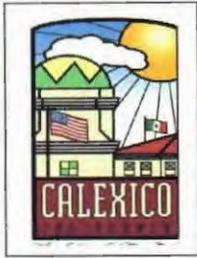


AGENDA
ITEM

20



AGENDA STAFF REPORT

DATE: September 4, 2019

TO: Mayor and City Council

APPROVED BY: David Dale, City Manager 

PREPARED BY: David Dale, City Manager

SUBJECT: Approval of Consulting Agreement with Dotek, LLC for Planning Services

=====

Recommendation:

Approve a Consulting Agreement with Dotek, LLC for Planning Services.

Background/Discussion:

The City of Calexico has been advertising for Planning and Building Services Director since a reorganization of the Planning and Building Department was approved by Council on November 14, 2018. To date, the City has not been able to attract a qualified individual to take the position. Therefore, City Administration reached out to qualified firms to provide the needed planning services. The term of the contract is from July 1, 2019 through June 30, 2020. The contract allows for up to 25 hours per week, and a total of 750 hours. It requires the consultant to have and keep commercial general liability insurance, automobile insurance, professional liability insurance, and worker's compensation insurance (if applicable).

Fiscal Impact:

\$60,000 this fiscal year for planning consulting services.

Coordinated with:

City Attorney.

Attachments:

1. Proposed Agreement



PLANNING & BUILDING CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (hereinafter "Agreement") made this 1st day of July 2019, by and between the CITY OF CALEXICO (hereinafter "City"), a municipal corporation, and **DOTEK, LLC** (hereinafter "Consultant"), a Limited Liability Company. City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

RECITALS

- A. Consultant desires to perform and assume responsibility for the provision of certain professional planning services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that he is qualified and experienced in providing such services, is licensed in the State of California to the extent required and is familiar with the plans of the City.

- B. The City desires to engage Consultant to provide the following services: Professional planning advice, consultation, and any other assistance otherwise necessary in order to aid the City in the initiation and furtherance of Planning & Building Development Projects ("Services") at the discretion of the City Manager. These Services are to be rendered over a twelve (12) month period.

ARTICLE 1. TERM OF AGREEMENT.

This Agreement will become effective as of the date first set forth above and will continue in effect until the 30th of June 2020, unless terminated earlier pursuant to the terms of Article 4 of this Agreement.

ARTICLE 2. RELATIONSHIP.

Section 2.01 Independent Contractor. It is the express intention of the Parties that Consultant be an independent contractor and not an employee, agent, joint venture, or partner of the City. Nothing in this agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Consultant and the City or any employee or agent of the City. Both Parties acknowledge that Consultant is not an employee for state or federal tax purposes or any other purpose. Consultant shall retain the right to perform services for others during the term of this Agreement.

Section 2.02 Payment of Income Taxes. Consultant is responsible for paying all income taxes, including estimated taxes, incurred as a result of the compensation paid by the City to Consultant for Services under this Agreement. On request, Consultant will provide the City with proof of timely payment. Consultant agrees to indemnify the City for any claims, costs, losses, fees, penalties, interest, or damages suffered by the City resulting from Consultant's failure to comply with this provision.

Section 2.03 Time and Place of Performing Work. Consultant will perform the Services under this Agreement at Calexico City Hall, or at the Consultant's office as directed by the City Manager.

Section 2.04 Workers' Compensation and Unemployment Benefits. Consultant agrees to provide (if necessary) workers' compensation insurance, unemployment benefits contributions and all other legally-required employment-related taxes, premiums or fees for Consultant's employees and agents. Consultant further agrees to hold harmless and indemnify the City for any and all claims by Consultant's employees or agents or because of work performed for the ultimate benefit of the City pursuant to this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONSULTANT.

Section 3.01 Performance of Services.

- a. Consultant shall perform the Services on a weekly basis, but such performance shall not exceed twenty-five (25) hours per week, unless prior authorization is obtained from the City Manager. At no time during the term of this Agreement shall Consultant's total hours worked exceed seven hundred fifty (750).
- b. Consultant agrees that the City shall have the right to disclose the terms of Consultant's compensation at any time.

Section 3.02 Scope of Services.

- a. Consultant will not make any representation, enter into any covenants, contracts, or agreements on behalf of the City unless specifically authorized by the City Manager. Consultant shall not engage in any activities during the term of this Agreement that jeopardize the general welfare or interests of the City.
- b. Consultant represents and warrants to the City that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of the City and will use his best efforts, skills and abilities to perform the Services. Consultant, in his sole discretion, will determine the method, details and means of performing the Services. Consultant has complied, or will comply, with all federal, state and local laws requiring business permits, certificates or licenses required to carry out the Services. Consultant may, at Consultant's own expense, engage those personnel, assistants or subcontractors (collectively, "Assistants") as Consultant reasonably deems necessary to perform the Services. Unless retained by City, in writing, any Assistants shall be, and shall remain, agents, employees or contractors of Consultant, and not of the City. Consultant assumes full and sole responsibility for the payment of all compensation and other expenses attributable to the Assistants, including all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings. Prior to engaging the services of any Assistants for the Services, Consultant shall require them to contractually agree, in writing, to abide by the provisions contained in Article 6 of this Agreement. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government.
- c. This Agreement is non-exclusive and Consultant shall dedicate such time as may be required to perform the Services. Consultant has obtained such authorizations and approvals as may be necessary to avoid conflict with any of Consultant's other employers or clients.

ARTICLE 4. TERMINATION OF AGREEMENT.

Section 4.01 Termination by City. City has the right to terminate or abandon any portion or all of the work under this Agreement at any time and without cause by giving written notice to Consultant at least ten (10) days prior to the end of the month. In such case, the termination of services shall take effect upon completion of the month. In such event, City shall be immediately given title and possession to all documents produced in furtherance of the performance of Services under this Agreement, including correspondence, original field notes, drawings and specifications, written reports and all other documents related to the performance of Services under this Agreement. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. Upon payment of the amount required to be paid to Consultant, City shall have the rights, as provided in this Agreement, to use all documents prepared by or on behalf of Consultant under this Agreement, including correspondence, original field notes, drawings and specifications, written reports, plans and all other documents related to the performance of Services under this Agreement. Consultant shall not be entitled to payment for unperformed Services and shall not be entitled to damages or compensation for termination of work.

Section 4.02 Termination by Consultant. Consultant may terminate his obligation to provide further Services under this Agreement by giving written notice to the City at least ten (10) days prior to the end of the month. In such case, the termination of Services shall take effect upon completion of the month.

Section 4.03 Termination on Occurrence of Stated Events. This Agreement will terminate automatically, upon written notification to the Consultant, on the occurrence of any of the following events:

- a) Bankruptcy or insolvency of Consultant.
- b) Death of Consultant.
- c) Assignment of this Agreement by either Party without the consent of the other Party.
- d) The amount of total compensation paid to Consultant for performance of Services under this Agreement reaches or exceeds sixty thousand dollars (\$60,000).
- e) The number of total hours worked under this Agreement by Consultant reaches or exceeds seven hundred fifty (750).

Upon termination for any of the first three stated events, Consultant shall be paid for those Services adequately rendered to City.

Section 4.04 Termination for General Failure to Perform to Industry Standards. Termination may also occur should the performance of duties of Consultant fall below the community or industry standards typically associated with the competent professional conduct in the Consultant's areas of service. Should the City seek to terminate the Agreement pursuant to this section a notice shall be provided in writing; shall not be issued unreasonably; and shall provide a detailed description of the performance that is deemed substandard comparing it to a description of the specific performance criteria that constitute performance at the standard.

Upon such 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.

Section 4.05 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.

ARTICLE 5. COMPENSATION AND PAYMENT.

Section 5.01 Payment of Fees. In consideration of the Services to be performed by Consultant, the City agrees to pay Consultant at an hourly rate of eighty dollars (\$80.00). However, under no circumstances shall the total compensation paid to Consultant for the Services performed under this Agreement exceed sixty thousand dollars (\$60,000.00); provided, however, the City may, at its sole and absolute discretion, make additional exceptional payments. In the event of termination pursuant to Article 4 of this Agreement, the City's obligations pursuant to this paragraph shall cease and be of no further force or effect. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

Section 5.02 Expenses. Consultant shall be solely responsible for all costs and expenses incurred by Consultant in connection with the performance of the Services.

Section 5.03 Adequate Compensation. Consultant acknowledges and agrees that the compensation described in this Article 5 is adequate and appropriate consideration for the performance of the Services and is accepted by Consultant in full and complete satisfaction and discharge of any and all monetary and non-monetary obligations owed to Consultant by the City or any affiliate of the City.

ARTICLE 6. INTELLECTUAL PROPERTY RIGHTS.

Section 6.01 Ownership of Records. All reports, information, data, or other material given to, prepared by or assembled by the Consultant as part of the work or Services under these specifications ("Documents and Data") shall be the property of the City. Consultant shall not disclose those Documents or Data to any other individual or organization without the prior written approval of the City. Consultant represents and warrants that Consultant has the legal right to grant City permission to use any and all Documents & Data. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

Section 6.02 Survival; Remedies. The provisions of this Article 6 shall survive the termination of this Agreement for any reason whatsoever. In addition to any other rights or remedies that the City may be entitled to pursue, the City shall be entitled to seek an injunction or other equitable relief in the event of an actual or threatened breach of the obligations required of Consultant under this Article 6.

ARTICLE 7. INDEMNIFICATION.

To the fullest extent permitted by law, Consultant shall defend (with counsel reasonably approved by the City), indemnify and hold the City, its city council, members of the city council, department heads, officers, directors, employees, and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, his employees, subcontractors, consultants or agents in connection with the performance of Consultant's Services or this Agreement, including without limitation the payment of all damages, expert witness fees and attorneys' fees and other related costs and expenses, including but not limited to legal costs and expenses incurred by the City, its city council, members of the city council, department heads, officers, directors, employees, and authorized volunteers in connection with any Claim 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 city council, members of the city council, department heads, officers, directors, employees, and authorized volunteers. The obligation to indemnify and defend City as set forth herein is binding on the successors, assigns, or heirs of Consultant and shall survive the termination of this Agreement or this Article.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

By execution of this Agreement, Consultant acknowledges and agrees that he has read and understands the provisions hereof and that this paragraph is a material element of consideration. If any part of this Indemnification is found to conflict with applicable laws, such part shall be unenforceable only insofar as it conflicts with said laws, and that this Indemnification shall be judicially interpreted and rewritten to be legally binding upon Consultant.

The provisions of this Article 7 shall survive the completion of the Services and the termination of this Agreement.

ARTICLE 8. INSURANCE.

Consultant shall not commence work for the City until it has provided evidence satisfactory to the City 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 secured all insurance required under this Article.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

- (ii) Defense costs shall be payable in addition to the limits.
- (iii) Requirements of specific coverage or limits contained in this Article are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

- (i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.
- (ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.
- (iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.
- (iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

ARTICLE 9. Notices. All notices and other communication required, or permitted to be

given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Services. Notice shall be given to:

City:
City of Calexico 608
Heber Avenue
Calexico, CA 92231 Attn:
City Manager

Consultant:
Dotek LLC
731 Rockwood Avenue
Calexico, CA 92231

Section 9.02 Entire Agreement. This Agreement, together with its exhibits, shall constitute the entire understanding and final written integrated expression of all of the agreements between the City and Consultant with respect to the Services and other subjects addressed herein. This Agreement, and its exhibits, supersede all prior or contemporaneous, written or oral, memoranda, arrangements, contracts or understandings between the Parties hereto relating to such matters.

Section 9.03 Partial Invalidity. If any provision in this Agreement is held by a governmental authority or court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will nevertheless continue in full force and effect without being impaired or invalidated in any way.

Section 9.04 Assignment and Binding Effect. Because the Services to be performed by Consultant may be unique in nature, Consultant shall not be permitted to make a complete delegation or transfer his duties hereunder unless Consultant both remains primarily liable for the performance of this Agreement and obtains the prior written consent of the City. This Agreement shall be binding upon and enforceable against the Parties hereto and their respective successors, successors-in-interest, transferees, assigns, administrators and legal representatives.

Section 9.05 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to principles relating to conflicts of law.

Section 9.06 Modifications. No modification, supplement, or amendment of this Agreement, regardless of materiality, shall be valid and binding unless executed in writing and signed by both Parties.

Section 9.07 Venue. Any legal action, suit, claim and/or proceeding arising out of or relating to this Agreement shall be instituted or brought solely and exclusively in any state or federal court located within the County of Imperial, State of California, and each Party agrees not to assert,

by way of motion, as a defense, or otherwise, in any such action, suit or proceeding, any claim that such party is not subject personally to the jurisdiction of such court in an inconvenient forum, that the venue of the action, suit or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court. Each Party further irrevocably submits to the jurisdiction of any such court in any such action, suit or proceeding.

Section 9.08 Attorneys' Fees. If any action or other proceeding shall be commenced to enforce this Agreement, the substantially prevailing party in such action or proceeding shall be entitled to recover from the other Party reasonable attorneys' fees, costs and out-of-pocket expenses incurred by such prevailing party in connection with such action or proceeding.

Section 9.09 Authority of Signatory. Each signatory represents that he/it is fully authorized to enter into this Agreement and bind the party on whose behalf the signature is proffered.

Section 9.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall be considered one and the same agreement.

Section 9.11 Representation by Counsel. The Parties hereto acknowledge that they have been represented by and have relied upon counsel of their own choosing in the negotiations for the preparation of this Agreement, that they have read this Agreement, have had its contents fully explained to them by such counsel, or have voluntarily chosen to forego advice and explanation of counsel, and are fully aware of and understand all of its terms and the legal consequences thereof. It is agreed that no provision hereof shall be construed against any Party hereto by virtue of the activities of that Party or that Party's attorneys.

Section 9.12 Public Records Act. Consultant understands that the City is subject to the California Public Records Act ("CPRA") and that, although the CPRA recognizes that certain confidential information may be protected from disclosure under certain circumstances, the City may not be in a position to establish that any or all of purportedly confidential information is exempt from disclosure under the CPRA. If Consultant claims or intends to claim that any document provided by Consultant to the City contains confidential information of any kind or nature, including, for example and without limitation, trade secret or proprietary information, Consultant shall stamp "Confidential" on each such document that it delivers to the City. If a third-party makes a request to inspect or copy any information claimed by Consultant to be confidential, City shall have no duty to oppose the request other than to provide Consultant with reasonable notice to allow Consultant to seek protection from disclosure by a court of competent jurisdiction, and shall in no event be liable to Consultant for damages of any kind or nature arising from or in connection with City's release of any information that Consultant has provided to City in connection with this Agreement pursuant to a CPRA request or as otherwise required by law.

Section 9.13 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

Section 9.14 Maintenance of Records. Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the Agreement for inspection by City.

Section 9.15 Other Consultants. City reserves its right to employ other consultants, including engineers, in connection with this Agreement or other projects.

Section 9.16 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. 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 director, official, 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective on the date first written above.

CONSULTANT

CITY

By: _____

By: _____

Dotek, LLC

David Dale, City Manager

Date: _____

Date: _____

ATTEST:

Gabriela Garcia, City Clerk