

City Council

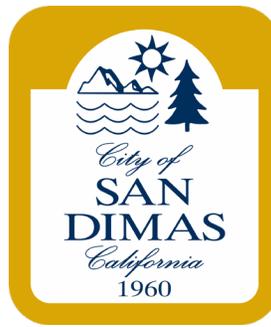
Emmett Badar, Mayor
Denis Bertone, Mayor Pro Tem
John Ebner
Ryan A. Vienna
Eric Weber

City Manager

Chris Constantin

Assistant City Manager

Brad McKinney



**Director of
Community Development**
Henry K. Noh

**Acting Director of
Parks and Recreation**
Brad McKinney

Director of Public Works
Shari Garwick

City Attorney
Jeff Malawy

**INITIAL STUDY / MITIGATED NEGATIVE DECLARATION REQUEST
FOR PROPOSAL (RFP) FOR PIONEER SQUARE**

Dear Proposers:

The City of San Dimas (hereinafter referred to as the “City”) is requesting proposals from a qualified public entity or private firm to prepare an Initial Study pursuant to the California Environmental Quality Act (CEQA) for a mixed-use project (multi-family, commercial and hotel). It is anticipated that the analysis will result in preparation of a Mitigated Negative Declaration

TENTATIVE SCHEDULE

- | | |
|-------------------------------------|-------------------------------|
| • Release of RFP | March 31, 2021 |
| • Proposal are due | April 20, 2021 at noon |
| • Selection of consultant | May 4, 2021 |
| • Contract negotiation and approval | May 4 - 7, 2021 |

PROPOSAL SUBMISSION

One electronic copy in pdf format of the proposal must be received no later than noon (12:00 pm) on Tuesday, April 20, 2021. Hard copies are not required.

Submit on USB Flash Drive or email to:

Marco A. Espinoza, Senior Planner
Development Services
City of San Dimas
245 E. Bonita Avenue
San Dimas, CA 91773
mespinoza@sandimasca.gov

CONTACT

Please direct any questions regarding this Request for Proposals to Marco A. Espinoza, Senior Planner (909) 394-6259.

PROJECT DESCRIPTION

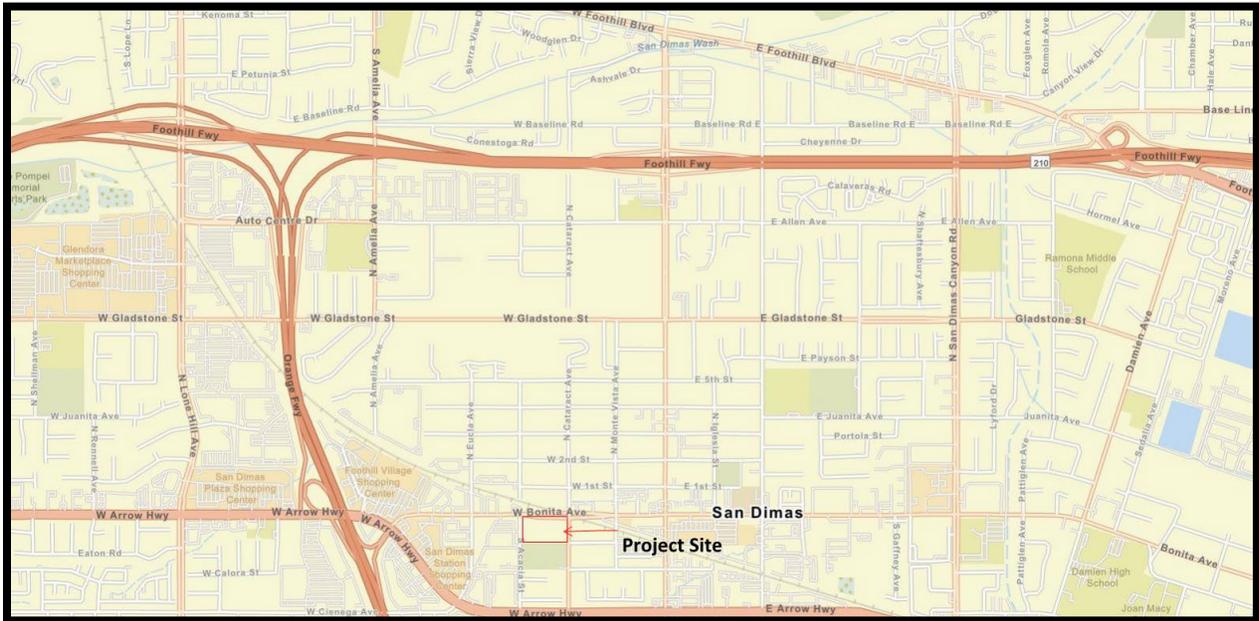
The City of San Dimas needs to evaluate the environmental impacts associated with a proposed multi-use project that includes a four-story boutique hotel with up to 80 rooms, 38,000 square feet of commercial, retail, office and restaurant space, 15,000 square feet of flexible office space, and up to 75 multi-family residential units.

The project site is approximately 4.68 acres comprised of two vacant lots. The primary lot is 4.42 acres and is located on the south side of Bonita Avenue between S. Cataract Avenue to the east and S. Acacia Street to the west (APN: 8386-021-913). The second lot is 0.26 acre comprised of two Assessor Parcel Numbers (8390-021-915 & -916) located just to the east of the primary lot facing South Cataract Avenue between West Bonita Avenue and West Railway Street as shown on the map below. The project site is within ¼ mile from the San Dimas Gold Line light rail station that is currently under construction and has an expected completion/operational date of mid-2025. The project site is located approximately one mile south of the 210 (Foothill) freeway and approximately one-half mile east of the 57 (Orange) freeway.

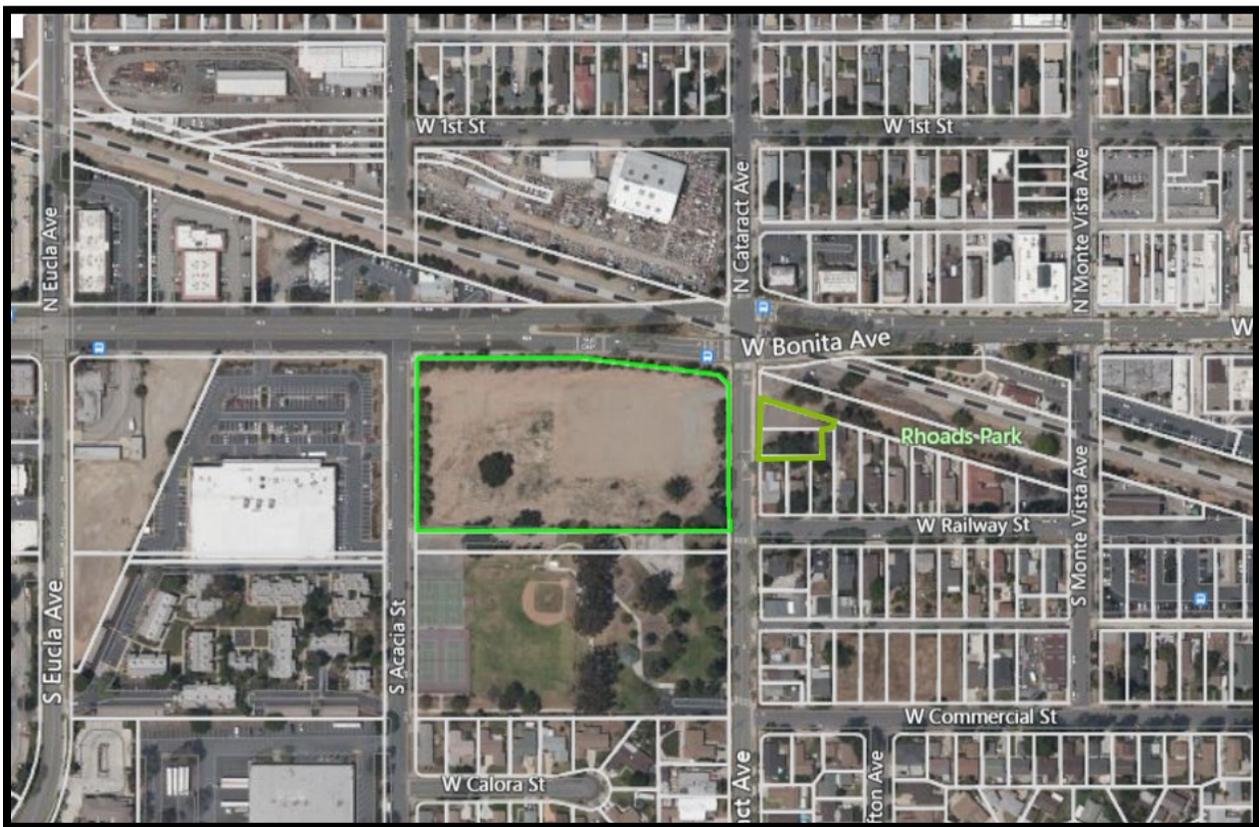
The site is currently owned by the San Dimas Successor Agency and the City has entered into an Exclusive Negotiation Agreement (ENA) with Pioneer Square, LLC for the development of the sites. The proposed development of the primary lot is for an 80-unit, four-story boutique hotel, 38,000 square feet of commercial, retail, office, and restaurants, 15,000 square feet of flex office space, and 75 multi-family residential units. A one-level subterranean parking lot with approximately 298 parking spaces is also proposed. All the uses will occupy several buildings that range from two-stories to four-stories and will be placed around a center pedestrian courtyard. The secondary lot is proposed for development of a 4,000 square foot single-story commercial building.

The project will require the following entitlement submittals:

1. General Plan Amendment (GPA) – from Commercial to Mixed-use;
2. Tentative Tract Map (TTM);
3. Municipal Code Text Amendment (MCTA) – to allow for mixed-use uses and establish the development standards within Creative Growth zone;
4. Development Plan Review (DPR) – review of the site layout, building architecture, and landscaping;
5. Tree Removal Permit (TRP) – a request to remove a number of the existing trees on site;
6. Master Sign Program – development of master sign program for the entire project, particularly the nonresidential components;
7. Development Agreement (DA) – agreement with the developer and the City for development of the sites; and
8. Environmental Review.



General Site Location



Aerial of subject sites highlighted in green.



Proposed project site plan.

OUTSTANDING ISSUES

- City will be working with the applicant to relocate existing storm drain that runs through the property to the public right-of-way under the adjoining streets.
- Potentially underground of existing Edison overhead lines.

SCOPE OF WORK

Proposals must address the following tasks to be completed by the consultant.

Task 1: Consultation with Staff

Consultant will attend a kick-off meeting with the applicants' project team and City staff to discuss the project and the proposed scope of work. Consultant will identify data needs, project objectives, and ensure that deliverables are consistent with the overall project timeline.

Deliverable:

- 1.1 Kick-off meeting

Task 2: Prepare 1st and 2nd screen check IS/MND

Consultant will prepare all required sections of the environmental report and the City will provide the Consultant any required information to complete the analysis. Additionally, the Consultant will be responsible for all the notices as listed below. If staff comments are extensive, a 2nd screen check IS/MND submittal may need to be provided. A 2nd screen check

document and review cycle should be budgeted in the case it is needed. Consultant will be responsible for the following:

- Preparing Notice of Intent
- AB 52 Consultation Notice
- SB 18 Consultation Notice
- Prepare and distribute notices to responsible agencies as well as to a City mailing list comprised of property owners and residents within 500 feet of the project (City to prepare the mailing list).
- Consultation with other agencies or tribes as requested by the agencies or applicant.

Deliverables:

- 2.1 Screen check IS/MND
- 2.2 Notice of Intent and required notification
- 2.3 AB52 Consultation Notice
- 2.4 SB 18 Consultation Notice
- 2.5 Preparation and distribution of notice to agencies and property owners/residents within 500 feet of the project

Technical Studies

Provided by the City:

Phase 1 and Phase 2 studies.

The following environmental studies have not been performed and will be required as part of this proposal:

- a. Air Quality and Greenhouse Gas Analysis
- b. Geotechnical Report:
 - Infiltration Report
 - Drainage Report
- c. Biological Resources Assessment and Arboriculture Report
- d. Preliminary Water Quality Management Plan (WQMP)
- e. Hydrology Report / Low Impact Development (LID) Report
- f. Noise
- g. Traffic Impact Analysis – Potential impacts to the existing and proposed roadway system, bikeway network, and pedestrians. The analysis must utilize VMT models. Level of Service shall also be analyzed for safety and operational impacts. The City is requesting that the selected consultant retain Fehr and Peers to perform this study.
- h. Utilities/Service Systems – Potential impacts on the City’s current utilities and services including, but not limited to, wastewater and storm water treatment facilities as well as solid waste and landfill capacities.

The consultant will be responsible for reviewing and incorporating the technical studies provided and providing/conducting and additional studies as required to complete the environmental document. The consultant will perform any additional technical studies and

analyses as may be necessary to support preparation of the Initial Study and all related mitigation measures addressing significant impacts.

Deliverable:

- 2.6 Technical analyses/studies to be provided as part of the Initial Study and/or as appendices to the Initial Study

Task 3: Prepare Proof Check Draft IS/MND

Upon receipt of the City's and Subdivision/Environmental Committee on the screen check IS/MND. submittal, Consultant will make revisions and resubmit the document as a proof check IS/MND. A proof check IS/MND is the final print copy of the IS/MND before printing. No major comments on the document are anticipated from City staff at this level of review.

Deliverables:

- 3.1 Draft IS/MND
- 3.2 One electronic copy of the Draft IS/MND in pdf
- 3.3 One electronic copy in Microsoft Word

Task 4: Circulation of Draft IS/MND

The proof check document with any revisions requested by City staff will serve as the Draft IS/MND.

Deliverable:

- 4.1 Five hard copies, 25 USB Flash Drive's in pdf format, and one electronic copy in Microsoft Word format of the Initial Study, Mitigated Negative Declaration, and Draft Mitigation Monitoring Program

Task 5: Prepare Responses to Comments

Although not required by CEQA, the City's policy is to provide a thorough Response to Comments for the IS/MND. The Responses to Comments is expected to be detailed and comprehensive. Upon receipt of written comments on the Draft IS/MND, Consultant will review all comments. Consultant will prepare a written response to all comments. These responses will be provided as separate Responses to Comment document. Upon receipt of the City's comments, Consultant will finalize the response to comments. City staff will mail the prepared responses to the public agencies.

Deliverable:

- Responses to Comments
- One electronic copy of the responses in pdf
- One electronic copy in Microsoft Word

Task 6: Meeting Attendance as Needed

In addition to the kick-off meeting, the proposal should budget for the following meetings:

- Planning Commission public hearings (two meetings, if required)
- City Council public hearing (two meetings, if required)

Task 7: Prepare and File Notice of Determination

File a Notice of Determination (NOD) within five (5) days of the project being approved with the Los Angeles County Clerk office and the State Clearinghouse and pay appropriate filing fees

Deliverables:

- 7.1 County Clerk Office Certified copy of NOD

PROPOSAL REQUIREMENTS

Proposals must include following:

1. Letter of transmittal, signed by an individual authorized to bind the consultant
2. General information about the consultant (e.g. size, location, years in business)
3. Identification of primary and alternate project managers (see “Assigned Representatives” section below for more information)
4. Qualifications of staff who will work on the project
5. Detailed description of the services to be provided, based on the tasks outlined above
6. Detailed project schedule showing beginning and end dates for each task and the overall project
7. Identification of any information or assistance required from City staff to accomplish each task, including any related timelines necessary to meet the project schedule
8. Description of the consultant’s approach to maintain communication with City staff
9. Discussion about any subcontractors the consultant proposes to use and, if so, information about the subcontractors related to items 2, 3, and 4 above
10. Compensation schedule including the following:
 - a. Cost for each task
 - b. Fee schedule including hourly rates for all key staff (and subcontractors if applicable)
 - c. List of all reimbursable costs aside from staff
11. Statement of any requested exceptions to the standard Agreement for Services (see “Agreement for Services” section below for more information)
12. Any additional information deemed appropriate by the consultant

SELECTION CRITERIA

City staff will evaluate each proposal received by the deadline based on the following criteria:

- Qualifications, background, and prior experience of the consultant
- Technical approach and understanding of the work to be performed
- Cost of services to be performed as compared with the level of effort to be expended
- Schedule for overall project and time required for each task

As part of the evaluation process, the City of San Dimas may conduct interviews with those consultants whose proposal and qualifications are deemed to most closely match the requirements of the RFP. Alternatively, the City may elect not to conduct interviews and to select a consultant based solely upon the strength of the written proposal. If the City elects

to hold interviews, additional information about the interview process will be sent separately to those consultants selected for an interview.

The City will negotiate a contract with the most qualified firm with compensation that the City determines is fair and reasonable based upon the scope of work. Fee proposals from competing consultants may be used to assist City staff in determining a fair and reasonable compensation.

RIGHTS TO PROPOSALS

All proposals, upon submission to the City of San Dimas, shall become the City's property for its use as deemed appropriate. By submitting a proposal, the consultant covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. Nothing contained in this RFP shall create any contractual relationship between the consultant and the City of San Dimas. The City accepts no financial responsibility for costs incurred by any consultant in responding to this RFP. The City of San Dimas has the following prerogatives with regard to proposals submitted:

- To accept or reject any or all proposals
- To award all or part of the project at its discretion
- To adopt any or all parts of a proposal
- To utilize any or all ideas from proposals submitted
- To request additional information for the purposes of clarification
- To correct any arithmetic errors in any or all proposals submitted
- To change the deadline for submitting proposals upon appropriate notification to all consultants receiving the RFP
- To accept or negotiate any modifications to the scope and fee of any proposal following the deadline for receipt of all proposals and prior to contract award
- To waive any irregularity or any non-conformity of proposals with this RFP, whether of a technical or substantive nature

DISCLOSURE OF CONTENTS

All proposals accepted by the City shall become a matter of public record and shall be regarded as public, with the exception of those elements of each proposal that are identified by the consultant as business or trade secrets and plainly marked as "trade secret," "confidential," or "proprietary." Each element of a proposal that the consultant desires not to be considered a public record must be clearly marked. Any blanket statement (i.e. regarding entire pages, documents, or other non-specific designations) shall not be sufficient and shall not bind the City in any way whatsoever. If disclosure is required under the California Public Records Act or otherwise by law (despite the consultant's request for confidentiality), the City shall not in any way be liable or responsible for the disclosure of any such records or part thereof.

PROTESTS

1. Protest Contents: Proposer may protest a contract award if the Proposer believes that the award was inconsistent with City policy or this RFP is not in compliance with law. A protest must be filed in writing with the City (email is not acceptable) within five (5) business days after receipt of notification of the Contract award. Any protest submitted after 5:00 p.m. of the fifth business day after notification of the Contract award will be rejected by the City as invalid and the Proposer's failure to timely file a protest will waive the Proposer's right to protest the Contract award. The Proposer's protest must include supporting documentation, legal authorities in support of the grounds for the protest and the name, address and telephone number of the person representing the Proposer for purposes of the protest. Any matters not set forth in the protest shall be deemed waived.
2. City Review: The City Manager or designee will review and evaluate the basis of the protest provided the protest is filed in strict conformity with the foregoing. The City shall provide the Proposer submitting the protest with a written statement concurring with or denying the protest. Action by the City relative to the protest will be final and not subject to appeal or reconsideration. The procedure and time limits set forth in this Section are mandatory and are the Proposer's sole and exclusive remedy in the event of protest. Failure to comply with these procedures will constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

AGREEMENT FOR SERVICES

The consultant will enter into an Agreement for Services with the City of San Dimas based upon the contents of the RFP and the consultant's proposal (See Attachment 1 – Professional Services Agreement).

INSURANCE REQUIREMENTS

Prior to executing an Agreement for Services, the consultant will be required to provide to the City proof of the required insurance. Consultants are encouraged to contact their insurance carriers during the proposal stage to ensure that the insurance requirements can be met if selected. See section under INSURANCE for specific requirements.

CITY BUSINESS LICENSE

A City of San Dimas business license will be required for the consultant and any subcontractors.

ASSIGNED REPRESENTATIVES

The City will assign a responsible representative to administer the contract, and to assist the consultant in obtaining information. The consultant also shall assign a responsible representative (project manager) and an alternate, who shall be identified in the proposal. The consultant's representative will remain in responsible charge of the consultant's duties from the notice to proceed through project completion.

If the consultant's primary representative should be unable to continue with the project, then the alternate representative identified in the proposal shall become the project

manager. The City's representative shall first approve any substitution of representatives or subcontractors identified in the proposal in writing. The City reserves the right to review and approve/disapprove all key staff and subcontractor substitution or removal, and may consider such changes not approved to be a breach of contract.

TERMS AND CONDITIONS:

A. SIGNED SUBMISSION OF PROPOSALS

The supplier with his/her usual signature must sign the submission of proposals in longhand. Submission of proposals by partnerships must be signed with the partnership name by the principal partner, followed by the signature and designation of the partner signing; submission of proposals by corporations must be signed with legal name of the corporation of president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall be typed or printed below the signature.

B. LATE SUBMISSION OF PROPOSALS

Any submission of proposals received after the due date and time specified in this RFP will not be considered.

C. WITHDRAWAL OF SUBMISSION OF PROPOSALS

Any service provider may withdraw his submission of proposals, either personally or by written or facsimile request at any time prior to the time set for the proposals opening, provided that written confirmation of any facsimile withdrawal of the signature of the service provider is placed in the mail and postmarked prior to the time set for the opening thereof. Negligence on the part of the service provider in preparing his/her submission of proposal confers no right of withdrawal or modification of his/her submission after such submission has been opened.

Attachment No. 1

**CITY OF SAN DIMAS
PROFESSIONAL SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made as of (Date) by and between the City of San Dimas, a municipal corporation (“City”) and (Consultant/Firm), a General Partnership consulting firm, with its place of business at _____ (“Consultant”).

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

2.2 Services

City desires to engage Consultant to provide such professional consulting services for administering the City’s “_____” project.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional services. The Services are more particularly described in “Exhibit “A” RFP/Consultant’s Proposal” attached hereto and incorporated herein by reference. References therein to “Consultant/Firm” shall mean and refer to Consultant. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 General Terms and Conditions. In the event of any inconsistency between the provisions of this Agreement and Consultant’s proposal, the provisions of this Agreement shall control.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services or a threat to the safety of persons or property, shall be promptly removed from the Services by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: _____.

3.2.5 City's Representative. The City hereby designates, Chris Constantin, City Manager or his designee Henry Noh, Director of Community Development to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or designee.

3.2.6 Consultant's Representative. Consultant hereby designates _____, Managing Principal, or his designee, to act as its representative for the performance of this Agreement ("Consultant's Representative").

Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times. Consultant shall perform the services identified in the Exhibit A: Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of \$_____ unless specifically approved in advance and in writing by City. Consultant shall notify the City Representative, in writing, when fees and expenses incurred under this Agreement have reached 80% of the maximum amount payable. Consultant shall concurrently inform the City Representative of Consultant's estimate of total expenditures required to complete is current assignments before proceeding, when the remaining work would exceed the maximum amount payable.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner and to the highest professional standards of Consultant's profession, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement.

As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Services by the Consultant and shall not be re-employed to perform any of the Services or to work on the Services. Consultant shall be liable and accountable for any and all payments or other compensation to all sub-consultants performing

services under this Agreement. City shall not be liable for any payment or other compensation for any sub-consultants.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Services, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code Section 1090, and the Political Reform Act (Government Code Section 8100 *et seq*), and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. No change shall be made in Consultant's project administrator without City's prior written consent.

3.2.11 This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.

3.2.12 Consultant shall notify the City Representative, in writing, of any change in name, ownership or control of Consultant's firm or sub-consultant. Change of ownership or control of Consultant's firm may require an amendment to the Agreement.

3.2.13 This Agreement is subject to prevailing wage law, for all work performed under the Agreement for which the payment of prevailing wages is required under the California Labor Code. In particular, Consultant acknowledges that prevailing wage determinations are available for the performance of inspection and survey work.

3.3 Insurance.

3.3.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.3.2 Minimum Requirements. Consultant shall, at its expense, procure, maintain and keep in full force for the duration of the Agreement insurance against claims for death or injuries to

persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) General Liability: of no less than \$1,000,000 per occurrence for bodily injury, personal injury and broad form property damage, also including products and operations hazard, contractual insurance, independent consultants, underground hazard, and explosion and collapse hazard where applicable. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: \$1,000,000 per accident for bodily injury and \$1,000,000 for property damage; and (3) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.3.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability.

3.3.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way. (3) Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Consultant's expense.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers. (3) Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to main written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

3.3.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

3.3.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.3.7 Acceptability of Insurers. Insurance is to be placed with insurers admitted in the State of California with a current A.M. Best's rating no less than A: VIII, licensed to do business in California, and satisfactory to the City.

3.3.8 Procurements of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under this Agreement.

3.3.9 Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under the Agreement.

3.3.10 Consultant may be self-insured under the terms of this Agreement only with express written approval from the City. (i) All self-insured retentions (SIR) must be disclosed to the City for approval and shall not reduce the limits of liability (ii) Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the name insured or the City.

3.3.11 Verification of Coverage. At all times during the term of this Agreement, Consultant shall maintain on file and furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies and endorsements, at any time. Failure to exercise this right shall not constitute a waiver of right to exercise later.

3.3.12 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.4 Fees and Payments.

3.4.1 Services Compensation. City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees in full satisfaction for such services, payment in accordance with the Proposed Project Budget set forth in Exhibit A – Cost Estimate.

3.4.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant pursuant to this Agreement. The statement shall describe the amount of Services and supplies provided

since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.4.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.5 Accounting Records.

3.5.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement upon oral or written request of City. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement.

3.6 General Provisions.

3.6.1 Termination of Agreement.

3.6.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.6.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished City Documents and Data (as defined below) and other information of any kind prepared by Consultant in connection with the performance of Services shall be returned to City under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.6.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CONSULTANT:

Attn:

With a copy to:

CITY:

City of San Dimas

245 E. Bonita Avenue

San Dimas, CA 91773

Attn: _____

Such notice shall be deemed made when personally delivered or when mailed, 48 hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.3 Ownership of Materials.

3.6.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be restricted or limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.6.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement. (i) If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action. (ii) Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. 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 represent that it is, or that any of its agents or employees are, in any manner employees of City.

3.6.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.6.6 Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents (the "Indemnitees") free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, to the extent arising out of or incident to any alleged negligent acts, errors, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services of this Agreement, including without limitation the payment of all consequential damages and reasonable attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all reasonable legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents or volunteers. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 3.6.6 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.

3.6.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Los Angeles County.

3.6.8 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.6.9 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.6.10 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or sub-consultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.11 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, creed, national origin, handicap as defined by law, ancestry, sex (including pregnancy, childbirth, or related medical condition), disabled veteran status, Vietnam veteran status, medical condition (cancer-related), marital status, sexual orientation, gender identity, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training, Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.6.12 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.6.13 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.13.1 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[signatures on next page]

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”

CITY OF SAN DIMAS

Chris Constantin
City Manager

Date: _____

Attest:

Debra Black
City Clerk

Date:

Approved as to Form:

Aleshire & Wynder, LLP

City Attorney

Date:

“Consultant”

Name:
Title:

Date: _____