



City of Carson Report to Successor Agency

February 19, 2013
New Business Consent

SUBJECT: CONSIDERATION OF THE SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH A.G.I. GEOTECHNICAL, INC., FOR PROJECT NO. 1223: CARSON PARK MASTER PLAN

Farrokh Abolfathi

Submitted by Farrokh Abolfathi
Acting Director of Public Works

Approved by David C. Biggs
Executive Director

I. SUMMARY

Due to the additional soil inspection, geotechnical observation and testing services necessary to complete the remaining improvements for Project No. 1223: Carson Park Master Plan, staff requests that the City Council authorize the Second Amendment to the Professional Services Agreement with A.G.I. Geotechnical, Inc., for the additional services, contracts and funding requirements for an additional fee not-to-exceed \$19,500.00.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE the Second Amendment to the Professional Services Agreement between the Carson Successor Agency and A.G.I. Geotechnical, Inc., for the additional geotechnical observation and testing services needed to complete Project No. 1223: Carson Park Master Plan, for a negotiated fee not-to-exceed \$19,500.00
2. AUTHORIZE the Chairman to execute the Second Amendment to the Professional Services Agreement between the Carson Successor Agency and A.G.I. Geotechnical, Inc., after approval as to form by the City Attorney.

III. ALTERNATIVES

1. DO NOT APPROVE the Second Amendment to the Professional Services Agreement with A.G.I. Geotechnical, Inc.,
2. TAKE another action the Carson Successor Agency deems appropriate consistent with the requirements of law.

IV. BACKGROUND

The City's Capital Improvement Program (CIP) calls for the construction of Project No. 1223: Carson Park Master Plan, located at 21411 S. Orrick Avenue (Exhibit No. 1). Carson Park occupies 10.9 acres and is developed with ball fields, 2 basketball courts, a children's play area, a horse shoe area,

meeting/craft rooms, picnic areas, a snack bar, volleyball courts, and a swimming pool.

The Carson Park Master Plan proposes construction of a 21,210 square foot building for a gymnasium, activity room, dance room, computer room, workout area, childcare facility, and a concession area. The existing community center and remote restroom buildings were demolished and will be reconstructed as part of these improvements.

On February 1, 2012, the Carson Successor Agency entered into an ancillary contract with A.G.I. Geotechnical, Inc., (A.G.I.) to perform certain soils testing services for a negotiated fee of \$24,560.00. The ancillary contract was not made subject to the master PLA, because the total amount was less than the threshold amount to trigger application of the PLA to this contract (Exhibit No. 2).

On October 2, 2012, the Successor Agency approved the First Amendment to the Professional Services Agreement between the Carson Successor Agency and A.G.I. for the additional geotechnical observation and testing services needed to complete Project No. 1223: Carson Park Master Plan, for a negotiated fee not-to-exceed \$14,000.00 (Exhibit No. 3).

The recent occasional rains caused the soil to saturate within the project site and has impacted the base preparation for the asphalt concrete and cement concrete needed as part of the Carson Park Improvements. In addition, soils within Carson Park have a high clay content which are called "expansive," the clay volume actually increases when the soil becomes wet and shrinks when the soil dries, which may cause the base to lift unevenly because of variations in the soil composition and wetness that will cause the structural concrete pavement to crack. This saturation makes the soil impossible to compact properly; thus, some type of water management system has been employed to eliminate or control the presence of rain water. The ground has been turned up, dried and recompact; a system which is necessary to condition the soil and recompact it properly, otherwise, it will result in soil movement that will lead to cracks on the concrete pavement and surrounding structures.

Soil recompaction is required since the natural soil was disturbed and is not dense enough to support the pavement structures it needs to in order to meet the engineer's specifications. The base course which serves as the foundation to support the top layers of the pavement needs to meet the minimum requirements of 95% relative compaction to provide a stable foundation needed to support either additional layers of aggregates or the placement of asphalt concrete or cement concrete.

The extended services of A.G.I. are necessary to perform the soils compaction test and determine if the minimum required compaction is achieved, which is

vital for the safety and stability of the asphalt and concrete pavements and the surrounding structures. Verifying that the soil is compacted enough allows pavement and other structures to continue without problems due to soil settling. A.G.I. will certify if the soil is compacted properly, and if it will provide the necessary bearing capacity and the allowable differential settlement.

Staff worked with A.G.I. to provide services necessary in completing this work. To accommodate the additional requests, A.G.I. requested additional professional fees for their services due to the amount of additional inspection and testing services necessary, which would be extremely difficult to handle adequately and timely within their existing contract. For these additional services, A.G.I. submitted their proposals, and staff negotiated the agreement revision for an additional fee not-to-exceed \$19,500.00 (Exhibit No. 4).

Based on the above, staff is requesting that the Carson Successor Agency approve the Second Amendment to the Professional Services Agreement with A.G.I. for the required additional inspection and testing services needed to complete the Carson Park Master Plan project for the not-to-exceed amount of \$19,500.00.

The construction of Carson Park facility is progressing and is approximately 90% complete, with a reasonable number of change orders experienced to date. Hardscape and all other concrete works, irrigation lines, and other required landscape improvements are all on going and in progress. The original scheduled completion of this project was January 2013. Due to several unforeseen field conditions, including rainy days, and the additional improvements requested by City staff which were added to the original scope of work, it has been determined that the project completion will take longer than expected and originally scheduled. It is anticipated that an additional 60 calendar days may be necessary to complete this project, which will delay the completion date to March 2013.

V. FISCAL IMPACT

The total construction bid amount for this improvement project is \$9,351,000.00, and the total cost of the professional services and contingency is now \$3,262,777.00, for a total project cost of \$12,613,777.00. Funds for this project, in the amount of \$10,000,000.00, were included in the FY 2011/12 Carson Consolidated Project Area budget account no. 30-70-710-996-8004/0122301; and on September 6, 2011, an additional \$2,327,799.00 was appropriated from the Carson Consolidated Project Area fund balance to account no. 30-70-710-996-8004/0122301. On February 1, 2012, the Carson Successor Agency entered into an ancillary contract with A.G.I. Geotechnical, Inc., to perform certain soil testing services for a negotiated fee not-to-exceed

\$24,560.00. On April 3, 2012, the Carson Successor Agency approved the First Amendment to the Professional Services Agreement with Vanir Construction Management, Inc., for a negotiated fee not-to-exceed \$23,260.00. On May 1, 2012, an additional \$73,832.00 was appropriated from the general fund balance to account no. 01-99-999-004-8004/0122301. On October 2, 2012, the Carson Successor Agency approved the Third Amendment to the Professional Services Agreement with Vanir Construction Management, Inc., for a negotiated fee not-to-exceed \$89,385.00; the First Amendment to the Professional Services Agreement with A.G.I. Geotechnical, Inc., for a negotiated fee not-to-exceed \$14,000.00; and the First Amendment to the Professional Agreement with Westberg and White, Inc., for a negotiated fee not-to-exceed \$39,050.00. On December 18, 2012, the Carson Successor Agency approved the Fourth Amendment to the Professional Services Agreement with Vanir Construction Management, Inc., and an additional \$166,882.00 was appropriated from the unreserved, undesignated Carson Successor Agency fund balance to account no. 82-70-793-985-8004/0122301. On January 15, 2013, the Carson Successor Agency approved the Fifth Amendment to the Professional Services Agreement with Vanir Construction Management, Inc., and an additional \$25,764.00 was appropriated from Agency bond funds to account no. 82-70-793-985-8004/0122301. The total project budget, as approved in the 5-Year CIP approved by City Council on October 16, 2012 is \$14,400,000.00 to be funded by the Carson Successor Agency bond funds (Exhibit No. 5). Hence, there are available funds for the cost of this contract amendment.

ANTICIPATED USES OF FUNDS:

DESCRIPTION OF SERVICES	REVISED BUDGET #1	PROJECT AMEND. #2 (2/1/12)	PROJECT AMEND. #3 (4/3/12)	PROJECT AMEND. #4 (5/1/12)	PROJECT AMEND. #5 (10/2/12)	PROJECT AMEND. #6 (12/18/12)	PROJECT AMEND. #7 (01/15/13)	PROJECT AMEND. #8 (02/19/13)	REVISED BUDGET
Construction Cost	\$9,351,000.00								\$9,351,000.00
Construction Contingency	1,402,650.00	-\$24,560.00	-\$23,260.00		-\$142,435.00				1,212,395.00
Design Architect	707,609.00				39,050.00				746,659.00
Staff Augmentation	160,000.00								160,000.00
Construction Management/Inspection	706,540.00		23,260.00	73,832.00	89,385.00	\$166,882.00	\$25,764.00		1,085,663.00
Soils Inspection		24,560.00			14,000.00			\$19,500.00	58,060.00
TOTAL	\$12,327,799.00	\$0.00	\$0.00	\$73,832.00	\$0.00	\$166,882.00	\$25,764.00	\$19,500.00	\$12,613,777.00

VI. EXHIBITS

1. Location Map. (pg. 6)
2. Professional Services Agreement with A.G.I. Geotechnical, Inc. (pgs. 7-28)
3. Minutes, October 2, 2012, Item No. 3. (pgs. 29-30)

February 19, 2013

4. Proposal from A.G.I. Geotechnical, Inc. (pgs. 31-36)
5. Project No. 1223 5-Year CIP estimated project cost and proposed funding sources. (pg. 37)

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Prepared by: Gilbert Marquez, P.E., Senior Civil Engineer

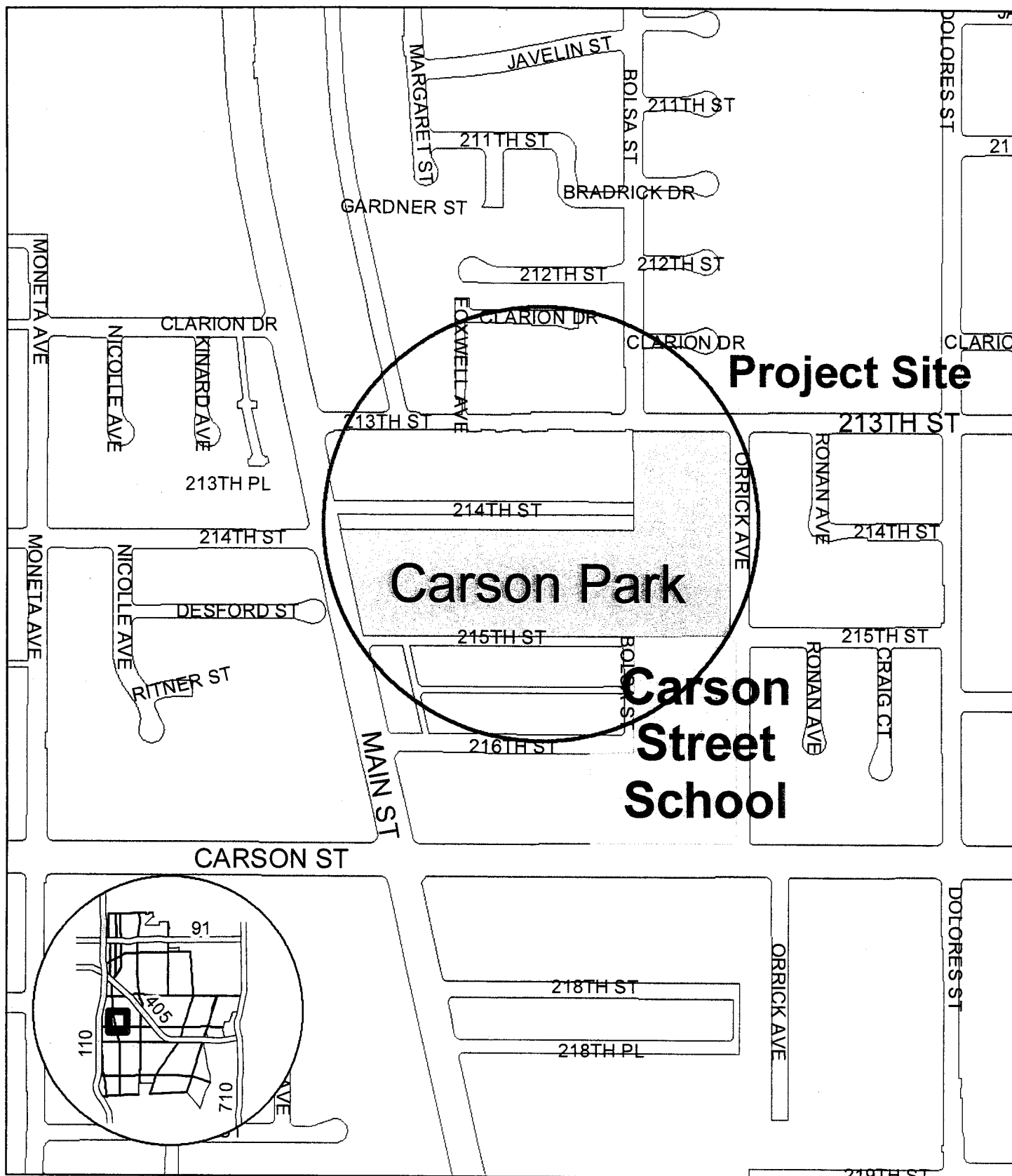
TO: Rev09-04-2012

Reviewed by:

City Clerk	City Treasurer
Administrative Services <i>Jackie Hunt</i>	Public Works
Community Development	Community Services

Action taken by Successor Agency

Date _____ Action _____



Location Map
Project No. 1223
Carson Park Master Plan

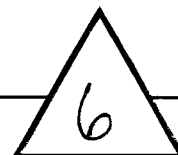


EXHIBIT NO. 1

AGREEMENT FOR PROFESSIONAL SERVICES

(A.G.I. Geotechnical, Inc. / City of Carson –
Carson Successor Agency)

THIS CONTRACT SERVICES AGREEMENT ("Agreement") is made and entered into this 1st day of February, 2012, by and between the CITY OF CARSON/CARSON SUCCESSOR AGENCY, a general law city and municipal corporation ("City/Agency") and A.G.I. Geotechnical, Inc. a California corporation ("Contractor"). The term Contractor includes professionals performing in a consulting capacity.)

RECITALS

A. City/Agency, and A.G.I. Geotechnica, Inc., entered into a Contract Services Agreement for Geotechnical Investigation and Material Testing on February 1, 2012.

B.. Contractor represents that it is qualified to perform such services desired by the City/Agency as set forth in the proposal submitted by Contractor dated February 1, 2012, attached hereto as Exhibit "A" and incorporated herein ("the Proposal").

C. City/Agency desires to engage the services of Contractor to provide Geotechnical Investigation and Material Testing services, as provided herein, in connection with the project identified as Project No. 1223, Carson Park Master Plan.

AGREEMENT

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1.0 SERVICES OF CONTRACTOR

1.1 **Scope of Services.** In compliance with all terms and conditions of this Agreement, Contractor shall provide geotechnical investigation and material testing services as specified in the "Scope of Services" attached hereto as Exhibit A", and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder, Contractor covenants and warrants that all services will be performed in a competent, professional, and satisfactory manner in accordance with standards prevalent in the industry. As a material inducement to the City/Agency entering into this Agreement, Contractor represents and warrants that it is a provider of first class work and services and Contractor is experienced in performing the work and services contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 **Compliance with Laws.** All services performed hereunder shall be performed in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered.

1.3 **Licenses, Permits, Fees and Assessments.** Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement, including a business license from the City of Carson. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City/Agency against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City/Agency hereunder.

1.4 **Familiarity with Work.** By executing this Agreement, Contractor warrants that (a) it has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and, (c) fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City/Agency of such fact and shall not proceed except at Contractor's risk until written instructions are received from the Contract Officer.

1.5 **Care of Work.** The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by the City, except such losses or damages as may be caused by City's/Agency's own negligence.

1.6 **Further Responsibilities of Parties.** Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonable necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.7 **Additional Services.** City/Agency shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to five percent (5%) of the Contract Sum or \$25,000.00, whichever is less; or in the time to perform of up to one hundred

eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefore.

1.8 **Complaints.** A written log of all complaints shall be maintained to include the date, time of occurrence, location, problem, and action to be taken pursuant thereto or reason for non-action. The log is to be reviewed with Contract Officer or authorized designee at the end of each day. Pictures are to be taken at the time of the incident which is the subject of the complaint. Any activities determined by City/Agency to be unacceptable and to require immediate abatement shall be corrected immediately by Contractor. All other complaints shall be abated by Contractor within 24 hours of notification of the complaint.

2.0 COMPENSATION

2.1 **Schedule of Compensation.** For services rendered pursuant to this Agreement, the Contractor shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "B" and incorporated herein by this reference, but not exceeding the maximum contract amount of Twenty Four Thousand, Five Hundred and Sixty Dollars (\$24,560.00), ("Contract Sum"). The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation. Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expense, transportation expense approved by the Contract Officer in advance, and no other expenses and only if specified in the Schedule of Compensation.

2.2 **Method of Payment.** Unless some other method of payment is specified in the Schedule of Compensation, in any month in which Contractor wishes to receive payment, no later than the fourth (4th) working day of such month. Contractor shall submit to the City in the form approved by the City's Administrative Services General Manager, an invoice of services rendered prior to the date of the invoice, except as provided in Section 7.3. City/Agency shall pay Contractor for all expenses stated thereon which are approved by City/Agency pursuant to this Agreement no later than the last working day of the month.

2.3 **Availability of Funds.** It is mutually understood between the parties that this Agreement is valid and enforceable only if sufficient funds are made available by the Agency Members of the City for the purposes of this Agreement. The availability of funding is affected by matters outside the City's/Agency's control, including other governmental entities. Accordingly, the City/Agency has the option to void the whole Agreement or to amend the Agreement to reflect unanticipated reduction in funding, for any reason.

3.0 PERFORMANCE SCHEDULE

3.1 **Time of Essence.** Time is of the essence in the performance of this Agreement.

3.2 **Schedule of Performance.** All services rendered pursuant to this Agreement shall be effective February 1, 2012 and shall remain in effect for a period of 180 days unless earlier terminated pursuant to Section 7.8.

3.3 **Force Majeure.** The time period specified for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, acts of any governmental agency, including the City/Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time of performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City/Agency for any delay in the performance of this Agreement, however, caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 **Term & Extended Term(s).** Unless earlier terminated in accordance with Section 7.8 of this Agreement, this Agreement shall continue in full force and effect for 180 days. City/Agency reserves the right, in its sole and unfettered direction, to extend the Term of this Agreement by providing Contractor with written notice of its intent to extend the Term or any Extended Term of this Agreement not less than thirty (30) calendar days prior to the expiration of the Term or any Extended Term of this Agreement.

4.0 COORDINATION OF WORK

4.1 **Representative of Contractor.** Mark A. Swiatek, Principal Engineering Geologist is hereby designated as being the principal and representative of the Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith. It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principal were a substantial inducement for City/Agency to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. The foregoing principal may not be changed by Contractor without the express written approval of the Contract Officer.

4.2 **Contract Officer.** The Contract Officer and City's/Agency representative shall be Gilbert Marquez, Senior Civil Engineer or in his or her absence, as designated in writing by the City Manager/Executive Director of City. If no Contract Officer is so designated, the City Manager/Executive Director shall be the Contract Officer. It shall be the Contractor's

responsibility to assure that the Contractor Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by the City/Agency to the Contract Officer. Unless otherwise specified herein, any approval of the City/Agency required hereunder shall mean the approval of the Contract Officer.

4.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability and reputation of Contractor and its principals and employees were a substantial inducement for the City/Agency to enter into this Agreement. Therefore, Contractor shall not contract with any entity to perform in whole or in part the services required hereunder with the express written approval of the City/Agency. In addition, neither this Agreement nor any interest herein may be assigned or transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of the City/Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without express consent of City/Agency.

4.4 Independent Contractor. Neither the City/Agency nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City/Agency shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City/Agency and shall remain at all times as to City/Agency a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not, at any time, or in any manner represent that it or any of its agents or employees are agents or employees of the City. City/Agency shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venture or a member of any joint enterprise with Contractor.

Contractor agrees to pay all required taxes on amounts paid to Contractor under this Agreement, and to indemnify and hold City/Agency harmless from any and all taxes, assessments, penalties, and interest asserted against City/Agency by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers compensation law regarding Contractor and Contractor's employees. Contractor further agrees to indemnify and hold harmless City/Agency from any failure of Contractor to comply with applicable worker's compensation laws. City/Agency shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City/Agency from Contractor as a result of Contractor's failure to promptly pay to City/Agency any reimbursement or indemnification arising under this Section.

5.0 INSURANCE AND INDEMINIFICATION

5.1 **Insurance.** Contractor shall at all times during the term of this Agreement each carry, maintain, and keep in full force and effect, with an insurance company admitted to do business in California and approved by City Risk Manager (1) a policy or policies of broad-form comprehensive general liability insurance with minimum limits of \$2,000,000.00 combined single coverage against any injury, death, loss or damage as a result of wrongful or negligent acts by Contractor, its officers, employees, agents, and independent contractors in performance under this Agreement; (2) property damage insurance with a minimum coverage of \$1,000,000.00; (3) automotive liability insurance, with the minimum combined single limits coverage of \$1,000,000.00; and (4) worker's compensation insurance with a minimum limit of \$1,000,000.00 or the amount required by law, whichever is greater. The City/Agency, its officers, employees, attorneys, and volunteers shall be named as additional insured on the policy(ies) as to comprehensive general liability, property damage, and worker's compensation coverages.

(1) All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, reduced, or otherwise modified (except through the addition of additional insured's to the policy) by the insurance carrier without the insurance carrier giving the City/Agency thirty (30) day's prior written notice thereof. Contractor agrees that it will not cancel, reduce or otherwise modify said insurance coverage.

(2) Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, and such insurance is available at a reasonable cost, the City may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Contractor and the cost of such insurance may be deducted, at the option of City, from payments due Contractor.

(3) At all times during the term of this Agreement, Contractor shall maintain on file with the City Clerk endorsement of the insurance carrier or carrier on the City's standard endorsement forms showing that the aforesaid policies are in effect as provided above. Contractor shall file such endorsements with the City Clerk prior to execution of this Agreement.

5.2 **Indemnification.** Contractor agrees to indemnify, hold harmless and defend the City/Agency, its officials, officers, and employees, and will hold and save each of them harmless from, any and all actions, suites, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the negligent acts or omissions of Contractor hereunder, or arising from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence on the part of the City/Agency, its officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City/Agency, its officers, agents or employees, who are directly responsible to the City/Agency, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City/Agency, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City/Agency, its officers, agents, and employees harmless therefrom;

(c) In the event the City/Agency, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City/Agency, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

6.0 RECORDS AND REPORTS

6.1 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City/Agency is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated here in or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.2 Records. Contractor shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required.

6.3 Ownership of Documents. All reports, records, documents and other materials prepared by Contractor, its employees, subcontractors and/or agents in the performance of this Agreement shall be the property of City/Agency and shall be delivered to the City/Agency upon request of the Contract Officer or upon the termination of this Agreement, and the Contractor shall have no claim for further compensation as a result of the exercise by the City/Agency of its full right of ownership of the documents and materials hereunder. Any use of such completed

documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's/Agency's sole risk and without liability to Contractor, and the City/Agency shall indemnify the Contractor for all damages resulting therefrom. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City/Agency of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City/Agency for all damages resulting therefrom.

6.4 **Release of Documents.** The reports, records, documents and other materials prepared by the Contractor in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

7.0 **ENFORCEMENT OF AGREEMENT**

7.1 **Governing Law.** This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

7.2 **Disputes.** In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party in writing of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice, and completes the cure of such default within thirty (30) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Notwithstanding the foregoing, however, City/Agency shall be excused from payment if Contractor has for any period failed to perform its work in a satisfactory manner. Compliance with the provisions of this Section shall be condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be waiver of any party's right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's/Agency's or the Contractor's right to terminate this Agreement without cause pursuant to Section 7.8.

7.3 **Retention of Funds.** Contractor hereby authorizes City/Agency to deduct from any amount payable to Contractor (whether or not arising out of the Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City/Agency of any losses, costs, liabilities, or damages suffered by City/Agency, and (ii) all amounts for which City/Agency may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City/Agency may withhold from any payment due, without liability for interest because of such

withholding, an amount sufficient to cover such claim. The failure of City/Agency to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City/Agency as elsewhere provided herein.

7.4 **Waiver.** No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. City's/Agency's consent or approval of any act by Contractor requiring the City's/Agency's consent or approval shall not be deemed to waive or render unnecessary City's/Agency's consent to or approval of any subsequent act of Contractor. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 **Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one of more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default by the other party.

7.6 **Legal Action.** In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 **Liquidated Damages.** Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City/Agency the sum of Zero (\$0.00) as liquidated damages for each working day of delay in the performance of any services required hereunder. The City/Agency may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 **Termination Prior to Expiration of Term.** This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City/Agency reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice shall be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to City/Agency, except that where termination is due to the fault of the City/Agency, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Office, except as provided in Section 7.3. In the event, the Contractor has initiated

termination the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to the Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2. For purposes of this Agreement, cause shall be defined as the failure to abide by all terms and conditions of this Agreement, the failure of Contractor to perform its obligations hereunder in a timely and satisfactory manner, or if Contractor ceases performing its work for ten (10) days during any thirty (30) day period.

7.9 Termination for Cause. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City/Agency may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City/Agency shall use reasonable efforts to mitigate such damages), and City/Agency may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City/Agency as previously stated.

7.10 Attorney's Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

8.0 CITY OFFICERS AND EMPLOYEES; NON DISCRIMINATION

8.1 Non-liability of City Officer and Employees. No officer or employee of the City/Agency shall be personally liable to the Contractor or any successor in interest, in the event of any default or breach by the City/Agency or for any amount may become due to the Contractor or to its successor, or for any breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest. No officer or employee of the City/Agency shall have any personal interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his personal interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement. When requested by the Contract Officer, prior to the City's/Agency's execution of the Agreement, Contractor shall provide the City/Agency with an executed statement of economic interest.

8.3 Covenants against Discrimination. The Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, in the performance of

this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

9.0 MISCELLANEOUS PROVISIONS

9.1 **Notice.** Any notices, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City/Agency, to the City Manager/Executive Director and to the attention of the Contract Officer, CITY OF CARSON, 701 East, Carson Street, CARSON, California 90745, and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City:

City Manager/Executive Director
City of Carson
701 East Carson Street
Carson, CA 90745
Attention: Gilbert Marquez
Senior Civil Engineer
Engineering Services

To Contractor:

A.G.I. Geotechnical, Inc.
16555 Sherman Way, Suite A
Van Nuys, CA 91406
Attention: Mark A. Swiatek
Principal Engineering Geologist

9.2 **Interpretation.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 **Integration: Amendment.** It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations arrangements, agreements and understandings, if any, between the parties and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

9.4 **Severability.** In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or Sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders the Agreement meaningless.

9.5 **Warranty & Representation of Non-Collusion.** No official, officer, or employee of the City/Agency has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of the City/Agency participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Contractor hereby warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City/Agency official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded this Agreement. Contractor further warrants and represents that it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City/Agency official, officer, or employee, as a result of consequence of obtaining or being awarded this Agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

_____ Initials of Authorized Contractor's Officer

9.6 **Corporate Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[SIGNATURES NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Attest:

"CITY/CARSON SUCCESSOR AGENCY

By: _____
Agency City Clerk

By: *David C. [Signature]*
Executive Director

Dated: _____

SEAL

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Agency Attorney

Attest:

CONTRACTOR
A.G.I. GEOTECHNICAL, INC.

By: _____
Print Name

Mark [Signature]
Signature

Title

2-2-2012
Date

By: _____
Print Name

Signature

Title

Date

[END OF SIGNATURES]

EXHIBIT "A"
SCOPE OF SERVICES

[See Attached]



A. G. I. GEOTECHNICAL, INC.

16555 Sherman Way, Suite A • Van Nuys, CA 91406 • Office (818)785-5244 • Fax (818)785-6251

February 1, 2012

Proposal No. 7990
Project No. 20-3444-10

City of Carson
701 E. Carson Street
P.O. Box 6234
Carson, CA 90749

RE: Project No. 1223-Carson Park Master Plan

Attention: Mr. Gilbert Marquez, P.E./Project Manager

Subject: **PROPOSAL FOR GEOTECHNICAL SERVICES**
City of Carson Redevelopment Agency/Carson Park
21411 S. Orrick Avenue
Carson, California

Dear Mr. Marquez:

A.G.I. Geotechnical, Inc. is pleased to present this proposal to provide geotechnical observation and testing services during the grading and development of Carson Park. We are proposing that our services be billed on an hourly basis at prevailing wage in accordance with the enclosed Schedule of Charges. Our understanding of the project is based upon our soils investigation report and the approved site plans. Daily field inspection reports will be provided each time our staff is on site. We are estimating the following cost to complete the project.

MASS GRADING

During rough grading for the building pad and parking lots, we propose to staff the project full time with our soils technician. Our technician will work under the supervision of our engineer who will periodically visit the site. We will perform various lab tests during and at

the completion of grading. We will perform selected lab tests (grain size, maximum density, shear strength, potential expansion, chemical) on import materials for the building pad. Upon completion of grading, we will prepare a Rough Grade Compaction Report in order to provide you with the compaction testing and laboratory data performed during grading and certifying the fill for construction.

We are estimating approximately 90 hours of billable time for the technician and 9 hours for the project engineer during grading.

Field Technician	80 hours x \$100 =	\$8,000.00
Engineer Supervision	8 hours x \$150 =	\$1,200.00
Laboratory Testing	40 hours x \$70 =	\$2,800.00
Final Compaction Report	Fixed Fee	<u>\$2,000.00</u>
		\$14,000.00

BUILDING PAD

We are proposing to provide compaction testing for utility trenches and observation of footing excavations during construction. We are estimating 10 additional half-day visits during construction to observe footing and test utility trench backfill.

Field Technician	30 hours x \$100 =	\$3,000.00
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PARKING LOTS

We are proposing to provide compaction testing during preparation of subgrade and base for the parking lot and hardscape areas. We will provide laboratory testing of base materials and provide a final certification report.

Field Technician	40 hours x \$100 =	\$4,000.00
Engineer Supervision	4 hours x \$150 =	\$600.00
Laboratory Testing	4 hours x \$70 =	\$280.00
Final Compaction Report	Fixed Fee	<u>\$1,000.00</u>
		\$5,880.00

MILEAGE CHARGES

The round-trip mileage from our office to the site is 70 miles at the rate of .60¢ per mile. We are estimating our staff will make at least 40 round-trip visits to the site during grading and construction.

Mileage Charges	40 x \$42/visit =	\$1,680.00
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Our estimate for the completion of the project is

\$24,560.00

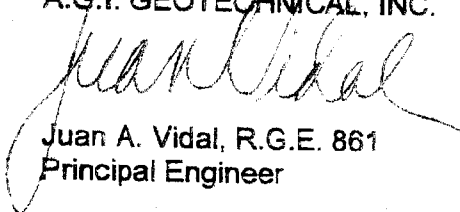
This estimate is for bidding purposes only. Actual costs may vary and will be billed on an hourly basis in accordance with our Schedule of Charges. If the foregoing conditions and the attached Special Provisions are acceptable, please indicate your acceptance by signing below, **initialing the Special Provisions** and returning one copy of this proposal to our office.


City of Carson
Proposal No. 7990
January 25, 2012

Page 4

We appreciate the opportunity to be of service. If you have any questions, please do not hesitate to contact this office.

Very truly yours,
A.G.I. GEOTECHNICAL, INC.


Juan A. Vidal, R.G.E. 861
Principal Engineer


Mark A. Swiatek, C.E.G. 1781
Principal Engineering Geologist

Enclosures: Special Provisions
Schedule of Charges

Distribution: (1) Addressee via email

Accepted by,

Signature

Date

Printed Name

Phone

SPECIAL PROVISIONS

1. A.G.I.'S PERFORMANCE

(A) Governmental agency rules and regulations are subject to interpretation by agency reviewers. All reports will be written by A.G.I. with the intent of providing sufficient information to comply with regulatory agency requirements. However, no guarantee is given that any or all reports will be approved by the applicable governmental agency. As a standard industry practice, all additional work subsequent to submittal of the original report by A.G.I. will be in addition to our estimate and will be billed hourly, unless prior arrangements are agreed to.

(B) A.G.I. is relying entirely on plans and maps given to A.G.I. by the Client or Client's agents. Client shall indemnify and hold A.G.I. harmless from any and all damages to person or property caused to A.G.I. or third parties resulting from undisclosed underground conditions or errors or inaccuracy of plans, maps or any other information provided by the Client or Client's agents to A.G.I.. A.G.I. will exercise reasonable care in an effort not to place excavations in the areas of existing utilities. A.G.I. will call Underground Service Alert (USA) prior to proceeding with the field portion of the investigation. They will locate public utility lines in public access areas (i.e., street, sidewalks, etc.), but will not locate utilities on private property. It is anticipated that you will be able to locate utility lines within the site.

(C) Although every reasonable effort will be made to minimize any adverse influences the equipment may have on existing landscaping, it is important to recognize that some disruption of the landscaping will occur as a result of any equipment used for excavations, including hand excavations. Some excess dirt from the borings, trenches or pits may be left on-site. A.G.I. will not be responsible for maintenance of any excavations beyond initially backfilling them upon completion of the field work. It has been our experience that backfilled excavations can settle with time.

(D) A.G.I. shall not be responsible for its failure to perform as a result of inclement weather, accidents, acts of God, public insurrection, war, labor difficulties, riots, interference by governmental agencies, or any other act reasonably beyond A.G.I.'s control.

(E) Client shall disclose in writing to A.G.I. any and all known or suspected hazardous and toxic conditions or materials present at the job-site and shall indemnify, defend and hold A.G.I. harmless from and against any all liability, costs, attorneys or expert fees or damage to a person or property arising from hazardous or toxic conditions or materials present at the job-site.

2. CHANGES IN THE SCOPE OR AMOUNT OF SERVICES

If conditions other than those anticipated are encountered, a different scope of work may be required. If a change in scope of work is required, additional consulting and/or subcontract fees may be incurred. Client will be notified for authorization to proceed with a modified scope of work. Client shall be responsible for all additional charges, costs and expenses incurred for any changes requested by the client. Client acknowledges that the total amount of any invoice will be directly affected by the number and kinds of changes, as well as the time within which to complete the changes. If the changes requested by the client are substantial, they can become a major portion of the bill. Due to the need for rapid decisions, fax transmissions shall be deemed an acceptable mode of confirmation.

3. A.G.I.'S PROFESSIONAL OPINION

A.G.I.'s professional services, findings and recommendations will be obtained and prepared in accordance with generally accepted current engineering practices. No opinions or warranties of any kind are given by A.G.I. except those expressly stated in A.G.I.'s written reports.

4. QUOTATIONS

Unless otherwise specified (such as a fixed price), Client shall pay A.G.I. its standard rates for the services and products provided subject to changes in pricing from time to time. If the quotation is in the form of an estimate, the fees and expenses shown are not the maximum estimates. The final fees and expenses shall be shown when the final invoice is tendered.

CLIENT INITIALS _____

5. PAYMENT

All invoices are due and payable upon receipt. A.G.I. has the right at any time to specify the manner of payment, notwithstanding any prior course of conduct or dealing between the parties. Any and all invoices, or any portion thereof, outstanding after thirty (30) days, shall accrue interest at 1.5% per month, but in no event more than the maximum rate permissible by law, from the original date of invoice until paid.

6. ENTRY ONTO THE PROJECT

Client hereby grants A.G.I. the right of entry to the job-site to permit A.G.I. to perform the work under this agreement.

7. A.G.I.'S INSURANCE

A.G.I. maintains worker's compensation and public liability insurance policies for bodily injury and property damage. Certificates of insurance will be furnished upon request. With regard to property claims, A.G.I. shall not be responsible for damage beyond those amounts paid under the policies. A.G.I. shall not be responsible for any consequential lost profits, business interruption and damages claimed by the Client.

8. LIABILITY

(A) Client acknowledges that it is aware of the risks involved in construction and agrees to limit any liability claim for damages to person or property, attorney's fees, expert fees or other costs of defense or expenses (collectively "claims") to be levied against A.G.I. arising out of or relating to any design defect, error, omission, professional negligence or other promise of A.G.I. (collectively "Liabilities") to the greater of \$50,000.00 or the amount of A.G.I.'s fees paid under the contract. The fee charged Client for the services to be rendered pursuant to this agreement has been established with regard to the legal effect of this Limit of Liability section.

(B) The client and A.G.I. intend to allocate, release, liquidate, exclude or limit certain liability in accordance with and to the maximum extent permitted under California Law. Accordingly, if any portions of provisions are held to be unenforceable or invalid by any court, the remaining portions shall not be affected and shall be curtailed by the court, but only to the extent required for their validity under any law which may be applicable. As curtailed, the remaining provisions shall be enforceable.

9. GENERAL PROVISIONS

(A) Any and all disputes arising out of the interpretation, performance or breach of this Agreement, at the request of either party, shall be submitted to binding arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its commercial arbitration rules then in effect. The arbitrator shall apply California substantive law to the proceeding, and shall have the power to grant all legal and equitable remedies and award compensatory damages provided by California Law except for the power to award punitive damages. The parties shall be permitted to conduct discovery in accordance with the California Code of Civil Procedure. The arbitrator shall prepare in writing and provide to the parties an award including factual findings and the reasons on which the decision is based. The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected pursuant to California Code of Civil Procedure, Sections 1286.2 or 1286.6 for any such error. Except as provided in the preceding sentence, the award of the arbitrator shall be final and may be submitted to any court having jurisdiction for the purpose of confirmation and enforcement. As additional damages, the arbitrator shall have the discretion to award costs and attorney fees to the prevailing party.

(B) No provision of this Agreement shall be interpreted for or against any party because that party or its legal representative drafted the provision.

(C) Failure by a party to exercise any right, remedy, or opinion in this Agreement or delay by a party in exercising the same, will not operate as a waiver. No waiver will be effective unless it is in writing.

10. TERMINATION

The obligation to perform further services under this Agreement may be terminated by either party upon seven (7) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Further, A.G.I. may terminate this agreement upon seven (7) days' written notice if A.G.I.'s services for the project are delayed or suspended for more than ninety (90) days for reasons beyond A.G.I.'s control; in such case A.G.I. shall have no liability to Client on account of such termination. In the event of early termination, A.G.I. shall be entitled to compensation at the rates set forth in the schedule of charges, which shall be immediately due and payable upon A.G.I.'s presentation to Client of an invoice for said charges.

CLIENT INITIALS _____

EXHIBIT "B"
SCHEDULE OF COMPENSATION

[See attached]



A.G.I. GEOTECHNICAL, INC.

16555 Sherman Way, Suite A - Van Nuys, CA 91406 - (818) 785-5244 - FAX (818) 785-6251

SCHEDULE OF CHARGES FOR FOUNDATION AND GEOLOGIC INVESTIGATIONS

The fee for our services will be based on the charges listed below. All fee quotations are applicable for a period of 90 days from the date of the proposal to which this schedule is attached. We reserve the right to modify these rates upon 30 days advanced notice.

Professional:

	Hourly Rate
Principal Engineers/Geologists/Consultants	\$150.00
Project Engineers/Geologists	\$125.00
Staff Engineers/Geologists	\$100.00
Expert Witness-Testimony (4 hr. min.)	\$300.00
Expert Witness-Stand-By Time (4hr. min)	\$200.00

Technical:

Deputy Grading Inspector	\$90.00
Senior Field Technician/Supervisor	\$80.00
Field Technician	\$75.00
Laboratory Technicians	\$70.00
AutoCAD Drafting Service	\$70.00
Drafting Services	\$60.00
Secretarial Services	\$45.00
Prevailing Wage Field Technician	\$110.00

For projects with a defined scope, our charges are based on Time and Expense, Standard Unit Charge, Not-to Exceed, or Fixed Fee.

OTHER FEES

Mileage at \$0.60 per mile

Map Reproduction (30" x 42") at \$4.00 per map

Out-of-Pocket Expenses will be billed at cost plus 15%.

Overtime for hourly personnel will be billed at the hourly rate times 1.50 for over eight (8) hours and Saturdays, double time for Sundays and holidays.

Minimum charge for site visits for inspection or compaction testing will be two (2) hours. Show up time two (2) hours.

Travel time and mileage will be charged from the office (portal to portal) as per schedule of fees.

INSURANCE

A.G.I. Geotechnical, Inc. maintains General Liability Insurance for bodily injury and property damage with an aggregate limit of \$2,000,000.00 per occurrence for its own account and will furnish certificates of insurance upon request. In the event the client desires additional coverage, we will, upon the client's written request, obtain additional insurance at the client's expense.

Effective August, 2007

Engineering Geology - Soil Engineering - Environmental Studies

ITEM NO. (3) CONSIDERATION OF APPROVAL OF THE THIRD AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH VANIR CONSTRUCTION MANAGEMENT, INC.; THE FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH A.G.I. GEOTECHNICAL, INC.; AND THE FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH WESTBERG AND WHITE, INC., FOR PROJECT NO. 1223: CARSON PARK MASTER PLAN (PUBLIC WORKS DEPARTMENT)

RECOMMENDATION for the Successor Agency:

TAKE the following actions:

1. APPROVE the Third Amendment to the Professional Services Agreement between the Carson Successor Agency and Vanir Construction Management, Inc., for the additional construction management time and construction inspection services needed to complete Project No. 1223: Carson Park Master Plan, for a negotiated fee not-to-exceed \$89,385.00.
2. APPROVE the First Amendment to the Professional Services Agreement between the Carson Successor Agency and A.G.I. Geotechnical, Inc., for the additional geotechnical observation and testing services needed to complete Project No. 1223: Carson Park Master Plan, for a negotiated fee not-to- exceed \$14,000.00.
3. APPROVE the First Amendment to the Professional Services Agreement between the Carson Successor Agency and Westberg and White, Inc. for the additional professional services needed to complete Project No. 1223: Carson Park Master Plan, for a negotiated fee not-to-exceed \$39,050.00.
4. AUTHORIZE the Mayor to execute the Third Amendment to the Professional Services Agreement between the Carson Successor Agency and Vanir Construction Management, Inc., after approval as to form by the City Attorney.
5. AUTHORIZE the Mayor to execute the First Amendment to the Professional Services Agreement between the Carson Successor Agency and A.G.I. Geotechnical, Inc., after approval as to form by the City Attorney.
6. AUTHORIZE the Mayor to execute the First Amendment to the Professional Services Agreement between the Carson Successor Agency and Westberg and White, Inc. after approval as to form by the City Attorney.

ACTION: Item No. 3 was approved on the New Business Consent Calendar on motion of Dear, seconded by Santarina and unanimously carried by the following vote:

Ayes: Mayor/Agency Chairman/Authority Chairman Dear, Mayor Pro Tem/Agency Vice Chairman/Authority Vice Chairman Ruiz-Raber/Council Member/Agency Member/Authority Commissioner Davis-Holmes, Council Member/Agency Member/Authority Commissioner Gipson and Council Member/Agency Member/Authority Commissioner Santarina

Noes: None
Abstain: None
Absent: None

City/Agency/Authority Attorney Wynder clarified that with respect to Successor Agency Item No. 3, the request was to authorize the Agency Chair to execute those agreements.

Subsequently, Mayor/Agency Chairman/Authority Chairman Dear stated that there was a typographical error in the Carson Successor Agency agenda face sheet on Page 3, Item No. 3, subsets 4, 5, and 6 that should read, "Authorize the Chairperson" to execute the agreements, which was the proper wording for the Successor Agency and with City/Agency/Authority Attorney Wynder concurring.



A. G. I. G E O T E C H N I C A L , I N C.

16555 Sherman Way, Suite A • Van Nuys, CA 91406 • Office (818)785-5244 • Facsimile:(818)785-6251

January 21, 2013

Project No. 20-3444-10
Proposal No. 8196

City of Carson
701 E. Carson St.
P.O. Box 6234
Carson, CA 90749

RE: Project No. 1223-Carson Park Master Plan

Attention: Mr. Gilbert Marquez, P.E./Project Manager

Subject: **PROPOSAL FOR CONTRACT EXTENSION**
City of Carson Redevelopment Agency/Carson Park
21411 S. Orrick Avenue
Carson, California

Dear Mr. Marquez:

A.G.I. Geotechnical, Inc. is pleased to present this proposal for contract extension to provide continuing geotechnical observation and testing services during development of Carson Park. All work is continuing under the observation and testing of our engineering technicians. The work remaining consists of: Site Concrete Work, Site Storm Drain and Electrical, Fire Lane Subgrade and Base, Dugout Subgrade and Base and Parking Lot Subgrade and Base. We are requesting a contract extension to cover the remaining services. All services will be billed on an hourly basis in accordance with our Schedule of Charges.

Senior Field Technician (prevailing wage)	136 hours x \$110.00	\$14,960.00
Engineering Supervision	5 hours x \$150.00	\$ 750.00
Laboratory Testing	5 hours x \$70.00	\$ 350.00

EXHIBIT NO. 04

Engineering Geology - Soil Engineering - Environmental Studies

Compaction Reports (Trench Backfill, Concrete Work, Subgrade and Base)	Fixed Fee	\$2,000.00
Mileage Charges	32 visits x \$42/visit	<u>\$1,344.00</u>

Our estimate for the completion of the project is \$19,404.00

Based on our experience with similar projects, our estimated fee to complete the project and provide you with the compaction reports is estimated to be about \$19,404.00. Our actual fee will be billed on an hourly basis in accordance with the enclosed Schedule of Charges.

If the foregoing conditions and the attached Special Provisions are acceptable, please indicate your acceptance by signing below, **initialing the Special Provisions** and returning one copy of this proposal to our office.

We appreciate the opportunity to be of service. If you have any questions, please do not hesitate to contact this office.

Very truly yours,
A.G.I. GEOTECHNICAL, INC.


Juan Carlos Vidal
Vice President


Juan A. Vidal, R.G.E 861
Principal Engineer

JCV/JAV:jcv

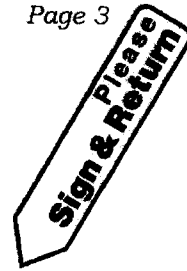
Enclosures: Special Provisions
Schedule of Charges

Distribution: (1) Addressee via e-mail



City of Carson
Proposal No. 8196
January 21, 2013

Page 3



Accepted by,

Signature

Date

Printed Name

Phone



A.G.I. Geotechnical, Inc. • 16555 Sherman Way, Suite A • Van Nuys, CA 91406
Office: (818)785-5244 • Facsimile: (818)785-6251

SPECIAL PROVISIONS

1. A.G.I.'S PERFORMANCE

(A) Governmental agency rules and regulations are subject to interpretation by agency reviewers. All reports will be written by A.G.I. with the intent of providing sufficient information to comply with regulatory agency requirements. However, no guarantee is given that any or all reports will be approved by the applicable governmental agency. As a standard industry practice, all additional work subsequent to submittal of the original report by A.G.I. will be in addition to our estimate and will be billed hourly, unless prior arrangements are agreed to.

(B) A.G.I. is relying entirely on plans and maps given to A.G.I. by the Client or Client's agents. Client shall indemnify and hold A.G.I. harmless from any and all damages to person or property caused to A.G.I. or third parties resulting from undisclosed underground conditions or errors or inaccuracy of plans, maps or any other information provided by the Client or Client's agents to A.G.I. A.G.I. will exercise reasonable care in an effort not to place excavations in the areas of existing utilities. A.G.I. will call Underground Service Alert (USA) prior to proceeding with the field portion of the investigation. They will locate public utility lines in public access areas (i.e., street, sidewalks, etc.), but will not locate utilities on private property. It is anticipated that you will be able to locate utility lines within the site.

(C) Although every reasonable effort will be made to minimize any adverse influences the equipment may have on existing landscaping, it is important to recognize that some disruption of the landscaping will occur as a result of any equipment used for excavations, including hand excavations. Some excess dirt from the borings, trenches or pits may be left on-site. A.G.I. will not be responsible for maintenance of any excavations beyond initially backfilling them upon completion of the field work. It has been our experience that backfilled excavations can settle with time.

(D) A.G.I. shall not be responsible for its failure to perform as a result of inclement weather, accidents, acts of God, public insurrection, war, labor difficulties, riots, interference by governmental agencies, or any other act reasonably beyond A.G.I.'s control.

(E) Client shall disclose in writing to A.G.I. any and all known or suspected hazardous and toxic conditions or materials present at the job-site and shall indemnify, defend and hold A.G.I. harmless from and against any all liability, costs, attorneys or expert fees or damage to a person or property arising from hazardous or toxic conditions or materials present at the job-site.

2. CHANGES IN THE SCOPE OR AMOUNT OF SERVICES

If conditions other than those anticipated are encountered, a different scope of work may be required. If a change in scope of work is required, additional consulting and/or subcontract fees may be incurred. Client will be notified for authorization to proceed with a modified scope of work. Client shall be responsible for all additional charges, costs and expenses incurred for any changes requested by the client. Client acknowledges that the total amount of any invoice will be directly affected by the number and kinds of changes, as well as the time within which to complete the changes. If the changes requested by the client are substantial, they can become a major portion of the bill. Due to the need for rapid decisions, fax transmissions shall be deemed an acceptable mode of confirmation.

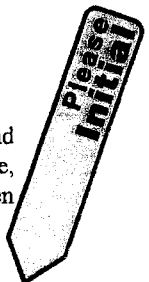
3. A.G.I.'S PROFESSIONAL OPINION

A.G.I.'s professional services, findings and recommendations will be obtained and prepared in accordance with generally accepted current engineering practices. No opinions or warranties of any kind are given by A.G.I. except those expressly stated in A.G.I.'s written reports.

4. QUOTATIONS

Unless otherwise specified (such as a fixed price), Client shall pay A.G.I. its standard rates for the services and products provided subject to changes in pricing from time to time. If the quotation is in the form of an estimate, the fees and expenses shown are not the maximum estimates. The final fees and expenses shall be shown when the final invoice is tendered.

CLIENT INITIALS _____



5. PAYMENT

All invoices are due and payable upon receipt. A.G.I. has the right at any time to specify the manner of payment, notwithstanding any prior course of conduct or dealing between the parties. Any and all invoices, or any portion thereof, outstanding after thirty (30) days, shall accrue interest at 1.5% per month, but in no event more than the maximum rate permissible by law, from the original date of invoice until paid.

6. ENTRY ONTO THE PROJECT

Client hereby grants A.G.I. the right of entry to the job-site to permit A.G.I. to perform the work under this agreement.

7. A.G.I.'S INSURANCE

A.G.I. maintains worker's compensation and public liability insurance policies for bodily injury and property damage. Certificates of insurance will be furnished upon request. With regard to property claims, A.G.I. shall not be responsible for damage beyond those amounts paid under the policies. A.G.I. shall not be responsible for any consequential lost profits, business interruption and damages claimed by the Client.

8. LIABILITY

(A) Client acknowledges that it is aware of the risks involved in construction and agrees to limit any liability claim for damages to person or property, attorney's fees, expert fees or other costs of defense or expenses (collectively "claims") to be levied against A.G.I. arising out of or relating to any design defect, error, omission, professional negligence or other promise of A.G.I. (collectively "Liabilities") to the greater of \$50,000.00 or the amount of A.G.I.'s fees paid under the contract. The fee charged Client for the services to be rendered pursuant to this agreement has been established with regard to the legal effect of this Limit of Liability section.

(B) The client and A.G.I. intend to allocate, release, liquidate, exclude or limit certain liability in accordance with and to the maximum extent permitted under California Law. Accordingly, if any portions of provisions are held to be unenforceable or invalid by any court, the remaining portions shall not be affected and shall be curtailed by the court, but only to the extent required for their validity under any law which may be applicable. As curtailed, the remaining provisions shall be enforceable.

9. GENERAL PROVISIONS

(A) Any and all disputes arising out of the interpretation, performance or breach of this Agreement, at the request of either party, shall be submitted to binding arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its commercial arbitration rules then in effect. The arbitrator shall apply California substantive law to the proceeding, and shall have the power to grant all legal and equitable remedies and award compensatory damages provided by California Law except for the power to award punitive damages. The parties shall be permitted to conduct discovery in accordance with the California Code of Civil Procedure. The arbitrator shall prepare in writing and provide to the parties an award including factual findings and the reasons on which the decision is based. The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected pursuant to California Code of Civil Procedure, Sections 1286.2 or 1286.6 for any such error. Except as provided in the preceding sentence, the award of the arbitrator shall be final and may be submitted to any court having jurisdiction for the purpose of confirmation and enforcement. As additional damages, the arbitrator shall have the discretion to award costs and attorney fees to the prevailing party.

(B) No provision of this Agreement shall be interpreted for or against any party because that party or its legal representative drafted the provision.

(C) Failure by a party to exercise any right, remedy, or opinion in this Agreement or delay by a party in exercising the same, will not operate as a waiver. No waiver will be effective unless it is in writing.

(D) For all intents and purposes this will be considered a legal and binding contract between A.G.I. and the company listed on the title page. It is also considered that the agreement was executed in the city of Van Nuys, state of California.

10. TERMINATION

The obligation to perform further services under this Agreement may be terminated by either party upon seven (7) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Further, A.G.I. may terminate this agreement upon seven (7) days' written notice if A.G.I.'s services for the project are delayed or suspended for more than ninety (90) days for reasons beyond A.G.I.'s control; in such case A.G.I. shall have no liability to Client on account of such termination. In the event of early termination, A.G.I. shall be entitled to compensation at the rates set forth in the schedule of charges, which shall be immediately due and payable upon A.G.I.'s presentation to Client of an invoice for said charges.

CLIENT INITIALS _____

Please
Initial



A. G. I. GEOTECHNICAL, INC.

16555 Sherman Way, Suite A • Van Nuys, CA 91406 • Office (818)785-5244 • Facsimile:(818)785-6251

SCHEDULE OF CHARGES FOR FOUNDATION AND GEOLOGIC INVESTIGATIONS

The fee for our services will be based on the charges listed below. All fee quotations are applicable for a period of 90 days from the date of the proposal to which this schedule is attached. We reserve the right to modify these rates upon 30 days advanced notice.

Professional:

	Hourly Rate
Principal Engineers/Geologists/Consultants.....	\$150.00
Project Engineers/Geologists.....	\$125.00
Staff Engineers/Geologists.....	\$100.00
Expert Witness-Testimony (4 hr. min.)	\$300.00
Expert Witness-Stand-By Time (4hr. min).....	\$200.00

Technical:

Deputy Grading Inspector.....	\$90.00
Senior Field Technician/Supervisor.....	\$80.00
Field Technician.....	\$75.00
Laboratory Technicians	\$70.00
AutoCAD Drafting Service.....	\$70.00
Drafting Services	\$60.00
Secretarial Services.....	\$45.00
Prevailing Wage Field Technician.....	\$110.00

For projects with a defined scope, our charges are based on Time and Expense, Standard Unit Charge, Not-to Exceed, or Fixed Fee.

OTHER FEES

Mileage at \$0.60 per mile

Map Reproduction (30" x 42") at \$4.00 per map

Out-of-Pocket Expenses will be billed at cost plus 15%.

Overtime for hourly personnel will be billed at the hourly rate times 1.50 for over eight (8) hours and Saturdays, double time for Sundays and holidays.

Minimum charge for site visits for inspection or compaction testing will be two (2) hours. Show up time two (2) hours.

Travel time and mileage will be charged from the office (portal to portal) as per schedule of fees.

INSURANCE

A.G.I. Geotechnical, Inc. maintains General Liability Insurance for bodily injury and property damage with an aggregate limit of \$2,000,000.00 per occurrence for its own account and will furnish certificates of insurance upon request. In the event the client desires additional coverage, we will, upon the client's written request, obtain additional insurance at the client's expense.

Effective August, 2007



CITY OF CARSON FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM

Proposed Fiscal Year: 2012/13 THROUGH 2016/17

Project No: 1223

Project Name: Carson Park Master Plan

Project Description: Project includes construction of a gymnasium, activity room, dance room, computer room, workout area, childcare facility, and a concession area. Improvement plan includes upgrades or enhancements to the basketball courts, ball fields, and reconstruction of the existing parking lot, including the addition of 41 parking spaces.

ESTIMATED PROJECT COST AND PROPOSED FUNDING SOURCES						
Estimated Project Cost	\$	14,400,000				
Proposed Funding Source(s)	Fiscal Year 2012/13	Fiscal Year 2013/14	Fiscal Year 2014/15	Fiscal Year 2015/16	Fiscal Year 2016/17	Total By Funding Source(s)
CSA Bond Fund	\$ 14,400,000	\$ -	\$ -	\$ -	\$ -	\$ 14,400,000
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total for Fiscal Year	\$ 14,400,000	\$ -	\$ -	\$ -	\$ -	\$ 14,400,000

PROJECT SCHEDULE

Milestones

Date

Request For Proposal (RFP/RFQ) - PSE

Approve Plans, Specifications & Estimates (PSE)

Advertise Project Construction

Award of Construction Contract

Construction Start Date

Project Completion Date

