

**CONSULTANT AGREEMENT BETWEEN THE CITY OF SANTA ANA  
AND SWINERTON MANAGEMENT & CONSULTING FOR CONSTRUCTION  
MANAGEMENT AND INSPECTION SERVICES FOR THE NEW AQUATIC  
FACILITY AT MEMORIAL PARK PROJECT**

THIS AGREEMENT is made and entered into on this 4<sup>th</sup> day of June, 2024 by and between Swinerton Management & Consulting (“Consultant”), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (“City”).

**RECITALS**

- A. The City desires to retain a Consultant having special skill and knowledge in the field of construction management and inspection services for the new aquatic facility at Memorial Park Project.
- B. Consultant represents that Consultant is able and willing to provide such services to the City.
- C. In undertaking the performance of this Agreement, Consultant represents that it is knowledgeable in its field and that any services performed by Consultant under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

**NOW THEREFORE**, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

**1. SCOPE OF SERVICES**

Contractor shall perform the services described in the scope of work that was included in RFP No. 24-041A that is attached as **Exhibit A**, and as further delineated in Contractor’s proposal, which is attached as **Exhibit B** and incorporated in full.

**2. COMPENSATION**

- a. City agrees to pay, and Consultant agrees to accept as total payment for its services for City, the rates and charges identified in **Exhibit B**. The total amount to be expended during the term of this Agreement shall be comprised of \$1,001,477.00, with a 20% contingency of \$200,295.40, for a total not to exceed of \$1,201,772.40.
- b. Payment by City shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures. City and Consultant agree that all payments due and owing under this Agreement shall be made through Automated Clearing House (ACH) transfers. Consultant agrees to execute the City’s standard ACH Vendor Payment Authorization and provide required documentation. Upon verification of the data provided, the City will be authorized to deposit payments directly into Consultant’s account(s) with financial

institutions. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals which may reasonably be expected by City.

### **3. TERM**

This Agreement shall commence on the date first written above and expire on December 31, 2026, with the option for the City to grant up to **two (2) one (1)-year** renewals, exercisable by a writing by the City Manager and the City Attorney, unless terminated earlier in accordance with Section 17, below.

### **4. PREVAILING WAGES**

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed are part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **5. INDEPENDENT CONTRACTOR**

Consultant shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; however, the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services. Consultant shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

### **6. OWNERSHIP OF MATERIALS**

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any

and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

## **7. INSURANCE**

Prior to undertaking performance of work under this Agreement, Consultant shall maintain and shall require any subcontractors to obtain and maintain insurance as described below for the entire Term of this Agreement against claims for injuries to persons or damage to property which may arise from or in connection with services, products and materials supplied to City. Total cost of such insurance shall be borne by Consultant.

### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence and \$4,000,000 aggregate. Required policy limits can be met with primary and umbrella/excess insurance policies.
2. **Automobile Liability:** Insurance Services Office Form CA 00 01 covering Code 1 (any auto), with limits no less than \$1,000,000 combined single limits. In the event Consultant does not maintain commercial automobile liability insurance, City will accept evidence of personal automobile insurance.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident, policy or employee, for bodily injury or disease. Coverage is not required if Consultant has no employees and signs request to waive such insurance.
4. **Professional Liability Insurance:** with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 aggregate.

If Consultant maintains broader coverage and/or higher limits than the minimum requirements for each line of coverage shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

### **Other Insurance Provisions**

The above required insurance policies are to contain or be endorsed to contain the following provisions:

1. City, its City Council, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds, under Consultant's CGL, Professional Liability, and Automobile Liability policies, with respect to any liability arising out of work or operations performed by or on behalf of the Instructor including materials, parts, equipment, and personnel furnished in connection with such work or operations.

2. Consultant's Insurance company(ies) agrees to waive all rights of subrogation against City, its City Council, its officers, officials, employees, agents, and volunteers for losses paid under the terms of any policy which arise from work performed by Consultant under this Agreement.
3. For any claims related to this contract, Consultant's insurance coverage shall be primary and any insurance maintained by City, its City Council, its officers, officials, employees, agents, or volunteers shall not contribute with it.
4. A severability of interest provision must apply for all the additional insureds, ensuring that Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limits of liability.
5. Insurance policies required herein shall provide that coverage shall not be canceled, suspended, voided, reduced in coverage or in limits, non-renewed by the carrier, or materially changed except after thirty (30) days prior written notice has been given to City. Ten (10) days prior written notice shall be provided to City for policy cancellation or non-renewal due to non-payment of premium.
6. Certificate Holder on each Evidence of Insurance certificate shall be: City of Santa Ana, Attention: (Public Works Agency, Executive Director of Public Works), 20 Civic Center Plaza M-43, Santa Ana, CA 92701. The name and location of project must be included in the Description of Operations section of each certificate.

### **Self-Insured Retentions**

Self-insured retentions must be declared to and approved by the City. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

### **Acceptability of Insurers**

Insurance is to be placed with insurers authorized to conduct business in the State of California with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to City.

### **Verification of Coverage**

Consultant shall furnish City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive Consultant's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

### **Special Risks or Circumstances**

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **8. INDEMNIFICATION**

Consultant agrees to defend, and shall indemnify and hold harmless the City, its officers, agents, employees, consultants, special counsel, and representatives from liability: (1) for

personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the negligent operations of the Consultant or its subconsultants, agents, employees, or other persons acting on their behalf which relates to the services described in section 1 of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. The Consultant further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

## **9. INTELLECTUAL PROPERTY INDEMNIFICATION**

Consultant shall defend, indemnify and hold harmless the City, its officers, agents, representatives, and employees against any and all liability, including costs, and attorney's fees, for infringement of any United States' letters patent, trademark, or copyright contained in the work product or documents provided by Consultant to the City pursuant to this Agreement.

## **10. RECORDS**

Consultant shall keep records and invoices in connection with the work to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures, and disbursements charged to the City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of the City to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement during regular business hours. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

## **11. CONFIDENTIALITY**

If Consultant receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Consultant agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of

like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Consultant disclosed in a publicly available source; (c) is in rightful possession of the Consultant without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Consultant without reference to information disclosed by the City.

## **12. CONFLICT OF INTEREST CLAUSE**

Consultant covenants that it presently has no interest and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

## **13. NOTICE**

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:           Clerk of the City Council  
City of Santa Ana  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, CA 92702-1988

Executive Director  
Public Works Agency  
City of Santa Ana  
20 Civic Center Plaza (M-43)  
P.O. Box 1988  
Santa Ana, CA 92702

To Consultant:  
Jeffrey Gee  
Vice President  
Swinerton Management & Consulting  
16798 W. Bernardo Dr.  
San Diego, CA 92127

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

#### **14. EXCLUSIVITY AND AMENDMENT**

This Agreement represents the complete and exclusive statement between the City and Consultant regarding the subject matter herein, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Consultant. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Consultant or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

#### **15. ASSIGNMENT**

Inasmuch as this Agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other consultants retained by City.

#### **16. WAIVER**

No waiver of breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure or right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

#### **17. TERMINATION**

This Agreement may be terminated by the City upon thirty (30) days written notice of termination. In such event, Consultant shall be entitled to receive and the City shall pay Consultant compensation for all services performed by Consultant prior to receipt of such notice of termination, subject to the following conditions:

- a. As a condition of such payment, the Executive Director may require Consultant to deliver to the City all work product completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Consultant consents to the City's use thereof for such purposes as the City deems appropriate.
- b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

## **18. NON-DISCRIMINATION**

Consultant shall not discriminate because of race, color, creed, relation, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities or in connection with any activities under this Agreement. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

## **19. JURISDICTION-VENUE**

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

## **20. PROFESSIONAL LICENSES**

Consultant shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Consultant shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

## **21. FUNDING-RELATED PROVISIONS**

Funds from the Coronavirus State Fiscal Recovery Fund and/or the Coronavirus Local Fiscal Recovery Fund, together known as the Coronavirus State and Local Fiscal Recovery Funds ("CSLFRF") program, will be used to fund all or a portion of this Agreement. As applicable, Consultant shall comply with all federal requirements including, but not limited to, the following, all of which are expressly incorporated herein by reference:

- a. Sections 602 and 603 of the Social Security Act as added by Section 9901 of the American Rescue Plan Act of 2021 (the "Act");

b. U.S. Department of the Treasury (“Treasury”) Final Rule for the Act, available at <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>;

c. Treasury Compliance and Reporting Guidance for the Act, available at <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>;

d. 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, other than such provisions as the U.S. Department of the Treasury may determine are inapplicable to the CSLFRF program and subject to such exceptions as may be otherwise provided by the U.S. Department of the Treasury;

e. Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions; and

f. Federal contract provisions attached hereto as **Exhibit C** and incorporated herein by reference.

Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in this Agreement. With respect to any conflict between such federal requirements and the terms of this Agreement and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.

## **22. MISCELLANEOUS PROVISIONS**

- a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney’s fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.
- b. All exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

[Signatures on the following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

**ATTEST:**

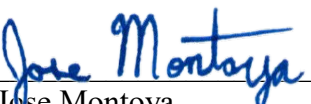
**CITY OF SANTA ANA**


\_\_\_\_\_  
Jennifer L. Hall  
City Clerk

\_\_\_\_\_  
Alvaro Nuñez  
City Manager

**APPROVED AS TO FORM**  
SONIA R. CARVALHO  
City Attorney

**CONSULTANT**

By:   
\_\_\_\_\_  
Jose Montoya  
Assistant City Attorney

  
\_\_\_\_\_  
Jeffrey Gee  
Vice President

**RECOMMENDED FOR APPROVAL**

\_\_\_\_\_  
Nabil Saba, P.E.  
Executive Director  
Public Works Agency

## **EXHIBIT A**

**REQUEST FOR PROPOSALS (RFP)  
FOR  
CONSTRUCTION MANAGEMENT SERVICES  
FOR THE  
NEW AQUATICS FACILITY AT MEMORIAL PARK PROJECT  
RFP NO.: 24-041A**



**CITY OF SANTA ANA  
Public Works Agency  
20 Civic Center Plaza, M-22  
Santa Ana, CA 92701**

**Sean Thomas  
Principal Civil Engineer  
[SThomas5@santa-ana.org](mailto:SThomas5@santa-ana.org)**

**Gerardo Padilla  
Construction Manager  
(714) 647-5636 Office  
[Gpadilla5@santa-ana.org](mailto:Gpadilla5@santa-ana.org)**

Approved for Release:

*S.T.*

Nabil Saba, P.E.  
Executive Director  
Public Works Agency

**KEY RFP DATES (Subject to change at discretion of City):**

Issue Date:	Tuesday, March 12, 2024
Deadline for Requests for Information:	Tuesday, April 2, 2024
Submittal Due Date:	Tuesday, April 9, 2024, 4:00 p.m.
Project Award Date:	Tuesday, May 21, 2024

**Appendix  
ATTACHMENT 1  
SCOPE OF WORK**

**CITY OF SANTA ANA**

**REQUEST FOR PROPOSALS  
FOR**

**NEW AQUATICS FACILITY AT MEMORIAL PARK  
CONSTRUCTABILITY REVIEW, CONSTRUCTION MANAGEMENT,  
AND INSPECTION SERVICES  
RFP NO. 24-041A**

**INTRODUCTION/BACKGROUND**

The City of Santa Ana previously solicited proposals Architectural and Engineering services for a construction of New Aquatic Facilities at Memorial Park (the “Project”). By this Request for Proposals (RFP), the City now desires to engage a professional consultant to perform constructability review and construction management services. The consultant shall provide at least three individuals to act as Construction Manager (CM, the “owner’s representative”), Inspector, and a Contract Administrator (CA), and serve as an extension of City staff to assist in the overall delivery of this project which includes performing independent review of plans, specifications, and estimate, pre-construction tasks, managing construction and ensuring that the work is completed in accordance with the funding requirements, contract documents, and project closeout, commissioning, and warranty phase. The consultant team will report directly to the City's Construction Manager or his authorized representative. City staff may assist in managing construction and will oversee the work of the Construction Manager, Inspector, and Contract Administrator.

Memorial Park, dedicated in May 1950, is a 16.3-acre city park located in the central-south area of the City of Santa Ana, surrounded by residential properties. The park was dedicated by former Governor Earl Warren as a living memorial for future generations to honor “the heroic lives who carried the battle for democracy”. The park is currently comprised of four ballfields, concession/restroom building, basketball courts, volleyball court, handball court, fitness equipment area, playground area, band shell and lawn areas, walkway, lighting, and the City’s largest municipal swimming pool. The park is an island configuration surrounded by parking.

The community center and pool are both of the original 1956 installation and are a traditional “bath house” type design. Existing facilities are very old and deteriorated; deferred maintenance and renovations are no longer effective. The swimming pool shell and walls of the pool equipment room have cracked. In addition to the building age and poor condition, the floor plan layout does not meet today’s programming needs. Much of the site hardscape is cracked and there are numerous drainage issues. Amenities that have been added over the years did not follow a master plan, and their layouts do not efficiently utilize the site. This Project will include the demolition and rebuilding of the aquatics facility (bath house, pool, pool equipment building) with the following components:

Pool Facility components shall include at a minimum:

- New Aquatics Building, to include:
  - Front Desk Area
  - Multi-Purpose Room
  - Training Room

- Locker Rooms, Showers, Restrooms. Include Family Locker Room
- Staff Offices
- Life Guard Office
- Break Room
- Pool Equipment Room (Mechanical)
- Pool Storage Room
- Swimming Pool
  - New 25' x 50' meter pool, with 7'0" depth
  - Tall Portable Guard Chairs
  - Area for Bleacher Seating

Site Components may include, but is not limited:

- Splash Park Area (approximately 1,000 sf)
- Sports Courts (Basketball, Volleyball, Handball, Pickle Ball)
- Fitness Equipment Area
- Band Shell and Lawn Area
- Picnic
- Open Space
- Walkways, Lighting
- Park Signage
- Site Furnishing (benches, picnic tables, trash receptacles, dog waste stations)
- Historical Marker or dedicated area as “living memorial” to incorporate intention and dedication by former Governor Earl Warren.
  - Storm Water Mitigation
  - Waster Wise Landscaping and automated irrigation

Consultant shall also consider circulation, security, visibility, emergency action procedures, lighting, ease of equipment servicing and delivery, maintenance when laying out functions. Consultant shall also look to Memorial Park’s history to draw cues and inspiration for the park’s redevelopment.

*Note: Minor changes to plans and the preparation of the specifications may occur during the RFP process without notice to the prospective proposer, however, selected firm will have access to the latest documents once the RFP has been awarded.*

### **Consultant Responsibilities**

*The Consultant’s responsibilities shall include the following project tasks:*

The required services by the Construction Manager (who will be performing plan checking services), the Inspector, and the Contract Administrator may include the following:

#### ***Task 1: Constructability Review***

The required services by the Construction Manager and the Inspector will be involved in the review of the project deliverables which includes, but is not limited to, the following

- Design Development (60% plans), including site section studies, draft specification, and “Opinion of Probable Cost”.
  - Construction Documents (90% and 100% Plans), final technical specifications, and finalized “Opinion of Probable Cost”.
  - Swimming pool design and overall ADA compliance.
  - Mechanical and Electrical System Replacement plans
  - Geotechnical Report and Structural Calculations
1. The CM shall be a registered engineer in the State of California or a Certified Construction Manager (CCM) and shall possess a minimum of (5) years' experience in construction management. The CM and the inspector shall be involved in the review of specification and plan checking. These reviews will focus on constructability, inter-disciplinary coordination, completeness, and general code compliance. The CM and the Inspector should have relevant experience in construction management and certifications that affirm the experience.
  2. The CM shall provide a thorough review of the construction sequence necessary to complete the improvements included in the construction contract.
  3. Review potential utility conflicts and identify items requiring coordination with third party utility agencies.
  4. Review measurement and payment sections of the Specifications to ensure that the proposed work specified is covered by a bid item and identify any redundant pay items
  5. Review of bid quantity takeoffs and engineer’s estimate. If an error is noted, it will be included in the list of review comments.
  6. Conduct up to two (2) site visit/field review by as part of the plan review to identify any current field conditions not reflected on the Plans.
  7. Participate in up to two (2) public meetings to ensure consistency when plan checking. Public meetings will be hosted by the design consultant.
  8. Participate in bi-weekly meetings with design consultant and City representatives to reduce discrepancies when plan checking.
  9. Identify the elements of construction that could be substituted with more efficient materials and associated methods.
  10. Provide a list of items that may be overlapping, extra, not needed or candidates for removal.
  11. Prepare and submit an itemized list of findings and outline recommendations to reconcile issues discovered and generally to expedite the project.
  12. Review of Geotechnical report and the structural calculations for the purposes of the expected constructability review.
  13. CM shall provide recommendations for special material testing and inspection that will be needed during the construction phase.

14. The CM shall provide a peer estimate, site utilization plan, and provide a total Project Schedule for the New Aquatics Facility at Memorial Park project.
15. In accordance with Public Contract Code Section 20101, the CM shall establish a system to prequalify contractors who wish to bid on the subject project.

***TASK 2: Construction Management and Inspection Services***

1. The CM shall be a registered engineer in the State of California or a Certified Construction Manager (CCM) and shall represent the City Construction Manager in the field. The CM shall possess a minimum of (5) years' experience in construction management. The Inspector and the Contracts Administrator should have relevant experience in construction management and certifications that affirm the experience.
2. Prior to the start of the project, the CM shall be responsible for conducting a bid analysis to determine who the lowest responsible bidder for the project will be. Shall obtain certificates of insurance, performance bond and "New Vendor Packet" requirements have been satisfied. This includes verifying that all sub-contractors have a valid City Business License. Once determined, a staff report will need to be generated to recommend the award of a Construction Contract.
3. Prior to selecting a bidder, the CM is responsible to conduct a mandatory pre-bid meeting with all potential bidders one week after advertising the bid. This meeting will facilitate open discussion for addressing any questions or potential change orders related to the construction project. This meeting cannot be scheduled on a Monday or Friday.
4. The CM team is tasked with the pre-qualification of contractors bidding for this project. This involves preparing solicitations and reviewing Statements of Qualifications (SOQ) submitted by prospective bidders. Subsequently, the CM will compile a recommendation for the City of Santa Ana based on the review process.
5. The CM team shall be responsible for review of completeness and quantity of all required shop drawings, product data, samples, requests for information (RFI), and other submittals ("Submittals"). Shall coordinate with design consultant to review before transmitting their assessment of each Submittal to City staffing for final approval, and shall establish and implement procedures for expediting the processing and approval of Submittals.
6. Lead pre-construction meeting and schedule and conduct weekly construction and progress meetings to discuss such matters as procedures, progress, problems and scheduling. Will prepare and promptly distribute minutes.
7. Attend and co-lead up to three (3) Construction Update meetings with the community, including a pre-construction meeting. Primary purpose of these meetings are to provide pertinent updates to the community and answer any questions relating to the construction project.
8. Shall be responsible for ensuring that all building permits, special permits, if required are obtained, and that all applicable fees have been paid, and shall obtain approvals from authorities having jurisdiction over the Project.

9. Shall review construction schedule, including activity sequences and duration, schedule of submittals and schedule of delivery for products with long lead-time. Update the project schedule as required showing current conditions and revisions required by actual progress.
10. Shall conduct comprehensive evaluation of change order requests, provide independent estimates, render recommendations and assist in claim resolution. Shall regularly monitor and report on the status of the Project Construction Budget on a monthly basis, indicating actual costs for completed activities and work in progress, and indicating estimates for uncompleted work. Report should identify variances between actual and budgeted or estimated costs, and shall advise the City whenever it appears that the Actual Construction Cost has exceeded, or will exceed, the Project Construction Budget for the entire Project or any Project Component.
11. Monitor the contractor's safety program. Take necessary steps to ensure the jobsite conditions are in compliance with OSHA regulations.
12. Maintain cost accounting records on authorized work performed under unit costs and additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.
13. May develop and implement procedures for the review and processing of applications by contractor for progress and final payments. CM is responsible to review and approve monthly progress payments, and make recommendations for certification to the City for payment.
14. Act as an advisor to the city throughout construction and commission of the project. Determine that the work of contractor is being performed in accordance with the contract documents. Make recommendations to the City regarding special inspection or testing of work not in compliance with the provisions of the contract documents. Subject to review by the City, reject work which does not conform to the requirements of contract documents.
15. The individuals, Construction Manager, Inspector and Contract Administrator, shall not be responsible for construction means, methods, techniques, sequences and procedures employed by the contractor in the performance of the contract, and shall not be responsible for the failure of the contractor to carry out work in accordance with the contract documents. However, any errors, omissions, or discrepancies found in the Contract Documents shall be called to the attention of the City's Construction Manager and clarified prior to construction starts.
16. Consult with the City when the contractor requests interpretations of the meaning and intent of the drawings and specifications, and assist in achieving the resolution of problems, which may arise.
17. Record the progress of the project. Submit written daily and progress reports to the City. Keep daily logs containing a record of weather, contractor's work on the site, number of workers and equipment, work accomplished, problems encountered, and other relevant data. Make the log available to the City. Prepare and send Weekly Statement of Working Days to the contractor. Monitor contractor's compliance with labor code requirements.
18. Maintain, at the job site, records of contract documents including drawings, addenda, change orders, and other modifications of plans and specifications marked to show all changes made during construction. Maintain as-built records of underground utilities, including locations and depths of trenches. At the completion of the project, deliver to the City all contract documents including as-built records.

19. Evaluate the completion of the work of the contractor and make recommendations to the City when work is ready for final inspection. Assist the City in conducting final inspections.
20. The CM shall be responsible for evaluating the commission and trial runs of all equipment and coordinate with City Parks staff for operations and maintenance training.
21. Facilitate and coordinate inspection by representatives of other agencies.
22. Schedule and coordinate special inspection and material testing with the County of Orange or other consultants.
23. Assist City with project budget tracking by funding source to ensure progress payment applications are applied appropriately to correct funding sources.
24. Assist City with submission of narrative and financial reports on the progress and activities of the project to grant agencies
25. Shall monitor and enforce prevailing wage forms and requirements for conformance to the prevailing wage rates on a weekly basis. Shall verify that all Trade personnel listed in the daily log are also listed in the certified payroll and shall conduct weekly employee interviews, one for each trade, and submit verification with the monthly progress payments.
26. Shall coordinate and assist the City's Community Work Force Agreement (CWA) Consultant to monitor and enforce the CWA forms and requirements to ensure compliance. Verification should be provided with the monthly progress payments.
27. The CM shall be responsible for all project closeout items, such as: As-Built plans and related documentation, punch list completion, commissioning, warranty requests during the one-year period. Shall schedule and oversee the warranty repair. Should include site visits as requested by the City to look at defects or imperfection to determine if it is a warranty issue.

The city reserves the right to add or reduce some of the above tasks and duties as it sees fit. The consultant, serving as staff extension, shall remain sufficiently flexible to meet the needs of the City and of the project.

*Plan Check & Permits:*

Construction drawings shall be in accordance with the 2022 California Building Code and will require review/approval by the City Planning and Building Agency.

**PAYMENT AND INVOICING:**

Selected Consultant shall invoice the City based on time and material according to the City's standard invoice template. Tasks and hours shall be clearly identified and all rates must match those included in the approved agreement.

**PAYMENT AND INVOICING:**

This agreement will be utilizing Federal American Rescue Plan Act (ARPA) funds. Proposer shall comply with all requirements as they pertain to use of these funds.

**FEE PROPOSAL:**

In addition to Section IV.B.3 (Submittal Requirements: Fee Proposal) fee schedule shall be structured to correspond to the above mentioned tasks as follows:

**Task 1: Constructability Review**

- Subtasks

**Task 2: Construction Management and Inspection Services**

- Subtasks

**Total Fee:** \_\_\_\_\_

Fee schedule for each task should include an hourly breakdown that corresponds to the task total.

**CITY RESPONSANILITIES:**

The City will provide information in its possession relevant to the preparation of the required information in the RFP. The City will provide only the staff assistance and the documentation specifically in referred to herein.

- Furnish scope of work and provide general direction as needed for the assigned project
- All plan check coordination within the City
- Advertise, award, and execution of construction contract
- Electronic files (sample plans & specifications, City of Santa Ana's CADD Standards)
- Electronic files for title sheets and sheet borders
- Facilitate meeting space and coordination and City facilities
- Facilitate City Permits

**CONSULTANT RESPONSIBILITIES:**

- Consultant shall provide all required insurance as outlined in Attachment 2 of this RFP.

## **EXHIBIT B**

### Schedule / Estimated Hours per Task

**We have based our schedule and pricing on the following milestones/durations:**

- Additionally, hours and cost distribution are approximate only and provided for accounting purposes.

**FEE PROPOSAL**

TASKS	Project Executive		Comdr. Manager		Project Inspector		Admin. Manager		Scheduler		Estimator		Safety Manager		Subtotals					
	Hrs	Rate \$	Hrs	Rate \$	Hrs	Rate \$	Hrs	Rate \$	Hrs	Rate \$	Hrs	Rate \$	Hrs	Rate \$						
1	CONSTRUCTIBILITY REVIEWS																			
	Constructability Review - 60% Design Documents																			
	80	251	\$20,080	165	50	24	115	\$2,760	125	50	153	50	16	197	\$3,152	4	160	\$640	\$26,632	
	152	251	\$18,152	165	50	48	115	\$5,520	125	50	24	153	\$3,672	32	197	\$6,304	4	160	\$640	\$54,288
	16	251	\$4,016	165	50	115	50	125	50	153	50	197	50	160	50				\$4,016	
Develop Contractor Pre-Qualification Process																				
2	CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES																			
	Bill Process																			
	32	251	\$8,032	16	165	\$2,640	16	115	\$1,840	16	125	50	153	50	197	50	160	50	\$12,512	
	Preconstruction																			
	20	251	\$5,020	40	165	\$6,600	16	115	\$1,840	16	125	50	153	50	197	50	160	50	\$15,460	
	Construction - CM Services																			
	140	251	\$35,140	1400	165	\$231,000	224	115	\$25,760	1104	125	\$138,000	28	153	\$4,284	56	197	\$11,032	112	\$17,920
	Construction - Inspection Services																			
	15	251	\$3,765	165	50	115	50	125	50	153	50	197	50	160	50					\$48,136
	Reporting and Communication																			
251	50	112	165	\$18,480	224	115	\$25,760	125	50	153	50	197	50	160	50				\$44,240	
Project Close-Out																				
251	50	32	165	\$5,280	8	115	\$920	16	125	\$2,000	153	50	197	50	160	50			\$8,200	
SUBTOTAL																				
CONSTRUCTION CONTINGENCY @ 20%																				
																			\$834,564	
																			\$106,914	
TOTAL FEE																			\$1,901,477	

## **EXHIBIT C**

## **EXHIBIT C FEDERAL CONTRACT PROVISIONS**

During the performance of this Agreement, Consultant shall comply with all applicable federal laws and regulations including, but not limited to, the federal contract provisions in this Exhibit C.

### **1. REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.327)**

(a) Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. The Contract Documents include remedies for breach and termination for cause and convenience.

(b) Appendix II to Part 200 (C) – Equal Employment Opportunity: If this Agreement meets the definition of a “federal assisted construction contract” in 41 CFR § 60-1.3, Consultant agrees as follows during the performance of this Agreement:

(i) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.

(iv) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The Consultant will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

The City further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the City so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The City agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of the Consultant and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The City further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for

violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the City agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part the grant (contract, loan, insurance, guarantee) for this project; refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) Appendix II to Part 200 (D) – Davis-Bacon Act: Not applicable to this Agreement since it is funded by CSLFRF.

(d) Appendix II to Part 200 (D) – Copeland “Antti-Kickback” Act: Not applicable to this Agreement since it is funded by CSLFRF.

(e) Appendix II to Part 200 (E) – Contract Work Hours and Safety Standards Act:

(i) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (ii) of this section the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (ii) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (ii) of this section.

(iii) Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the Consultant, such sums as may be determined to be necessary to satisfy any liabilities of Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.

(iv) Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (v) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Consultant

shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.

(f) Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement: If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the Consultant wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Consultant must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency..

(g) Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act:

(i) Pursuant to the Clean Air Act, (1) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Consultant agrees to include these requirements in each subcontract exceeding \$150,000.

(ii) Pursuant to the Federal Water Pollution Control Act, (1) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Consultant agrees to include these requirements in each subcontract exceeding \$150,000.

(h) Appendix II to Part 200 (H) – Debarment and Suspension:

(i) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Consultant is required to verify that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(ii) Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(iii) This certification is a material representation of fact relied upon by City. If it is later determined that Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(iv) Consultant warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Consultant also agrees to verify that all subcontractors performing work under this Agreement are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Consultant

further agrees to notify the City in writing immediately if Consultant or its subcontractors are not in compliance during the term of this Agreement.

(i) Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act: Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

(j) Appendix II to Part 200 (J) – §200.323 Procurement of Recovered Materials:

(i) Consultant shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.

(ii) In the performance of this Agreement, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price.

(iii) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(iv) The Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

(k) Appendix II to Part 200 (K) – §200.216 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment:

(i) Consultant shall not contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system funded under this Agreement. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(1) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(2) Telecommunications or video surveillance services provided by such entities or using such equipment.

(3) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(ii) See Public Law 115-232, section 889 for additional information.

(l) Appendix II to Part 200 (L) – §200.322 Domestic Preferences for Procurement:

(i) Consultant shall, to the greatest extent practicable, purchase, acquire, or use goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts.

(ii) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**2. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN’S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS (2 C.F.R. § 200.321)**

(a) Consultant shall be subject to 2 C.F.R. § 200.321 and will take affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award.

(b) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

(v) Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

(c) Consultant shall submit evidence of compliance with the foregoing affirmative steps when requested by the City.

### **3. COMPLIANCE WITH U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL FISCAL RECOVERY FUND AWARD TERMS AND CONDITIONS**

(a) Maintenance of and Access to Records. Consultant shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing. Consultant agrees to provide the City, Treasury Office of Inspector General and the Government Accountability Office, or any of their authorized representatives access to any books, documents, papers, and records (electronic and otherwise) of the Consultant which are directly pertinent to this Agreement for the purposes of conducting audits or other investigations. Records shall be maintained by Consultant for a period of five (5) years after completion of the Project.

(b) Compliance with Federal Regulations. Consultant agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Consultant also agrees to comply with all other applicable federal statutes, regulations, and executive orders, including, without limitation, the following:

(i) Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

(ii) Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

(iii) OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

(iv) Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

(v) Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

(vi) New Restrictions on Lobbying, 31 C.F.R. Part 21.

(vii) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

(c) Compliance with Federal Statutes and Regulations Prohibiting Discrimination. Consultant agrees to comply with statutes and regulations prohibiting discrimination applicable to the CSLFRF program including, without limitation, the following:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.

(ii) The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.

(iii) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.

(iv) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.

(v) Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

(d) False Statements. Consultant understands that making false statements or claims in connection with the CSLFRF program is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

(e) Protections for Whistleblowers.

(i) In accordance with 41 U.S.C. § 4712, Consultant may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

(ii) The list of persons and entities referenced in the paragraph above includes the following:

- (1) A member of Congress or a representative of a committee of Congress;
- (2) An Inspector General;
- (3) The Government Accountability Office;

(4) A Treasury employee responsible for contract or grant oversight or management;

(5) An authorized official of the Department of Justice or other law enforcement agency;

(6) A court or grand jury; or

(7) A management official or other employee of Consultant, or a subcontractor who has the responsibility to investigate, discover, or address misconduct.

(f) Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Consultant is encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles, and encourage its subcontractors to do the same

(g) Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Consultant should encourage its employees and subcontractors to adopt and enforce policies that ban text messaging while driving, and Consultant should establish workplace safety policies to decrease accidents caused by distracted drivers.

(h) Assurances of Compliance with Civil Rights Requirements. The Civil Rights Restoration Act of 1987 provides that the provisions of this assurance apply to the Project, including, but not limited to, the following:

(i) Consultant ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal funds, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166; directives; circulars; policies; memoranda and/or guidance documents.

(ii) Consultant acknowledges that Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency (LEP),” seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, are limited in their English proficiency. Consultant understands that the denial of access to persons to its programs, services and activities because of their limited proficiency in English is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964. Accordingly, Consultant shall initiate reasonable steps, or comply with Treasury’s directives, to ensure meaningful access to its programs, services and activities to LEP persons. Consultant understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary to ensure effective communication in the Project.

(iii) Consultant agrees to consider the need for language services for LEP persons during development of applicable budgets and when conducting programs, services and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on LEP, please visit <http://www.lep.gov>.

(iv) Consultant acknowledges and agrees that compliance with this assurance constitutes a condition of continued receipt of federal financial assistance and is binding upon Consultant and Consultant's successors, transferees and assignees for the period in which such assistance is provided.

(v) Consultant agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Consultant and the Consultant's subcontractors, successors, transferees and assignees:

*The subcontractor, successor, transferee and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by Department of the Treasury Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also extends protection to persons with "Limited English proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by Department of the Treasury Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement).*

(vi) Consultant understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Consultant, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Consultant for the period during which it retains ownership or possession of the property.

(vii) Consultant shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. Consultant shall comply with information requests, on-site compliance reviews, and reporting requirements.

(viii) Consultant shall maintain a complaint log and inform the Department of the Treasury of any accusations of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Consultant must also inform the Department of the Treasury if Consultant has received no complaints under Title VI.

(ix) Consultant must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Consultant and the administrative agency that made the finding. If the Consultant settles a case or matter alleging such discrimination, Consultant must provide documentation of the settlement. If Consultant has not been the subject of any court or administrative agency finding of discrimination, please so state.

(x) If Consultant makes sub-awards to other agencies or other entities, Consultant is responsible for assuring that sub-recipients also comply with Title VI and all of the applicable authorities covered in this assurance.