

CITY OF FULLERTON AGREEMENT FOR TRAFFIC ENGINEERING SERVICES

This agreement ("Agreement"), dated this 1st day of July, 2017 (the "Effective Date"), is by and between City of Fullerton, 303 West Commonwealth Avenue, Fullerton, CA 92832, a municipal corporation ("CITY") and Albert Grover & Associates, a California corporation, having a place of business at 211 E. Imperial Hwy, Suite 208, Fullerton, CA 92835 ("CONSULTANT").

I

RECITALS

WHEREAS, CITY needs and requires the professional services of a qualified consultant in connection with providing traffic engineering services; and

WHEREAS, CONSULTANT is qualified and is willing to perform the professional services required, and has submitted a proposal to the CITY to provide those services ("Proposal") with the following modification: CONSULTANT will provide a minimum of eight (8) hours per week and additional time as requested. A copy of the Proposal, including fee schedule, is attached hereto as Attachment A and is incorporated herein by this reference; and

WHEREAS, CITY has reviewed CONSULTANT's Proposal and finds that it will be compatible with CITY's intent, and the City Council has authorized entering into this Agreement based upon the Proposal.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions contained herein, CITY and CONSULTANT agree as follows:

II

SCOPE OF SERVICES

- A. CITY hereby engages CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the various services set forth in Attachment A (the documents contained in Attachment A shall be hereinafter referred to as the "Scope of Services") which is made a part thereof in its entirety by reference.
- B. All professional services to be provided by CONSULTANT pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence, and skill ordinarily exercised by professional consultants in similar circumstances in accordance with sound professional practices.

III

COMPENSATION AND METHOD OF PAYMENT

CONSULTANT shall be compensated as follows, up to a maximum amount of \$205/hour for the City's Traffic Engineer. Staff support services will be performed at the hourly rates listed in the Proposal.

A. Actual Labor

As compensation for services to be performed as specified in the Scope of Services, CITY shall pay CONSULTANT for the actual hours worked by the CONSULTANT, not to exceed 800 hours per fiscal year, at the rates indicated above, and CONSULTANT'S employee(s) at the rate set forth in CONSULTANT'S standard fee schedule not to exceed \$70,000 per fiscal year, in effect at the time of execution of this Agreement, a copy of which is included in Attachment A and is incorporated herein by reference.

B. Material, Other Direct Costs and Reimbursable Expenses

CITY agrees to reimburse CONSULTANT for material and other direct costs specified in the Scope of Services at the discretion of the Director of Engineering incurred as a direct result of CONSULTANT'S performance of services.

C. Invoices

1. CONSULTANT will bill CITY at intervals no more often than monthly.
2. Each invoice submitted by CONSULTANT will:
 - (a) Provide supporting detail including identification of person(s) who performed the services, hours (or days) worked, and billing rates; and,
 - (b) For material, other actual costs, and expenses, provide an itemized listing of amounts claimed, pertinent information relative to other costs or expenses, receipts to document the expenses when reasonably available, and other such information as may be reasonably requested by CITY to substantiate the validity of the invoice.
3. CITY shall pay the CONSULTANT within thirty (30) days of receipt of invoice.

IV

MATERIALS TO BE PROVIDED BY CITY OF FULLERTON

CITY shall furnish CONSULTANT with the following:

Available technical data and studies related to the work required in the Scope of Services.

V

TERM

This contract shall commence on the Effective Date, and remain and continue in effect until June 30, 2018 unless terminated sooner pursuant to terms of this Agreement. The term of this Agreement may be extended upon the mutual agreement of the parties in writing.

VI

TIME OF PERFORMANCE

CONSULTANT shall diligently perform the services required under this Agreement. CONSULTANT and CITY shall meet and agree to a schedule for each project assignment. If CONSULTANT falls behind schedule, it shall immediately notify the CITY of the estimated delay, and shall provide a written explanation of the delay, if requested by the CITY.

VII

AGREEMENT EXTENSION

If the work is delayed at any time by reason of a suspension order by CITY or because of any other act of CITY, or because of neglect by CITY, or if the work should be delayed at any time by reasons of strikes, acts of God, the public enemy, fire, floods, epidemics, quarantine restrictions, freight embargoes, abnormal force, violence of the elements, or for any other cause beyond the control of the CONSULTANT, then the CONSULTANT shall be entitled to an extension of time equivalent to the time actually lost by such delay.

VIII

AGREEMENT TERMINATION

- A. Termination by CITY. CITY reserves the right and privilege to terminate, cancel, suspend, or abandon this Agreement, or all or any part of the work related to the Agreement, at any time by providing prior written notice to CONSULTANT and specifying the effective date of termination. Unless stated otherwise, termination shall become effective upon CONSULTANT's receipt of the notice of such termination from the CITY.
- B. Termination by CONSULTANT. Should CITY fail to comply with its obligations under this Agreement, CONSULTANT may terminate this Agreement by giving written notice thereof thirty (30) days prior to such termination. If this Agreement is terminated as provided herein, CONSULTANT will be paid for all professional services performed up to the effective day of termination in accordance with the Scope of Services and Article III of this Agreement – Compensation and Method of Payment.
- C. Documents. In the event of termination of this Agreement, all finished or unfinished design, development and construction documents, data studies, drawings, maps and reports prepared by CONSULTANT shall be delivered to the CITY within five (5) days of CONSULTANT'S receipt of termination notice, and at no additional cost to CITY.

IX

INDEPENDENT CONTRACTOR STATUS

CONSULTANT's relationship to CITY in the performance of this Agreement is that of an independent contractor. The parties agree that no activities of the CITY or CONSULTANT or statements by the CITY or CONSULTANT in connection with this Agreement shall be interpreted as establishing any type of business relationship other than one of principal and independent contractor. CONSULTANT'S personnel, performing services under this Agreement, shall at all times be under CONSULTANT's exclusive direction and control, shall be employees of CONSULTANT, and shall not be employees of CITY. CONSULTANT shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, worker's compensation, and similar matters.

X

NOTICES

Any notices required to be given hereunder shall be in writing and shall be personally served or delivered by First Class United States mail. Any notice given by mail shall be deemed given when deposited in the United States Mail, postage prepaid, addressed to the party to be served as follows, or as may be hereafter changed, with notice to the other party in accordance with this section.

TO CITY:

City of Fullerton
303 West Commonwealth Avenue
Fullerton, CA 92832
Attn: Donald K. Hoppe, Director of Public Works

TO CONSULTANT:

Albert Grover & Associates
211 E. Imperial Hwy., Suite 208
Fullerton, CA 92835
Attn: Albert L. Grover, P.E., President and CEO

XI

INSURANCE AND INDEMNITY

CONSULTANT shall procure and maintain throughout the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, his agents, representatives, employees or subcontractors. CONSULTANT shall provide current evidence of the required insurance in a form acceptable to the CITY and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way, the Indemnification and Hold Harmless clause contained herein in Section XII or the extent to which CONSULTANT may be held responsible for payments of damages to persons or property.

A. Minimum Scope and Limits of Insurance

1. Commercial General Liability Insurance. CONSULTANT shall maintain commercial general liability insurance coverage in a form at least as broad as ISO Form #CG 0001 ED. 11/88, with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required occurrence limit.
2. Business Automobile Liability Insurance. CONSULTANT shall maintain business automobile liability insurance coverage in a form at least as broad as ISO Form # CA 0001 T ED. 6/92, with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.
3. Workers' Compensation and Employers' Liability Insurance. CONSULTANT shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than \$1,000,000 each accident.
4. Professional Liability Insurance. CONSULTANT shall maintain professional liability insurance appropriate to CONSULTANT'S profession with a limit of not less than \$1,000,000. Architects' and engineers' coverage shall be endorsed to include contractual liability. If policy is written as a "claims made" policy, the retro date of the policy shall be prior to the start of the contract work.

B. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the CITY.

C. Other Insurance Provisions

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

1. Commercial General Liability, Business Automobile Liability.

The CITY, its elected or appointed officials, officers, employees and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of CONSULTANT, including materials, parts or equipment furnished in connection with such work or operations; or with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT. Such coverage as an additional insured shall not be limited to the period of time during which the CONSULTANT is conducting ongoing operations for the CITY but rather, shall continue after the completion of such operations. The coverage shall contain no special limitations on the scope of its protection afforded to the CITY, its officers, employees and volunteers.

2. Commercial General Liability, Business Automobile Liability.

This insurance shall be primary insurance as respects the CITY, its officers, employees and

volunteers and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by the CITY, its officers, employees and designated volunteers shall be excess of this insurance and shall not contribute with it.

3. Professional Liability.

If the Professional Liability policy is written on a "claims made" form, CONSULTANT shall maintain similar coverage for three consecutive years following completion of the project and shall thereafter, submit annual evidence of coverage. Additionally, CONSULTANT shall provide certified copies of the claims reporting requirements contained within the policies.

4. Workers' Compensation and Employers' Liability Insurance.

Insurer shall waive their right of subrogation against CITY, its officers, employees and volunteers for work done on behalf of the CITY.

5. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

D. Acceptability of Insurers

All required insurance shall be placed with insurers acceptable to the CITY with current BEST'S ratings of no less than B+, Class X. Workers' compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of the CITY, insurance provided by non-admitted or surplus carriers with a minimum BEST'S rating of no less than A- Class X may be accepted if CONSULTANT evidences the requisite need to the sole satisfaction of the CITY.

E. Verification of Coverage

CONSULTANT shall furnish the CITY with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, CONSULTANT shall furnish certified copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by CITY before work commences. The CITY reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

XII

INDEMNIFICATION AND HOLD HARMLESS

CONSULTANT shall defend, indemnify, hold free and harmless CITY, its elected officials, officers, designated agents, employees, and volunteers from and against any and all damages to property or injuries to or death of any person or persons, including attorneys' fees; and shall defend, indemnify, save and hold harmless CITY, its elected officials, officers, designated agents, employees, and volunteers from any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims,

and all other claims resulting from or arising out of the intentional or negligent acts, errors or omissions of CONSULTANT, its employees, agents and/or authorized subconsultants, in the performance of this Agreement.

XIII

AGREEMENT BINDING/ENTIRE AGREEMENT

CITY and CONSULTANT each binds itself, its partners, subsidiaries, successors, and assignees to this Agreement. This Agreement represents the entire agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, or agreements, either written or oral. Each party 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. This Agreement may be amended only by written instrument signed by both CITY and CONSULTANT. In the event any provision of this Agreement shall be held to be invalid and unenforceable, the other provisions of this Agreement shall be valid and binding on the parties hereto.

XIV

MISCELLANEOUS PROVISIONS

A. Counterparts.

This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement.

B. Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

C. Attorney's Fees.

In the event any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by a court of competent jurisdiction to be reasonable.

D. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal action relating to or arising out of this Agreement shall be subject to the jurisdiction of the County of Orange, California.

E. Ownership of Documents.

All documents prepared by CONSULTANT in the performance of this Agreement shall be and remain the sole properties of the CITY. CONSULTANT shall deliver to the CITY any plans, specifications, studies, reports, drawings or any other items or materials prepared in

accordance with the required services under the Agreement, to the CITY, no later than the conclusion of the performance of the services by CONSULTANT.

F. Warranty.

CONSULTANT warrants that it shall perform the professional services required by this Agreement in compliance with the Federal and California laws related to minimum hours and wages, including but not limited to, 40 U.S.C. 276A, et seq., California Labor Code, sections 1171, et seq., and California Labor Code section 6300 et seq.; Fair Employment Practices, including but not limited to, 29 U.S.C. 651, et seq., and California Labor Code, sections 6300 et seq.; and Fair Employment, including but not limited to, 29 U.S.C. 201 et seq., California Labor Code, sections 1410, et seq.; Title 6 of the Civil Rights Act of 1964, as amended, 49 CFR 21 through appendix H and 23 CSR 710.405(b); and all other federal, state and local laws and ordinances applicable to the work required under this Agreement.

G. Assignability.

This Agreement may not be sold, transferred or assigned by any party, or by operation of law, to any other person or persons or business entity, without the other party's expressed written consent. Any such sale, transfer or assignment, or attempted sale, transfer or assignment without express written consent may be deemed by the other party to constitute a voluntary termination of this Agreement and this Agreement shall thereafter be deemed terminated and void.

H. Subcontractors or Subconsultants.

CONSULTANT shall provide CITY with a list of any and all subcontractors and/or subconsultants proposed to provide work or services in conjunction with the Scope of Services; no other subcontractor or subconsultants shall be used by CONSULTANT unless a replacement is approved in advance and in writing by the CITY. No work under this Agreement shall be provided by any subcontractors or subconsultants until such time as the CITY approves of CONSULTANT'S list of proposed subcontractors/subconsultants.

I. Order of Precedence.

In the event of an inconsistency in this Agreement, the inconsistency shall be resolved in the following order:

1. This Agreement
2. The Proposal

J. Waiver.

No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. CITY'S consent or approval of any act by CONSULTANT requiring CITY'S consent to or approval of any subsequent act of CONSULTANT or any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

K. Confidentiality.


All findings, reports, information, exhibits prepared or assembled by CONSULTANT in connection with the performance of its professional services pursuant to this Agreement are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior consent of CITY. All findings, reports, information and exhibits shall become the property of CITY.

L. Records and Audits.

Records of CONSULTANT'S personnel and expenses related to the work performed under this Agreement shall be kept on a generally recognized accounting basis, and shall be made available to CITY or its authorized representatives for inspection and/or audit at mutually convenient times during the course of the performance of this Agreement, and for a period of three (3) years from the date the Agreement is terminated.

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


CITY OF FULLERTON

By: 

Name: Donald K. Hoppe

Title: Director of Public Works

CONSULTANT

By: 
Exec. Vice Pres

Name: for Albert L. Grover, P.E.

Title: President and CEO

APPROVED AS TO FORM:

By:  for

Name: Richard D. Jones

Title: City Attorney

ATTEST:

By: 

Name: Lucinda Williams

Title: City Clerk