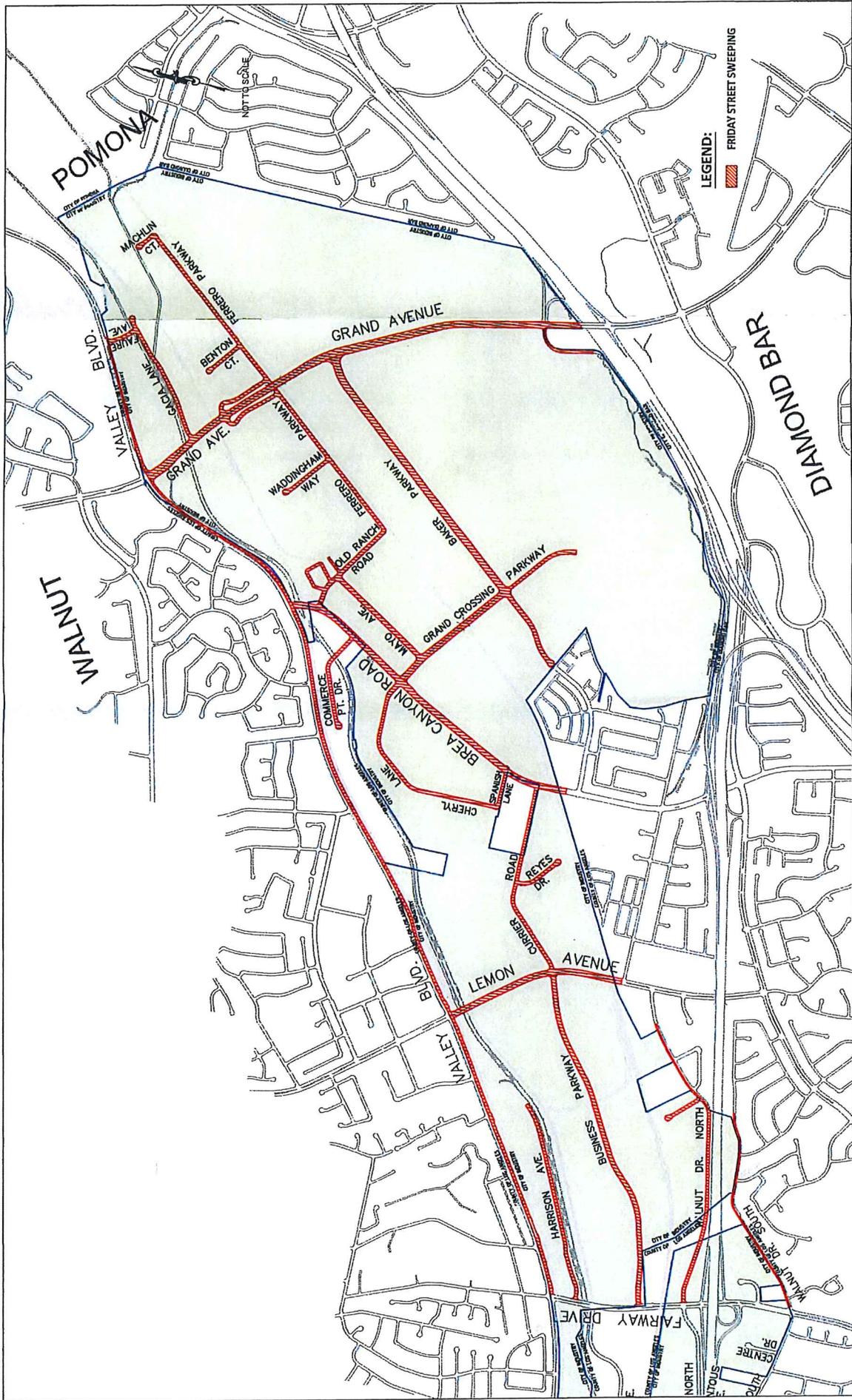
AVOCADO HEIGHTS

HACIENDA
HEIGHTS

LEGEND:
 TUESDAY STREET SWEEPING





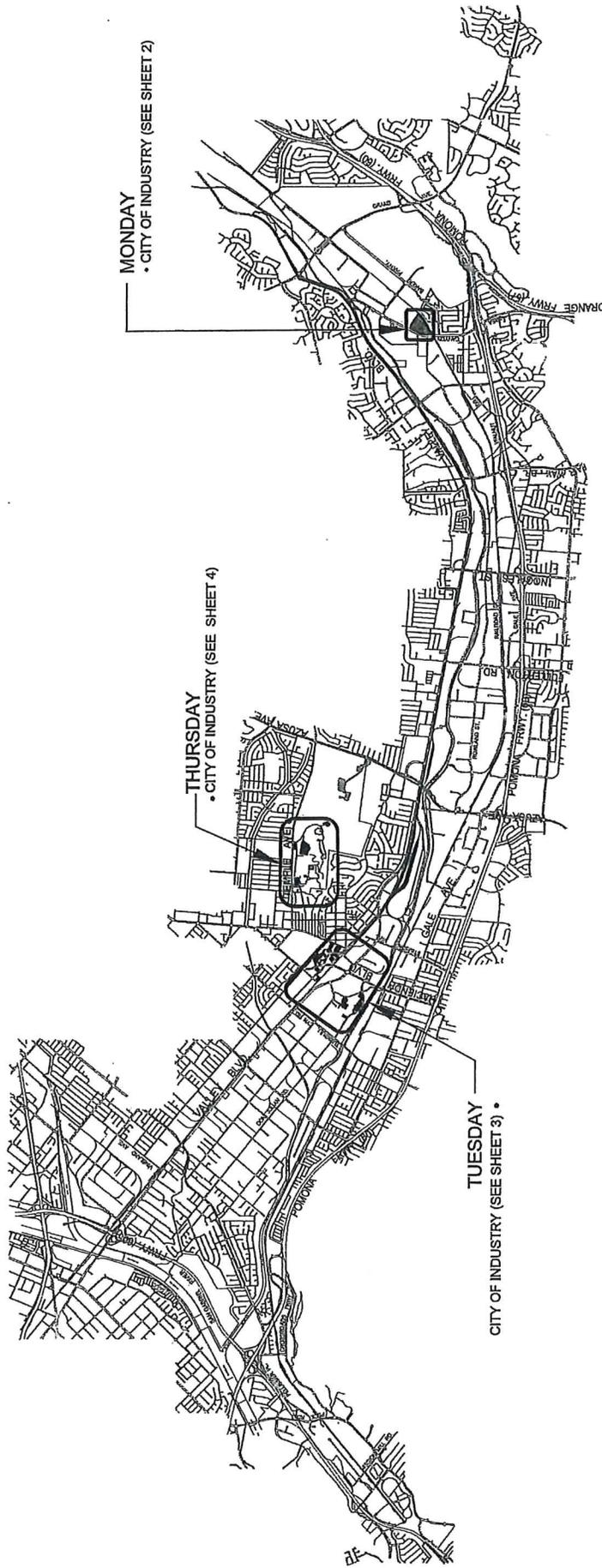


**EXHIBIT C TO CITY OF INDUSTRY STREET
SWEEPING CONTRACT
CITY CONTRACT NO. 1423**

PARKING LOT SWEEPING SCHEDULE - (4 Sheets)

CITY OF INDUSTRY

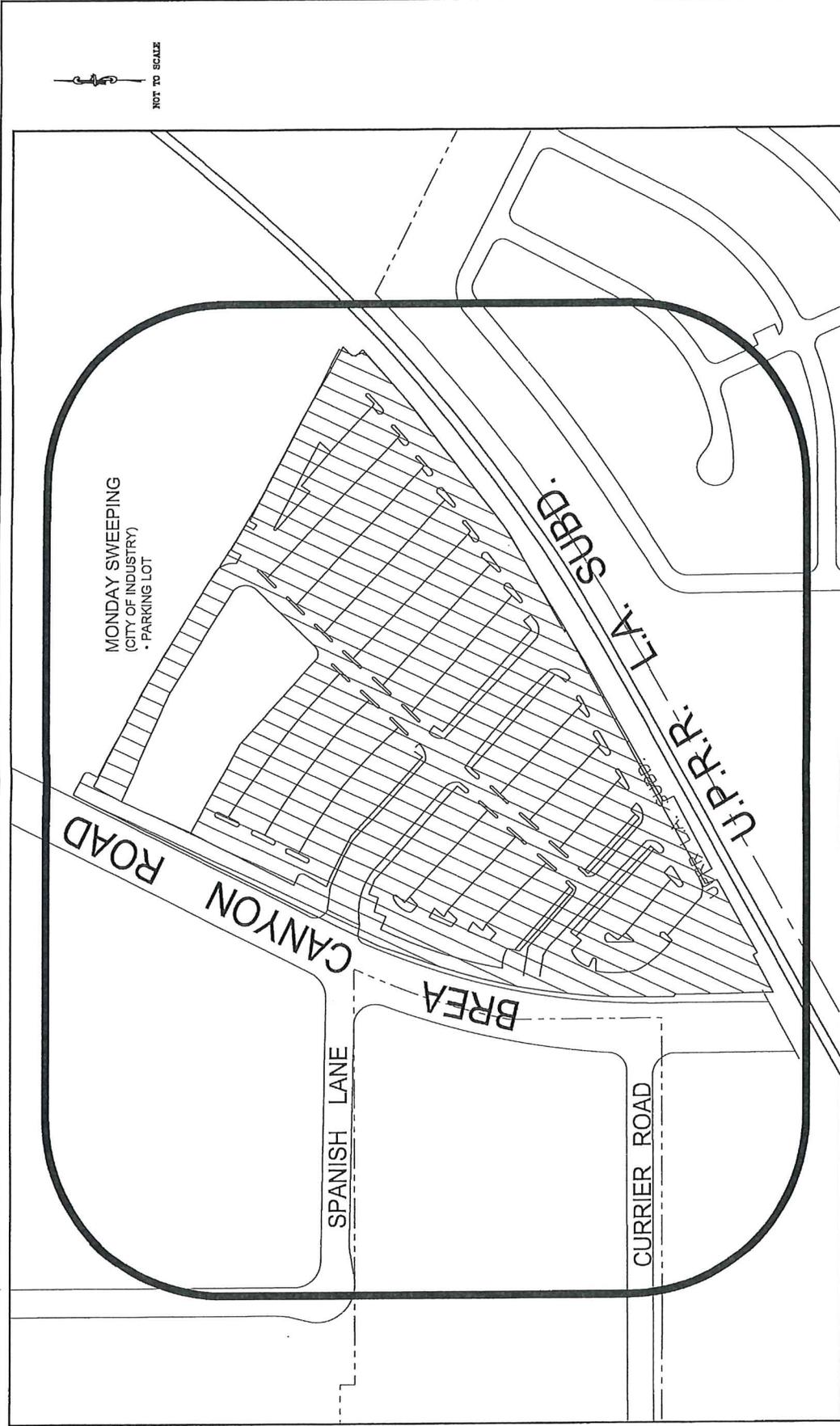
PARKING LOT SWEEPING SCHEDULE



MONDAY
• CITY OF INDUSTRY (SEE SHEET 2)

THURSDAY
• CITY OF INDUSTRY (SEE SHEET 4)

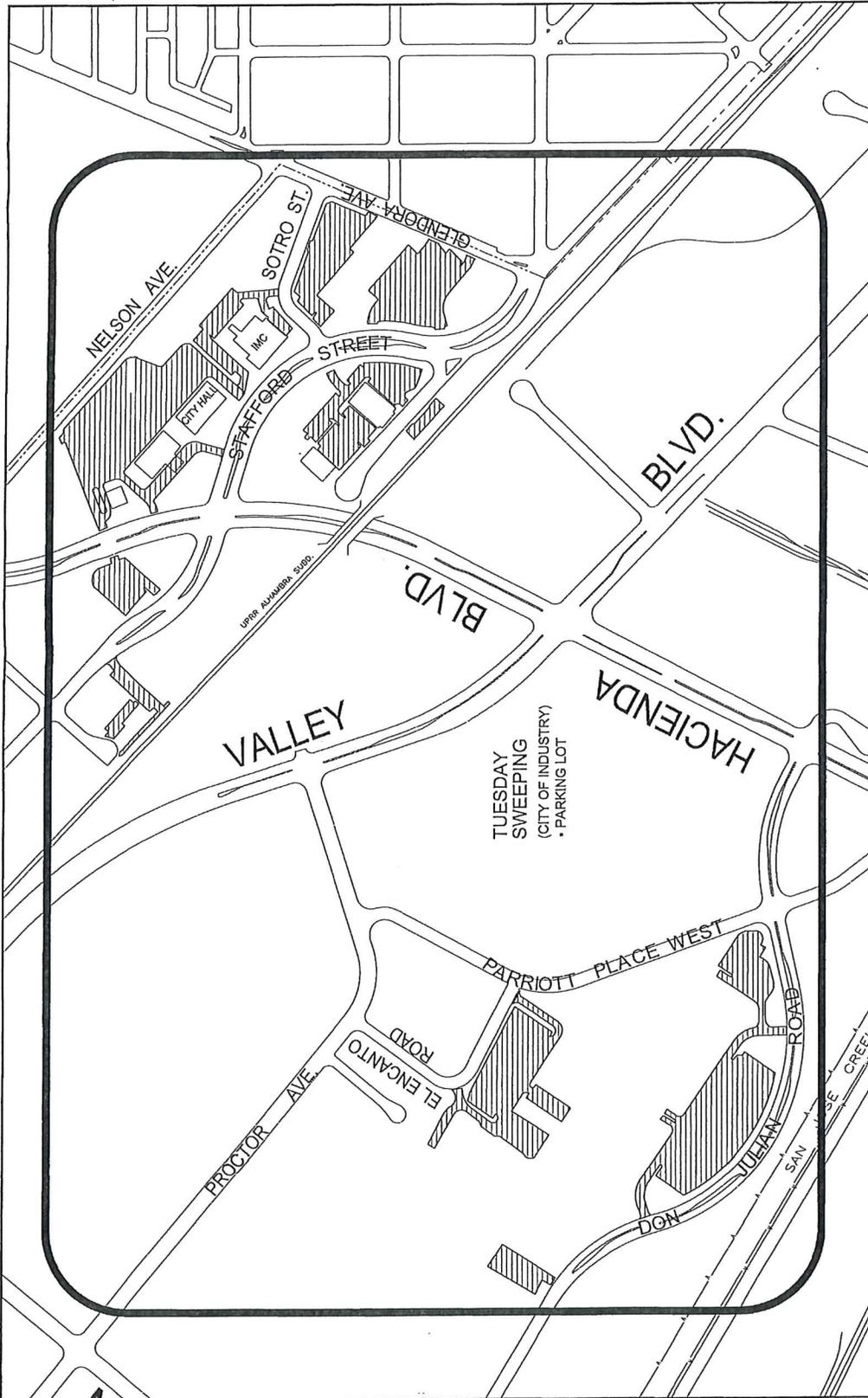
TUESDAY
• CITY OF INDUSTRY (SEE SHEET 3)



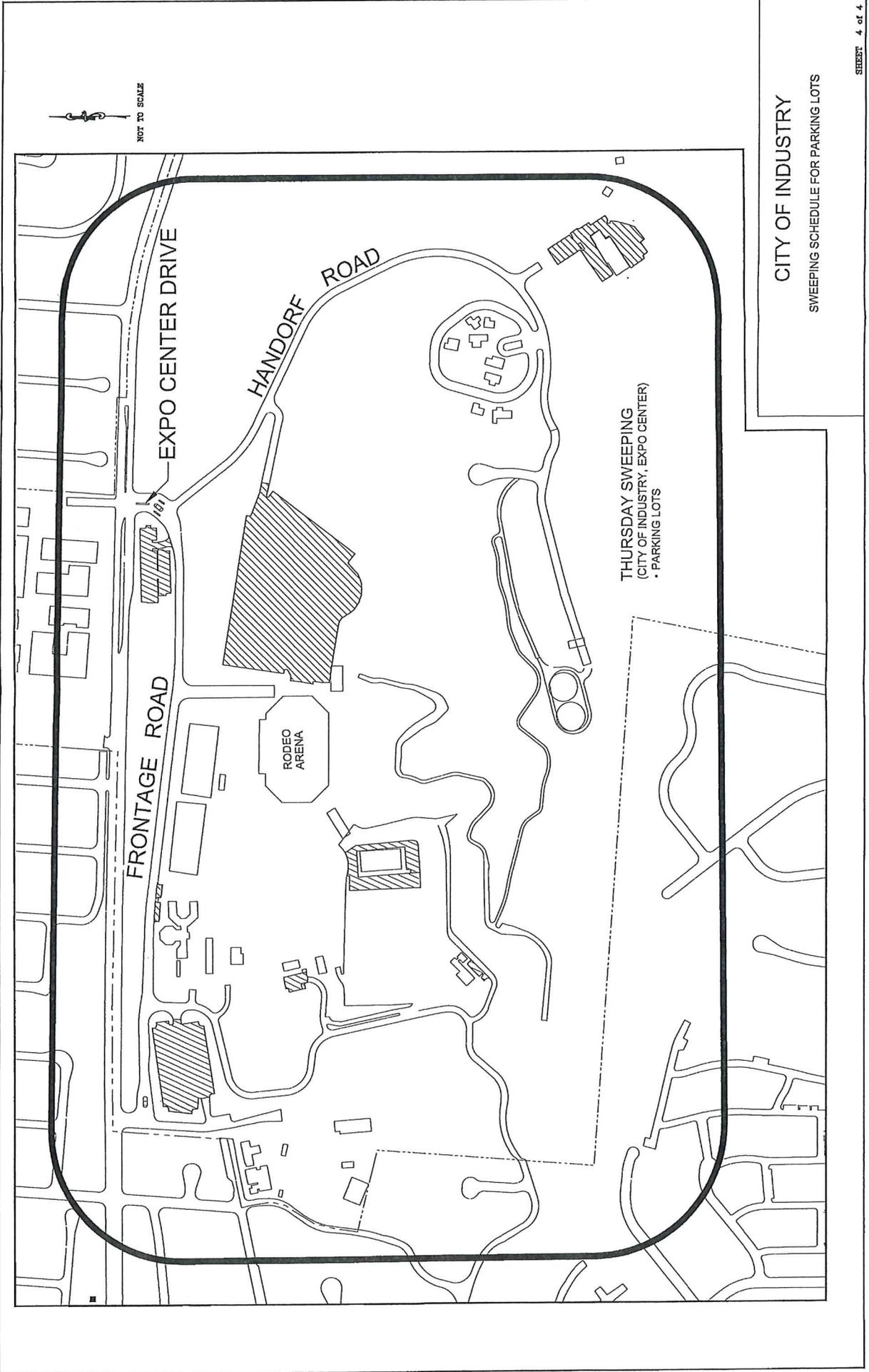
CITY OF INDUSTRY

SWEEPING SCHEDULE FOR PARKING LOTS

DATE: 10/15/03 CITY OF INDUSTRY STREET SWEEPING SCHEDULE FOR PARKING LOTS. DRAWN BY: J. P. GARDNER. CHECKED BY: J. P. GARDNER. SCALE: AS SHOWN. DATE: 10/15/03. SHEET 2 OF 4.



CITY OF INDUSTRY
 PARKING LOT SWEEPING SCHEDULE



NOT TO SCALE

EXPO CENTER DRIVE

HANDORF ROAD

FRONTAGE ROAD

RODEO ARENA

THURSDAY SWEEPING
(CITY OF INDUSTRY, EXPO CENTER)
• PARKING LOTS

CITY OF INDUSTRY

SWEEPING SCHEDULE FOR PARKING LOTS

**EXHIBIT D TO CITY OF INDUSTRY STREET
SWEEPING CONTRACT
CITY CONTRACT NO. 1423**

COMPENSATION

1. **Contract Work**

Compensation for Contract Work shall be in the following amounts:

- A. Street Sweeping: The sum of \$14,897.40 (fourteen thousand eight hundred ninety seven dollars and forty cents) per month
- B. Parking Lot Sweeping: The sum of \$1,898.20 (one thousand eight hundred ninety eight dollars and twenty cents) per month

2. **Revised Work**

The City has calculated the street sweeping work to be 215 curb miles and the parking lot work to be 1.84 million square feet. The CONTRACTOR understands and agrees that the City may revise the work ("Revised Work") by adding or subtracting Contract Work for street sweeping and or parking lot sweeping upon 30 (thirty) calendar days written notice to the CONTRACTOR based upon the following formula:

- 1. Add or subtract street sweeping work on a curb mile basis.

The City will divide the Unit Price submitted by the CONTRACTOR as stated above for the Streets work by 215 to determine the per curb mile cost that will be used by the City in calculating additional compensation or a reduction in compensation. For purposes of this Contract and the Exhibits thereto, the term "curb mile" shall mean: (1) raised street curbs; (2) median curbs and (3) painted medians without curbs.

- 2. Add or subtract parking lot work on a square foot basis

The City will divide the Unit Price submitted by the CONTRACTOR as stated above for the Parking Lots work by 1.84 million to determine the per square foot cost that will be used by the City in calculating additional compensation or a reduction in compensation.

**EXHIBIT E TO CITY OF INDUSTRY STREET
SWEEPING CONTRACT
CITY CONTRACT NO. 1423**

**RULE 1186 & 1186.1 OF THE SOUTH COAST AIR
QUALITY MANAGEMENT DISTRICT**

(Adopted February 14, 1997)(Amended December 11, 1998)
(Amended September 10, 1999)(Amended April 2, 2004)
(Amended July 11, 2008)

**RULE 1186. PM₁₀ EMISSIONS FROM PAVED AND UNPAVED ROADS,
AND LIVESTOCK OPERATIONS**

(a) Purpose

The purpose of this rule is to reduce the amount of particulate matter entrained in the ambient air as a result of vehicular travel on paved and unpaved public roads, and at livestock operations.

(b) Applicability

The provisions of this rule shall apply to specified land uses and activities conducted within the South Coast Air Quality Management District which result in fugitive dust.

(c) Definitions

(1) AVERAGE DAILY TRIPS (ADT) means the average number of vehicles that cross a given surface during a specified 24-hour time period as determined by the most recent Institute of Transportation Engineers trip generation manual, tube counts, or observations.

(2) CERTIFIED STREET SWEEPER is a sweeper that has been certified by the District as meeting the Rule 1186 sweeper certification procedures and requirements for PM₁₀-efficient sweepers.

(3) CHEMICAL STABILIZERS mean any non-toxic chemical dust suppressant which must not be used if prohibited for use by the Regional Water Quality Control Boards, the California Air Resources Board, the U.S. Environmental Protection Agency (U.S. EPA), or any applicable law, rule or regulation. The chemical stabilizers shall meet any specifications, criteria, or tests required by any federal, state, or local water agency. Unless otherwise indicated, the use of a non-toxic chemical stabilizer shall be of sufficient concentration and application frequency to maintain a stabilized surface.

(4) CHEMICAL STABILIZATION means a method of dust control implemented by a person to mitigate fugitive dust and corresponding PM₁₀ emissions which involves the use of non-toxic chemical stabilizers in sufficient quantities to maintain a stabilized surface.

- (5) CONTRACT DATE is the date the contract has been signed by both parties but no earlier than 6 months before sweeping begins. Renewals of sweeping contracts are considered new contracts.
- (6) DISTRICT'S TEST PROTOCOL: RULE 1186 CERTIFIED STREET SWEEPER COMPLIANCE TESTING means the reference test method contained in Appendix A, or hereafter approved by the Executive Officer and the U.S. Environmental Protection Agency to be an equivalent method.
- (7) DUST SUPPRESSANTS are water, hygroscopic materials, or non-toxic chemical stabilizers used as a treatment material to reduce fugitive dust emissions.
- (8) ESSENTIAL PUBLIC SERVICES are sewage treatment facilities, prisons, police facilities, fire fighting facilities, schools, hospitals, landfills, and water delivery operations.
- (9) FEED LANE ACCESS AREAS are roads providing access from the feed preparation areas to and including feed lane areas at a livestock operation. These access roads are typically used to distribute feed from feed trucks to the animals.
- (10) FUGITIVE DUST means any solid particulate matter that becomes airborne, other than that emitted from an exhaust stack, directly or indirectly as a result of the activities of man.
- (11) INDEPENDENT TESTING FACILITY (OR LABORATORY) means a testing facility that meets the requirements of District Rule 304, subdivision (k) and is approved by the District to conduct certification testing under the District's Test Protocol: RULE 1186 Certified Street Sweeper Compliance Testing.
- (12) LIVESTOCK OPERATIONS means any operation directly related to the raising of more than 50 animals for the primary purpose of making a profit or for a livelihood.
- (13) OWNER/OPERATOR is any person who owns, leases, or operates a land use or activity subject to the requirements of this rule.
- (14) PAVED ROAD means a public or private improved street, highway, alley, public way, or easement that is covered by typical roadway materials, but excluding access roadways that connect a facility with a public paved roadway and are not open to through traffic. Public paved roads are those open to public access and that are owned by any federal, state, county,

municipal or any other governmental or quasi-governmental agencies. Private paved roads are any paved roads not defined as public.

- (15) PM₁₀ is particulate matter with an aerodynamic diameter smaller than or equal to 10 microns as measured by the applicable State and Federal reference test methods.
- (16) PURCHASE OR LEASE DATE is the date the purchase or lease contract for delivery of sweeping equipment has been signed by both parties. Renewals of leasing contracts are considered new leases.
- (17) ROUTINE STREET SWEEPING is street sweeping performed by local governments or their contractors at least once every three months for a given paved road.
- (18) SOUTH COAST AIR BASIN means the non-desert portions of Los Angeles, Riverside, and San Bernardino counties and all of Orange County as defined in California Code of Regulations, Title 17, Section 60104. The area is bounded on the west by the Pacific Ocean, on the north and east by the San Gabriel, San Bernardino, and San Jacinto Mountains, and on the south by the San Diego county line.
- (19) STABILIZED SURFACE means any previously disturbed surface area or open storage pile which, through the application of dust suppressants, shows visual or other evidence of surface crusting and is resistant to wind-driven fugitive dust.
- (20) STREET CLEANING means the removal of post-event visible roadway accumulations using street sweeping equipment, front end loaders, haul vehicles, manual shoveling, street flushing, or any other methods determined effective by the responsible agency.
- (21) TYPICAL ROADWAY MATERIALS means concrete, asphaltic concrete, recycled asphalt, asphalt or any other material of equivalent performance as determined by the Executive Officer, the California Air Resources Board, and the U.S. EPA.
- (22) UNPAVED ACCESS CONNECTIONS means any unpaved road connection with a paved public road.
- (23) UNPAVED ALLEY means any roadway not exceeding 25 feet in width, which is primarily used for access to the rear or side entrances of abutting property, and that is not covered by typical roadway materials.
- (24) UNPAVED ROADS are any unsealed or unpaved roads, equipment paths, or travel ways that are not covered by typical roadway materials. Public

unpaved roads are any unpaved roadway owned by federal, state, county, municipal or other governmental or quasi-governmental agencies. Private unpaved roads are all unpaved roadways not defined as public. This definition excludes horse trails, hiking paths, bicycle paths, or other similar pathways used exclusively for purposes other than travel by motorized vehicles.

- (25) **VISIBLE ROADWAY ACCUMULATIONS** means the deposit of particulate matter onto paved roads as a result of wind or water erosion, haul vehicle spillage, or any other event excluding vehicular track-out, which results in the accumulation of visible roadway dust covering a contiguous area in excess of 200 square feet.
- (26) **WIND-DRIVEN FUGITIVE DUST** means visible emissions from any disturbed surface area which is generated by wind action alone.

(d) Requirements

Paved Roads

- (1) Any owner or operator of a paved public road on which there is visible roadway accumulations shall begin removal of such material through street cleaning within 72 hours of any notification of the accumulation and shall completely remove such material as soon as feasible. If removal cannot be completed within 10 days of notification, the owner/operator shall notify the Executive Officer and provide information on the location of the accumulation(s) and estimated removal completion date.
- (2) Any government or government agency which contracts to acquire street sweeping equipment or street sweeping services for routine street sweeping on public roads that it owns and/or maintains, shall acquire or use only certified street sweeping equipment.
- (3) Any government or government agency subject to the requirements of paragraph (d)(2) and/or its contractors shall operate and maintain the certified street sweeping equipment in accordance with the manufacturer's specifications. The use of parts determined by the Executive Officer to be substantially similar under the provisions of paragraph (f)(4) shall not be deemed a violation of this subparagraph.
- (4) Beginning January 1, 2006, any owner or operator of a public or private paved road shall construct, or require to be constructed, all new or widened paved roads in accordance with the American Association of

State Highway and Transportation Officials (AASHTO) guidelines or the applicable equivalent locally adopted guidelines for curbing, width of shoulders, and medians as specified below:

- (A) New construction or widening of paved roads with projected average daily trips of 500 vehicles or more shall be constructed with curbs or as an alternative paved outside shoulders using typical roadway materials and having the following minimum widths:

Average Daily Trips	Minimum Shoulder Width
500 - 3,000	4 feet
3,000 or greater	8 feet

- (B) New construction or widening of paved roads with medians and projected average daily trips of 500 vehicles or more shall pave the median area with typical roadway materials unless:
 - (i) the speed limits are set at or below 45 miles per hour; or
 - (ii) the medians are landscaped and maintained with grass or other vegetative ground cover and are surrounded by curbing; or
 - (iii) the medians are treated with chemical stabilizers in sufficient quantity and frequency to establish a stabilized surface and are surrounded by curbing.

Unpaved Roads

- (5) Any owner or operator of an unpaved public road in the South Coast Air Basin shall annually treat unpaved roads that have greater than the average ADT of all unpaved roads in its jurisdiction (as determined by the owner/operator) beginning January 1, 1998 and each of the 8 calendar years thereafter by either:
 - (A) Paving at least 1 mile of such roads using typical roadway materials; or
 - (B) Applying chemical stabilization to 2 miles of such roads in sufficient quantities to maintain a stabilized surface; or
 - (C) Taking one or more of the following actions on 3 miles of such roads:
 - (i) Installing signage at 1/4 mile intervals that prohibits vehicular speeds in excess of 15 miles per hour

(mph) as authorized by California Vehicle Code section 22365 and/or

- (ii) Installing speed control devices (e.g., speed bumps) every 500 feet and/or
- (iii) Maintaining the roadway in such a manner that inhibits vehicular speeds in excess of 15 mph.

(Note: Treatment in excess of the annual requirement can be credited toward future year requirements.)

Livestock Operations

- (6) Any owner or operator of a livestock operation shall cease all hay grinding activities between 2:00 and 5:00 p.m. each day, if visible emissions extend more than 50 feet from a hay grinding source.
- (7) Any owner or operator of a livestock operation shall treat all unpaved access connections and unpaved feed lane access areas with either pavement, gravel (maintained to a depth of four inches), or asphaltic road-base no later than January 1, 1998.

(e) **Street Sweeper Testing and Certification Procedures**

- (1) Any manufacturer seeking certification of street sweeping equipment as a certified street sweeper shall utilize the following procedures;
 - (A) The manufacturer shall submit a signed and dated certification request to the Executive Officer, and attest to the accuracy of all statements therein, that shall include:
 - (i) the name and address of the manufacturer, the brand name, the model number, and a complete description of the sweeper's dust collection and suppression system by submitting all of the information in paragraph (f)(2); and
 - (ii) confirmation that the specific sweeper configuration to be certified has been tested in accordance with District's Test Protocol: Rule 1186 Certified Street Sweeper Compliance Testing by an independent test facility or laboratory, and that test results demonstrate that the sweeper meets the Rule 1186 sweeper certification limits specified in paragraph (e)(2).

- (B) Manufacturers of certified street sweeping equipment may submit a certification request for additional equipment that has substantially similar material collection and dust suppression system(s) as equipment that was certified under the provisions of paragraph (e)(2), by providing the information specified in clause (e)(1)(A)(i). If the Executive Officer determines that the information submitted by the manufacturers in support of an equivalency determination and previous certification test results are sufficient to certify the additional equipment, the Executive Officer will approve the request.
- (2) The Executive Officer will certify street sweeping equipment provided such equipment meets the following conditions based on a single certification test:
 - (A) The pick-up efficiency, as defined in the District's Test Protocol: Rule 1186 Certified Street Sweeper Compliance Testing, is greater or equal to 80 percent; and
 - (B) The normalized mass of entrained PM₁₀, as defined by District's Test Protocol: Rule 1186 Certified Street Sweeper Compliance Testing, is less than or equal to 200 mg/m.
- (f) Street Sweeper Performance Characteristics
 - (1) Any manufacturer of a street sweeper that has previously been certified under the provisions of subdivision (e) shall, no later than November 11, 2008, submit to the Executive Officer a complete description of the dust collection and suppression systems of the equipment as configured during the certification testing or as otherwise certified under the provisions of subparagraph (e)(1)(B).
 - (2) The description of the dust collection and suppression systems required under paragraph (f)(1) shall, at a minimum, consist of the following:
 - (A) Dust collection
 - (i) Gutter broom
 - (I) material composition;
 - (II) bristle count and weight;
 - (III) tensile strength expressed as pounds per square inch (PSI); and
 - (IV) dimensions including length, thickness, and width.

- (ii) Main pickup broom (if part of the original certified street sweeper)
 - (I) material composition and pounds of fiber per broom;
 - (II) tensile strength expressed as PSI; and
 - (III) dimensions including length, thickness, and width.
 - (iii) Blower/Vacuum system (if part of the original certified street sweeper)
 - (I) horsepower; and
 - (II) drive type.
 - (B) Dust suppression
 - (i) Water suppression
 - (I) schematic drawing showing water nozzle locations and orifice nozzle sizes; and
 - (II) minimum system relief valve setting for water pump expressed as pounds per square inch (PSI).
 - (ii) Filter-based suppression
 - (I) filter media type and surface area; and
 - (II) filtration cleansing system, including mechanism and frequency.
- (3) Any manufacturer of street sweeping equipment shall notify the Executive Officer through submission of a plan regarding any change to a part specification or part supplier submitted pursuant to paragraph (f)(2). Street sweeping manufacturers shall be required to submit sufficient specifications and other data as determined by the Executive Officer to demonstrate that the equipment performance has not been affected by the change of a part specification or part supplier prior to the continued distribution of equipment as a certified street sweeper. In the event the Executive Officer determines that the certification of performance is not maintained, the manufacturer shall lose equipment certification for the specific street sweeper.
- (4) Any street sweeper parts supplier may sell parts to an entity required to procure certified street sweeping equipment provided that:
- (A) such parts were installed on equipment that was certified under the provisions of subdivision (e). Documentation that a given part was

on a street sweeper during certification testing must be submitted to the Executive Officer as a plan and must include the following:

- (i) Invoices from the parts supplier to the manufacturer, or
- (ii) Contractual agreements between the parts supplier to the manufacturer, or
- (iii) Any other documentation that the Executive Officers deems sufficient to demonstrate that a given part was on a piece of equipment that was previously certified; or

(B) the supplier submits a plan that demonstrates to the satisfaction of the Executive Officer that the replacement part is substantially similar to the original equipment manufacturer part.

(5) Any person subject to the plan submittal requirements under paragraphs (f)(3) or (f)(4) shall be assessed applicable filing and evaluation fees pursuant to Rule 306 (Plan Fees).

(6) Any plan submitted under the requirements under paragraphs (f)(3) or (f)(4) shall be either approved, conditionally approved or disapproved in writing by the Executive Officer within 120 days of the receipt of a complete plan.

(g) Recordkeeping

(1) Any person subject to paragraph (d)(3) shall maintain operational and maintenance records demonstrating compliance with paragraph (d)(3). Such records for the previous two years of operation (or total period of operation, if less than two years) must be made available to the Executive Officer upon request.

(2) Any person subject to paragraph (d)(5) shall maintain records that document compliance with the requirements specified in paragraph (d)(5). Such records must be updated annually and must be made available to the Executive Officer upon request.

(h) Exemptions

(1) The provisions of this rule shall not apply to essential public services that are in compliance with District Rule 403 (Fugitive Dust).

(2) The provisions of paragraph (d)(1) shall not apply to:

- (A) visible roadway accumulations that occur on roads with fewer than 500 average daily trips.

- (B) paved roads that have been closed until such time that the road is again opened to vehicular activity.
 - (C) events of such magnitude that a State of Emergency has been declared by the Governor, provided that removal of visible roadway accumulations associated with such events are initiated and completed as soon as feasible.
- (3) The provisions of paragraph (d)(5) shall not apply to:
- (A) any unpaved road 3,000 feet above mean sea level with fewer than 500 ADT.
 - (B) any unpaved road used for emergency fire or flood protection or emergency maintenance of essential service utilities to provide electricity, natural gas, telephone, water, and sewer.
 - (C) any unpaved public road where public access is prohibited.
 - (D) any unpaved alley.
 - (E) any government agency if it:
 - (i) notifies the Executive Officer that it has less than 5 miles of unpaved road mileage and implements once at least one of the control strategies identified in either subparagraph (d)(5)(A) or (d)(5)(B) or (d)(5)(C) on the unpaved road mileage with greater than the average ADT (as determined by the owner/operator) by January 1, 2000; or
 - (ii) notifies the Executive Officer that it has more than 5 but less than 10 miles of unpaved road mileage and implements at least one of the control strategies identified in either subparagraph (d)(5)(A) or (d)(5)(B) or (d)(5)(C) on unpaved roads with greater than the average ADT (as determined by the owner/operator) in each three year period beginning January 1, 1998 (with final treatments completed by December 31, 2005); or
 - (iii) notifies the Executive Officer that all of its remaining unpaved roads have 20 ADT or less (as determined by the owner/operator).
- (4) The provisions of paragraphs (d)(6) and (d)(7) shall not apply to livestock operations whose contiguous bounded areas do not exceed ten acres.
- (5) The provisions of subparagraph (d)(4)(A) shall not apply to unpaved road shoulders provided that the area extending eight feet from the outside edge

of the pavement is landscaped and maintained with grass or other vegetative ground cover.

(i) **Alternative Control Options**

In lieu of complying with the provisions of paragraphs (d)(5) and (d)(7), a person may submit for approval by the Executive Officer and the U.S. Environmental Protection Agency a plan for achieving equivalent emissions reductions through alternative control measures.

(Adopted August 18, 2000)(Amended June 4, 2004)
(Amended September 9, 2005)(Amended May 5, 2006)
(Amended June 6, 2008)(Amended January 9, 2009)

RULE 1186.1. LESS-POLLUTING SWEEPERS

(a) Purpose

To reduce air toxic and criteria pollutant emissions, this rule requires certain public and private sweeper fleet operators to acquire and operate alternative-fuel or otherwise less-polluting sweepers when purchasing or leasing these vehicles for sweeping operations undertaken by or for governments or governmental agencies in the jurisdiction of the South Coast Air Quality Management District (District).

(b) Applicability

- (1) This rule applies to any federal, state, county, city or governmental department or agency, any special district such as water, air, sanitation, transit, and school districts, or private individual firm, association, franchise, contractor, user or owner who provides sweeping services to a governmental agency that owns or leases 15 or more vehicles, including passenger cars, light-duty trucks, and medium- and heavy-duty on-road vehicles, but excluding those vehicles exempt as defined by Rule 1191 paragraph (f)(1).
- (2) Sweepers having a gross vehicle weight of 14,000 pounds or more are subject to this rule.

(c) Definitions

For purposes of this rule, the following definitions shall apply:

- (1) AFFECTED GOVERNMENTAL AGENCY means any governmental agency in the District's jurisdiction that owns or leases 15 or more vehicles, including passenger cars, light-duty trucks, and medium- and heavy-duty on-road vehicles, or contracts for sweeping services, excluding those exempt as defined by Rule 1191 paragraph (f)(1).
- (2) ALTERNATIVE-FUEL SWEEPER means a sweeper with engine(s) that use compressed or liquefied natural gas, liquefied petroleum gas (propane), methanol, electricity, or fuel cells. Hybrid-electric and dual-

fuel technologies that use diesel fuel are not considered alternative-fuel technologies for the purposes of this rule.

- (3) APPROVED CONTROL DEVICE(S) is a California Air Resources Board (CARB)-certified exhaust control device(s) that reduces particulates and possibly other precursor emissions. To be considered fitted with approved control device(s), all diesel exhaust from the sweeper, including the auxiliary engine (if applicable) must be vented through such a device(s) that have been certified by CARB at the time of vehicle purchase.
- (4) FLEET OPERATOR is any federal, state, county, city, or governmental department or agency, any special district such as water, air, sanitation, transit, and school districts, or private individual firm, association, franchise, contractor, user or owner who provides sweeping services to a governmental agency that owns or leases 15 or more vehicles, including passenger cars, light-duty trucks, and medium- and heavy-duty on-road vehicles, excluding those exempt as defined by Rule 1191 paragraph (f)(1).
- (5) GOVERNMENTAL AGENCY include any federal, state, regional, county, city, or governmental department and agency, and any special district such as water, air, sanitation, transit, and school districts. See AFFECTED GOVERNMENTAL AGENCY.
- (6) LOW-SULFUR DIESEL FUEL means diesel fuel that has a maximum sulfur content of 15 parts per million (ppm). The use of low-sulfur diesel fuel improves the performance of and may be necessary for the use of advanced exhaust control devices.
- (7) PURCHASE OR LEASE means that a purchase or lease contract has been signed by both parties for a sweeper to be delivered within 1 year of the purchase or lease contract date, which is the date the contract is signed by both parties.
- (8) SWEEPER means any heavy-duty vehicle with a gross vehicle weight of 14,000 pounds or more that is permitted to operate on public roads through California Department of Motor Vehicle registration or the federal government and used for the express purpose of removing material from paved surfaces, by mechanical means through the action of one or more brooms, or by suction through a vacuum or regenerative air system or any combination of the above.

(9) SWEEPING OPERATIONS means operations to remove material from paved surfaces using sweeper(s), as defined by this rule.

(d) Requirements

For Fleet Operators:

(1) Beginning July 1, 2002, a fleet operator shall meet the following conditions for each individual purchase or lease of a replacement or additional sweeper:

- (A) Purchase or lease an alternative-fuel sweeper, OR
- (B) Provide alternative-fuel sweeping services where required under contract with a government agency, pursuant to subparagraphs (d)(2)(A) and (d)(2)(B).
- (C) Before July 1, 2010, if the fleet operator has an approved Technical Infeasibility Certification for this individual purchase or lease, as described in subdivision (e),
 - (i) purchase or lease a non-alternative fueled sweeper with all applicable approved control device(s), and
 - (ii) maintain the approved control device(s) per manufacturer's specifications, and
 - (iii) if using diesel fuel, fuel the sweeper with low-sulfur diesel fuel only, and
 - (iv) comply with Rule 1186 without invoking the exemption provision in Rule 1186 paragraph (i)(3), unless a demonstration is made to the Executive Officer that for solely technical reasons no certified sweeper, as defined in Rule 1186 paragraph (c)(2), is commercially available.
- (D) Failure to use alternative-fuel sweepers where required under contract with a government agency shall be a violation of this rule for each day that the street sweeping services are provided.

For Affected Governmental Agencies Contracting for Sweeping Services:

- (2) Any affected governmental agency that signs a contract after July 1, 2002 for sweeping services must:
- (A) Contract for sweeping services that use alternative-fuel sweeper(s), OR
 - (B) Solicit bids for sweeping operations using alternative-fuel sweepers and if no bids are submitted:

- (i) Contract for non-alternative fueled sweeper(s) and ensure that the sweeper(s) are only fueled with low-sulfur diesel and outfitted with approved control device(s) that are installed and maintained per the manufacturer's specifications, and
 - (ii) Contract for sweeper(s) that comply with Rule 1186, unless a demonstration is made to the Executive Officer that for solely technical reasons no certified sweeper, as defined in Rule 1186 paragraph (c)(2), is commercially available.
- (3) After January 1, 2003, any renewal or extension option of a contract is considered a new contract that must meet the requirements of paragraph (d)(2).
- (4) Pursuant to paragraph (d)(2), alternative-fuel sweepers shall be used for the entire term of the contract. If alternative-fuel sweepers are not available at the beginning of the contract due to the date of delivery, the affected government agency shall submit a signed and dated Technical Infeasibility Certification Request to the Executive Officer prior to the award of the contract demonstrating the unavailability of alternative-fuel sweeper service for the period of time during which alternative-fuel sweepers are to be delivered.
- (e) Technical Infeasibility Certification Criteria and Procedures
 - (1) Six months prior to the date of purchase or lease of a replacement or additional sweeper, any fleet operator seeking to comply with subdivision (d) without purchasing or leasing an alternate-fuel sweeper [i.e., opting to comply with paragraph (d)(2)], shall demonstrate the technical infeasibility of complying with paragraph (d)(1) requirements by submitting a signed and dated Technical Infeasibility Certification Request to the Executive Officer and attest to the accuracy of all statements therein, that shall include:
 - (A) the name and address of the fleet operator; and
 - (B) current sweeper fleet composition, including make, model, and a complete description of the sweepers' dust suppression systems; and
 - (C) demonstration that no alternative-fuel engine and chassis configuration is commercially available from any manufacturer for sweeping operations conducted by the fleet operator (only technical

reasons for choosing a given chassis configuration are acceptable),
OR

- (D) demonstration that a fueling station for alternative-fuel sweepers commercially available from any manufacturer for sweeping operations conducted by the fleet operator is not available within five miles of the vehicle storage or maintenance yards.
 - (2) Within 90 calendar days of receipt of a completed Technical Infeasibility Certification Request submitted pursuant to paragraph (e)(1), the Executive Officer will either approve or disapprove the Request, in writing.
 - (3) The Executive Officer shall disapprove a Technical Infeasibility Certification Request if it does not meet the requirements of paragraph (e)(1). If a Technical Infeasibility Certification Request is disapproved by the Executive Officer:
 - (A) The reasons for disapproval shall be given to the applicant in writing.
 - (B) Upon receipt of a notice of a disapproved Technical Infeasibility Certification Request, the fleet operator shall comply with paragraph (d)(1).
 - (C) The fleet operator may resubmit a Technical Infeasibility Certification Request at any time after receiving a disapproval notification, but must still comply with paragraph (d)(1) until such time as the Executive Officer approves a Technical Infeasibility Certification Request under paragraph (e)(1).
 - (4) A Technical Infeasibility Certification Request is subject to plan filing and evaluation fees as described in Rule 306.
- (f) Exemptions
- (1) The provisions of this rule shall not apply to fleets consisting of evaluation/test vehicles, provided by or operated by the vehicle manufacturer or manufacturer representative for testing or evaluation, exclusively.
 - (2) The provisions of subdivision (d) shall not apply to a sweeper purchase by a fleet operator that is solely dedicated to serving governmental agencies that are not subject to this rule, upon demonstration to and approval of the Executive Officer.

(g) Compliance Auditing and Enforcement

- (1) At the request of the Executive Officer, the fleet operator shall provide the purchase, lease, or contract records for their sweepers to demonstrate compliance with subdivision (d).
- (2) At the request of the Executive Officer, any fleet operator claiming an exemption under subdivision (f) shall supply proof that their sweeper or fleet is exempted from this rule.

(h) Severability

If any provision of this rule is held by judicial order to be invalid, or invalid or inapplicable to any person or circumstance, such order shall not affect the validity of the remainder of this rule, or the validity or applicability of such provision to other persons or circumstances. In the event any of the exceptions to this rule is held by judicial order to be invalid, the persons or circumstances covered by the exception shall instead be required to comply with the remainder of this rule.

CITY COUNCIL

ITEM NO. 5.4



CITY OF INDUSTRY

MEMORANDUM

TO: Honorable Mayor Moss and Members of the City Council

FROM: Troy Helling, City Manager *TH*

STAFF: Joshua Nelson, City Engineer *JN*
James Cramsie, Director of Engineering, CNC Engineering *JCC*

DATE: February 13, 2020

SUBJECT: Consideration of Amendment No. 2 to the Professional Services Agreement with Tetra Tech, Inc., to continue 30 percent Preliminary Design for Multi-Benefit Stormwater Capture Projects for the Upper San Gabriel River Enhanced Watershed Management Program, for an amount not-to-exceed \$714,000.00 through August 31, 2020 (Contract No. 2017-1002)

Background:

The County of Los Angeles ("County"), the Los Angeles County Flood Control District, and the cities of Baldwin Park, Covina, Glendora, Industry, La Puente, and West Covina (collectively, the "Member Agencies") formed the Upper San Gabriel River ("USGR") Enhanced Watershed Management Program ("EWMP") Group on October 24, 2013. EWMPs serve as road maps to water sustainability by identifying opportunities to improve stormwater quality, water supply, and flood control. The Group completed the development of an EWMP and obtained approval from the Los Angeles Regional Water Quality Control Board on April 11, 2016. The Group's next objective was to prepare preliminary design reports at the 30 percent design level that will be suitable for grant funding applications and a design-build or design-bid-build solicitation package for projects identified in the approved EWMP and in consultation with the Member Agencies.

On September 14, 2017, the City Council approved a Professional Services Agreement ("Agreement") with Tetra Tech, Inc. ("Tetra Tech"), for the preparation of 30 percent Preliminary Design for Multi-Benefit Stormwater Capture Projects for the USGR EWMP, in an amount not to exceed \$680,000.00, through September 14, 2019. On September 12, 2019, Amendment No. 1 was approved, extending the Agreement with Tetra Tech through December 31, 2019. The extension was needed to complete final deliverables with no additional compensation and address final comments by the Member Agencies on the final 30 percent design package(s).

The funds used for the 30 percent Preliminary Design were provided by the County of Los Angeles, through a cost sharing Memorandum of Understanding (MOU) between the member agencies of the USGR EWMP group. The funds included the amount of \$680,000.00 for preparation of the 30 percent Preliminary Designs, along with a 5 percent

administrative fee (\$34,000.00) paid to the City of Industry, for the administration of the Agreement on behalf of the EWMP group. These additional funds have not been used by the City, and after initial discussions with the group members, the group would like to use these additional funds to support group members either by seeking grant funding through programs, such as the Safe, Clean Water Program, or other tasks that would benefit the group. The final use of the funds by the group has yet to be determined. City Staff is recommending that the City allocate the \$34,000.00 in administrative fees back to the EWMP group. The extra funds would be used to increase compensation in the Agreement with Tetra Tech, and then allowing the EWMP group to utilize the extra funds as the group sees fit.

Discussion:

Staff is proposing Amendment No. 2 to the Professional Services Agreement to allow Tetra Tech to continue providing consulting services through August 31, 2020. The proposed amendment increases the compensation of the Agreement by \$34,000.00, due to the extension of the term for a total contract amount of \$714,000.00.

Table 1 - Summary of Professional Services Costs

Professional Services Agreement dated 9/14/2017	\$680,000.00
Amendment No. 1 to Professional Services Agreement	Time Extension
Amendment No. 2 to Professional Services Agreement	\$34,000.00
Total	\$714,000.00

Fiscal Impact:

There is no direct fiscal impact as the additional amount of \$34,000.00 was provided by the EWMP group to the City (Account No. 120-703-5130).

Recommendation:

It is recommended that the City Council approve Amendment No. 2 to the Professional Services Agreement with Tetra Tech, Inc. in an amount not-to-exceed \$714,000.00.

Exhibit:

- A. Amendment No. 2 to the Professional Services Agreement with Tetra Tech, Inc., dated February 13, 2020

TH/JN/JC:jf

EXHIBIT A

Amendment No. 2 to the Professional Services Agreement with
Tetra Tech, Inc. dated February 13, 2020

[Attached]

**AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT WITH
TETRA TECH, INC.**

This Amendment No. 2 to the Professional Services Agreement (“Agreement”) is made and entered into this 13th day of February, 2020, (“Effective Date”) by and between the City of Industry, a California municipal corporation (“City”) and Tetra Tech, Inc., a Delaware Corporation (“Consultant”). The City and Consultant are hereinafter collectively referred to as the “Parties”.

RECITALS

WHEREAS, on or about September 14, 2017, the Agreement was entered into and executed between the City and Consultant to provide engineering services for stormwater capture projects; and

WHEREAS, on or about September 12, 2019, the City approved Amendment No. 1 to extend the term of the Agreement through December 31, 2019, to continue to allow Consultant to complete the final deliverables, and to allow for reconciliation of the final invoices for the project; and

WHEREAS, the Parties desire to amend the Agreement to extend the term of the Agreement through August 31, 2020 and increase compensation to Consultant by \$34,000.00; and

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

AMENDMENT

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

Section 1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than August 31, 2020, unless sooner terminated pursuant to the provisions of this Agreement.

Section 4. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B (“Rate Schedule”), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Seven Hundred Fourteen Thousand dollars (\$714,000.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

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

“CITY”
City of Industry

“CONSULTANT”
Tetra Tech, Inc.

By: _____
Troy Helling, City Manager

By: _____
Clint Boschen, Director

Attest:

By: _____
Julie Gutierrez-Robles, City Clerk

APPROVED AS TO FORM

By: _____
James M. Casso, City Attorney

EXHIBIT A TO AMENDMENT NO. 2
AGREEMENT FOR CONSULTING SERVICES WITH TETRA TECH, INC. DATED
SEPTEMBER 14, 2017

CITY OF INDUSTRY

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of September 14, 2017 ("Effective Date"), between the City of Industry, a municipal corporation ("City") and Tetra Tech, Inc., a California corporation ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

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

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

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than September 14, 2019, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

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

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

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

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the

Political Reform Act (Government Code Section 81000 *et seq.*). During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) City has not consented in writing to Consultant's performance of such work. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

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

3. MANAGEMENT

City's City Manager shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

4. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Six Hundred Eighty Thousand dollars (\$680,000.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

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

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

5. LABOR CODE AND PREVAILING WAGES

(a) Consultant represents and warrants that it is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 16000, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000.00 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and any location where the Services are performed. Consultant shall indemnify, defend and hold harmless, the City, its elected officials, officers, employees and agents, from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, Consultant's or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant, failure or alleged failure to comply with Prevailing Wage Laws.

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

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

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT

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

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

7. OWNERSHIP OF DOCUMENTS

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

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the the County of Los Angeles, the Los Angeles County Flood Control District, and the cities of Baldwin Park, Covina, Glendora, Industry, La Puente and South El Monte (collectively the "Cities") and may be used, reused, or otherwise disposed of by the Cities without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at

the Consultant's office, and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to Cities all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the Cities.

8. INDEMNIFICATION

(a) Indemnity for professional liability

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

(b) Indemnity for other than professional liability

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

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

Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and Cities, as to whether liability arises from the sole negligence of one or more of the Cities or their officers, employees, or agents, Consultant will be obligated to pay for Cities' defense until such time as a final judgment has been entered adjudicating one or more of the Cities as solely negligent. Consultant will not

be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation. For purposes of this paragraph, the term "sole negligence" means the negligence of one or more of the Cities.

9. INSURANCE

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

10. INDEPENDENT CONSULTANT

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

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

11. LEGAL RESPONSIBILITIES

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

12. UNDUE INFLUENCE

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

13. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES

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

14. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless Consultant is prohibited by law from informing the City of such Discovery, court order or subpoena. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

15. NOTICES

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

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

Attention: City Manager

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

To Consultant: Chad Helmle, Vice President
Tetra Tech, Inc.
3475 East Foothill Boulevard
Pasadena, CA 91107
Tel (626) 470-2427

16. ASSIGNMENT

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

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

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

17. GOVERNING LAW/ATTORNEYS' FEES

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

18. ENTIRE AGREEMENT

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

19. SEVERABILITY

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

20. COUNTERPARTS

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

21. CAPTIONS

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

22. WAIVER

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

23. REMEDIES

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or

the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

24. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

"CITY"
City of Industry

"CONSULTANT"
Tetra Tech, Inc.

By: Paul J. Philips
Paul J. Philips, City Manager

By: Chad Helmle
Chad Helmle, Vice President

Attest:

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

Approved as to form:

By: James M. Casso
James M. Casso, City Attorney

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

EXHIBIT A

SCOPE OF SERVICES

Consultant shall provide the following services:

Prepare Preliminary Design Reports ("Project") at the 30% design level construction drawings that will be suitable for grant funding applications and/or a design-build or design-bid-build solicitation packages that demonstrate a comprehensive approach to stormwater planning for the San Gabriel River Watershed for the following sites:

Site	Owner	Potential Jurisdiction(s) Tributary
Barnes Park	Baldwin Park	Baldwin Park
Kahler Russell Park	Covina	Covina, County, Glendora, and San Dimas
Downtown Properties	Glendora	Glendora
San Angelo Park and Vacant Lot	Industry	Industry and County
Cortez Park	West Covina	West Covina and Walnut
Allen J. Martin	County	County, West Covina and La Puente
La Puente Park	La Puente	La Puente

The following tasks are provided as a guide to accomplish the objectives. The services to be performed by the Consultant shall include, but not be limited to, the following items of work:

1. Project Management, Coordination, and Meetings

The Consultant will provide project management services to ensure the project is delivered on schedule and within budget. The Consultant will obtain feedback from Cities on various stages of the project development.

1.1. Project Schedule

Provide a detailed schedule to complete all the tasks of this Scope of Work. The schedule may be updated as necessary and as approved by the Project Manager.

1.2. Coordination

Perform project management duties including coordinating with Cities, coordinating calls, and providing an explanation of the work completed, work to be done, and work that was to have been done but not, with explanations.

1.3. Meetings

Schedule and prepare meeting agenda, presentation, and summary notes. The Consultant should assume monthly meetings, including a kick-off meeting, with the Cities, and other select stakeholders, such as Los Angeles County Department of Parks

and Recreation. The Consultant shall also meet with the Los Angeles County Regional Water Quality Control Board ("Regional Board"), and attend two meetings with other stakeholder agencies, such as the Upper San Gabriel Valley Municipal Water District, as directed by the City.

Deliverables: Project schedules, agenda, presentation, and summary notes.

2. Geotechnical Evaluation

The Consultant will conduct a geotechnical evaluation to provide a reasonable understanding of the subsurface conditions and the ability to infiltrate at the proposed location and depth, including but not limited to, an infiltration test and Phase I Environmental Site Assessment (Phase I). The Consultant will also conduct shallow infiltration tests for sites where low impact development features, such as bioswales, are proposed. Prior to conducting the tests, guidance from the Cities will be given on testing locations.

One deep boring up to 100 feet or groundwater table has been conducted for all sites, except Cortez Park, during the Enhanced Watershed Management Program ("EWMP") development. The geotechnical investigation results can be found in Appendix B-3 within the file link below:

<http://www.cityofindustry.org/Home/ShowDocument?id=2132>

The Consultant will obtain necessary access permits from Baldwin Park, Glendora, and West Covina.

Deliverable: Geotechnical report and Phase I report for all sites, except as set forth in the following paragraph.

Note: The Los Angeles County Department of Public Works ("LACDPW") will provide geotechnical reports for Kahler Russell Park, San Angelo Park, and Allen J. Martin Park. The LACDPW will conduct Cone Penetration Tests to characterize the subsurface stratigraphy and in coordination with the Consultant, perform necessary percolation tests. The Consultant will still perform Phase I for the three sites.

3. Develop Stormwater Capture Capacity and Conduct Water Quality Analysis

The Consultant will determine the maximum potential drainage area that could be captured by each site and meet water quality standards. Guidance from the City will be given on available project footprint. The Consultant will develop the following stormwater capture capacity options:

- 1) BMP size that will achieve water quality standards for the Project tributary drainage area to those sites,
- 2) BMP size that is most cost-effective for the Project tributary area,
- 3) BMP size that will capture the 85th percentile, 24-hour storm volume,

- 4) Any other BMP size that the Consultant determines will best achieve multi-benefits, including but not limited to addressing stormwater quality and water supply.

The Consultant will also develop recommendations for the BMP location and type as well as the location, type, and size of pre-treatment systems and diversion structures for each BMP option.

The Consultant will obtain and review all necessary data to complete the task. If the available information is incomplete, the Consultant will perform all tasks necessary to develop the design capacity options. The Consultant must follow LACDPW's standards for conducting hydrologic and hydraulic analyses.

The Consultant will use the Watershed Management Modeling System (WMMS) and System for Urban Stormwater Treatment and Analysis Integration (SUSTAIN) to support the design of stormwater capture capacity. The Consultant will evaluate available water quality data most relevant to the Project site and follow the Regional Board's guidelines for conducting water quality modeling for the Project, including model calibration.

Available Information: The Los Angeles County Department of Public Works (LACDPW) will provide hydrology studies and GIS shapefiles of drainage areas for Kahler Russell Park, San Angelo Park and Vacant Lot, and Allen J. Martin Park. LACDPW's standards at <http://dpw.lacounty.gov/wrd/Publication/index.cfm>, WMMS: <http://dpw.lacounty.gov/wmd/wmms/>, Regional Board's *Guidelines for Conducting Reasonable Assurance Analysis in a Watershed Management Program, Including an Enhanced Watershed Management Program*, dated March 25, 2014.

Deliverables: Stormwater Capture Capacity Options Report, GIS files, and WMMS and SUSTAIN input and output files.

4. Water Conservation Analysis

The Consultant will determine the potential annual groundwater recharge volume for each project site.

Optional Task: The Consultant will also incorporate a stormwater reuse design if desired by the Cities. Said design shall require a separate agreement and shall be paid for by the Party requesting the work.

Deliverable: Water Conservation Analysis.

5. Utility

The Consultant will identify the appropriate right-of-way, conduct a utility search, and propose a design that avoids or resolves utility conflicts for each site.

Deliverable: Utility Search Report.

6. Topographic Survey

The Consultant will conduct an aerial topography of each site, and where necessary in localized areas, conduct a ground topography to determine elevations of surface and sub-surface features, including invert elevation, pipe diameter and direction of flow for underground utilities, and tree trunk location and size. Aerial topography will be prepared with one (1) foot contours and at a 1" = 40' scale.

Deliverable: AutoCAD basemap to be incorporated into 30% design plans; support documentation, including a network adjustment report for the GPS survey, bench runs, including the vertical datum, and CA Zone 5 (NAD 83) coordinate values of the local centerline monuments; and electronic format of black and white orthophotos of each site.

7. Environmental Evaluation/Documentation

Review and evaluate the required environmental clearance processes to satisfy the California Environmental Quality Act ("CEQA"), National Environmental Policy Act (NEPA) and any other environmental requirements including historical, cultural, etc. The Consultant will prepare an Initial Study checklist in accordance with CEQA.

Deliverable: Environmental evaluation report and Initial Study checklist.

8. Regulatory Requirements and Permits

The Consultant will identify all regulatory requirements and permits, including but not limited to local municipal and zoning code for parking lot requirements, Los Angeles County Department of Public Health Guidelines for Alternate Water Sources, Indoor and Outdoor Non-Potable Use, dated December 2015 or more up-to-date guidelines. The Consultant will prepare preliminary permit applications with the necessary documentation, including design plans and reports, and ensure the project design meets all regulatory requirements.

Deliverable: Regulatory Requirements Report and Permit applications for each site.

9. Landscaping and Park Improvements and Artistic Rendering

The Consultant will work with the County and the Cities to develop landscape concept plans to restore vegetation impacted by the Projects, incorporate aboveground Low Impact Development (LID) features and interpretive signage, and other park improvements. The Consultant will show the plan, perspective, and section views and identify the plant species.

Deliverable: Artistic rendering in Photoshop format and design plans in AutoCAD format.

10. Operation and Maintenance ("O&M")

The Consultant will develop an O&M template that can be updated upon completion of final design plans. O&M template to include frequency of maintenance, replacement and schedule of system components.

Deliverable: O&M Template.

11. Monitoring Plan

The Consultant will develop baseline and long-term post project monitoring plans to determine water quality improvements and water supply benefits.

Deliverables: Monitoring plans for each site.

12. Preliminary 30% Design Cost Estimate

The Consultant will develop detailed costs for the options identified in Task 3, water quality and flow monitoring, and operation and maintenance for the duration of one lifecycle of the stormwater capture BMP product.

Deliverable: Preliminary 30% Cost Estimate.

13. Preliminary Project Schedule

The Consultant will develop a detailed schedule that includes tasks required to complete a final design, obtain all permits, start and complete construction, and conduct water quality and flow monitoring for each site.

Deliverable: Preliminary Project Schedule in Microsoft Project or equivalent.

14. Final Deliverable

Based on the findings from each task in the scope of work, submit a Preliminary Design Report and 30% design plans for each site.

Deliverable: Final Deliverable.

EXHIBIT B

RATE SCHEDULE

Consultant shall perform the services at the rates listed in the Billing Rate Schedule set forth below. The Cost Proposal set forth herein shall serve as guidance for the total cost for each task. In no event, shall compensation to Consultant exceed the amount set forth in Section 4 of the Agreement.



**Multi-Benefit Stormwater Capture Projects
for the Upper San Gabriel River Enhanced Watershed Management Program**

Billing Rate Schedule

Personnel	Professional Classification	Rate	U
Chad Helmle	Principal	\$ 235.00	hr.
Oliver Galang	Project Manager	\$ 220.00	hr.
Jason Wright	Sr Water Resources/Civil/Environ Engineer	\$ 175.00	hr.
Merrill Taylor	Water Resources/Civil/Environ Engineer	\$ 140.00	hr.
Alysha Chan	Assistant Civil/Environmental/Water Resources Engineer	\$ 100.00	hr.
Angie Marciano	Contract Administrator	\$ 96.00	hr.
Eric Joller	Project Assistant	\$ 96.00	hr.
Mauricio Argente	Principal, Landscape Architect	\$ 300.00	hr.
Mark Bush	Principal, QA/QC Manager	\$ 235.00	hr.
Jason Fussel	Senior Engineer (Civil)	\$ 195.00	hr.
Elva Angeles	Staff Professional	\$ 140.00	hr.
Hai Nguyen	Staff Designer	\$ 125.00	hr.
Sara Dowds	Survey Technician	\$ 90.00	hr.
Anthony Ramos	CADD Designer	\$ 120.00	hr.
Karen Grubb	Project Assistant	\$ 85.00	hr.
	Two Man Survey Crew	\$ 210.00	hr.
Peter Skopek, PhD, PE, GE	Principal Engineer / Geologist	\$ 230.00	hr.
Fernando Cuenca, PhD, PE	Project Engineer / Geologist	\$ 145.00	hr.
Andrew McLarty, PG, CEG	Senior Staff Engineer / Geologist	\$ 145.00	hr.
Allan Stone	Soils / Asphalt / Field Technician	\$ 90.00	hr.
Steven Grod	Scientist (Staff Scientist)	\$ 126.00	hr.
Tanya MacLean	Senior Technician	\$ 98.00	hr.
Renee Longman	Environmental Planner	\$ 130.00	hr.

TE Price Proposal		Revision Date Jul 21, 2017		Labor Plan												Total Price		Total Pricing Totals																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																								
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Develop Preliminary Design Report (PDR) for Multi-Benefit Stormwater Capture Projects for the Upper San Gabriel River EWMP Submitted to City of Industry (Attn: Susan Vogel, Administrative Analyst)																680,000		680,000																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																								
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EXHIBIT C

INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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