



# **REQUEST FOR PROPOSALS**

**Phase-I Environmental Site Assessment  
Services  
April 2010**

**City of San Bernardino  
Economic Development Agency**

City of San Bernardino Economic Development Agency  
201 North "E" Street, Suite 301  
San Bernardino, CA 92401-1507  
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[www.sbrda.org](http://www.sbrda.org)

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**I. INTRODUCTION**

In July 2008, the City of San Bernardino (City) Economic Development Agency (Agency) received two U.S. EPA Brownfield Assessment grants (Grant) for the preparation of approximately ten (10) Phase-I Environmental Site Assessments (Phase-I ESA) for petroleum contamination and six (6) Phase-I ESAs for hazardous substance contamination. The Agency has completed its inventory of existing Brownfield sites and has established a priority list of sites to investigate within the San Bernardino Greater Downtown Revitalization Area (SBGDRA).

The Agency is issuing this Request for Proposal (RFP) to invite submittal of Proposals from qualified consultants (Proposers) interested in providing Phase-I ESA services utilizing the practices in accordance with U.S. EPA Final Rule on conducting "All Appropriate Inquiry" regulations or American Society for Testing Materials (ASTM) E1527-05 standards in response to the Agency's U.S. EPA Assessment Grant.

The Brownfields Assessment area of the City, as defined in the Grant applications, is bounded on the north by Ninth Street, on the west by Pepper Street, on the south by Mill Street, and on the east by Tippecanoe Avenue.

Maps of the SBGDRA can be found on the Agency website: [http://www.sbrda.org/pdf/East\\_map.pdf](http://www.sbrda.org/pdf/East_map.pdf) and [http://www.sbrda.org/pdf/East\\_map.pdf](http://www.sbrda.org/pdf/East_map.pdf).

The sites that have been selected for Phase-I ESAs are listed in Exhibit "A" to this RFP. The Agency is currently awaiting U.S. EPA approval of the selected sites. If any of the sites should be changed, the selected Contractor(s) will be given the opportunity to revise their submitted Cost Proposal as necessary.

The term of the contract(s) resulting from this RFP shall commence when the Agency executes the consultant agreement (Agreement), and shall continue until work has been accomplished, approximately 120 days.

**II. MINIMUM PROPOSER REQUIREMENTS**

Proposers must clearly and specifically demonstrate in their Proposal that they:

1. Can meet the requirements as specified in this RFP;
2. Have the capability to provide the proposed services;
3. Have the capability to enter into the Agreement with the Agency in accordance with Exhibit "F" - Sample Contract;
4. Have the administrative and fiscal ability to provide and manage the proposed activities and to ensure an adequate audit compliance and maintain adequate files and records, which are subject to confidentiality requirements and meet statistical reporting requirements;



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5. Have the ability to comply with the proposed delivery and performance schedule;
6. Have the ability to adjust to flexible work schedules as necessary;
7. Have no record of unsatisfactory performance; and
- ~~8. Have attended, or had a representative attend the pre-proposal meeting.~~

**III. Q&A**

Questions regarding this RFP are to be submitted no later than 4:00 p.m. May 5, 2010, via email to: Kathleen Robles, Project Manager, [krobles@sbrda.org](mailto:krobles@sbrda.org). Questions and answers will be posted on the Agency’s website: <http://www.sbrda.org/brownfields.htm> by 5:00 p.m. May 10, 2010.

**IV. GOOD FAITH EFFORT**

Each Proposer must submit documentation that a Good Faith Effort was performed in accordance with CFR 40 Section 33.301.

Agency goals established by EPA are:

	<u>MBE</u>	<u>WBE</u>
Construction	24%	6%
Equipment	22%	26%
Services	30%	31%
Supplies	29%	20%

Performing a Good Faith Effort does not mean you must have met these objectives/goals, but rather you have put forth the effort.

**V. PROPOSAL SUBMITTAL**

Proposals must be received at the address listed below, no later than 4:00 p.m. on Tuesday, June 1, 2010 and addressed as follows:

RFP – Phase-I Environmental Site Assessment Service  
Attention: Kathleen Robles, Project Manager  
City of San Bernardino Economic Development Agency  
201 North “E” Street, Suite 301  
San Bernardino, CA 92401-1507

Facsimile or electronically transmitted proposals will not be accepted since they do not contain original signatures. Postmarks will not be accepted in lieu of actual receipt. Late proposals will be returned to the Proposer unopened.



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**VI. PROPOSAL TIMELINE**

The following timetable indicates the dates of major significance related to this RFP:

1. Release of RFP	April 21, 2010
<del>2. Deadline for submission of questions</del>	<del>4:00 p.m. May 5, 2010</del>
<del>3.</del> 2. Proposer questions with answers to be posted to website	<u>April 27<sup>th</sup>, May 5<sup>th</sup>, and</u> May 10, 2010
<del>4.</del> 3. Deadline for proposals	4:00 p.m., Tuesday, June 1, 2010
<del>5.</del> 4. Tentative selection interviews	June, 2010
<del>6.</del> 5. Tentative date for awarding of contract	June, 2010

The Agency reserves the right to revise the proposal timeline if such action is in the best interest of the Agency.

**VII. PROPOSAL CONDITIONS**

**A. Contingencies**

This RFP does not commit the Agency to award an Agreement. The Agency reserves the right to accept or reject any or all proposals if the Agency determines it is in the best interest of the Agency to do so. The Agency will notify all Proposers, in writing, if the Agency rejects all proposals or cancels this RFP.

**B. Modifications**

The Agency reserves the right to issue addenda or amendments to this RFP.

**C. Negotiations**

The Agency may require the Consultant selected to participate in negotiations and to submit a price, technical or other revisions of their proposal as may result from negotiations.

**D. Proposal Submission**

To be considered, all proposals must be submitted in the manner set forth in this RFP. It is the Proposer's responsibility to ensure that its proposal arrives on or before the deadline as set forth in Section IV - Proposal Submittal.

**E. Incurred Costs**

This RFP does not commit the Agency to pay any costs incurred in the preparation of a proposal in response to this RFP and each Proposer agrees that all costs incurred in developing their respective proposals are the Proposer's responsibility.



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***F. Contract Award***

Award of the Contract may or may not be on an all or nothing basis. The Agency reserves the option to make one or more awards as it deems to be in the best interests of the Agency.

**VIII. SCOPE OF WORK**

***A. Site Information***

The Brownfields Assessment area of the City, as defined in the Grant applications, is bounded on the north by Ninth Street, on the west by Pepper Street, on the south by Mill Street, and on the east by Tippecanoe Avenue.

Maps of the SBGDRA can be found at [http://www.sbrda.org/pdf/East\\_map.pdf](http://www.sbrda.org/pdf/East_map.pdf) and [http://www.sbrda.org/pdf/East\\_map.pdf](http://www.sbrda.org/pdf/East_map.pdf).

The sites that have been selected for Phase-I ESAs are listed in Exhibit “A” to this RFP. The Agency is currently awaiting U.S. EPA approval of the selected sites. If any of the sites should be changed, the selected Contractor(s) will be given the opportunity to revise their submitted Cost Proposal as necessary.

***B. Scope of Work***

Phase-I ESAs will be performed to investigate the potential presence of petroleum contamination and/or hazardous substance contamination and will be conducted in compliance with U.S. EPA final rule on conducting AAI or in compliance with ASTM Standard E1527-05, “Standard Practice for Standard Practice Environmental Site Assessments: Phase-I Environmental Site Assessment Process”(November 1, 2005).

The Tasks to be conducted in the execution of the Phase-I ESA shall include, but not limited to, the following:

1. Historical site review
2. Environmental Database Search
3. Site Inspection/Interviews
4. Draft/Final Report to include conclusions and recommendations
5. Appendix materials should support your analysis, and not provide new information.



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**C. Deliverables**

Deliverables shall include, but not limited to, the following:

1. Draft Report
2. Final Report containing conclusions and recommendations based upon the data collected and citation of reference(s) where data was obtained.

**IX. RFP CONTRACT REQUIREMENTS**

1. Attached, as Exhibit "F" to this RFP, for informational purposes only is the standard form of Agency consultant contract that each party responding to this RFP must be prepared to execute. The final form of such contract will be subject only to the obvious insertions of precise information, date, names and other similar pertinent information that will be unique to any party receiving a consultant contract from the Agency pursuant to this RFP. In the event any Proposer seeks to make modifications to this form consultant contract, such suggested changes must be included in the proposal in response to this RFP otherwise it will be assumed that the Proposer has accepted all terms and provisions of this form consultant contract.
2. Recycled Paper Products - The Agency requests the Proposers to use recycled paper for proposals and for any printed or photocopied material created as a result of a contract with the Agency. Please use both sides of paper sheets for reports and on recycled paper.

**X. PROPOSAL SUBMISSION**

**A. General**

1. All interested and qualified Proposers are invited to submit a proposal for consideration. Submission of a proposal indicates that the Proposer has read and understands this entire RFP, including all appendices, attachments, exhibits, schedules, and addendum (as applicable) and all concerns regarding this RFP have been satisfied.
2. Proposals must be submitted in the format described below. Proposals are to be prepared in such a manner as to provide a straightforward, concise description of their capabilities to satisfy the requirements of this RFP. Expensive bindings, displays, promotional materials, etc., are neither necessary nor desired. Emphasis should be concentrated on compliance with the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
3. Proposals must be complete in all respects as required in this section. A proposal may not be considered if it is conditional or incomplete.



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4. All proposals and materials submitted become the property of the Agency. All proposals received are subject to the “California Public Records Act” and are public documents.
5. All proposals must be submitted no later than 4:00 p.m. Tuesday June 1, 2010 at the address listed below and labeled accordingly:

RFP – Phase-I Environmental Site Assessment Service  
Attention: Kathleen Robles, Project Manager  
City of San Bernardino Economic Development Agency  
201 North “E” Street, Suite 301  
San Bernardino, CA 92401-1507

**PROPOSALS SUBMITTED AFTER THE ABOVE STATED TIME AND DATE  
WILL NOT BE CONSIDERED AND WILL BE RETURNED UNOPENED**

***B. Proposal Presentation***

1. One (1) signed original, one (1) copy in digital format (Windows OS), and three (3) hard copies of the written proposal are required to be submitted.

The package containing the original, the digital copy, and three (3) copies must be sealed and marked with the Proposer’s name and “CONFIDENTIAL – RFP – PHASE-I ENVIRONMENTAL SITE ASSESSMENT SERVICE.”

2. One (1) signed original and one copy in digital format (Windows OS) of the cost proposal shall be submitted in a separate sealed envelope and clearly marked “CONFIDENTIAL - COST PROPOSAL.”
3. Proposals should be submitted on 8½” by 11” recycled paper with double-sided printing, unless specifically shown to be impractical, with no less than ½” top, bottom, left, and right margins. Proposals must be typed or prepared with work processing equipment. Typeface must be a minimum of 12 pt. font. Each page, including attachments and exhibits, must be clearly and consecutively numbered.

***C. Proposal Format***

Response to this RFP must be in the form of a proposal package that must be submitted in the following format:

**Page #1** - RFP Exhibit “D” - Checklist

**Page #2** - RFP Exhibit “B” - Cover Sheet

**Page #3** - Cover letter on letterhead stationery, signed by a duly authorized officer, employee, or agent of the organization/firm submitting the proposal that must include the following information:



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- a. A statement that the proposal is submitted in response to the Request for Proposals for Phase-I Environmental Site Assessment Service.
- b. A statement indicating which individuals, by name, title, address and phone number, are authorized to submit proposals and negotiate with the Agency on behalf of the organization/firm.

**Page #4** – RFP Exhibit “C” - **Statement of Certification** – Submit on letterhead stationery, signed by a duly authorized officer, employee, or agent of the organization/firm submitting the Proposal.

**Proposal Description**

The proposal description should include the steps to take prepare a Phase-I ESA report, an outline of a Phase-I ESA report, and a detail of each task to be undertaken in conjunction with Section VIII – Scope of Work.

- a. Proposal should address in detail, but is not limited to all items in Section VIII – Scope of Work.
- b. Proposal should include the following:
  - Overview of the business
  - Organizational Chart
  - Services offered
  - A minimum of 3 related references for Phase-I ESA projects that have been performed in compliance with AAI or ASTM E1527-05.
  - Brief synopsis of the Proposer’s understanding of the Agency’s needs and how the Proposer plans to meet these needs. This should provide a broad understanding of the Proposer’s entire proposal.
  - Narrative description of work to be performed, to include detail plan of activities
  - Proposed schedule
  - Proposed deliverables
  - Explanation of any assumptions and/or constraints
  - Any other pertinent information needed to evaluate proposal
  - Any other relevant materials the firm desires to submit to support its qualifications.
  - Statement of Qualifications
    - Include the following in this section of the proposal:
      - Statement of Qualifications: Each Proposer shall state the ability to provide requested service and percentage of time to be committed to the project.
      - Resume: Each Proposer shall provide a resume for each individual involved with this proposed Agreement who will deal with the Agency, such as the Project Manager, Project Engineer, etc.



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- A statement that the Proposer does not have any commitments or potential commitments which may impact of the Proposer's assets, lines of credit, guarantor letters or ability to perform the Agreement.

**Appendix A - Good Faith Effort** documentation. If the Proposer is a MBE/WBE, a copy of the official certification must be included in Appendix A.

Any reasonable inquiry to determine the responsibility of a Proposer may be conducted by the Agency. The submission of a proposal constitutes permission by the Proposer for the Agency to verify all information contained therein. If deemed necessary by the Agency, additional information may be requested from the Proposer. Failure to comply with any such request may disqualify a Proposer from further consideration. Such additional information may include evidence of financial ability to perform.

***D. Cost Proposal***

In a separately sealed envelope, include the Cost Proposal. The proposal must include a current Fee Schedule and a "not to exceed" project budget that indicates the costs and hours for the total project on a task-by-task basis, and inclusive of reimbursables. Reimbursables as a separate line item(s) are not allowed for such items as: mileage, postage, faxes, copying/printing, per diems, etc. A final cost will be negotiated with the selected firm. An overall rate structure must also be included in the Cost Proposal.

**XI. PROPOSAL EVALUATION AND SELECTION**

Primary consideration shall be the effectiveness of the Proposer in the delivery of the services requested based on experience, approach to scope of work for this RFP, schedule for completion, and Good Faith Effort, if necessary. The initial evaluation will be based solely on the written proposal as submitted.

Selection interviews may or may not be held and if a decision is made to conduct interviews, the Proposers selected for interviews will be based on determination of which proposal(s) may best meet the needs of the Agency and which are in compliance with the requirements of this RFP.

The Agreement will be awarded based the final determination of the Agency after having reviewed the proposals received.

The contents of the proposal of the successful Proposer will become contractual obligations and failure to accept these obligations in a contractual agreement may result in cancellation of the award.

Any award or awards pursuant to this RFP may be made to one (1) or more Proposers for all or any portion of the work described in this RFP.



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**Exhibit A - PHASE-I ESA SITES**

Subject to Change

for Agency use	Assessor Parcel Number	Address/Location	Vacant (Y or N)
<b>Petroleum</b>			
Pet 9	0135-032-01	697 Mt. Vernon Ave	N
Pet 7	0135-041-12	N. Sierra Way	Y
Pet 1	0136-171-42	580 W. Mill Street	Y
Pet 3	0136-191-21	488 W. Mill Street	Y
Pet 23	0137-041-12	1003 W. Rialto Ave	N
Pet 27	0138-124-28	5 <sup>th</sup> Street & Garner Ave	N
Pet 21	0138-272-06	1019 W. 3 <sup>rd</sup> Street	N
Pet 8	0140-222-42	W. 8 <sup>th</sup> Street & N. Sierra Way	Y
<b>Hazardous Substances</b>			
Haz 9	0134-231-31	Carousel Mall parking lot	Y
Haz 2	0135-281-22	N. Arrowhead Ave & W. King Street	Y
Haz 7	0138-132-37	N. L Street & W. Spruce Street	Y
Haz 6	0138-273-24	W. 2 <sup>nd</sup> Street	N
Haz 4	0140-211-47	829 N. E Street	Y



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**Exhibit B - RFP COVER SHEET**

RFP – Phase-I Environmental Site Assessment Services

**OFFICIAL AGENCY/ORGANIZATION NAME AND ADDRESS:**

Indicate address, as it is to appear on contract.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Federal Employee ID #: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Email: \_\_\_\_\_



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**Exhibit C - CERTIFICATION**

Certification: (To be completed by Proposer on their letterhead).

- a. A concise statement of the services proposed.
- b. A statement that the offer made in the proposal is firm and binding for 90 days from the date the proposal is opened and recorded.
- c. A statement that all aspects of the proposal, including the cost proposal, have been determined independently, without consultation with any other prospective Proposer or competitor for the purpose of restricting competition.
- d. A statement that all declarations in the proposal and attachments are true and that this shall constitute a warranty, the falsity of which shall entitle the Agency to pursue any remedy by law.
- e. A statement that the Proposer agrees that all aspects of the RFP and the proposal submitted shall be binding if the proposal is selected and a contract awarded in the form of the Agreement as attached to the RFP.
- f. A statement that the Proposer agrees to provide the Agency with any other information that the Agency determines is necessary for an accurate determination of the Proposer's ability to perform services as proposed.
- g. A statement that the prospective Proposer, if selected, will comply with all applicable rules, laws and regulations.

The undersigned hereby certifies that the statements contained in this Certification and the application package are true and complete to the best of the Proposer's knowledge, and further, understands that this is a public document available for public inspection.

Original Signature \_\_\_\_\_

Title \_\_\_\_\_

Company Name (Print) \_\_\_\_\_

Date \_\_\_\_\_



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**Exhibit D - RFP SUBMITTAL CHECKLIST**

Please use this checklist when submitting your RFP package.

<b><u>Item</u></b>	<b><u>Description</u></b>	<b><u>Included</u></b>
1.	<b>RFP Submittal Checklist</b> – Exhibit D	
2.	<b>RFP Cover Sheet</b> – Exhibit B	
3.	<b>Cover Letter</b>	
4.	<b>Statement of Certification</b> – Exhibit C	
5.	<b>Proposal Description</b>	
6.	Scope of Work and Schedule	
7.	Statement of Qualifications	
8.	Organizational Chart	
9.	Resume of Project Manager	
10.	Resumes of key personnel	
11.	<b>Appendix A</b> - Good Faith Effort documentation/Certification	
12.	<b>Itemized Cost Proposal</b> in a separate sealed envelope	



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**Exhibit E - SAMPLE CONTRACT**

**REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO**

**AGREEMENT FOR PROFESSIONAL SERVICES**

\_\_\_\_\_

This AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into as of \_\_\_\_\_ 200\_\_\_\_, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO ("Agency"), a public body, corporate and politic, and \_\_\_\_\_, ("Consultant").

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND MUTUAL PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. **SUPERVISION OF CONSULTANT.** The Agency Staff designated in **Exhibit "A"** shall be responsible for the direction of any work to be performed by the Consultant and any other consultants or subconsultants to the Agency under this Agreement. The Consultant shall not undertake any work under the terms of this Agreement, unless instructed to do so by one of the designated staff members. No other staff member is authorized by the Agency to request services from the Consultant.
2. **TERM OF AGREEMENT.** The term of this Agreement shall commence on the date first appearing in this Agreement and will terminate upon the completion of the services described in the Scope of Services as referenced in Section 3, unless earlier terminated as provided in this Agreement. The Agency reserves the right through the actions of the Interim Executive Director to terminate this Agreement at anytime either with or without cause and at the sole convenience of the Agency upon delivery of notice of termination to the Consultant; provided, however, that upon the effective date of any such termination, the Agency shall be responsible to pay and/or reimburse the Consultant for all services, materials and supplies as may have been furnished to the Agency in accordance with the Scope of Services as referenced in Section 3.
3. **SCOPE OF CONSULTANT SERVICES.** The Agency hereby retains the Consultant to provide the professional consulting services set forth in the Scope of Services attached hereto as **Exhibit "B"** and incorporated herein by this reference. The Consultant hereby agrees to perform the work set forth in the Scope of Services, in accordance with the terms of this Agreement. The Consultant shall perform the services as set forth on said Scope of Services within the time periods to be identified by the appropriate Agency representative.
4. **PAYMENT BY AGENCY FOR WORK PERFORMED BY CONSULTANT.**
  - A. The Agency shall compensate the Consultant in an aggregate amount not to exceed \$ \_\_\_\_\_ for completion of the services described in the Scope of Services set forth in **Exhibit "B."**
  - B. The compensation designated in subsection 4. A. shall be the Total Fee for the performance of the work and the delivery of the final work product materials, as set forth in the Scope of Services. The Total Fee shall include, but not be limited to, the salaries of all subcontractors retained by the Consultant and all employees of the Consultant to perform work pursuant to this Agreement and shall be inclusive of all costs and expenses incurred for mileage, travel, graphics, telephone, printing, fax transmission, postage, copies and such other expenses related to completion of the work set forth in the Scope of Services.
  - C. The Consultant shall invoice the Agency for work performed by the Consultant under this Agreement each calendar month during the term of this Agreement.



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D. The Consultant shall submit invoices under this Agreement to:

Redevelopment Agency of the City of San Bernardino  
Attention: \_\_\_\_\_ Executive Director  
201 North "E" Street, Suite 301  
San Bernardino, California 92401-1507

E. Each invoice of the Consultant shall set forth the time and expenses of the Consultant incurred in performance of the Scope of Services, during the period of time for which the invoice is issued. Each invoice of the Consultant shall clearly set forth the names of the individual personnel of the Consultant and any individual subconsultants utilized by the Consultant, during the time period covered by the invoice, a description of the professional services rendered on a daily basis by each named individual during such time period, the respective hourly rates of each named individual and the actual time expended by each named individual. Each invoice of the Consultant shall be accompanied by copies of all third party invoices for other direct costs incurred and paid by the Consultant during such time period. The Agency shall pay all amounts set forth on the invoices of the Consultant and approved by the authorized Agency Staff personnel who requested the services, within thirty (30) days after such approval.

5. **RECORDS RETENTION.** Records, maps, field notes and supporting documents and all other records pertaining to the use of funds paid to the Consultant hereunder shall be retained by the Consultant and available to the Agency for examination and for purposes of performing an audit for a period of five (5) years from the date of expiration or termination of this Agreement or for a longer period, as required by law. Such records shall be available to the Agency and to appropriate county, state or federal agencies and officials for inspection during the regular business hours of the Consultant. If the Consultant does not maintain regular business hours, then such records shall be available for inspection between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding federal and state government holidays. In the event of litigation or an audit relating to this Agreement or funds paid to the Consultant by the Agency under this Agreement, such records shall be retained by the Consultant until all such litigation or audit has been resolved.
6. **INDEMNIFICATION.** The Consultant shall defend, indemnify and hold harmless the Agency, its officers, employees, representatives, and agents from and against any and all actions, suits, proceedings, claims, demands, losses, costs and expenses, including legal costs and attorneys fees, for injury or damage of any type claimed as a result of the negligent acts or omissions of the Consultant, its officers, employees, subcontractors and agents, to the extent arising from or related to negligent performance by the Consultant of the work required under this Agreement.
7. **INSURANCE.** The Consultant shall maintain insurance, as set forth in **Exhibit "C"** to this Agreement, throughout the term of this Agreement. The Consultant shall remain liable to the Agency pursuant to Section 6. above to the extent the Consultant is not covered by applicable insurance for all losses and damages incurred by the Agency that are caused directly or indirectly through the actions or inactions, willful misconduct or negligence of the Consultant in the performance of the duties incurred by the Consultant pursuant to this Agreement.
8. **OWNERSHIP AND REUSE OF DOCUMENTS AND OTHER MATERIALS AND INFORMATION.** All maps, photographs, data, information, reports, drawings, specifications, computations, notes, renderings, designs, inventions, photographs, modifications, adoptions, utilizations, correspondence or other documents generated by or on behalf of the Consultant for performance of the work (collectively, the "Work Products") set forth in the Scope of Services shall upon payment for those services embodying the particular element of the Work Products, become the sole property of the Agency, and the Work Products shall thereafter be delivered to the Agency upon written request from the Agency to the Consultant. The Consultant shall not make use of any maps, photographs, data, information, reports, drawings, specifications, computations, notes, renderings, designs, inventions, photographs, modifications, adoptions,



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utilizations, correspondence or other documents and other materials whether for marketing purposes or for use with other clients when such have become the property of the Agency without the prior express written consent of the Agency except to the extent that such maps, photographs, data, information, reports, drawings, specifications, computations, notes, renderings, designs, inventions, photographs, modifications, adoptions, utilizations, correspondence or other documents are readily available to the general public as public records pursuant to State law; provided, however, that the Consultant may retain copies of any such items for their business records.

The Consultant shall execute, acknowledge and perform any and all acts which shall reasonably required in order for the Agency to establish unequivocal ownership of the maps, photographs, data, information, reports, drawings, specifications, computations, notes, renderings, designs, inventions, photographs, modifications, adoptions, utilizations, correspondence or other documents and record, register and procure an issuance in or to the Agency's rights, title and/or interest. Any reuse without written verification or adaptation by the Consultant for the specific purpose intended will be at the Agency's sole risk and without liability or legal exposure to the Consultant.

9. **PRESS RELEASES.** Press or news releases, including photographs or public announcements, or confirmation of the same related to the work to be performed by the Consultant under this Agreement shall only be made by the Consultant with the prior written consent of the Agency.
10. **CONFIDENTIALITY OF MATERIALS AND INFORMATION.** The Consultant shall keep confidential all reports, survey notes and observations, information, and data acquired or generated in performance of the work set forth in the Scope of Services, which the Agency designates confidential. None of such designated confidential materials or information may be made available to any person or entity, public or private, without the prior written consent of the Agency.
11. **DEFAULT AND REMEDIES.**
  - A. Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided, however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within seven (7) calendar days after receipt of written notice specifying such default and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.
  - B. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.
  - C. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties under this Agreement are cumulative and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
  - D. In the event that a default of any party to this Agreement may remain uncured for more than seven (7) calendar days following written notice, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.



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12. TERMINATION.

- A. This Agreement may be terminated by either party for any reason by giving the other party fifteen (15) calendar days' prior written notice. The Agency shall pay the Consultant for all work authorized by the Agency and completed, prior to the effective termination date.
- B. In the event of a termination of this Agreement under this Section 12, the Consultant shall provide all documents, notes, maps, reports, data or other work product developed in performance of the Scope of Services of this Agreement to the Agency, within ten (10) calendar days of such termination and without additional charge to the Agency.

13. NOTICE. All notices given hereunder shall be in writing. Notices shall be presented in person or by certified or registered United States Mail, return receipt requested, postage prepaid or by overnight delivery by a nationally recognized delivery service to the addresses set forth below. Notice presented by United States Mail shall be deemed effective on the third business day following the deposit of such Notice with the United States Postal Service. This Section 13 shall not prevent the parties hereto from giving notice by personal service or telephonically verified fax transmission, which shall be deemed effective upon actual receipt of such personal service or telephonic verification. Either party may change their address for receipt of written notice by notifying the other party in writing of a new address for delivering notice to such party.

**CONSULTANT:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AGENCY:** Redevelopment Agency of the City of San Bernardino  
Attention: \_\_\_\_\_ Executive Director  
201 North "E" Street, Suite 301  
San Bernardino, California 92401-1507

14. COMPLIANCE WITH LAW. The Consultant shall comply with all local, state, and federal laws, including, but not limited to, environmental acts, rules and regulations applicable to the work to be performed by the Consultant under this Agreement. The Consultant shall maintain all necessary licenses and registrations for the lawful performance of the work required of the Consultant under this Agreement.

15. NONDISCRIMINATION. The Consultant shall not discriminate against any person on the basis of race, color, creed, religion, natural origin, ancestry, sex, marital status or physical handicap in the performance of the Scope of Services of this Agreement. Without limitation, the Consultant hereby certifies that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status of national origin. Further, the Consultant shall promote affirmative action in its hiring practices and employee policies for minorities and other designated classes in accordance with federal, state and local laws. Such action shall include, but not be limited to, the following: recruitment and recruitment advertising, employment, upgrading and promotion. In addition, the Consultant shall not exclude from participation under this Agreement any employee or applicant for employment on the basis of age, handicap or religion in compliance with State and Federal laws.

16. CONSULTANT AND EACH SUBCONTRACTOR ARE INDEPENDENT CONTRACTORS. The Consultant shall at all times during the performance of any work described in the Scope of Services be deemed to be an independent contractor. Neither the Consultant nor any of its subcontractors shall at any time or in any manner represent that it or any of its employees are employees of the Agency or any member agency of the Agency. The Agency shall not be requested or ordered to assume any liability or expense for the direct payment of any salary, wage or benefit to any person employed by the Consultant or its



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subcontractors to perform any item of work described in the Scope of Services. The Consultant is entirely responsible for the immediate payment of all subcontractor liens.

17. SEVERABILITY. Each and every section of this Agreement shall be construed as a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof to certain circumstances shall be declared invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
18. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties. This Agreement supersedes all prior negotiation, discussions and agreements between the parties concerning the subject matters covered herein. The parties intend this Agreement to be the final expression of their agreement with respect to the subjects covered herein and a complete and exclusive statement of such terms.
19. AMENDMENT OR MODIFICATION. This Agreement may only be modified or amended by written instrument duly approved and executed by each of the parties hereto. Any such modification or amendment shall be valid, binding and legally enforceable only if in written form and executed by each of the parties hereto, following all necessary approvals and authorizations for such execution.
20. GOVERNING LAW. This Agreement shall be governed by the laws of the State of California. Any legal action arising from or related to this Agreement shall be brought in the Superior Court of the State of California in and for the County of San Bernardino.
21. NON-WAIVER. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the same provision or any remaining provisions of this Agreement.
22. ASSIGNMENT. This Agreement may not be assigned by the Consultant without the prior written consent of the Agency.
23. REPRESENTATIONS OF PERSONS EXECUTING AGREEMENT. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the parties each purports to represent.
24. EXECUTION IN COUNTERPARTS. This Agreement may be executed in one (1) or more counterparts, each of which will constitute an original.
25. EFFECTIVENESS OF AGREEMENT AS TO THE AGENCY. This Agreement shall not be binding on the Agency until signed by an authorized representative of the Consultant, approved by the Agency and executed by the Interim Executive Director or his designee.
26. CONFLICTS OF INTEREST. The Consultant hereby represents that it has no interests adverse to the Agency or the City at the time of execution of this Agreement except as previously disclosed to the Agency Staff and in particular with respect to other work being performed by the Consultant for the (i) \_\_\_\_\_, and (ii) \_\_\_\_\_. The Consultant hereby agrees that, during the term of this Agreement, the Consultant shall not enter into any agreement or acquire any interests detrimental or adverse to the Agency or the City. Additionally, the Consultant hereby represents and warrants to the Agency that the Consultant and any partnerships, individual persons or any other party or parties comprising the Consultant, together with each subcontractor who may hereafter be designated to perform services pursuant to this Agreement, do not have and, during the term of this Agreement, shall not acquire any property ownership interest, business interests, professional employment relationships, contractual relationships of any nature or any other financial arrangements relating to the



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Agency, property over which the Agency has jurisdiction or any members or staff of the Agency that have not been previously disclosed in writing to the Agency, and that any such property ownership interests, business interests, professional employment relationships, contractual relationships or any nature or any other financial arrangements will not adversely affect the ability of the Consultant to perform the services to the Agency as set forth in this Agreement.

27. NON-EXCLUSIVITY. This Agreement shall not create an exclusive relationship between the Agency and the Consultant for the services set forth in **Exhibit "B"** or any similar or related services. The Agency may, during the term of this Agreement, contract with other consultants for the performance of the same, similar or related services as those that may be performed by the Consultant under this Agreement. The Agency reserves the discretion and the right to determine the amount of services to be performed by the Consultant for the Agency under this Agreement, including not requesting any services at all. This Agreement only sets forth the terms upon which any such services will be provided to the Agency by the Consultant, if such services are requested by the Agency, as set forth in this Agreement.

28. CONSEQUENTIAL DAMAGES AND LIMITATION OF LIABILITY. The Agency and Consultant agree that except as otherwise provided in this Section 28, in no event will either be liable to the other under this Agreement for any damages including but not limited to, special damages, loss of revenue, loss of profit, operating costs or business interruption losses, regardless of cause, including breach of contract, negligence, strict liability or otherwise. The limitations and exclusions of liability set forth in this Section 28 shall apply regardless of fault, breach of contract, tort, strict liability or otherwise of the Consultant and the Agency, their employees or subconsultants.

29. ADDITIONAL CONTRACT REQUIREMENTS WHEN CONSULTANT SUBCONTRACTS ANY PORTION OF THIS CONTRACT. As set forth pursuant to EPA requirements, and in compliance with the EPA's determined Agency's Minority-owned Business Enterprise and Woman-owned Business Enterprise (MBE/WBE) goals and objectives, the Consultant shall:

- A. Perform and document its Good Faith Effort;
- B. Maintain a bidders list;
- C. Make an effort to meet its Fair Share Objectives (MBE/WBE goals) when applicable of:

	<u>MBE</u>	<u>WBE</u>
Construction	24%	6%
Equipment	22%	26%
Services	30%	31%
Supplies	29%	20%

- D. Maintain recordkeeping and reporting, including MBE/WBE utilization reporting;
- E. Provide the following 3 forms to its subcontractors:
  - a. U.S. EPA 6100-2 Subcontractor Participation Form
  - b. U.S. EPA 6100-3 Subcontractor Performance Form
  - c. U.S. EPA 6100-4 Subcontractor Utilization Form
- F. Pay each subcontractor within thirty (30) calendar days of receipt of payment from the Agency;
- G. Notify the Agency in writing prior to terminating the MBE/WBE subcontractor;
- H. Utilize Good Faith Efforts if soliciting a replacement subcontractor even if the Consultant has achieved its fair share objectives.



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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date indicated next to the authorized signatures of the officers of each of them as appear below.

**AGENCY**

Dated: \_\_\_\_\_

Redevelopment Agency of the City of San Bernardino, a public body, corporate and politic

By: \_\_\_\_\_  
\_\_\_\_\_, Executive Director

Approved as to Form and Legal Content:

By: \_\_\_\_\_  
Timothy Sabo, Agency Counsel

**CONSULTANT**

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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EXHIBIT "A"
SUPERVISORY STAFF PERSONNEL

Agency Staff: \_\_\_\_\_, Executive Director
\_\_\_\_\_, Deputy Director
\_\_\_\_\_, Project Manager

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EXHIBIT "B"
SCOPE OF SERVICES
(Draft Proposal Subject to Change)

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EXHIBIT "C"
INSURANCE REQUIREMENTS

The Consultant shall maintain insurance policies issued by an insurance company or companies authorized to do business in the State of California and that maintain during the term of the policy a "General Policyholders Rating" of at least A(v), as set forth in the then most current edition of "Bests Insurance Guide," as follows:

- (1) Comprehensive General Liability Insurance. The Contractor shall maintain comprehensive general liability insurance of not less than One Million Dollars (\$1,000,000.00) combined single limit, per occurrence.
(2) Automobile Insurance. The Consultant and each of its subcontractors shall maintain comprehensive automobile liability insurance of not less than One Hundred Thousand Dollars (\$100,000.00) combined single limit per occurrence for each vehicle leased or owned by the Consultant or its subcontractors and used in performing work under this Agreement.
(2) Worker's Compensation Insurance. The Consultant and each of its subcontractors shall maintain worker's compensation coverage in accordance with California workers' compensation laws for all workers under the Consultant's and/or subcontractor's employment performing work under this Agreement.
(3) Errors and Omissions Coverage. The Consultant shall maintain an insurance policy covering liability for errors and omissions of the Consultant in performing the Scope of Services of this Agreement in an amount of not less than One Million Dollars (\$1,000,000.00).

Concurrent with the execution of this Agreement and prior to the commencement of any work by the Consultant, the Consultant shall deliver to the Agency, copies of policies or certificates evidencing the existence of the insurance coverage required herein, which coverage shall remain in full force and effect continuously throughout the term of this Agreement. Each policy of insurance that Consultant purchases in satisfaction of the insurance requirements of this Agreement shall name the Agency as an additional insured and shall provide that the policy may not be cancelled, terminated, or modified, except upon thirty (30) days prior written notice to the Agency.