

**City of Garden Grove**

**INTER-DEPARTMENT MEMORANDUM**

To: Matthew J. Fertal	From: William E. Murray
Dept.: City Manager	Dept.: Public Works
Subject: APPROVAL OF AGREEMENTS WITH 1) GROUP DELTA CONSULTANTS 2) ASSOCIATED SOILS ENGINEERING AND 3) SMITH-EMERY LABORATORIES FOR ON-CALL GEOTECHNICAL SERVICES	
Date: November 11, 2014	

**OBJECTIVE**

To request City Council approval of three professional services agreements with 1) Group Delta Consultants, 2) Associated Soils Engineering, and 3) Smith-Emery Laboratories for on-call geotechnical services.

**BACKGROUND**

Currently, the City does not have geotechnical staff or a laboratory, and therefore, needs to engage the services of a consultant to meet the various geotechnical needs of capital projects.

**DISCUSSION**

The City of Garden Grove has various divisions requiring geotechnical services, such as Streets & Storms Drains, Water, and the Sanitary District. Historically, however, the primary demand for geotechnical services has come from the capital projects section. There is a need for geotechnical fieldwork, analysis, reports and studies, materials testing and acceptance, quality assurance testing, and independent analysis of civil engineering designs.

Six requests for proposal were sent to geotechnical firms for on-call geotechnical services, with four of the consultants submitting proposals. A panel consisting of three staff members rated the proposals based on qualifications, work experience, and references. Based on the evaluation results, Associated Soils Engineering, Group Delta Consultants, and Smith-Emery Laboratories rated the highest. The following is a summary of the ratings:

	ASSOCIATED SOILS	GROUP DELTA	SMITH- EMERY	AMERICAN GEOTECHNICAL
RATER A	186	193.5	189	180.75
RATER B	172	193.5	215	150.5
RATER C	186	178	171	152
<b>TOTAL</b>	<b>544</b>	<b>565</b>	<b>575</b>	<b>483.25</b>

APPROVAL OF AGREEMENTS WITH 1) GROUP DELTA CONSULTANTS 2)  
ASSOCIATED SOILS ENGINEERING AND 3) SMITH-EMERY LABORATORIES FOR ON-  
CALL GEOTECHNICAL SERVICES

November aa, 2014

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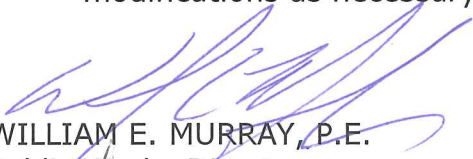
FINANCIAL IMPACT

There is no financial impact to the General Fund. Each agreement will be established for a three-year period in the amount, not to exceed, of \$300,000 each. Funding for these services will derive from Measure M2 and Gas Tax.

RECOMMENDATION

Staff recommends that the City Council:

- Approve the attached agreements for on-call geotechnical services with:  
1) Associated Soils Engineering, 2) Group Delta Consultants, and  
3) Smith-Emery Laboratories; and
- Authorize the City Manager to execute the agreements, in the amount not to exceed of \$300,000 per agreement, on behalf of the City and to make minor modifications as necessary.

  
WILLIAM E. MURRAY, P.E.  
Public Works Director

  
By: Ana Neal  
Senior Administrative Analyst

Attachment 1: Associated Soils Engineering Agreement

Attachment 2: Group Delta Agreement

Attachment 3: Smith-Emery Laboratories Agreement

Recommended for Approval

  
Matthew J. Fertal  
City Manager

## **CONSULTANT AGREEMENT**

THIS AGREEMENT is made this        day of        2014, by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and Associated Soils Engineering, Inc., a California Corporation ("CONSULTANT").

### **RECITALS**

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove City Council authorization dated November 11, 2014.
2. CITY desires to utilize the services of CONSULTANT to provide on-call geotechnical services.
3. CITY does not have the personnel to perform these services.
4. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish the required services.

### **AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement:** The initial term of this Agreement shall be for a period of three (3) years commencing upon the date of full execution of the Agreement. Following expiration of the initial term, there will be an option to extend the Agreement for one (1) additional two (2) year term (from the date of execution). Exercise of the option years shall be the sole option of the CITY. This Agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONSULTANT for work performed to date in accordance with CONSULTANT's Proposal, which is attached as Exhibit "A" and is hereby incorporated by reference. CONSULTANT is required to present evidence to support performed work.
2. **Services to be Provided:** The services to be performed by CONSULTANT shall consist of providing on-call geotechnical services on an "as-needed" and "as requested" basis and shall consist of those services described in CITY's Request for Proposal and as further specified in CONSULTANT'S Proposal. CONSULTANT understands and agrees that the Proposal and this Agreement do not guarantee any specific amount of work and that CITY may contract with other consultants to provide similar services. All services shall be performed only after authorized in writing by CITY. CONSULTANT warrants and agrees that its provision of Services under this Agreement shall be performed in a competent, professional and satisfactory manner in accordance with customary and usual practices in CONSULTANT'S profession and standards prevalent in

the industry for such services. By executing this Agreement, CONSULTANT warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

3. **Compensation.** CONSULTANT shall be compensated as follows:

- 3.1 **Amount.** Not to exceed \$300,000. Unless the CITY and CONSULTANT mutually agree to lower rates for a specific project, CONSULTANT shall be compensated in accordance with the fee schedule set forth in Exhibit "A".
- 3.2 **Not to Exceed.** The Parties agree that CONSULTANT shall bill for the Services provided by CONSULTANT to City on an hourly basis, except where otherwise set forth herein or otherwise mutually agreed by the parties, provided, however, that total compensation payable by CITY to CONSULTANT for all services rendered by CONSULTANT under this Agreement shall not exceed the total amount of Three Hundred Thousand Dollars and 00/100 cents (\$300,000.00). CONSULTANT shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. The Proposal and this Agreement do not guarantee any specific amount of work.
- 3.3 **Payment.** For work under this Agreement, payment shall be made by CITY in arrears per monthly invoice submitted by CONSULTANT. For extra work not a part of this Agreement, a written authorization by CITY will be required and payment shall be based on hourly rates as provided in Exhibit "A".
- 3.4 **Records of Expenses.** CONSULTANT shall keep complete and accurate records of payroll costs, travel and incidental expenses. These records will be made available at reasonable times to CITY.
- 3.5 **Termination.** CITY and CONSULTANT shall each have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice of termination to the other party. If the Agreement is terminated by the CITY, then the provisions of paragraph 3 shall apply to that portion of the work completed.

4. **Insurance Requirements**

- 4.1 **Commencement of Work.** CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.

- 4.2 Workers Compensation Insurance. For the duration of this Agreement, CONSULTANT and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable. The insurer shall waive its rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers.
- 4.3 Insurance Amounts. CONSULTANT shall maintain the following insurance for the duration of this Agreement:
- a) Commercial general liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable); Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY;
  - b) Automobile liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable) Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
  - c) Professional liability in the amount of \$1,000,000 per occurrence; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to city's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, lease, hired, or borrowed by CONSULTANT. CONSULTANT shall provide to CITY

proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONSULTANT's insurance coverage shall be primary insurance as respects to CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

*If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.*

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONSULTANT in the event of any default or breach by CITY, or for any amount, which may become due to CONSULTANT.
6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is understood and agreed that CONSULTANT, including CONSULTANT's employees, shall act and be independent contractor(s) and not agent(s) or employee(s) of CITY, and that no relationship of employer-employee exists between the parties. CONSULTANT's assigned personnel shall not obtain or be entitled to any rights or benefits that accrue to, or are payable to, CITY employees, and CONSULTANT shall so inform each employee organization and each employee who is hired or retained under this Agreement. CITY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of this Agreement, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT hereby expressly assumes all responsibility and liability for the payment of wages and benefits to its assigned personnel, and all related reporting and withholding obligations. CONSULTANT hereby agrees to indemnify and hold CITY harmless from any and all claims or liabilities that CITY may incur arising from any contention by any third party, including, but not limited to, any employee of CONSULTANT or any federal or state agency or other entity, that an employer-employee relationship exists by reason of this Agreement, including, without limitation, claims that CITY is responsible for retirement or other benefits allegedly accruing to CONSULTANT's assigned personnel.
8. **Compliance With Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government. CONSULTANT shall comply with, and shall be responsible for causing all

contractors and subcontractors performing any of the work pursuant to this Agreement, if any, to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.

9. **Disclosure of Documents.** All documents or other information developed or received by CONSULTANT are confidential and shall not be disclosed without authorization by CITY, unless disclosure is required by law.
10. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
11. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
12. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
  - (a) Address of CONSULTANT is as follows:

Associated Soils Engineering, Inc.  
2860 Walnut Avenue  
Signal Hill, California 90755
  - (b) Address of CITY is as follows (with a copy to):

Engineering:	City Attorney
City of Garden Grove	City of Garden Grove
P.O. Box 3070	P.O. Box 3070
Garden Grove, CA 92840	Garden Grove, CA 92840
13. **CONSULTANT'S Proposal.** This Agreement shall include CONSULTANT'S proposal, Exhibit "A" hereto, which shall be incorporated herein. In the event of any inconsistency between the terms of the proposal and the provisions in the main body of this Agreement, the provisions in the main body of this Agreement shall govern.
14. **Licenses, Permits and Fees.** At its sole expense, CONSULTANT shall obtain a **Garden Grove Business License**, all permits and licenses as may be required by this Agreement.

15. **Familiarity With Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions thereof; and (3) it understands the facilities, difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
16. **Time of Essence.** Time is of the essence in the performance of this Agreement.
17. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability and reputation of CONSULTANT, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONSULTANT. CITY will deal directly with and will make all payments to CONSULTANT.
18. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
19. **Indemnification.** To the fullest extent permitted by law, CONSULTANT agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT in the performance of the Agreement. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.



20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by CITY and CONSULTANT.
21. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and CONSULTANT.
22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.
23. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties
24. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

*[SIGNATURES ON FOLLOWING PAGE]*

**IN WITNESS THEREOF**, these parties hereto have caused this Agreement to be executed as of the date set forth opposite the respective signatures.

**"CITY"  
CITY OF GARDEN GROVE**


Dated: \_\_\_\_\_, 2014

By: \_\_\_\_\_  
City Manager

**ATTEST**

**"CONSULTANT"  
ASSOCIATED SOILS  
ENGINEERING, INC., a California  
Corporation**

\_\_\_\_\_  
City Clerk

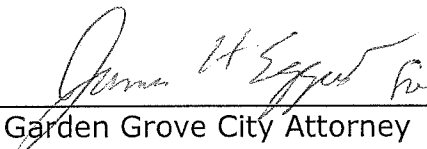
By:   
Title: PRESIDENT

Dated: \_\_\_\_\_, 2014

Dated: 10/1/14, 2014

**APPROVED AS TO FORM:**

If CONSULTANT/CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY

  
\_\_\_\_\_  
Garden Grove City Attorney

Dated: October 9, 2014

## CONSULTANT AGREEMENT

THIS AGREEMENT is made this        day of        2014, by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and Group Delta Consultants, Inc., a California Corporation ("CONSULTANT").

### RECITALS

The following recitals are a substantive part of this Agreement:

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  - c) Professional liability in the amount of \$1,000,000 per occurrence; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to city's requirements, as approved by the CITY.

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*If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.*

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONSULTANT in the event of any default or breach by CITY, or for any amount, which may become due to CONSULTANT.
6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is understood and agreed that CONSULTANT, including CONSULTANT's employees, shall act and be independent contractor(s) and not agent(s) or employee(s) of CITY, and that no relationship of employer-employee exists between the parties. CONSULTANT's assigned personnel shall not obtain or be entitled to any rights or benefits that accrue to, or are payable to, CITY employees, and CONSULTANT shall so inform each employee organization and each employee who is hired or retained under this Agreement. CITY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of this Agreement, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT hereby expressly assumes all responsibility and liability for the payment of wages and benefits to its assigned personnel, and all related reporting and withholding obligations. CONSULTANT hereby agrees to indemnify and hold CITY harmless from any and all claims or liabilities that CITY may incur arising from any contention by any third party, including, but not limited to, any employee of CONSULTANT or any federal or state agency or other entity, that an employer-employee relationship exists by reason of this Agreement, including, without limitation, claims that CITY is responsible for retirement or other benefits allegedly accruing to CONSULTANT's assigned personnel.
8. **Compliance With Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government. CONSULTANT shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this

Agreement, if any, to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.

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10. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
11. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
12. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
  - (a) Address of CONSULTANT is as follows:

Group Delta  
1320 South Simpson Circle  
Anaheim, CA 92806
  - (b) Address of CITY is as follows (with a copy to):

Engineering: City of Garden Grove P.O. Box 3070 Garden Grove, CA 92840	City Attorney City of Garden Grove P.O. Box 3070 Garden Grove, CA 92840
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13. **CONSULTANT'S Proposal.** This Agreement shall include CONSULTANT'S proposal, Exhibit "A" hereto, which shall be incorporated herein. In the event of any inconsistency between the terms of the proposal and the provisions in the main body of this Agreement, the provisions in the main body of this Agreement shall govern.
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16. **Time of Essence.** Time is of the essence in the performance of this Agreement.
17. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability and reputation of CONSULTANT, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONSULTANT. CITY will deal directly with and will make all payments to CONSULTANT.
18. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
19. **Indemnification.** To the fullest extent permitted by law, CONSULTANT agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT in the performance of the Agreement. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This



Agreement may be modified only by subsequent mutual written agreement executed by CITY and CONSULTANT.

21. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and CONSULTANT.
22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.
23. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties
24. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

*[SIGNATURES ON FOLLOWING PAGE]*

**IN WITNESS THEREOF**, these parties hereto have caused this Agreement to be executed as of the date set forth opposite the respective signatures.

**"CITY"  
CITY OF GARDEN GROVE**

Dated: \_\_\_\_\_, 2014

By: \_\_\_\_\_  
City Manager

**ATTEST**

**"CONSULTANT"  
GROUP DELTA CONSULTANTS,  
INC.**, a California Corporation

\_\_\_\_\_  
City Clerk

By: *J. Moulton*  
Title: President

Dated: \_\_\_\_\_, 2014

Dated: 10-2-14, 2014

**APPROVED AS TO FORM:**

If CONSULTANT/CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY

*James W. Egan*  
Garden Grove City Attorney

Dated: October 9, 2014

## **CONSULTANT AGREEMENT**

THIS AGREEMENT is made this        day of        2014, by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and Smith Emery Laboratories, a California Corporation ("CONSULTANT").

### **RECITALS**

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Council authorization dated November 11, 2014.
2. CITY desires to utilize the services of CONSULTANT to provide on-call geotechnical services.
3. CITY does not have the personnel to perform these services.
4. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish services.

### **AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement:** The initial term of this Agreement shall be for a period of three (3) years commencing upon the date of full execution of the Agreement. Following expiration of the initial term, there will be an option to extend the Agreement for one (1) additional two (2) year term (from the date of execution). Exercise of the option years shall be the sole option of the CITY. This Agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONSULTANT for work performed to date in accordance with CONSULTANT'S proposal, which is attached as Exhibit "A" and is hereby incorporated by reference. CONSULTANT is required to present evidence to support performed work.
2. **Services to be Provided:** The services to be performed by CONSULTANT shall consist of providing on-call geotechnical services on an "as-needed" and "as requested" basis and shall consist of those services described in CITY'S Request for Proposal and as further specified in CONSULTANT'S Proposal. CONSULTANT understands and agrees that the Proposal and this Agreement do not guarantee any specific amount of work and that CITY may contract with other consultants to provide similar services. All services shall be performed only after authorized in writing by CITY. CONSULTANT warrants and agrees that its provision of Services under this Agreement shall be performed in a competent, professional and satisfactory manner in accordance with customary and usual practices in CONSULTANT'S profession and standards prevalent in

the industry for such services. By executing this Agreement, CONSULTANT warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

3. **Compensation.** CONSULTANT shall be compensated as follows:

- 3.1 **Amount.** Not to exceed \$300,000. Unless the CITY and CONSULTANT mutually agree to lower rates for a specific project, CONSULTANT shall be compensated in accordance with the fee schedule set forth in Exhibit "A".
- 3.2 **Not to Exceed.** The Parties agree that CONSULTANT shall bill for the Services provided by CONSULTANT to City on an hourly basis, except where otherwise set forth herein or otherwise mutually agreed by the parties, provided, however, that total compensation payable by CITY to CONSULTANT for all services rendered by CONSULTANT under this Agreement shall not exceed the total amount of Three Hundred Thousand Dollars and 00/100 cents (\$300,000.00). CONSULTANT shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. The Proposal and this Agreement do not guarantee any specific amount of work.
- 3.3 **Payment.** For work under this Agreement, payment shall be made by CITY in arrears per monthly invoice submitted by CONSULTANT. For extra work not a part of this Agreement, a written authorization by CITY will be required and payment shall be based on hourly rates as provided in Exhibit "A".
- 3.4 **Records of Expenses.** CONSULTANT shall keep complete and accurate records of payroll costs, travel and incidental expenses. These records will be made available at reasonable times to CITY.
- 3.5 **Termination.** CITY and CONSULTANT shall each have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice of termination to the other party. If the Agreement is terminated by CITY, then the provisions of paragraph 3 shall apply to that portion of the work completed.

4. **Insurance Requirements**

- 4.1 **Commencement of Work.** CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.

- 4.2 Workers Compensation Insurance. For the duration of this Agreement, CONSULTANT and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable. The insurer shall waive its rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers.
- 4.3 Insurance Amounts. CONSULTANT shall maintain the following insurance for the duration of this Agreement:
- a) Commercial general liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable); Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY;
  - b) Automobile liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable) Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
  - c) Professional liability in the amount of \$1,000,000 per occurrence; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to city's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, lease, hired, or borrowed by CONSULTANT. CONSULTANT shall provide to CITY

proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONSULTANT's insurance coverage shall be primary insurance as respects to CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

*If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.*

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONSULTANT in the event of any default or breach by CITY, or for any amount, which may become due to CONSULTANT.
6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is understood and agreed that CONSULTANT, including CONSULTANT's employees, shall act and be independent contractor(s) and not agent(s) or employee(s) of CITY, and that no relationship of employer-employee exists between the parties. CONSULTANT's assigned personnel shall not obtain or be entitled to any rights or benefits that accrue to, or are payable to, CITY employees, and CONSULTANT shall so inform each employee organization and each employee who is hired or retained under this Agreement. CITY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of this Agreement, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT hereby expressly assumes all responsibility and liability for the payment of wages and benefits to its assigned personnel, and all related reporting and withholding obligations. CONSULTANT hereby agrees to indemnify and hold CITY harmless from any and all claims or liabilities that CITY may incur arising from any contention by any third party, including, but not limited to, any employee of CONSULTANT or any federal or state agency or other entity, that an employer-employee relationship exists by reason of this Agreement, including, without limitation, claims that CITY is responsible for retirement or other benefits allegedly accruing to CONSULTANT's assigned personnel.
8. **Compliance With Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government. CONSULTANT shall comply with, and shall be responsible for causing all

contractors and subcontractors performing any of the work pursuant to this Agreement, if any, to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.

9. **Disclosure of Documents.** All documents or other information developed or received by CONSULTANT are confidential and shall not be disclosed without authorization by CITY, unless disclosure is required by law.
10. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
11. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
12. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
  - (a) Address of CONSULTANT is as follows:

Smith-Emery Laboratories  
1197 North Tustin Avenue  
Anaheim, CA 92807
  - (b) Address of CITY is as follows (with a copy to):

Engineering:	City Attorney
City of Garden Grove	City of Garden Grove
P.O. Box 3070	P.O. Box 3070
Garden Grove, CA 92840	Garden Grove, CA 92840
13. **CONSULTANT'S Proposal.** This Agreement shall include CONSULTANT'S proposal, Exhibit "A" hereto, which shall be incorporated herein. In the event of any inconsistency between the terms of the proposal and the provisions in the main body of this Agreement, the provisions in the main body of this Agreement shall govern.
14. **Licenses, Permits and Fees.** At its sole expense, CONSULTANT shall obtain a **Garden Grove Business License**, all permits and licenses as may be required by this Agreement.

15. **Familiarity With Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions thereof; and (3) it understands the facilities, difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
16. **Time of Essence.** Time is of the essence in the performance of this Agreement.
17. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability and reputation of CONSULTANT, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONSULTANT. CITY will deal directly with and will make all payments to CONSULTANT.
18. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
19. **Indemnification.** To the fullest extent permitted by law, CONSULTANT agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT in the performance of the Agreement. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.



20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by CITY and CONSULTANT.
21. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and CONSULTANT.
22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.
23. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties
24. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

*[SIGNATURES ON FOLLOWING PAGE]*

**IN WITNESS THEREOF**, these parties hereto have caused this Agreement to be executed as of the date set forth opposite the respective signatures.

**"CITY"  
CITY OF GARDEN GROVE**

Dated: \_\_\_\_\_, 2014

By: \_\_\_\_\_  
City Manager

**ATTEST**

**"CONSULTANT"  
SMITH EMERY LABORATORIES, a  
California Corporation**

\_\_\_\_\_  
City Clerk

By: Robert Greeley  
Title: OPERATIONS MANAGER

Dated: \_\_\_\_\_, 2014

Dated: OCT. 14, \_\_\_\_\_, 2014

**APPROVED AS TO FORM:**



James H. [Signature]  
Garden Grove City Attorney

If CONSULTANT/CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY

Dated: Oct. 22 \_\_\_\_\_, 2014