

**CITY OF COVINA**

**REQUEST FOR PROPOSALS (RFP)**

**FOR**

**CONSTRUCTION MANAGEMENT & INSPECTION SERVICES**

**FOR**

**WINGATE PARK REGIONAL EWMP PROJECT**  
**PROJECT NO. WM211**

**RFP 2025-01**



**PROPOSAL DEADLINE: THURSDAY, FEBRUARY 26, 2026 – 10:00 AM.**

**CITY OF COVINA  
CITY CLERK OFFICE  
125 E. COLLEGE STREET  
COVINA, CA 91723  
ATTN: MICHAEL FLORES JR – PUBLIC WORKS MANAGER – ENGINEERING &  
CAPITAL IMPROVEMENT**



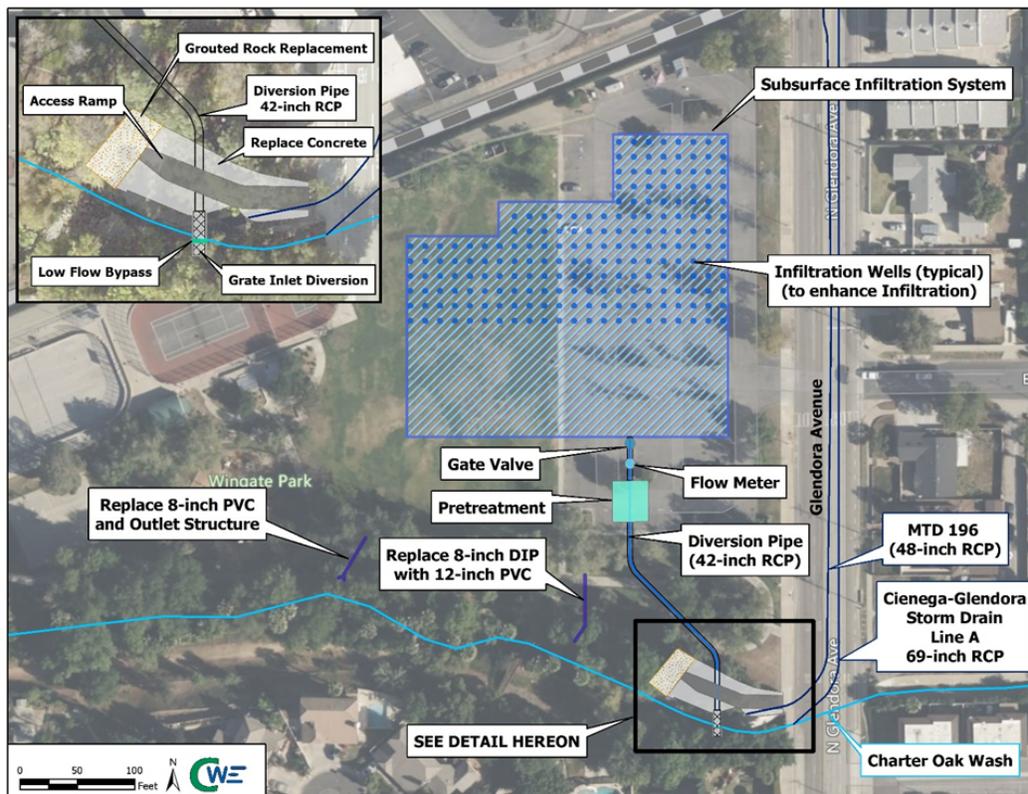
**CITY OF COVINA  
PUBLIC WORKS/ENGINEERING DIVISION  
REQUEST FOR PROPOSALS FOR CONSTRUCTION MANAGEMENT &  
INSPECTION SERVICES  
FOR  
WINGATE PARK REGIONAL EWMP PROJECT  
PROJECT NO. WM211**

**INTRODUCTION**

The City of Covina is requesting proposals from qualified Professional Construction Management (CM) firms to provide construction management services for the construction of the Wingate Park Regional EWMP Project – Project No. WM211. It is expected that the selected construction management firm will work closely with the City of Covina staff and its consultants in the daily coordination and construction. The projected duration of the project is eighteen (18) months.

**PROJECT LOCATION**

735 N. Glendora Avenue (Northeast corner of Park)



## **BACKGROUND**

The City of Covina (City) is implementing the Wingate Park Regional Enhanced Watershed Management Program (EWMP) Project (Project) to address water quality impairments due to urban runoff discharges to Charter Oak Wash. The Project captures runoff from within the City, neighboring cities Glendora and San Dimas, and unincorporated areas of Los Angeles County, and improves water quality both within Charter Oak Wash and its downstream waterbodies Walnut Creek and the San Gabriel River. The Project was identified as one of eight regional projects of the Upper San Gabriel River (USGR) EWMP and will assist the USGR group in addressing applicable Total Maximum Daily Loads (TMDLs) and water quality priorities. The Project will capture, treat, and infiltrate runoff generated from a drainage area of approximately 1,100 acres that comprises various land uses. The Project will divert and capture urban runoff from Charter Oak Wash before it reaches Walnut Creek, and it will utilize a subsurface storage system to support infiltration. Water quality is expected to improve by diverting urban runoff before it reaches Walnut Creek. The EWMP addressed the requirements set forth in the Los Angeles County National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit. The Project also includes park improvements, including parking lot improvements, a new playground, new walking paths, and landscape/irrigation.

### **Wingate Park Regional EWMP Project**

The envisioned Wingate Park Regional EWMP Project concept would provide a number of stormwater, community, and recreation amenities that would meet the needs of the City of Covina residents. Essentially, the envisioned amenities of the Wingate Park Regional EWMP Project would include, but not be limited to, the following:

- Stormwater capture system
- New playground construction
- New picnic tables, benches, and additional seating.
- New parking lot construction
- New entrance monument signage
- New soccer field
- New walking trail

## **SCOPE OF SERVICES**

The following is a general outline of the scope of work to be provided by the selected firm. While it is intended that the following scope of work include all elements essential to develop the project, those submitting proposals are advised to perform their own field reconnaissance (At their own expense) and include any items which they feel have been overlooked. The consultant may also note any required items which they feel to be excessive or unnecessary. The description and cost of such found items should be noted and outlined separately in the proposal.

The consultant will work under the supervision of the Public Works Manager – Engineering/Capital Improvement. Services required to complete this project by the consultant shall include:

### **Task 1 – Pre-Construction Meeting**

Consultant shall arrange and conduct a pre-construction meeting with the City, construction Contractor, stakeholders, affected utility companies, and other Project participants to introduce key personnel and discuss procedures/expectations. The Consultant shall prepare a meeting agenda and summary.

### **Task 2 – Submittal Review and Response**

Consultant shall review and submit recommendations for approvals to the City for all the submittals received from the contractor. Consultant shall log all submittals and their responses in a table that will be distributed to the Contractor on a regular basis to confirm submittals have been responded to prior to construction of that specific feature.

### **Task 3 – RFI Review and Response**

Consultant shall review and respond to Requests for Information (RFIs). Consultant should log all RFIs and responses in a table that will be distributed to the Contractor on a regular basis to confirm items requested have been responded to adequately.

### **Task 4 – Change Order Review and Response**

Upon receipt of a Change Order, Consultant shall review the Project documents to determine the merit of the request and create an independent cost estimate as a basis for negotiation. Consultant shall then work with the Contractor to issue a reasonable cost or recommend the work be done under a time and materials basis (T&M). Consultant should maintain a log of the Change Orders submitted and responded to.

### **Task 5 – Construction Inspection**

Consultant shall provide and maintain sufficient staff to effectively manage the construction and perform the required inspections over the duration specified in the Contract Documents (expect construction to start around July 2026 and be completed within 370 working days). A full-time inspector is required for the Project. Inspections will be performed to verify that the workmanship and quality of the Contractor's work are to industry standards and in compliance with Project plans and specifications, along with department regulations and other applicable laws and codes. The onsite inspector shall log activities each workday and quickly notify the City of issues as they become apparent. Consultant shall be onsite each day and will work out of the office to be supplied by the Contractor. Consultant should verify that the as-built plan set is kept up to date by the Contractor and that changes are documented as needed and on a regular basis, consistent with the requirements identified in the Project specifications.

Consultant shall develop and maintain strict inspection diaries to document work progress, labor and equipment utilized, issues encountered, direction given to the Contractor, safety violations, and other items of concern. Inspection diaries must include the names of each Contractor's personnel onsite that day. Coordination with impacted parties (such as utility companies, school, and local residents) and public notification and outreach will take place as needed and for the duration of the Project.

### **Task 6 – Testing Services**

Consultant shall be responsible for testing services required in alignment with the Contract Documents. It is anticipated that testing services will be required in relation to the following (at a minimum) earthwork observations, compaction testing, utility trench backfill, pavement subgrade preparation, excavations, hot-mix asphalt, and cast-in-place concrete. The proposal shall detail the number of tests and related assumptions used to develop the associated fee.

### **Task 7– Certified Payroll Compliance and Worker Hiring Review**

The Consultant shall review Certified Payroll Reports (CPRs) with monthly progress payments to confirm prevailing wage requirements are being met. The Consultant shall review documentation in relation to the Countywide Local and Targeted Worker Hire Policy included in the Contract Documents/specifications.

### **Task 8 – Progress Payments Review and Verification**

Consultant shall track the progress of work completed and provide the City with measurements, calculations, and recommendations regarding progress payments.

### **Task 9 – Project Schedule Review**

Consultant shall analyze the Contractor's baseline schedule, identify the critical path, and provide feedback as appropriate. Schedule updates will be submitted by the Contractor in accordance with the Project specifications (two-week lookahead schedules are to be provided at weekly meetings). Consultant should review updated schedule to monitor the Project progress, identify potential delays, and plan accordingly.

### **Task 10 – Construction Progress Meetings**

Construction progress meetings will be held on a weekly basis, or as requested, to inform the team on how individual tasks are progressing. Project concerns will also be brought up and discussed at regular progress meetings.

### **Task 11 – Preliminary/Final Punchlist and Final Walk**

Consultant shall develop a Preliminary and Final Punchlist addressing pending non-complaint items prior to Project acceptance. Consultant shall recommend to the City

when the Contractor's work is ready for final inspection and conduct a final inspection/walk through with City staff.

### **Task 12 – Preliminary/Final Punchlist and Final Walk**

Once the punch list items have been addressed, Consultant shall request and review warranties, guarantees, Operation and Maintenance (O&M) manuals, as-built mark ups, charts, and other required documents as identified in the Project specifications. Consultant shall then recommend issuance of the final payment and deliver an electronic file containing Project documents to the City for their records. Documentation will include the RFIs, submittals, shop/working drawing reviews, RFCs, inspection reports, photographs, and more, as documented in the task descriptions above.

### **Task 13 – Agency Coordination**

Consultant shall keep the City up to date regarding construction progress and activities throughout construction through meetings, phone calls, and emails. The City may request documentation and updates to provide to City Council, funding entities, and others. This task also includes assisting the City in coordinating with impacted utility companies and other stakeholders, including the various applicable permitting agencies. This task shall also include miscellaneous coordination with the various City departments as needed.

### **Task 14 – Environmental Services**

Consultant shall provide environmental services in accordance with the final Mitigation Monitoring and Reporting Plan (MMRP) (see attached). This includes biological, cultural, paleontological, and tribal related services. The proposal must document assumptions in relation to these services. A Jurisdictional Delineation and Focused Tree Survey have already been completed.

### **Task 15 – Safe, Clean Water Program (SCWP) Reporting**

Consultant shall perform SCWP reporting throughout the construction duration, which includes Mid-Year and Annual Reports. Upon request, the consultant shall attend Watershed Area Steering Committee (WASC) meetings to provide Project updates.

### **Task 16 – Labor Compliance**

The Consultant shall be responsible for performing comprehensive labor compliance services for the Project in strict accordance with all applicable federal, state, and local laws, regulations, and guidelines, including but not limited to prevailing wage laws, certified payroll requirements, apprenticeship requirements, worker classification standards, and reporting obligations imposed by any governmental or regulatory authority.

The Consultant shall:

- Monitor and administer labor compliance requirements throughout the duration of the Project;
- Review, verify, and maintain certified payroll records and supporting documentation;
- Ensure timely and accurate submission of all required reports, certifications, and disclosures;
- Coordinate with contractors, subcontractors, and applicable agencies as necessary to maintain compliance;
- Promptly notify the City in writing of any actual or potential labor compliance violations and recommend corrective actions.

The Consultant represents and warrants that all labor compliance services shall be performed in accordance with current legal standards and best industry practices. The Consultant shall remain knowledgeable of changes in applicable labor laws and shall implement such changes as required to maintain compliance throughout the Project.

## **PROPOSAL FORMAT**

Work Proposals shall be concise, well-organized and demonstrate the consultant's qualifications and experience relating to the proposed project. The Cost Proposal shall reflect all costs associated with the proposed project. At minimum, proposals shall include the following information:

### **A. The Work Proposal (envelope #1 – submit 3 copies)**

The Work Proposal should include, as a minimum, the following information, presented in a clear and concise manner:

- Letter of Interest**
- Firm profile and qualifications: List all applicable registrations, certifications, & training completed and Certifications as a DBE.**
- Resumes of key personnel that will be assigned to this project.**
- Work Plan:** A statement of your understanding of the project and a detailed description of your approach to implement all the tasks listed.
- Organizational Chart:** A chart identifying the key personnel assigned to the project. Identify the name of the project manager and the individual authorized to negotiate the contract on behalf of the consulting firm. Include the workload of the project manager and key team members, as well as their availability to complete the tasks.

- vi. **Firm Qualifications:** Identify a minimum of three (3) similar projects completed within the past five (5) years.
- vii. **Objections to Professional Services Agreement:** Objections shall be submitted in writing with justification clearly stated. Any consultant with objections to terms contained in the City's Professional Services Agreement (Attachment A) must advise the City of such objections and requested modifications as part of its Work Proposal. Failure of a proposer to accept the terms of the City's Professional Services Agreement may result in the rejection of the proposal. It shall be the responsibility of the prospective consultant to review all sections and exhibits of the Professional Services Agreement, including insurance requirements. If no objections are received, the City will assume the proposer is able to and will enter into the Professional Services Agreement and fulfill the terms and requirements set therein. The City may recover any damages accruing to the City as a result of the successful consultant's failure or refusal to execute the City's Professional Services Agreement.

## **B. The Cost Proposal (envelope #2 – submit 1 copy)**

The Cost Proposal should include a comprehensive summation of fees for the tasks described in the "Scope of Services," organized as follows:

- i. **Cost Proposal:** The Cost Proposal shall be organized within a task-by-task schedule that includes the following details:
  - a. Time estimates for principals, staff, sub-consultants, etc. with hourly billing rates.
  - b. Cost for materials and incidental services, including travel expenses, copying, printing, and plotting. Any proposed percentage mark-up for reimbursable expenses.
  - c. Total cost per task.
  - d. The cost proposal grand total shall be an amount "Not-to-Exceed."
- ii. **Hourly Rate Schedule:** A statement of hourly rates for all proposed staff classifications, including hourly rates for sub-consultants.

### **1. Inquiries and Addenda**

For inquiries regarding this RFP, please contact Michael Flores Jr, Public Works Manager – Engineering & Capital Improvement, via electronic mail at [mflores@covinaca.gov](mailto:mflores@covinaca.gov). Proposers must e-mail inquiries no later than 2:00 p.m. on February 12, 2026. Inquiries received after that date and time will not be answered and will be automatically disqualified.

**Plans and Specifications are available upon request via email at [mflores@covinaca.gov](mailto:mflores@covinaca.gov).**

The City will issue any revisions to this RFP as addenda. The City will distribute addenda to all potential proposers and post addenda on the City's website. Proposers are responsible for receipt of all addenda. Therefore, each proposer should contact the City to verify that he or she has received all addenda issued, if any. The City's issuance of a written addendum is the only official method whereby the City will interpret, clarify, or provide additional information concerning this RFP. No oral revisions to any provision in this RFP shall be binding.

## **2. Project Schedule**

<u>Milestone</u>	<u>Date</u>
• RFP-Notice Inviting Bid	January 29, 2026.
• Deadline for Inquiries	February 12, 2026; 2:00 p.m.
• Response to Questions	February 19, 2026; End of Day
• Deadline for Proposals	<b><u>February 26, 2026. 10:00 a.m.</u></b>
• Interviews	March 11 & 12, 2026 (if necessary)
• Council Award Date	<b><u>April 6, 2026</u></b>
• Construction Start (Tentative)	July, 2026.

## **3. Evaluation Procedure**

The Review Committee will evaluate each proposal for completeness and content. Each proposal will be evaluated based upon the relevant qualifications and experience of the proposer. The Review Committee may choose to interview two or more closely ranked firms, but will not expect or schedule elaborate presentations. License status and references will also be verified. The proposal review will focus on the following criteria:

**A. Project understanding/project approach (25 points).** The firm's proposal adequately demonstrates an understanding of the City's requirements and objectives; logic, clarity, specificity and overall quality of work plan and proposed schedule.

**B. Experience (25 points).** The firm's expertise and professional qualifications with similar work. Qualifications of the firm and the individuals assigned to perform the work. The technical experience in performing work of a similar nature; experience working with public agencies; strength and stability of the firm; and assessment by client references.

**C. Proposed Team and Organization (25 points).** Qualifications of proposed key personnel; logic of organization; and adequacy of labor commitment and resources to satisfactorily perform the requested services and meet the City's needs.

## **D. Proposal Fee (25 points).**

### **4. Professional Services Agreement**

The City will identify the consultant that best meets the needs of the City and enter contract negotiations with that highest ranked firm. Should the City fail to reach agreement with the top ranked firm, the City may enter negotiations with the next highest rated consultant and so on. City Staff will make a recommendation to the City Council for the award of a Professional Services Agreement to the consultant that best furthers the City's objectives.

The successful consultant will be expected to execute the attached Professional Services Agreement (Attachment A) approximately fifteen (15) days prior to City Council consideration. A recommendation for contract award will be presented to the City Council for consideration on **April 6, 2026** (tentative).

### **5. Insurance Requirements**

The successful consultant shall secure all insurance required under the Professional Services Agreement and provide any necessary documentation to the City fifteen (15) days prior to City Council consideration.

### **6. Acceptance or Rejection of Proposal**

The City reserves the right to accept, reject, or accept a portion of any and all proposals. The City also reserves the right to waive any informality or irregularity in any proposal or in the RFP as deemed to be in its best interest. Additionally, the City may, for any reason, decide not to award an agreement as a result of this RFP or cancel the RFP process. The City shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by the submission of the proposal. The City reserves the right to negotiate project deliverables and associated costs.

### **7. Legal Responsibilities**

All proposals must be submitted, filed, made, and executed in accordance with State and Federal laws related to proposals for contracts of this nature whether the same or expressly referred to herein or not. Any company submitting a proposal will by such action thereby agree to each and all of the terms, conditions, provisions, and requirements set forth, contemplated, and referred to in the RFP, and other contract documents, and to full compliance therewith.

### **8. Discrepancies and Misunderstandings**

Contractors and consultants must satisfy themselves by personal examination of the worksite, specifications, and other contract documents and by any other means as they may believe necessary, as to the actual physical conditions, requirements, and difficulties under which the work must be performed. No contractor or consultant will at any time after submission of a proposal make any claim or assertion that there

was any misunderstanding or lack of information regarding the nature or amount of work necessary for the satisfactory completion of the job. Any errors, omissions, or discrepancies called to the attention of the City will be clarified by the City in writing to all proposers prior to the submission of the proposals.

**9. Proposer Interested in More than one Proposal**

No person, firm, or corporation will be allowed to make or file, or be interested in more than one proposal for the same work unless alternate bids are called for. No proposal will be accepted from a consultant who has not been licensed in accordance with the provisions of the State Business and Professional Code.

**Attachments:**

Attachment A – City of Covina Professional Services Agreement

**Attachment A**  
**PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”) is dated [month] [day], [year] (“Effective Date”) and is between the City of Covina, a California municipal corporation (“City”) and [Consultant’s Legal Name], a [Legal Form of Entity, e.g., California corporation, limited partnership, limited liability company] (“Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

**RECITALS**

A. City desires to utilize the services of Consultant as an independent contractor for Construction Management & Inspection Services related to the Wingate Park Regional EWMP Project – Project No. WM211.

B. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Consultant and Consultant desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The parties therefore agree as follows:

**Term of Agreement.** The term of this Agreement shall be from the Effective Date through Month, Day, Year, unless sooner terminated as provided in Section 13 of this Agreement. The City may, upon mutual agreement, extend the contract for \_\_\_\_ (\_\_) additional one-year terms. In no event shall the contract be extended beyond Month, Day, Year.

**Compensation.**

Compensation. As full compensation for Consultant’s services provided under this Agreement, City shall pay Consultant a sum not to exceed [Written Amount] Dollars (\$[Numerical Amount]) (the “maximum compensation”), based on the hourly rates set forth in the Proposal, attached hereto as **Exhibit A**. Any terms in Exhibit A, other than the payment rates and schedule of payment, are null and void.

B. Expenses. The amount set forth in paragraph A shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

Additional Services. City shall not allow any claims for additional services performed by Consultant, unless the City Council and the Consultant Representative authorize the additional services in writing prior to Consultant’s performance of the additional services or incurrence of additional expenses. Any additional services or expenses authorized by the City Council shall be compensated at the rates set forth in **Exhibit A**, or, if not specified, at a rate mutually agreed to by the parties. City shall

make payment for additional services and expenses in accordance with Section 4 of this Agreement.

### **Consultant's Services.**

Scope of Services. Consultant shall perform the services described in the Proposal, attached as **Exhibit A**. City may request, in writing, changes in the scope of services to be performed. Any changes mutually agreed upon by the parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Consultant Representative shall be [Name], [Title] (the "Consultant Representative"). The Consultant Representative shall directly manage Consultant's services under this Agreement. Consultant shall not change the Consultant Representative without City's prior written consent.

Time for Performance. Consultant shall commence the services on the Effective Date and shall perform all services in conformance with the project timeline, attached hereto as **Exhibit B**.

Standard of Performance. Consultant shall perform all services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

Personnel. Consultant has, or will secure at its own expense, all personnel required to perform the services required under this Agreement. All of the services required under this Agreement shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

Compliance with Laws. The Consultant shall keep itself informed of all local, state and federal ordinances, 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 ordinances, laws and regulations. The City and its agents shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

Permits and Licenses. Consultant shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

### **Method of Payment.**

Invoices. Consultant shall submit to City an invoice, on a monthly basis or less frequently, for actual services performed pursuant to this Agreement. Each invoice shall

itemize the services rendered during the billing period, hourly rates charged, if applicable, and the amount due and verified by the Construction Manager. If 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.

Payment. City shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth in Section 2 of this Agreement. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Consultant. For all reimbursements authorized by this Agreement, Consultant shall provide receipts on all reimbursable expenses in excess of Fifty Dollars (\$50) in such form as approved by the Finance Director.

Audit of Records. Consultant shall make all records, invoices, timecards, cost control sheets and other records maintained by Consultant in connection with this agreement available during Consultant's regular working hours to City for review and audit by City.

**Ownership of Documents.** Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed ("written products") pursuant to this Agreement shall become the sole property of the City without restriction or limitation upon its use and may be used, reused, disseminated or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant.

### **Independent Contractor.**

**A.** Consultant is, and shall at all times remain as to City, a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, 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, agents or employees are in any manner employees of City.

**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.

**Confidentiality.** All data, documents, discussion, or other information (collectively “data”) developed or received by Consultant or provided for performance of this Agreement are deemed confidential. Consultant shall keep all data confidential and shall not disclose any data to any person or entity without City’s prior written consent. City shall grant such consent if disclosure is legally required. Consultant shall return all data to City upon the expiration or termination of this Agreement. Consultant’s covenant under this Section 7 shall survive the expiration or termination of this Agreement.

**Conflicts of Interest.** Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict-of-interest statutes of the State of California applicable to Consultant’s services under this Agreement, including the Political Reform Act (Gov. Code, § 81000 *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the City Representative’s prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section 8 into any subcontract that Consultant executes in connection with the performance of this Agreement.

## **Indemnification.**

### **A. Indemnities for Third Party Claims.**

To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively “Indemnitees”), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens and losses of any nature whatsoever, including fees of accountants, attorneys or other professionals, and all costs associated therewith, and the payment of all consequential damages (collectively “Liabilities”), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liability with counsel of the Indemnitees’ choice, and

shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Subparagraph A. 2).

Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section 9 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties.

B. Workers' Compensation Acts Not Limiting. Consultant's indemnifications and obligations under this Section 9, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 9 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability, tax, assessment, penalty or interest asserted against City.

Survival of Terms. Consultant's indemnifications and obligations under this Section 9 shall survive the expiration or termination of this Agreement.

## **Insurance.**

Minimum Scope and Limits of Insurance. Consultant shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

Commercial General Liability Insurance with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Four Million Dollars (\$4,000,000) per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, Consultant shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under Subparagraph A. 1) of this Section 10.

Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If Consultant has no employees while performing services under this Agreement, workers' compensation policy is not required, but Consultant shall provide an executed declaration that it has no employees.

Professional Liability Insurance [or Errors and Omissions Insurance] with minimum limits of Two Million Dollars (\$2,000,000) per claim and in aggregate.

Acceptability of Insurers. The insurance policies required under this Section 10 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A: VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Section 10.

Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming the City, its officers, employees, agents and volunteers as additional insureds.

Primary and Non-Contributing. The insurance policies required under this Section 10 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

Consultant's Waiver of Subrogation. The insurance policies required under this Section 10 shall not prohibit Consultant and Consultant's employees, agents or

subcontractors from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be approved by City. At City's option, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section 10 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) calendar days' prior written notice to City. If any insurance policy required under this Section 10 is canceled or reduced in coverage or limits, Consultant shall, within two (2) business days of notice from the insurer, phone, and fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

City Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Section 10 in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section 10, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

Evidence of Insurance. Prior to the performance of services under this Agreement, Consultant shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 10. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City. Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

Indemnity Requirements not Limiting. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify City under Section 9 of this Agreement.

Subcontractor Insurance Requirements. Consultant shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 10.

## **Mutual Cooperation.**

City's Cooperation. City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for Consultant's proper performance of the services required under this Agreement.

Consultant's Cooperation. In the event any claim or action is brought against the City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.

**Records and Inspections.** Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of five (5) years. Consultant shall, without charge, provide City with access to the records during normal business hours. City may examine and audit the records and make transcripts therefrom, and inspect all program data, documents, proceedings and activities.

## **Termination or Suspension of Agreement.**

Right to Terminate or Suspend. City may terminate or suspend this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least seven (7) calendar days before the termination or suspension is to be effective. Consultant may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least sixty (60) calendar days before the termination is to be effective.

Obligations upon Termination. Consultant shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

**Force Majeure.** Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

**Notices.** Any notices, consents, requests, demands, bills, invoices, reports or other communications which either party may desire to give to the other party under this Agreement must be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by reputable document delivery service or courier service during Consultant's and City's regular business hours, or (c) five business days

after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the party to be notified as set forth below:

If to City:  
Attn: \_\_\_\_\_  
City of Covina  
125 E. College Street  
Covina, California 91723

If to Consultant:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

**Prohibition of Assignment and Delegation.** Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Consultant from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 17 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 17, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

**No Third-Party Beneficiaries Intended.** Except as otherwise provided in Section 9, this Agreement is made solely for the benefit of the parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

**Waiver.** No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

**Exhibits.** Exhibits A, B, and C constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

**Entire Agreement.** This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty except those expressly set forth in this Agreement.

**Amendment of Agreement.** This Agreement may be amended only by a writing signed by both parties. The City Manager is authorized to sign an amendment to this Agreement on the City Council's behalf and without the City Council's prior approval to make the following non-substantive modifications to the Agreement: (a) name changes; (b) extensions of time; (c) non-monetary changes in the scope of work; and (d) termination of the Agreement.

**Headings.** The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the parties to this Agreement.

**Word Usage.** Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

**Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

**Governing Law and Choice of Forum.** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a municipal, superior or federal court with geographic jurisdiction over the City of Covina.

**Attorneys' Fees.** In any litigation or other proceeding by which one party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorneys' fees together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

**Severability.** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

**Authority to Execute Agreement.** The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or 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.

The parties, through their duly authorized representatives, are signing this Agreement on the date stated in the introductory clause.

City:

City of Covina,  
a California municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: Fabian Velez  
Title: Deputy City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: Kevin Ennis  
Title: City Attorney

Consultant:

[Consultant's Legal Name],  
a [Legal Form of Entity]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*(Two signatures of corporate officers required for corporations under Corporations Code Section 313, unless corporate documents authorize only one person to sign this Agreement on behalf of the corporation.)*