

CITY OF POMONA

PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into on June 1, 2020, by and between the City of Pomona, a California charter city and municipal corporation, organized under the laws of the State of California, with its principal place of business at 505 South Garey Avenue, Pomona, California 91766 ("City") and HR Green Pacific, Inc., a state of incorporation, with its principal place of business at 1260 Corona Point Court, Suite 305 Corona, CA 92879 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of professional on-call Engineering Plan Check consulting services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it has the knowledge and skill to provide professional on-call Engineering Plan Check consulting services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional on-call Engineering Plan Check as set forth in this Agreement.

3. TERMS. 3 Year, 2 Optional - 1 Year Extensions

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 and services. The services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. 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 Term. The term of this Agreement shall be from June 1, 2020 to May 31, 2023, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. 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. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents. 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, and in accordance with the Fee Schedule set forth in Exhibit "B" attached hereto and incorporated herein by reference. 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 following the City's review. 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 are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: George A. Wentz, Vice President.

3.2.5 City's Representative. The City hereby designates Ron Chan, Senior Civil Engineer, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all Consultant Services but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.2.6 Consultant's Representative. Consultant hereby designates George A. Wentz, Vice President, or his/her 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/her 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.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards ordinarily exercised by professionals currently practicing at the same time and 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 represents that all employees and subconsultants shall have sufficient skill and knowledge to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, 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 subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner consistent with professional standards of care shall be promptly removed from the Project by the Consultant at the request of the City and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Period of Performance Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones").

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3.2.10 Laws and Regulations; Employee/Labor Certification. 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 Project or the Services, including all Cal/OSHA requirements, 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 Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall, indemnify and hold City, its officials, directors, officers, employees, agents and volunteers 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.

3.2.10.1 Employment Eligibility; Consultant. By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Consultant. Consultant also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Consultant shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Consultant shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Consultant's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Consultants, Sub-subcontractors and Subconsultants. To the same extent and under the same conditions as Consultant, Consultant shall require all of its subcontractors, consultants, sub-subcontractors and subconsultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Consultant verifies that they are a duly authorized officer of Consultant, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Consultant or its subcontractors, consultants, sub-subcontractors or subconsultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Consultant under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex 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. 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.

3.2.10.5 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are morebroad, Consultant shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel- powered engine. Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its sub-consultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.6 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, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries.

3.2.11 Insurance.

3.2.11.1 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 subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.2.11.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance:

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined single limit for each accident.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than \$1,000,000 per claim. Covered professional services shall specifically include all work to be performed under this Agreement and by consultant. If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

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

(A) Commercial General Liability (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability. (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) Professional Liability (Errors & Omissions): (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

(D) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

3.2.11.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.11.5 Waiver of Subrogation. 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.

3.2.11.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.11.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.11.8 Acceptability of Insurers. 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 authorized to transact 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.

3.2.11.9 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.2.11.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.2.11.11 Additional Insurance Provisions

(A) 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.

(B) 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.

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

(D) 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.

(E) 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.

(F) Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.11.12 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional

insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

3.2.12 Water Quality Management and Compliance.

3.2.12.1 Storm Water Management. Storm, surface, nuisance, or other waters may be encountered at various times during the Services. Consultant hereby acknowledges that it has investigated the risk arising from such waters.

3.2.12.2 Compliance with Water Quality Laws, Ordinances and Regulations. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

3.2.12.3 Standard of Care. Consultant represents that all employees and subcontractors shall have sufficient skill and knowledge to perform the work assigned to them without violating the laws, regulations and policies described in Section 3.2.12.2 of this Agreement. Consultant further represents that it, its employees and subcontractors have or will receive adequate training, regarding these requirements as they may relate to the Services.

3.2.12.4 Liability for Non-compliance.

(A) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Section 3.2.14.2 of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Consultant agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence,

willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(B) **Defense:** City reserves the right to defend any enforcement action or civil action brought against the City for Consultant's failure to comply with any applicable water quality law, regulation, or policy. Consultant hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(C) **Damages:** City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in Section 3.2.12.2 of this Agreement, or any other relevant water quality law, regulation, or policy.

3.3 Fees and Payments.

3.3.1 **Compensation.** Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation shall not exceed **one hundred thousand dollars (\$ 100,000)** without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 **Payment of Compensation.** Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.3.3 **Reimbursement for Expenses.** Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "B" of this Agreement.

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 Project, 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 the City.

3.3.5 **Rate Increases.** In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "B" may be adjusted each year at the time of renewal as set forth in Exhibit "B."

3.4 Labor Code Requirements.

3.4.1 **Prevailing Wages.** Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations,

Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over \$25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall indemnify and hold the City, its officials, officers, employees and agents free and harmless from any damage or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant.

3.4.3 Labor Certification. By its signature hereunder, Consultant represents 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.

3.5 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. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment 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 Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services 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: HR GREEN PACIFIC, INC.
1260 Corona Point Court, Suite 305
Corona, CA 92879
ATTN: George A. Wentz

City: City of Pomona
505 South Garey Ave.
Pomona, CA 91766
ATTN: Ron Chan

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (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 and Confidentiality.

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"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.6.3.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.6.3.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.6.3.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.6.3.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such

materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.6.3.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

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.

3.6.5 [Reserved]

3.6.6 Indemnification.

3.6.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subconsultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.6.6.2 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.

3.6.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.6.8 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Los Angeles County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.6.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

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

3.6.12 Assignment or Transfer. Neither party 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 other party. 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.

3.6.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.6.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.15 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.

3.6.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.6.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.18 Prohibited Interests. Consultant maintains and represents 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 represents 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 representation, 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.

3.6.19 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.

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

3.7 Subcontracting.

3.7.1 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]

SIGNATURE PAGE TO
PROFESSIONAL SERVICES AGREEMENT BY AND
BETWEEN THE CITY OF POMONA AND HR GREEN
PACIFIC, INC.

CITY OF POMONA

By: 
Rene Guerrero
Public work Director

HR GREEN PACIFIC, INC.

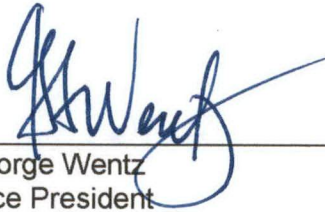
By: 
George Wentz
Vice President

EXHIBIT "A"

SCOPE OF SERVICES

Provide services for plan-checking of various development items, consisting of improvement plans (including, but not limited to rough grading, street, sewer, water, storm drain, on-site grading/paving, traffic signal, traffic striping/signage); subdivision maps (final tract maps and parcel maps); and professional studies (including, but not limited to hydrology/hydraulic, sewer, traffic, geotechnical, and water quality management plans).

Provide a thorough and complete initial plan-check using the highest professional standards. An initial plan-check shall be provided in conformance with the latest revision of: City of Pomona standards, civil engineering design guidelines appropriate for the type of work (Standard Specifications for Public Works Construction "Greenbook", State of California Standards and "Caltrans" Specifications, Caltrans Highway Design Manual, and various other design guidelines), as well as all relevant ordinances, resolutions, statutes, rules, and regulations of the City, and all other local, state or federal governmental agency having jurisdiction over the type and location of the development activity.

The selected Consultant shall be expected to review development items (plans, maps, or professional studies) in conformance with and in relation to the following related items:

- Adopted "Conditions of Approval"
- Approved Site Plans or Tentative Maps
- Planning Department comments / Planning Commission minutes, as relevant
- City of Pomona General Plan, Specific Corridor Plan, and Active Transportation Plan
- Applicable City of Pomona Specific Plans
- Title Report, Current Tax Bill or other property ownership verification
- Professional Studies (geotechnical, hydrology, sewer, traffic, etc.)
- Verification of issuance of a General Construction Activity Storm Water Permit, if required
- Grants or Vacations of Right-of-Way, as relevant
- Traverse, Lot and Tract Boundary Closures for final or parcel maps
- Reference maps, Assessor Maps, and other information related to final or parcel maps

In reviewing improvement plans; the selected Consultant shall ensure that all "Conditions of Approval" are met, such as: required frontage improvements (sidewalk/bikeway widths, color and treatment); required street pavement section and street design; minimum/maximum percentage slopes; ADA (Title 24) access requirements. The selected Consultant shall develop and establish Improvement Plan Check Sheets (guidelines) to ensure that minimum standards are met; and, shall ensure that the current General Notes are included on the first sheet of each plan set. The selected Consultant shall physically visit each development site, make a photo record of existing conditions, and ensure that improvements subject to plan-check review actually "fit" within the real world.

In reviewing final or parcel maps; the selected Consultant shall ensure that all "Conditions of Approval" are met, such as: required public and private right-of-way or easement dedications, right-of-way vacations, land transfers, conservation or public space easements, and drainage/public

utility easement dedications, as an example. The selected Consultant shall ensure that all final or parcel maps are technically correct and meet current local and state regulations. All applicable regulations identified in the Subdivision Map Act shall be reviewed, and compliance confirmed. It shall be the selected Consultant's responsibility to review the title report for subdivision guarantee and determine that the final or parcel map boundary is consistent with the description given in the title report; as well as ensure that the appropriate signatories and executors of the final or parcel map are consistent with the current vesting ownership indicated in the title report. The registered Land Surveyor (or appropriately licensed Civil Engineer) having responsible charge over the technical review of the final or parcel map will be required to provide a letter of approval, including the reviewer's professional stamp and signature, advising the City Engineer that the item is recommended for approval.

In reviewing Lot Line Adjustments and Parcel Mergers ("LLA's/PM's"), the selected Consultant shall coordinate all technical review of related documents, including: existing title reports, vesting deeds, deeds of trust, and legal descriptions/exhibits of existing parcels and adjusted/merged parcels. Initially, the selected Consultant shall review the City's current application documents and perform a survey of the review and approval process for LLA's/PM's to determine the appropriateness of the City's current process, to identify any deficiencies in the process, and prepare an improved LLA's/PM's application and review process. Fees for time required to review the LLA's/PM's application and review process shall be included in the plan-check service fees charged by the Consultant, and shall not be separately paid for outside of the plan-check process.

Upon completion of the first (initial) plan-check, the selected Consultant shall provide a complete and thorough itemized written list of plan-check comments for use by the developer's consultant in revising the initial plans, map or professional study. The Public Works Department shall expect the first plan-check comments to be of such detail and completeness so new plan-check comments on subsequent plan-check submittals are avoided, if at all possible, except when as a result of changes or modifications to the initial plans. The selected Consultant shall maintain its own plan-check files with copies of initial and subsequent drafts of plans or maps, plan-check comments from the initial and subsequent reviews, and relevant documentation and data. The selected Consultant shall scan all red-lined plans returned to the developer's consultant for correction as part of its plan-check file, and shall make the scanned plans available to the City upon request. A copy of all red-lined plans for each plan-check submittal shall be maintained in the file.

Special Note: Throughout the plan-check process, the selected Consultant shall be expected to be available to meet, as necessary, with the Public Works Department and/or the developer's consultant to discuss plan-check review comments. Fees for time required to meet with City staff or the developer's consultant shall be included in the plan-check service fees charged by the Consultant, and shall not be separately paid for outside of the plan-check process.

All plan-check services shall be performed by or under the responsible charge of a California licensed professional eligible to prepare and sign the type of map, plan, or professional study being reviewed. The Consultant shall submit an approval letter to the City Engineer stating that the subject development item (improvement plan, map or professional study) has been reviewed, all associated requirements (i.e. Conditions of Approval) have been satisfied, and the plan check item is recommend for approval by the selected Consultant.

Right of Way Services

In some cases, a land development application not involving a final or parcel map will require dedication of additional right-of-way associated with development of the site. In most cases the additional right-of-way to be dedicated coincides with a requirement to complete full half-width

ultimate street improvements across the frontage of the property in question. In limited cases, additional right-of-way is required to provide the full parkway width, without any additional street improvements required.

Generally, additional right-of-way dedications are limited to partial right-of-way "strips" and/or corner cut-back dedications. In limited cases, certain special easements may be required (i.e. public utility easements, drainage easements, sewer easements, or water easements). Right-of-way to be dedicated will be identified in the Conditions of Approval issued for the associated land development project.

The selected Consultant will be required to assist the City Engineer in the review and coordination of individual right-of-way dedications associated with land development projects. Right-of-way services, coordinated with plan-checking services associated with the subject property, will include:

- Verification of current fee title ownership
- Verification of existing right-of-way
- Verification of ultimate right-of-way (as required by City of Pomona General Plan and/or related Specific Plan)
- Review of legal descriptions and exhibits of required right-of-way dedication (as prepared by developer's consultant)
- Preparation of right-of-way dedication "Grant Deeds" (using City standard form)
- Coordination of required property owner signatures
- All project management and coordination; a "Right of Way File" shall be created and maintained for each right-of-way dedication; an indexing system shall be established and maintained to adequately track all right-of-way dedications

Related Services

Related services associated with private land development projects may be required, which may include providing entitlement services (coordination with the Planning Department, attendance at Economic Development Committee meetings, preparation of Conditions of Approval, etc.). Payment for related services will be made at an agreed price in accordance with the selected Consultant's approved hourly rates, or at a negotiated fixed price approved by the City Engineer.

Additional services may be required, such as "on-call" civil engineering design services for small-scale capital projects coordinated by the Public Works Department. Payment for "on-call" civil engineering design services will be made at an agreed price in accordance with the selected Consultant's approved hourly rates, or at a negotiated fixed price approved by the City Engineer.

Restriction on Sub-Contracting

The selected Consultant shall NOT subcontract or assign work to other consultants or firms unless identified in the Consultant's original proposal and approved by the City in award of the professional services agreement to the selected Consultant. Subsequent substitution of sub-consultants shall not be allowed unless otherwise specifically authorized by the City Engineer.

EXHIBIT "B"
FEE SCHEDULE

City of Pomona – Engineering Plan Check

FEES / RATE SCHEDULE

HR Green agrees to the fees as outlined in the RFP.

Hourly Rates

<u>Personnel Classification</u>	<u>Hourly Billing Rate</u>
Project Manager	\$ 180
Principal-in-Charge	\$ 215
QA/QC Manager	\$ 175
Senior Plan Check Engineer	\$ 180
Project Engineer	\$ 155
Civil Plan Checker	\$ 160
Associate / Assistant Engineer	\$ 135
Transportation Manager	\$ 140
Stormwater Manager / WQMP Reviewer	\$ 155
Technician / Project Administrator	\$ 75

Note:

1. Other disciplines are available based upon the needs of the City.
2. Hourly rates and charges shall remain fixed for the duration of the Master Agreement, unless otherwise negotiated and agreed to by the City of Pomona

Professional Reimbursement / Hourly and Overtime Rates: The hourly billing rates include the cost of salaries of the HR Green employees, plus sick leave, vacation, holiday and other fringe benefits. The percentage added to salary costs includes indirect overhead costs and fee (profit). All employees classified as "non-exempt" by the U.S. Department of Labor will be compensated at 1-1/2 times salary, as per state and Federal wage and hour for overtime hours. Billing rates will be calculated accordingly for overtime hours.

Reimbursable Expenses and Subconsultants: Reimbursement for direct expenses / subconsultants will be at cost plus 10% for items such as;

- a) Maps, photographs, reproductions, printing, equipment rental and special supplies related to the work.
- b) Subconsultants and other outside services, if needed.
- c) Specific telecommunications and delivery charges.
- d) Special fees, insurance, permits, and licenses applicable to do the work.
- e) Outside computer processing, computation, proprietary programs purchased for the work and other equipment.

CITY OF POMONA
FIRST AMENDMENT TO
AGREEMENT FOR PROFESSIONAL SERVICES

1. PARTIES AND DATE.

This First Amendment to the Agreement for Professional On-Call Engineering Plan Check Consulting Services ("First Amendment") is entered into on the 13th day of June 2021, by and between the City of Pomona (hereinafter referred to as the "City") and HR Green Pacific, Inc., (hereinafter referred to as the "CONSULTANT". City and CONSULTANT are sometimes collectively referred to herein as the "Parties."

2. RECITALS.

2.1 Agreement. The Parties entered into that certain Agreement for Professional On-call Engineering Plan Check Consulting Services dated June 1, 2020 ("Agreement").

2.2 First Amendment. The Parties now desire to amend Section 3.3.1 of the Agreement to reflect the word "annually" to section 3.3.1. as listed below:

Section 3.3.1 COMPENSATION of the contract "Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "b" attached hereto and incorporated herein by reference. The total compensation shall not exceed one hundred thousand dollars (\$100,000) annually without written approval of the City Council or City Manager as applicable. Extra work may be authorized, as described below and if authorized, will be compensated at the rates and manner set forth in this Agreement.

2.3 Remaining Provisions of Agreement. Except as otherwise specifically set forth in this First Amendment, the remaining provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Agreement on this 13th day of June 2021.

CITY OF POMONA

HR GREEN PACIFIC, INC

By: 

James Makshanoff
City Manager

By: 

George Wentz
Vice President

ATTEST:

By: 

City Clerk

7/20/21

APPROVED AS TO FORM:

By: 

Best Best & Krieger LLP
City Attorney

CITY OF POMONA

SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

This SECOND AMENDMENT to the Agreement for Professional On-Call Engineering Plan Check Consulting Services ("SECOND AMENDMENT") is entered into on the 1st day of June 2023, by and between the City of Pomona (the "CITY") and HR Green Pacific, Inc., ("CONSULTANT"), hereinafter referred to collectively as the "Parties."

RECITALS

Whereas, on June 1, 2020, the Parties entered into Agreement for Professional On-call Engineering Plan Check Consulting Services for an initial term of three years (the "AGREEMENT"), with two, one-year extension options of the AGREEMENT Term.

Whereas, the Agreement was for a term of 3 years, commencing June 1, 2020, to May 31, 2023.

Whereas, on July 1, 2021, the Parties entered into the First Amendment to the AGREEMENT in order to amend the compensation provisions of the AGREEMENT.

Whereas, the Parties now wish to enter into this SECOND AMENDMENT in order to extend the AGREEMENT through May 31, 2024, pursuant to City's first extension option as outlined in Section 3.1.2 of the AGREEMENT.

AMENDMENTS

1. Incorporation of Recitals. The recitals listed above are true and correct and are hereby incorporated herein by this reference.

2. Term. The term of the AGREEMENT shall be extended through May 31, 2024, unless earlier terminated.

3. No Other Changes. Except as amended by this SECOND AMENDMENT, all provisions of the AGREEMENT, as previously amended, shall remain in full force and effect and shall govern the actions of the Parties under this SECOND AMENDMENT.

4. Counterparts. A manually signed copy of this SECOND AMENDMENT which is transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this SECOND AMENDMENT for all purposes.

5. Severability. If any part of this SECOND AMENDMENT is held to be unlawful or void, all other parts of this SECOND AMENDMENT shall remain effective.

Now, therefore, the Parties hereto have executed this SECOND AMENDMENT as of the date set forth below:

CITY OF POMONA

HR GREEN PACIFIC, INC

By: _____

James Makshanoff
City Manager

By: _____

Timothy Hartnett
Vice President

Date: _____

June 22, 2023
Date: _____

ATTEST:

By: _____

Rosalia Butler, City Clerk

APPROVED AS TO FORM:

By: _____

Best Best & Krieger LLP
City Attorney

CONSENT RESOLUTION
OF THE BOARD OF DIRECTORS OF
HR GREEN PACIFIC, INC.

The following actions are taken by the Board of Directors of HR Green Pacific, Inc., a California Corporation, by written consent of the Board of Directors, without a meeting, pursuant to Section 307(b) of the California Corporations Code permitting such actions to be taken:

OFFICERS

RESOLVED, that the following persons be and they hereby are elected as officers of this corporation, each to serve at the pleasure of the Board of Directors until the next regular meeting of the Board of Directors (or written consent in lieu thereof) following the next annual meeting of the Shareholders of this corporation and until his or her successor is elected and qualified, or until his or her earlier resignation or removal:

President: Richard L. White

Chief Financial Officer/Treasurer: Michelle A. Byard

Secretary/Vice President: Jason J. Poppen

Officer in Charge of Engineering Practice as referred to in California Business and Professions Code Section 6738: Richard L. White

Responsible Managing Officer in charge of Contracting as referred to in California Business and Professions Code Section 7068: Richard L. White

Vice President:

Edward K. Barrett
Mohammad Akram Chaudhry
Jason S. Dohrmann
David R. Dougherty
Michael J. Halde
James E. Halverson
Timothy J. Hartnett
Ajay Jain
Ronald Krall
Andrew E. Marsh
David F. Maxwell
Andrew Mrowicki
Heath Picken
James R. Rasmussen
David L. Reitz
Stephen A. Sparks
Teresa H. Stadelmann
Phil L. Stuepfert
George A. Wentz
Stacy E. Woodson
Dawn R. Zahn

CITY OF POMONA

THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

This THIRD AMENDMENT to the Agreement for Professional On-Call Engineering Plan Check Consulting Services ("THIRD AMENDMENT") is entered into on the 1st day of June 2024, by and between the City of Pomona (the "CITY") and HR Green Pacific, Inc., ("CONSULTANT"), hereinafter referred to collectively as the "Parties."

RECITALS

Whereas, on June 1, 2020, the Parties entered into Agreement for Professional On-call Engineering Plan Check Consulting Services for an initial term of three years (the "AGREEMENT"), with two, one-year extension options of the AGREEMENT Term.

Whereas, the Agreement was for a term of 3 years, commencing June 1, 2020, to May 31, 2023.

Whereas, on July 1, 2021, the Parties entered into the First Amendment to the AGREEMENT in order to amend the compensation provisions of the AGREEMENT.

Whereas, the Parties entered into the SECOND AMENDMENT in order to extend the AGREEMENT through May 31, 2024, pursuant to City's first extension option as outlined in Section 3.1.2 of the AGREEMENT.

Whereas, the Parties now wish to enter into this THIRD AMENDMENT in order to extend the AGREEMENT through May 31, 2025, pursuant to City's second extension option as outlined in Section 3.1.2 of the AGREEMENT.

AMENDMENTS

1. **Incorporation of Recitals.** The recitals listed above are true and correct and are hereby incorporated herein by this reference.

2. **Term.** The term of the AGREEMENT shall be extended through May 31, 2025, unless earlier terminated.

3. **No Other Changes.** Except as amended by this THIRD AMENDMENT, all provisions of the AGREEMENT, as previously amended, shall remain in full force and effect and shall govern the actions of the Parties under this THIRD AMENDMENT.

4. **Counterparts.** A manually signed copy of this THIRD AMENDMENT which is transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this THIRD AMENDMENT for all purposes.

5. **Severability.** If any part of this THIRD AMENDMENT is held to be unlawful or void, all other parts of this THIRD AMENDMENT shall remain effective.

Now, therefore, the Parties hereto have executed this THIRD AMENDMENT as of the date set forth below:

CITY OF POMONA

HR GREEN PACIFIC, INC.

By: 

Anita D. Gutierrez
City Manager

By: 

Timothy Hartnett
Vice President

Date: 5/15/24

Vice President

PRINT:

May 14, 2024

DATE:

ATTEST:

By: 

Rosalia Butler, City Clerk

APPROVED AS TO FORM:

By: 

Best Best & Krieger LLP
City Attorney

CITY OF POMONA

FOURTH AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

This FOURTH AMENDMENT to the Agreement for Professional On-Call Engineering Plan Check Consulting Services ("FOURTH AMENDMENT") is entered into on the 1st day of September 2024, by and between the City of Pomona (the "CITY") and HR Green Pacific, Inc. ("CONSULTANT"), hereinafter referred to collectively as the "Parties."

RECITALS

Whereas, on June 1, 2020, the Parties entered into Agreement for Professional On-call Engineering Plan Check Consulting Services for an initial term of three years (the "AGREEMENT"), with two, one-year extension options of the AGREEMENT Term.

Whereas, the Agreement was for a term of 3 years, commencing June 1, 2020, to May 31, 2023.

Whereas, on July 1, 2021, the Parties entered into the First Amendment to the AGREEMENT in order to amend the compensation provisions of the AGREEMENT.

Whereas, on June 1, 2023, the Parties entered into the SECOND AMENDMENT in order to extend the AGREEMENT through May 31, 2024, pursuant to City's first extension option as outlined in Section 3.1.2 of the AGREEMENT.

Whereas, on June 1, 2024, the Parties entered into the THIRD AMENDMENT in order to extend the AGREEMENT through May 31, 2025, pursuant to City's second extension option as outlined in Section 3.1.2 of the AGREEMENT.

Whereas, the Parties now wish to enter into this FOURTH AMENDMENT in order to update the Fee Schedule to include a new Engineering Technician personnel classification as outlined in Fee Schedule (Exhibit "B") of the AGREEMENT.

AMENDMENTS

1. Incorporation of Recitals. The recitals listed above are true and correct and are hereby incorporated herein by this reference.

2. Fee Schedule (Exhibit "B"). The Fee Schedule (Exhibit "B") of the AGREEMENT shall include a new personnel classification of Engineering Technician with an hourly billing rate of \$115.00. Exhibit "B" of the Agreement shall be replaced in its entirety by Exhibit "B" attached hereto this FOURTH AMENDMENT and incorporated herein by this reference.

3. No Other Changes. Except as amended by this FOURTH AMENDMENT, all provisions of the AGREEMENT, as previously amended, shall remain in full force and effect and shall govern the actions of the Parties under this FOURTH AMENDMENT.

4. **Counterparts.** A manually signed copy of this FOURTH AMENDMENT which is transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this FOURTH AMENDMENT for all purposes.

5. **Severability.** If any part of this FOURTH AMENDMENT is held to be unlawful or void, all other parts of this FOURTH AMENDMENT shall remain effective.

Now, therefore, the Parties hereto have executed this FOURTH AMENDMENT as of the date set forth below:

CITY OF POMONA

HR GREEN PACIFIC, INC

By: 

Anita D. Gutierrez
City Manager

By: 

Timothy Harthett
Vice President

Date: 

November 4, 2024
Date:

ATTEST:

By: 

Rosalia Butler, City Clerk

11/14/24

APPROVED AS TO FORM:

By: 

Best Best & Krieger LLP
City Attorney

EXHIBIT "B"

FEE SCHEDULE

City of Pomona – Engineering Plan Check

FEES / RATE SCHEDULE

Hourly Rates

Personnel Classification	Hourly Billing Rate
Project Manager	\$ 180
Principal-in-Charge	\$ 215
QA/QC Manager	\$ 175
Senior Plan Check Engineer	\$ 180
Project Engineer	\$ 155
Civil Plan Checker	\$ 160
Associate / Assistant Engineer	\$ 135
Engineering Technician	\$ 115
Transportation Manager	\$ 140
Stormwater Manager / WQMP Reviewer	\$ 155
Technician / Project Administrator	\$ 75

Note:

- 1 Other disciplines are available based upon the needs of the City
- 2 Hourly rates and charges shall remain fixed for the duration of the Master Agreement, unless otherwise negotiated and agreed to by the City of Pomona

Professional Reimbursement / Hourly and Overtime Rates: The hourly billing rates include the cost of salaries of the HR Green employees, plus sick leave, vacation, holiday and other fringe benefits. The percentage added to salary costs includes indirect overhead costs and fee (profit). All employees classified as "non-exempt" by the U.S. Department of Labor will be compensated at 1-1/2 times salary, as per state and Federal wage and hour for overtime hours. Billing rates will be calculated accordingly for overtime hours.

Reimbursable Expenses and Subconsultants: Reimbursement for direct expenses / subconsultants will be at cost plus 10% for items such as:

- a) Maps, photographs, reproductions, printing, equipment rental and special supplies related to the work
- b) Subconsultants and other outside services, if needed
- c) Specific telecommunications and delivery charges
- d) Special fees, insurance, permits, and licenses applicable to do the work
- e) Outside computer processing, computation, proprietary programs purchased for the work and other equipment

Lugo, Patricia

From: Scott, Anita
Sent: Tuesday, November 5, 2024 4:29 PM
To: Anderson, Rene; Butler, Rosalia; Carvalho, Sonia {BBK Law}; Diggs, Chris; Donovanik, Betty; Ellis, Michael; Gluba, Mark; Guerrero, Rene; Scott, Anita; Johnson, Beverly; Mowbray, Andrew; Pelser, Kirk; Sosa-Nieves, Maritza; Wong, Sam
Cc: Marrufo, Beatrice; Montellano, Maura
Subject: Out of office 11/6 through 11/13 returning 11/14

Hello Team,

I will be out of the office tomorrow through next Wednesday. I plan to return on Thursday, November 14th, 2024. I will still be attending the community meeting with sidewalk vendors tomorrow evening. Mark has signature authority while I am out. Have wonderful Veteran's Day Weekend!!

Anita D. Gutierrez, Ed.D, AICP | City Manager
City of Pomona | 505 S. Garey Ave.
Pomona, CA 91769 | (909) 620-3773 | Work Cell (909) 322-8048
anita.gutierrez@pomonaca.gov



POMONA: *Vibrant, Safe, & Beautiful*

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